

ZONING BOARD OF APPEALS
TOWN OF CHESTER
1786 Kings Hwy
Chester, New York 10918
May 9, 2019

Meeting called to order: 7:05pm

Chairman led the meeting with the Pledge.

Members present: Chairman Finizia, Gregg Feigelson, Walter Popailo, Dan Doellinger, Bob Favara, Tom Atkin (late 8:15)

Members absent: Julie Bell

Also present: Rob Dickover (late 7:30)-Attorney, Alexa Burchianti-Secretary

A motion was made to adopt the minutes from March 14, 2019 made by Walter. Second by Gregg. Carried 5-0

Alexa stated before the public hearing is opened, the legal notice that had gone out and was published had a typo. The notice read that Broccoli Patch's address was 1392 Kings Hwy whereas the correct address for the parcel is 1355 Kings Hwy. All 300' notifications that went out were correct as well as the s/b/l on the legal notice. Let the record reflect that all certified letters went out and the legal notice was published in the Times Herald Record.

Motion to open the Public Hearing was made by Dan. Second by Bob. Carried 5-0

Broccoli Patch– Public Hearing

Ross Wingvolutz-Engineer is present for the applicant Lewis Donnelly, Broccoli Patch regarding the interpretation for the use of his property specifically that a catering facility is a permitted use believing that it is by the definition of restaurant. Ross read the definition of Restaurant that is defined in the code. "Any establishment, however designated, whose primary use is preparation and sale of food for consumption to patrons seated within an enclosed building or on the premises."

Ross also continued with the Mariam Webster definition of Cater, "To provide food and drinks at a party, meeting etc. especially as a job." Ross stated he feels it's in sync with each other and what they are doing is definitely included under the zoning under restaurant. At the initial meeting discussed was the second item part of that public notice which was multiple uses within the building. Ross read the definition of Principal Building or Use- "The primary purpose for which a lot or building is designed or used in which the principal use is conducted. In certain cases, more than two principal uses may be located in a single building or on a single lot." Ross believes that is specifically what they are proposing, and are specifically permitted to have multiple uses in one building per the definition.

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Gregg stated to Ross that he thought it would be helpful for the benefit of the audience to explain exactly what they are asking from the board, he senses from some of the materials that are circulating that there may be some misunderstanding as to what this board actually does and doesn't do.

Ross explained that this ZBA meeting is specifically to discuss whether what they are proposing as far as the use meets the definition and the ordinance. It's not regarding the site plan elements, the parking, noise, water, sewer, drainage, all of that will be addressed as part of the Site Plan Application in front of the Planning Board. So the very specific narrow scope of what this board is looking at is specifically what he discussed earlier, which is catering facility basically included as a use under the zoning and multiple uses in one building.

Public comments are in order as follows:

Nick Zungoli: Neighbor of Lewis Donnelly, lives and works next door. He has lived there for 40 years. Stated that primary business of both restaurant and catering establishments is the production and serving of food to the public. Generally speaking restaurants often offer food catered as an extra service for an event in their own building or client locations. Catering establishments focus is generally preparing and serving groups for events. In both cases the scale of catering can range in size. The LBSL zoning district has in it's past had small catering businesses. Feels that restaurant and catering crosses and should be one in the same. Spoke in favor for the applicant.

Susan Lynch: Read definition from Miriam Webster stated that restaurant definition says "business establishment where meals and refreshments may be purchased" she stated that she loved the Barnsider, loves the Taphouse , love being able to walk up and seeing a restaurant thrive. It's a constant stream of cars, people come they eat, they leave. A cater is to "provide or supply of food catered to a large party, to supply what is required or desired" as a member of the Warwick country club they are witnessed to many catered events, where 100-150 people come, sometimes there's a large tent put up outside, there's a large amount of cars, so in her opinion according to her definition a catered event is when a large number of people show up they enjoy the event and a large number of people leave. A restaurant is an establishment that services the community on an ongoing all day basis. And feels it would drastically effect the community which they are very supportive to want Sugar Loaf to grow, A restaurant would support and help a catering facility would not.

