

TOWN OF THOMPSON  
ZONING BOARD OF APPEALS  
February 8, 2022

IN ATTENDANCE:      Chairman Richard McClernon                      Sean Walker  
                                 Jay Mendels    Phyllis Perry  
                                 John Kelly, Jr.    Cindy Ruff, Alternate  
                                 Paula Kay, Consulting Attorney                              Heather Zangla, Secretary  
                                 James Carnell, Director of Building/Planning/Zoning

A motion for to go into executive session at 7:00 pm to discuss threatened or pending litigation was made by Jay Mendels and seconded by Sean Walker. Consulting Attorney Paula Kay will be involved in the executive session.  
5 in favor; 0 opposed

A motion to close the executive session at 7:22 pm was made by Jay Mendels and seconded by John Kelly.  
5 in favor; 0 opposed

Chairman McClernon called the meeting to order with the Pledge to the Flag.

A motion to approve January 11, 2022 minutes was made by Jay Mendels and seconded by Sean Walker.  
5 in favor, 0 opposed

**APPLICANT: DREAMWOOD HOLDING, LLC**  
36 Treasure Lake Road, Rock Hill, NY  
S/B/L: 53.-1-6  
Jose Maleh, Property owner

A motion to reopen to the public hearing was made by Jay Mendels and seconded by Sean Walker.  
5 in favor; 0 opposed

This application was held over from January 11, 2022. The applicant is working on getting an updated survey to show the current area of the existing septic system; however, the leach field was unable to be located due to the snow. The septic tank was located under the existing house.

If the leach filed cannot be located by the March 8, 2022 meeting, he may need to re-apply for the variance.

A motion to leave this hearing open until the March 8, 2022 was made by Jay Mendels and seconded by Phyllis Perry.  
5 in favor; 0 opposed

**APPLICANT: MOONLIGHT COTTAGES**

Tim Gottlieb, Project Engineer

Applicant is requesting an Area Variance from §250-9 of the Town of Thompson Zoning Code for: (1) Density per acre from required .5 per acre to proposed 1.15 per acre. Property is located at 43 Rubin Road, Monticello, NY: S/B/L: 43.-1-23.3 in the RR-2 zone.

Tim Gottlieb – at the last planning board meeting it was determined to have the wrong zoning classification. It was not located in the SR which allowed for a bungalow colony and it is in the RR2 zone which it will be classified as a cluster development.

Chairman McClernon – do you know how many buildings have been constructed? Tim Gottlieb - since I have been involved, none- just additions. Chairman McClernon – we are no over 200%, Tim Gottlieb unfortunately – it is what it is, this is existing.

Chairman McClernon – now we are continuing on building over the density. Jay Mendels – how many new units are we looking at? Chairman McClernon – it would be 9 new units. Jay Mendels – this is going to be even more non-conforming.

Jim Carnell – I believe the town will be looking to modify the code, this is the most restrictive district we have. I think this is an oversight on the town's part. This project has brought it to the town's attention. There aren't a lot of cluster developments in the town. If the town changes it, it will be way under the density.

Katie Rubin - On behalf of the surrounding properties and her family members. Adding more to an already over populated area is a concern. There is water and septic issues. The septic for the applicant is across the road. The system is failing and there is a smell of sewer all the time. Increased traffic is a concern. They currently park in the area that is the new development site. The multiple family house has been demolished however the garbage is still on the property, new construction will bring more garbage. There is an open foundation across the road. A loud speaker is used during the summer.

Joel Kohn – if I remember correctly this project was in the RR2 zone and I believe that the zone was changed years ago. The property is currently surrounded by SR zone, so I am unaware why the change was made or even asked for.

There is no other public comment.

A motion to close the public comment was made by John Kelly and seconded by Sean Walker 5 in favor; 0 opposed

Paula Kay stated that the application could be pulled at this time and wait for the town board to change the code.

Tim Gottlieb also stated that the septic is a sewer treatment plant approved by the DEC and is running properly and running under the allowed capacity.

