Public Hearing 7:00 pm

New Business:

1) Variance Application # 536: Application submitted by Stephen and Hope Hadsell to request relief from Article III, Section 190-29 (D)(1)(A) of the Town of New Scotland’s Zoning Law to allow an accessory structure to be located within the front set back on a lot. The parcel is owned by the Hadsells, located in the RA district at 233 Bullock Rd. and is identified as tax parcel # 83.-4-30.20. The request is for 40’ of relief to allow the structure to remain located along the R.O.W. of Bullock Road.

Mr. Baker asked the applicant to submit a sketch plan with the layout of the property and the boundary lines.

Mr. Baker referred this variance application to the Planning Board for their August 6, 2019 meeting. The applicant will be back to the Zoning Board of Appeals on August 27, 2019 for a public hearing.

2) Variance Application # 537: Application submitted by Mohawk Hudson Land Conservatory to request relief from Article III, Section 190-32C(5) of the Town of New Scotland’s Zoning Law to allow for a sign to be constructed on the front property line of the Bennet Hill Preserve. The parcel is located within the RF Zoning District on Bennet Hill Road. The parcel is owned by the applicant and identified as New Scotland Tax parcel id # 117.-2-24. The RF district has a Front yard setback of 25’ for signs. This request is for 25’ of relief to allow for the sign to be located along the R.O.W. of Bennet Hill Road.

Mr. Kent Harlow, representative for the Mohawk Hudson Land Conservatory, explained that they would like to put a sign perpendicular to the road at their Bennett Hill Road site.

Mr. Baker referred this variance application to the Planning Board for their August 6, 2019 meeting. The applicant will be back to the Zoning Board of Appeals on August 27, 2019 for a public hearing.

Old Business:

1) Variance Application # 531: Application submitted by Tommell Livestock LLC as a two part application. The first part is to request an appeal of determination for a violation given by the Building Inspector that the use of the parcel as a commercial public garage is not a current allowed use for the parcel. The second part of the application is a request to “renew” a use variance previously granted for this parcel to allow for the operation and use as a public garage. The parcel is located in the RA district at 173 North Rd. and is identified as tax parcel # 105.-3-6.10.

Mr. Steve Crookes recused himself from the meeting.

Mr. Robert Rosborough, Whiteman, Osterman and Hanna, representing Tommell Livestock LLC. We requested two forms of relief. First this is a previously non-conforming use as an interpretation of your code and second is the use variance application in the event that the Board finds that the
previous use variance expired. As the Board knows the four elements that the Board has to review to make a determination for a use variance and in this matter where a previous use variance was granted on findings of this Board just a few years ago that the four elements were satisfied for the same use of this same garage. It has not changed in any way. We respectfully submit that the standards are satisfied here as well. The courts have said where a Board has made a previous determination on the same facts that determination needs to be the same for subsequent applications where there is no substantial changing in facts. We respectfully submit that there has been no change here. It is the same use that was granted, a use variance of the prior owner and our investigation said that there was a use variance at the time we purchased so it is not self-created hardship. Basically the Board has seen our submission, the submission is not going to change at this point, and that’s a summary as to where we are and we respectfully submit that first the interpretation be granted because this is a pre-existing non-conforming use and the alternative that a use variance be granted in line with the same use variance that was granted in 2016 to the prior owner of the property.

Mr. Baker moved to issue a negative declaration for this project, because none of the environmental circumstances have changed from the previous application. Ms. Abrams seconded the motion; all in favor; motion so carried.

Vote: 3-0

Albany County’s recommendation was to defer to local consideration. Albany County found that the proposed action will have no significant county wide or inter- municipal impact. There is an advisory that submission of an Ag data statement to the Town is required by Town Law for the use variance, but we already have one of those.

Mr. Baker moved to deny the appeal to the extent that it sought a determination that the use variance with Mr. Charles Shufelt was still in effect on the grounds that the use variance expired as a matter of law pursuant to section 190-78 and a building permit was not obtained within one year of the date of the use variance and therefore the use variance expired as a matter of law. The applicant was required to apply for a new use variance. The conditions of the prior use variance were also not satisfied. Ms. Abrams seconded the motion; all in favor; motion so carried.

Vote: 3-0

Mr. Baker: Just to reiterate, what we talked about before was we have the issue that Ms. Coreno laid out that if all things remain the same we are obligated to affirm the previous determination otherwise we could be arbitrary and capricious in regards to the criteria for a use variance. That certainly applies to criteria B and C that a hardship that is unique to the property does not apply to a substantial portion of the district or neighborhood. That the requested use variance if granted will not alter the essential character of district or neighborhood. However, that was for a different owner. The use variance was never completed or acted on, so that owner sold the property to the current owners, Tommell Livestock, and the question was can they get a reasonable return from the property as demonstrated by comps in that area? And was the hardship self-created. On the financial element they have provided that the appraisal showed that the property valued as a residential property had a value between $142,000 - $160,000 and that as a commercial property $225,000. Even though they thought it was a commercial property they only paid $160,000 and gave a residential life estate for the person to stay in the house. So the value for what they paid for the property is in line with its value as a residential property. It can certainly be used at some point as a residential property in the range for what they paid for the property. It is not that it cannot be used as a reasonable return for any of the permitted uses in the zoning law. It can be used as a residential property. The second part is going to the self-created hardship. We had a lot of discussion about that. The applicant’s business manager admitted last meeting she did not check the Town’s files, she did not check the zoning law, did not know that there was a zoning law. She claimed to only look at some minutes online and one e-mail from prior counsel, which raised questions as to whether the conditions had been satisfied. She submitted an affidavit that said she inspected the entire Town file in the town records and she admitted that was not true. She did not look at the Town files. Tommell bought the property in December 2017 and did not make any effort, even though she had seen the minutes of the meeting to determine if the conditions had been satisfied or if they were operating the facility in accordance with the conditions that she had known about. Clearly it is a self-created hardship and there was virtually no due diligence on this. There is no evidence that the property was put on the market, to try to be marketed to other people, it was a closed transaction between parties that knew each other. They
knew at the time or should have known that there was no variance in effect there. They would have to reapply for the use variance.

Ms. Abrams: I would like to add, if they were to use the garage for commercial purposes, then they would have needed to go to DMV to get a permit. In order to get the permit, they would have needed a form from Mr. Cramer, at which time they certainly would have become aware that the conditions for the variance were not in compliance. So the fact is they didn’t even apply for a permit to conduct a business.

Mr. Baker: It is not in our purview to determine whether DMV would find them legal or not, but what we do know is that as a public garage it is required to have a DMV permit and they do not have a DMV permit and one of the elements to get a DMV permit is a certification that it complies with zoning, which is why Mr. Shufelt came here in the first place. I have found no effort at all by the applicant to make sure the business was in compliance with the law. Having said that, I would move that we adopt this decision as written and deny the request for a use variance.

Mr. Moore seconded the motion; all in favor; motion so carried.

Vote: 3-0

Discussion/Action minutes of May 28, 2019: Mr. Baker moved approve the May 28, 2019 minutes with correction and Mr. Moore seconded the motion; all in favor; motion so carried.

Vote: 4-0

Discussion/Action minutes of June 25, 2019: Will vote on the June minutes at the next meeting.

Motion to adjourn: At 7:50 p.m. Mr. Moore moved to adjourn and Mr. Crookes seconded the motion.

Respectfully submitted,

Lori Saba

THE NEXT TENATIVELY SCHEDULED MEETING August 27, 2019