Colleen Mercedes: Going off of what Susan said, the definitions between a restaurant and a catering hall it's really important to regard the size and scope. In her opinion it's

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like equating a canoe to a cruise ship. As member of the public you are not going to be able to walk into a catering hall and eat breakfast, lunch or dinner unless invited and won't be able to make use of that facility at all. She feels based on the definition that she (Susan) just gave they are 2 separate entities. Opined regarding principal building, outbuilding, and sizes of them. Her question was on small parcels of land that are very close together and abutting residential communities, if any of these businesses are able to erect additional structures, deem them principal buildings, and introduce new principal businesses within those structures, then does that make sub-dividing a moot point. She wonders what the precedence sets in terms of having multiple principal buildings, multiple principal businesses, and then out buildings on top of both of those structures. Alexa stated that they have agreed to combine the existing building and the new proposed building making it ONE structure. Colleen then stated where does that leave the process for sub-divisions. Stated she is not against the development, he bought it, he owns it, he absolutely has every right to develop it and is a big propionate of patronizing her local businesses, would love to be able to walk there and enjoy it. As a resident just want to be proactive, concerned about something fitting into the size and scope of the hamlet of the community.

Ed Lynch: Support of what his wife said. They want smart development, productive development, not only for the Sugar Loaf community but also in the context of a very small community in which they live. Ed used different comparisons between restaurant and catering and how they are not the same.

Lewis Donnelly: Stated he has been around here since 1986, enjoyed Sugar Loaf most of his life. Stated regarding the people that live on Creamery Pond, he can remember when that was woods, and there were no homes there. This was a thriving community. It had businesses, a theatre, outdoor music venue, it was a bustling community and everyone enjoyed it. Lewis wanted to address one issue. The restaurant, is going to be a farm to table restaurant, it's going to be ONE building. And yes you would be most welcome to come every day that it's open. It's going to be opened 6-7 days a week, and it's going to have a distillery in it and is going to be a farm to table restaurant AND it's going to do catering like every other restaurant. He stated he has the biggest piece of property in the village besides the theatre. Also to the point of buildings and being able to put them up where ever you'd like, that's not so! Lewis stated he deals with Planning Boards all the time you cannot build anything where ever you want! You cannot do what you want! Everything that he is proposing is in the building code, and within the building law and is allowed. The confusion sometimes with people they come to the boards and they sit and they rant and rave. The Planning Board is here only to be sured that everything that they do is within the code. They are not there to do them a favor, whether you like it or

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don't like it really is not the point. The point is, if it's done and it's done according to the law and according to the Zoning everybody should be allowed to do what they want on their own property. As long as it's within the code. The Zoning laws have been picked upon and beat on. This is not new today. He also stated, that what he is designing is exactly allowed by law. The size of his restaurant whether it be 150 people or for 40 people is irrelevant. He stated he already has approval for a restaurant and for a brewery/distillery. It's approved already, he wants to do an addition and now said he wants to do catering there. Almost every restaurant in the village or the hamlet will do catering for you. Certain thing they may not be able to do because there place is full, so they can't do it, but everybody does it. It's an industry standard. So what he is asking for is support from the community, is willing to work with the community to do a good job and make everyone as happy as can be. There is no way to make everyone happy. He understands the public's position, however trying to let the public understand his position as well. When they were building your houses, before those roads were cut in and before the theatre was built there was 150 people sitting in this room going we don't want these people we don't want these trees cut. We don't want those roads, we don't want this. If that was the position everyone took none of you would be living there. That's all I'm saying, trying to the best most beautiful place that you could imagine. It's going to fit into the community, it's going to be landscaped beautifully, and it's going to be done and managed professionally. There's not going to be mold, there's not going to be rats, it's going to be state of the art and beautiful and fit into the community. And they will be respectful as is everyone else is in the community when you have a party in your backyard. You can't make noise after a certain time. He wouldn't do it!

