

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the April 26, 2005 Meeting

A regular meeting of the Jamestown Zoning Board of Review was held at the Jamestown Library, 26 North Road. The Chairman called the meeting to order at 7:04 p.m. The clerk called the roll and noted the following members present:

Thomas Ginnerty
Don Wineberg
Raymond Iannetta
Richard Boren
Joseph Logan
David Nardolillo
Elizabeth Brazil
Dean Wagner

Also present: Brenda Hanna, Stenographer
Pat Westall, Zoning Clerk
Fred Brown, Zoning Officer
A. Lauriston Parks, Counsel

MINUTES

Minutes of the March 22, 2005 meeting.

A motion was made by Thomas Ginnerty and seconded by Richard Boren to accept the minutes of the March 22, 2005 as presented.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Raymond Iannetta, Richard Boren, and Joseph Logan voted in favor of the motion.

David Nardolillo, Elizabeth Brazil and Dean Wagner were not seated.

CORRESPONDENCE

Eastward Vista

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the request of Eastward Vista to the May 5, 2005 meeting at their request due to the lengthy agenda.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Raymond Iannetta, Richard Boren, and Joseph Logan voted in favor of the motion.

David Nardolillo, Elizabeth Brazil and Dean Wagner were not seated.

Town of Jamestown

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the request of the Town of Jamestown to the May 5, 2005 meeting at their request due to the lengthy agenda.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Raymond Iannetta, Richard Boren, and Joseph Logan voted in favor of the motion.

David Nardolillo, Elizabeth Brazil and Dean Wagner were not seated.

Cingular Wireless

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the request of Cingular Wireless to the May 5, 2005 meeting at their request due to the lengthy agenda.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Raymond Iannetta, Richard Boren, and Joseph Logan voted in favor of the motion.

David Nardolillo, Elizabeth Brazil and Dean Wagner were not seated.

Sheehan

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the request of Kerry Sheehan to the May 5, 2005 meeting at their request due to the lengthy agenda.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Raymond Iannetta, Richard Boren, and Joseph Logan voted in favor of the motion.

David Nardolillo, Elizabeth Brazil and Dean Wagner were not seated.

OLD BUSINESS

Clancy

A motion was made by Thomas Ginnerty and seconded by Raymond Iannetta to **deny** the request of David M. Clancy and Jennifer R. Clancy, whose property is located at 382 North Road, and further identified as Tax Assessor's Plat 7, Lot 22 for a Special Use Permit, as provided under Article 3, Section 302 (District Dimensional Regulations), and Article 6, Sections 600 (Consideration of the Zoning Board), 601 (Special Use Permits Authorized by this Ordinance), and 602 (Burden on the Applicant) of the Zoning Ordinance, and any other relevant sections of the Zoning Ordinance for retail sales of Home Crafted Products Manufactured on the Premises.

This Board had determined that this application does not satisfy the requirements of Article 6, Sections 600 and 602.

This motion is based on the following findings of fact:

1. Said property is located in a RR200 zone and contains 65,340 sq. ft.
2. The applicants have owned the property located at 382 North Road for approximately ten years.
3. In 2003 they applied for dimensional relief, that application is incorporated by reference hereto. At that time the applicant sought relief pursuant to Article 3, Section 311, (Maximum Size of Accessory Structures) to construct an oversize accessory structure 30 x 30' in which to house a glass blowing studio. Additionally, they sought relief under Article 1, Section 104 or 103, definition 29, Customary Home Occupation, to conduct a home business in a space exceeding 200 sq. ft.
4. That subsequent to the 2003 decision of the Board the applicants constructed an accessory structure on the property.