(1) Whether benefit can be achieved by other means feasible to applicant; Jay Mendels, John Kelly, Sean Walker and Phyllis Perry voted yes, Chairman McClernon voted no

(2) Undesirable change in neighborhood character or to nearby properties; All voted yes

(3) Whether request is substantial; All vote yes

(4) Whether request will have adverse physical or environmental effects; All voted yes

(5) Whether alleged difficulty is self-created; All voted yes

A motion to approve the variance was not made.

A motion to hold this application open until March 8, 2022 was made by Jay Mendels and seconded by Phyllis Perry.

5 in favor; 0 opposed

**APPLICANT: HAMASPIK RESORTS**

Steve Barshov, Project Attorney

Paula Kay – the next item on the agenda is coming to you pursuant to §267A of the town law, Hamaspik would like the board to make a motion to rehear the interpretation of hotels that this board made in December 2021.

A motion was made to allow the re-argument of the case for Hamaspik was made by Phyllis Perry and seconded by Jay Mendels.

5 in favor; 0 opposed

Paula Kay – one procedural issue that came up during the work session that I am sure that the applicant is now aware but the public may not be aware is that the Zoning Board did not have copies of Mr. Barshov's letter with regards to the application to re-argue, it was on the towns google drive under the Planning Board, not the Zoning Board. The Board has not had an opportunity to review it.

Steve Barshov – after the previous meeting I became aware that there was information from the building department stating that the property wasn't being used as a hotel. This material is attached in Mr. Bazydlo's affirmation. Exhibit A is an order to remedy from the building department. A correction of violation was issued stating that the property was being used as a hotel.

So this motion for re-hearing is to say that there was an omission that was made, this should have never come before the board to begin with. The Decision by the Building Department was made and it was final. That final decision as an administrative body which is as you know the primary body responsible for the interpretation of the town building code.

This determination of the building department has never been challenged. I am not asking you to change your opinions, just asking you to admit that there was no jurisdiction for the zoning board to take action. That is what the motion of rehearing is for.

Mr. Barshov – my motion for rehearing is to say that because the Department of Buildings had issued a violation and then deem that violation cured and resolve the issue about what is hotel use. In curing that violation there is nothing for the ZBA to take action on.

Mr. Barshov – so what I am asking in regards to your December minutes that you approve that portion of your decision which dealt with the camp, because there is no dispute with that. The only thing is that I ask the portion of the minutes that deals the hotel decision is for the board to

say they didn't have jurisdiction, therefore that hotel decision should not be an official decision of the board and that would end that matter.

Chairman McClernon – have you thought about changing your classification of the application to something that fits the definition of the code. Mr. Barshov – There has been no talk of that only because I was only here on re-hearing, not to reopen the matter. I am only here to say that you don't have any jurisdiction on this matter.

Paula Kay – since the chairman has asked the question, maybe in the next few weeks review and possibly find a code definition that the property will fit under. Steve Barshov- I will do so. Phyllis Perry – I think if it was termed as a retreat or respite it would fit better under the code versus a hotel. Steve Barshov - please understand regardless of where that leads us, the determination by the building department has already classified the property as a hotel. Phyllis Perry – when that information was presented to building department it could have still been the hotel but if the use is going to be different then that, that's where all this comes into play. Steve Barshov – That is why I quoted that language, and what the Building department stated is that they are still operating as a hotel. Paula Kay – I think that what is being said is that when the application was introduced to the Planning Board, there was a lot more different information which raised the question both with the handouts, the videos and all the other information that was submitted, it was a question as to what the property was being used at.

Jay Mendels – we need time to review all the information in the building department.

Steve Barshov – no one is hiding what is going on at the property. The building department can inspect the property.

A motion to hold this application open until March 8, 2022 meeting was made by Phyllis Perry and seconded by Jay Mendels.  
5 in favor; 0 opposed

A motion to close the meeting was made Jay Mendels by and seconded by John Kelly  
5 in favor; 0 opposed

Respectfully submitted,

Heather Zangla  
Secretary  
Town of Thompson Zoning Board of Appeals