Susan Lynch: Are you talking about building a restaurant and a catering hall? At one point recalled mentioning weddings. Or are you talking about building a restaurant that may offer catering services? For the record...what she hears is that is Lewis is proposing a farm to table restaurant (which we all love farm table) and 150 seat catering hall, that's what they are addressing. Large scale catering hall is not a restaurant. If you could clarify your intention.

Lewis Donnelly: My intention is to hopefully fill my restaurant of 150-200 people every day. So if my restaurant primary space, seats 60 and now those 60 spaces are full then will start using the other side of the facility as a restaurant as well.

Chairman Finizia: Hold on, I think the question was, are you having one or 2 buildings?

Susan Lynch: Designated spaces. Are you designating a space for a restaurant and designating a space for catering.

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Lewis Donnelly: It's one building all connected.

Susan Lynch repeated herself again about designating the spaces. And stated it's a simple yes or no.

Lewis Donnelly stated no, it's not, its semantics again. It's not a yes or no question. If my restaurant can do 150 seats I'm going to use that catering facility for my restaurant. How big is my restaurant allowed to be? What will the zoning allow, what I'm designing. If I can seat 200 people and I can get parking and I can feed them then that's what I'm going to do.

Steve Mendez: Lived over by Creamery pond for 15 yrs. Doesn't live there now, owned the old Sugar Loaf Inn. Knows Mr. Donnelly for a while, knows the quality of work he builds. He agrees with what Mr. Donnelly says about this community. This community has been dying for years. And sold to the Campos family which is now the Cancun Inn. I think it will be a positive for the community.

Susan Barron: Actually just looking for clarification, I think you said that you were waiting to see what the Zoning Board does but wouldn't that be the Planning Board? About the plan for the building, when you talk about the size of the building. Because that's what you referred to. Mr. Donnelly responded stating the Zoning Board has to agree that catering is a use that a restaurant does. Because there is nothing specific that addresses catering. But if every restaurant does catering including all the ones in the hamlet and every restaurant he goes to. The planning board is going to be the ones to determine, and we were going to have 2 separate buildings but because of the cemetery and the way it's sitting it's going to be one building, and make it beautiful and everyone will get a chance to look at it and do architectural renderings, and then the community can voice their opinion. Sue stated that just outside of the neighbors we all have to be concerned about the neighbors and what it might do to affect them. The cemetery was another thing she wanted talk about to make sure that the cemetery had protection in some way. And she wasn't sure if it was this board or the Planning board.

Ed Lynch: Wants to address some of the topics that went way afield. Stated he speaks for everyone when he says they want a successful Sugar Loaf. Ed stated that there is room down in Scotts Meadow that's been deader than Sugar Loaf there is plenty of space and room for catering halls there not on a 2 acre parcel on a little pond. The point is the location for a catering hall is not appropriate on 2 acres. Mr. Lynch opined on his opinion for what's right for sugar loaf.

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Alex Kemp: Orange County Partnership spoke in support of Mr. Donnelly and the project. Submitted a letter of support (which is on file in the office)./

Steve Keahon: How does the distillery part of it coincide with the regulation of Manufacturing in Sugar Loaf?

Chairman Finizia: Stated that is a Planning Board issue we are not going to address that here.

Alexa stated it is an allowable use in the LBSL district.

Colleen Mercedes: Opined once again regarding the difference between a catering hall and a restaurant.

Alex Jamieson: Stated that the residents make some valid points but there is a differences between the Planning Board and the Zoning Board. The zoning board are here to determine what the uses are, and can say that living in Sugar Loaf there are a number of businesses that have multi uses. Most of the public issues are planning board issues and that shouldn't be distracted from the 2 points of why they are here in front of the Zoning Board.