5. That soon thereafter the applicants installed various equipment, including furnaces, and commenced operation of the glass blowing studio.
6. That in addition to glass blowing equipment the applicants allocated an area in the accessory structure that served as a display area.
7. That the applicants created a parking lot area that could accommodate multiple vehicles.
8. That the applicants have erected a sign and light that are near the road and readily visible to passing traffic.
9. That during consecutive days multiple vehicles have parked in the parking area at the subject area.
10. That on multiple consecutive dates multiple vehicles have parked to the side of North Road to visit the subject property.
11. That the applicants have on many instances conducted retail sales at the subject property, when it was open to the public.
12. That the applicants have breached a condition contained in the April 2003 decision in that they have allowed more than occasional public openings that include commercial activities, in addition to studio visits to observe glass blowing production.
13. In that regard, occasional is defined by Webster's New Universal Unabridged Dictionary as of irregular occurrence, happening now and then, or infrequently.
14. On April 22, 2003 a hearing was held, the applicants presented testimony in support of their application. They described their business as a glass blowing studio in which they produced glassware to be sold at wholesale away from the North Road location. They told this Board that they anticipated infrequent outgoing shipments, perhaps two or three each week, by common carriers such as UPS.
15. At no time did the applicants request permission to conduct retail sales of any kind from the facility on North Road. The transcript of the testimony of the applicant is incorporated by reference herein.
16. At the close of that hearing, the Board granted the relief sought in part. That decision is incorporated by reference herein.
17. The present application was heard at the March Zoning Board meeting, March 22, 2005. Testimony in support of the present request was presented by Jennifer Clancy and two expert witnesses - George Durgin and Dennis Taber.
18. Mr. Taber testified as a traffic expert. He incorrectly stated that the area speed limit was 25 miles per hour. He was unfamiliar with lighting in the area; he was unfamiliar with road conditions or road contours. He did not perform an on location study.
19. In fact, the speed limit is 40 mph, routinely exceeded. There is a single lane of travel in each direction. There is a single streetlight in the immediate area, the property is located at the crest of a hill – drivers approaching from either direction have reduced visibility of traffic ahead or approaching in the opposite direction. There are passing restrictions in effect in the immediate area.
20. There is nowhere to park safely on the road in the area of the subject area. The road has a small paved surface to each side of the travel lanes, much more narrow than the width of a car. Once off the pavement there is an unevenly graded dirt/gravel shoulder, some parts are trench like.
21. In conclusion, the testimony of Mr. Taber was not probative as to issues of traffic; in fact his testimony was highly misleading. The area near the subject property does not provide

- for a safe place to park on North Road and travel is endangered by vehicles stopping or slowing in the area for the purpose of visits to the subject property.
22. The testimony of George Durgin was equally unpersuasive. He was qualified as an expert real estate appraisal but concentrated his testimony in the area of the appropriate use of the subject property.
 23. The applicants are before this Board seeking a special use permit the language of which are contained in Article 6, Section 601 and 602.
 24. The applicant's state in their application for a special use permit that they are seeking relief in order to conduct retail sales of what they describe as home crafted manufactured products.
 25. Article 3, Section 302, District Dimensional Regulations, Section VI (G) (11) permits the sale of home crafts products manufactured on premises by special use permit. Accordingly, the first issue presented is to determine what constitutes a home crafted manufactured product.
 26. Our first consideration is to determine the nature of products produced as a result of activity that is classified as a customary home occupation, the classification attributed by the applicants to their activity in their first application for relief filed on 3/24/03.
 27. The definition of customary home occupation is contained in RIGL Section 45-24-31 (33) where it states that a customary home occupation is one customarily carried out for gain by a resident as an accessory use in a residential unit.
 28. The Jamestown Zoning Act defines customary home occupation in Article 1, Section 103, definition 29. (p.7) and states as follows: (29) Customary Home Occupation. Any activity customarily carried out for economic gain by a resident which:
 - (a) is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit,
 - (b) is carried on by a member of the family residing in the dwelling unit,
 - (c) is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and,
 - (d) conforms to the following conditions:
 - 1) Performed by the resident and using no more than 200 sq. ft. of floor area and such activity shall not be visible from a lot line;
 - 2) There shall be no exterior display, no exterior sign (except as permitted under Article 13), no exterior storage of materials, and no other exterior indication of the home occupation or variation from the residential character of the principal building;
 - 3) No vibration, smoke, dust, odors, heat or glare, electrical interference, or offensive noise shall be produced;
 - 4) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood;
 - 5) Any parking required for the conduct of such a home occupation shall be provided off the street.
 29. The next step in this analysis is to make reference to Article 3, District Dimensional Regulations, which shall be met for all uses of land permitted under the Jamestown ordinance. In that article consideration is directed to the particular use being made of land

