

Town of Bristol
Zoning Board of Appeals
Minutes May 9, 2017

Present: Marty Snyder, Jen Sanford, John Krebbeks, Donna Beretta, Steve Smiley and Sandra Riker

Others Present: see attached sign in sheet as well as Jeff Graff, Attorney representing the ZBA

Minutes: The minutes of April 11, 2017 were approved with a motion by Jen Sanford and a second by John Krebbeks. Vote as follows: Snyder aye, Smiley aye, Krebbeks aye, Beretta aye, Sanford aye.

Administrative Appeal / Interpretation:

A request for appeal and interpretation was presented by Jesse Lyon of 4310 Case Road under tax parcel # 124.00-1-39.100 regarding Article 3, Section II, Paragraph 60 Definition of Home Occupation. He is also asking for relief from the decision made by the Code Enforcement Officer dated January 26, 2017. Donald Cheney of Cheney & Blair, LLP will be representing Mr. Lyon.

The definition of Home Occupation reads as follows:

Home Occupation: Any activity carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A home occupation shall be conducted entirely within the principal dwelling unit and/or in a properly permitted, approved, and fully enclosed accessory building. The accessory structure may not exceed 750 square feet and must be of similar construction, architecture, and materials to the main dwelling unit.

The January 26, 2017 decision by Code Officer Phil Sommer read as follows:

“ Jesse Lyon
4310 Case Road
Canandaigua, NY 14424

Mr. Lyon:

Reading what the ZBA talked about in your informal meeting they are leaving the decision up to this office on having a home occupation run out of your structure. After giving it great thought I believe your business does not fall under home occupation as described in our zoning.

Operations must be terminated and no signs of any kind of business activity must be present. This decision will come under great scrutiny from you as I am well aware of.

Mr. Lyon you have the right to appeal this decision by way of the Zoning Board of Appeals. If this is the path you wish you may contact the board secretary to schedule a date.

Phil Sommer
CEO/Fire Marshal”

This meeting is a continuation of the previous Zoning Board of Appeals meeting of April 11, 2017 when the public hearing was held and all present were able to speak to the application as well as a letter from another neighbor expressing their concern for the home occupation being conducted at 4310 Case Road. Chairman

Snyder made sure that everyone who wished to speak was given the opportunity to do so and then closed the public hearing. Tonight's meeting is being held for the ZBA Board to render their decision regarding the Appeal of Jesse Lyon-Home Occupation Business at 4310 Case Road to an administrative appeal letter dated March 27, 2017 from Mr. Lyon's Attorney Donald Cheney that was hand delivered to the CEO office on that date. The administrative appeal letter arrived on the 60th day from when the CEO Officer made his determination.

Chairman Snyder said he would like to separate the definition of home occupation in two parts. The first part deals with the use being completed in the resident's dwelling unit and the second part with the use in the accessory structure: ***and/or in a properly permitted, approved, and fully enclosed accessory building. The accessory structure may not exceed 750 square feet and must be of similar construction, architecture, and materials to the main dwelling unit.***

Jen Sanford- if the ZBA follows the regulation to the letter that states the accessory structure cannot exceed 750 square feet in size that is the first hurdle.

Steve Smiley - the accessory structure is 3456 square feet and far exceeds the 750 square feet as allowed by the regulation. The crux of the matter is the size rather than construction of the accessory structure, it is not even close to that and went on to say the accessory structure must of similar construction, architecture, and materials to the main dwelling unit and it does not fit that description either.

Chairman Snyder then mentioned the portion of the regulation that deals with the fact the accessory structure must be of similar construction, architecture, and materials to the main dwelling unit and said that a pole barn of metal construction is not compatible with the home dwelling made of wood.

Steve Smiley the construction of the building is not the first consideration as much as the size. Donna Beretta agreed with this point.

Chairman Snyder-then we all agree we do not need to interpret what is written as it appears to be cut & dried with regard to the size allowed as an accessory structure for a home occupation and the Board members agreed.

Chairman Snyder-moving along to the fact the home occupation must be conducted fully within a properly permitted and approved-the dumpster outside the building appears to be used for the business being conducted at 4310 Case Road.

Jen Sanford asked Mr. Lyon if the dumpster is there all the time and he replied yes this is where his employees bring the refuse collected at the job sites and it is emptied once a week.

Chairman Snyder said he felt that this business steps outside of what he would consider a home occupation if it is necessary to have a dumpster available for its use. He asked if the other Board members agreed or see that as a point of concern. Jen Sanford said she would agree with that especially because it is the dumpster is there all the time.

All Board members agreed the primary issue is the size of the building being 3456 square feet as opposed to the allowed 750 square feet.

Steve Smiley the issue is not that they are doing business at their house but inside of the 3456 sq. foot accessory building. Chairman Snyder agreed and when on to say that when he spoke with the Code Officer that is one of the key concerns.

Chairman Snyder listed the points of concern as:

1. Primary issue is the accessory structure shall not exceed 750 square feet in size.
2. The home occupation is to be conducted fully within that accessory building and clearly the dumpster is outside of that building.
3. The accessory structure should be similar in construction to the primary dwelling on the parcel.

John Krebbeks said that he does not have a problem with the third point and he would interpret more broadly as it is residential in nature not metal to wood. However, he does agree with the first point regarding the size of the accessory building and sees that as a problem.

Chairman Snyder made the motion to affirm the Code Officer's decision of January 26, 2017 that activity carried out at 4310 Case Road in the accessory structure does not fit within the definition of Home Occupation in the Zoning Regulations of the Town of Bristol and for the following reasons:

- A. The accessory structure size is 3456 square feet exceeds the 750 square foot limit allowed in the Town of Bristol.
- B. The operations of the home occupation are not conducted in a fully enclosed accessory building. The dumpster is located outside of the accessory building.

The motion was seconded by Steve Smiley and the Board polled as follows: Smiley aye, Snyder aye, Beretta aye, Krebbeks aye, and Sanford aye.

Chairman Snyder thanked Mr. Graff for attending our meeting to help with the Lyon Appeal and advised him it was not necessary to stay for the rest of our meeting.

Other Business: The Secretary advised the ZBA Board that she had received comments regarding the draft solar law as written from Jessica Bacher of Pace Law University and our Town Attorney Bill Kenyon. Ms. Bacher presented a Land Use Planning and Zoning for Solar Law session put on by the Ontario and Yates County Planning Departments on March 28, 2017 where she said she would be willing to review and draft laws for solar that a community had put together.

The comments from both Ms. Bacher and Mr. Kenyon were similar in nature. Both expressed concern that we were trying to use both Wattage and Area Coverage as criteria for zoning, and recommended we follow the wattage rather than use coverage. The Secretary has shared this with the Planning Board and is in the process of making the suggested changes for the Planning and Zoning Boards to review. There has been a revised version of the unified solar permit approved by the Town Board that is a better tool and she will provide that for the PB and ZBA to review and comment on as well.

She said that a joint meeting for Planning and ZBA will be coming in June or July when the Secretary has the changes and updates made to the draft solar law and unified residential permit.

CEO Report: presented by the Secretary.

A motion to adjourn was made by Jen Sanford with a second by Donna Beretta.

Respectfully submitted,

Sandra Riker

Town of Bristol

Planning and ZBA Secretary

Minutes approved for posting on June 12, 2017