Dave Imbossio: Asked if Mr. Donnelly ever ran a restaurant before or a distillery? Mr. Donnelly responded No. Mr. Imbossio also stated that coming from a family that has had restaurants in NYC and in the State of NY growing up there are many differences between a catering hall and a restaurant. Opined his opinion in Mr. Donnelly's qualifications in having a restaurant and his definition.

Patrick O'Neil: Just moved here from NYC stated that not all restaurants do catering. And expressed his opinion in the difference between catering and a restaurant.

Ed Lynch: stated that from going to previous planning board meetings that if it's not specifically in the code then it's prohibited. A restaurant can be a catering part time but a catering hall can never be a restaurant part time.

Castella Somma: President of the Sugar Loaf Chamber of Commerce. Read statement in support of the project.

Christine Maurer: stated that Mr. Donnelly's approved plans were from 1999 for a brewery not a distillery and a restaurant not a catering hall. Christine stated that a document (35 pages) was submitted that would prove this project would be violating codes. Stated that he clear cut almost 2 acres of the property she has pictures and claims

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it's a disgrace. Also stated that he violated a law which states he needs to leave a buffer or replant and it's been almost a year now and he has not been held to that law.

Chairman stated that there can be no more, we need to stick to the interpretation and the mixed use.

There wer no more comments.

Motion to close the public hearing made by Bob. Second by Gregg. Motion carried 5-0

Motion made to go into executive session for legal counsel at 8:15pm made by Walter. Second by Bob. Motion carried 5-0

Motion to come out of executive session at 8:44pm made by Walter. Second by Bob. Motion carried 5-0

Counsel Dickover stated this project was sent to OCDP for 239 referral. The OCDP sent the response as a local determination.

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Orange County Department of Planning

124 Main Street
Goshen, NY 10924-2124
Tel: (845) 615-3840
Fax: (845) 291-2533

David E. Church, AICP
Commissioner

www.orangecountygov.com/planning
planning@orangecountygov.com

**County Reply – Mandatory Review of Local Planning Action
as per NYS General Municipal Law §239-l, m, &n**

Local Referring Board: Town of Chester ZBA

Applicant: Lewis Donnelly

Project Name: Broccoli Patch

Proposed Action: Zoning Interpretation for the number of buildings permitted on a single lot and for the similarity of catering facilities to restaurants

Reason for County Review: Within 500 feet of County Route 13 (Kings Highway)

Date of Full Statement: March 21, 2019

Referral ID #: CHT 03-19M

Tax Map #: 13-3-2

Local File #: none provided

Comments:

The Department has received the above referenced zoning interpretation and has found no evidence that significant intermunicipal or countywide impacts would result from its approval. We would like to offer the following advisory comments:

Referral: It has long been the position of this department that zoning interpretations are not inherently referable actions, as they are not specified under New York State General Municipal Law Section 239, paragraphs l, m, and n. We note however that occasionally it can be helpful to obtain an outside perspective on these matters. It is the opinion of the Department that the applicant is correct in that the definition for “Principal Building or Use” does seem to leave room for multiple buildings on a single lot. We further note our opinion that catering facilities can be considered substantially similar to restaurants in usage, or could also be considered a service establishment for non-personal services and non-automotive services, listed as no. 10 under “Uses Requiring Site Plan Approval”.

We look forward to reviewing this application at such time as it comes before the Town of Chester Planning Board for Site Plan Approval.

County Recommendation: Local Determination

Date: April 12, 2019

Prepared by: Megan Tennermann, AICP, Planner

David Church, AICP
Commissioner of Planning

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available on-line at www.orangecountygov.com/planning.



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Counsel Dickover also stated this is an application for interpretation therefore by definition a Type II action no further SEQRA review.

The board has decided not to make a decision on this matter this evening and will reconvene on June 13, 2019.

Motion made to close the meeting made by Walter. Second by Gregg. Motion carried 5-0

Respectfully Submitted,

Alexa Burchianti
Zoning Board of Appeals Secretary