in conjunction to the district in which the property is located. A review of this article clearly shows that the RR200 zone is primarily an agricultural area - reference is made to Section 302 Use III.

30. Article 3, Section 302, Category VII (A) (4) states that customary home occupations are permitted uses in an RR200 zone; however, customary home occupations are identified in that section as a subcategory of Commercial Services, and Professional offices. There are no activities listed in the section that even remotely resemble the stated activities of the present applicant, production of glassware.
31. Conversely, category VIII lists industrial activities and IX lists industrial and manufacturing activities. A review of those functions more closely resemble the activities of the applicants; however, with the exception of storage or transfer of fishery equipment, all industrial or manufacturing activity are not permitted in an RR200 zone. Accordingly, the relief needed by the applicant should be a variance, not a special use permit.

Accordingly, this Board makes the following determination:

- I. That the production of glassware as performed by the applicant does not constitute a customary home occupation as defined in the ordinance in Article 3, Section 302, Category VII, subparagraph 4.
- II. That the applicants have failed to conform to the conditions established in Article 1, Section 103, definition 29, in particular sub paragraphs 1, 2, 4, and 5, regarding the activity defined as a customary home occupation (p7).
- III. That judged as an application for a special use permit pursuant to Article 6, Section 601 and 602; the applicant has failed to sustain their burden of proof.

In particular, the applicants have presented no probative evidence that the relief sought would not result in a substantial health and safety problem relating to traffic operation at the North Road location as noted earlier, the speed of traffic in the area would result in danger to drivers confronted with slowing, turning and stopping vehicles. That visibility is limited by the road contour since the subject property is located near the crest of a hill. That street parking is unavailable due to the road conditions, a single lane of travel in each direction, lack of a break down or parking lane and a small unstable dirt shoulder to each side of the road, and the area is poorly lighted.

Further, the granting of this application would substantially and permanently injure the appropriate use of the property in the surrounding area. That area, as well as the subject property, is designated as RR200, wherein permitted activities are primarily traditional agricultural pursuits.

That the granting of the relief sought would not be in keeping with the general purposes of the zoning ordinance or the comprehensive plan, in particular that a retail sales operation of any sort would be detrimental to the rural character of the area and contrary to the economic development plan, in particular Policy #1, to continue to direct commercial development into existing commercial zones.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Raymond Iannetta, Richard Boren, David Nardolillo, and Elizabeth Brazil voted in favor of the motion.

Joseph Logan was recused and Don Wineberg and Dean Wagner were not seated.

NEW BUSINESS

Kosacz

A motion was made by Richard Boren and seconded by Raymond Iannetta to table the request of Barbara, Paul, Frank, and Gary Kosacz and refer them back to CRMC and come back with something more definitive to put the Board in a better position to determine if it is the least relief.

The motion carried by a vote of 4 – 1.

Thomas Ginnerty, Raymond Iannetta, Richard Boren, Joseph Logan, and David Nardolillo voted in favor of the motion.

Joseph Logan voted against the motion.

Elizabeth Brazil and Dean Wagner were not seated.

A motion was made By Thomas Ginnerty to continue the remaining items on the agenda to the May 5, 2005 meeting.

ADJOURNMENT

A motion was made and seconded to adjourn at 11:02 p.m.

The motion carried unanimously.