



Town of Olive Zoning Board of Appeals

P.O. BOX 513, Shokan, New York 12481

Frederick Perry
Chairman

Members
Sandy Friedel
Brian O'Rourke
Chet Scofield
Gemma Young

MINUTES

December 5, 2024

1. Opening:

The Town of Olive Zoning Board of Appeals met on Thursday, December 5, 2024 at the Town of Olive Meeting Hall, to hold a regular meeting and a Public Hearing for Suzanne Stucki/Cold Brook Rental Properties LLC. Chairman Perry brought the meeting to order at 7:00 p.m., at which time the Chairman led the Pledge of Allegiance to the flag.

2. Record of Attendance:

Fred Perry
Chet Scofield
Gemma Young
Brian O'Rourke

Absent:
Sandy Friedel

3. Approval of Minutes:

On a Scofield/O'Rourke motion the Board dispensed the reading of the November 7, 2024 minutes, and accepted them as written.

4. Public Hearing:

4.1 **Application 24-04** of Suzanne Stucki for Cold Brook Rental Properties, LLC, for property located at 1025 Cold Brook Road, Boiceville, NY 12412

The hearing for Suzanne Stucki opened at 7:05 p.m. at which time Chairman Perry reviewed the rules for conducting a public hearing. The secretary read the legal notice appearing in the November 26, 2024 issue of the Daily Freeman announcing the applicants' appeal, "...for an Interpretation to determine if the Proposed Use of hosting seasonal special gatherings on a vacant parcel is permitted as a commercial recreation use and/or recreation facility in the R/E-1A zoning district."

Present at the meeting is Suzanne Stucki and her attorney, James Bacon. Mr. Bacon explained that Suzanne Stucki was before the Planning Board in August and September and they referred her to the Zoning Board of Appeals because they had some questions about the proposed use.

James Bacon remarked that he has looked at the code and wrote a letter to the Zoning Board of Appeals on November 13, 2024 and he feels that Ms. Stucki's use falls in the Commercial Recreation Use and it could also be used as an accessory use as the board had determined with Ashokan Dreams. Mr. Bacon feels that the Commercial Recreation use is the clearer path. James Bacon described that Ms. Stucki has 13-acres of land to work with and a nice long driveway, approximately 500' that would provide plenty of parking on either side of the driveway. Mr. Bacon said that there could be 150 people at these events, maybe two to three times a week from May to October. He said that you start with what the maximum would be and then tailor it down from there. This would go back to the Planning Board for consideration of the particulars. Mr. Bacon referred to his letter, at the top of page two, regarding parking, he cited Section 155-43(B) to point out that there is plenty of room for parking. Mr. Bacon said that Suzanne Stucki would be responsible with regard to the hours of operation and he feels that it is a good use of the property.

Gemma Young asked if it would strictly be for weddings. Ms. Stucki said she would like to see all types of special gatherings, including weddings. Gemma Young asked about the term recreation, would the people be playing sports. James Bacon said that it wouldn't necessarily be playing sports. He said that when you look at a use and try to fit it into the code and the drafters of the code didn't think of every single use. James Bacon said that this would be commercial because it would be a business type of use run by the home owner. He said that it wouldn't be a home occupation because it is bigger than that and this seems to be the closest definition that would work.

Gemma Young asked how wide the driveway is, the response was that it is about 12' wide and it is black-topped. James Bacon showed the sketch of the properties that was provided and pointed out that the guests would go up the driveway and turn around and come back down to exit, no one would be backing down the driveway. Suzanne Stucki said that it is a mowed lawn on both sides of the driveway.

Brian O'Rourke said that he drove the road today and his immediate concern is the density of the events being talked about could be disruptive to the community and he wonders how people will feel about it. He said that there could be 100 cars. James Bacon said that you first have to see where it would fit into the code and after that you can discuss mitigation and what the intensity of the use would be, but the first thing is to try to see where it would fall within the code.

Gemma Young asked Mr. Bacon how he felt that it would fall under commercial recreation because the code is pretty specific what commercial recreation means, and it is based on recreation; skiing, horse riding, and camping. James Bacon explained that the ZBA has the discretion to decide what a definition really means. He said that he read the code and feels it would be a commercial recreation use, or the use could be determined to be like the Ashokan Dreams type of use as an accessory use to the residence. Mr. Bacon stressed that the ZBA has the discretion to determine what fits into a use. James Bacon said that it is commercial because Ms. Stucki would be making money from this. Gemma Young feels that the code is pretty defined as a recreation use. Gemma Young also wanted to clarify that the Ashokan Dreams was an accessory use to an existing Bed and Breakfast business. Mr. Bacon said that perhaps playing music would be recreational, or maybe playing kickball at the event. He feels that the ZBA has the flexibility to make a determination. James Bacon said that usually the Code Enforcement Officer makes a determination but, in this case, it came from the Planning Board, he asked John Ingram if he had the opportunity to look at the proposal. Suzanne Stucki did have a conversation with Mr. Ingram and that was the closest use that he could come up with.

Gemma Young asked Ms. Stucki if the house is her primary residence, she responded that it is. Gemma Young asked if it is rented out or does Ms. Stucki live in it. Suzanne Stucki said that she lives in the house, the family has lived in it for 50 years. Ms. Stucki said that there are no permanent structures on

the 3-acre parcel. Gemma Young asked if anyone would be staying over on the property after an event. Ms. Stucki said they would not, it is her home. Suzanne Stucki said that she doesn't see it as just weddings, she said that property has hosted graduation parties and church picnics. She said that at the church picnics there was a lot of recreation with activities and fishing. She said that she sees the property being used for not just a fancy wedding gathering, it has been used for receptions after both of her parents' funerals and other friends and family have utilized the property and we have used a local tent company. Suzanne Stucki said that she has been in touch with that tent company and they are very rigid and they get the necessary permits from the town when setting up for an event.

Chairman Perry said that he understands that the proposed use is on a separate parcel from the property. Ms. Stucki said that the vacant 3.8-acres has the pond with a gazebo and the driveway to the primary residence goes through the corner of the small parcel. She said that everything is a mowed lawn. Chairman Perry asked the applicant if commercial recreation is the code they are looking to use, James Bacon said that it is really the only category that he feels it would fit into nicely. He asked if John Ingram had any other thoughts. John Ingram said that when the code was written no one thought about getting married out in a field and that is why the ZBA was created to make the decision that it can be something other than a lawn.

Chairman Perry said that with regard to comparing it to Ashokan Dreams, he is seeing something else because when that interpretation came before the ZBA the Ashokan Dreams was already operating as a permitted Bed and Breakfast and the seasonal wedding venue was an accessory use to that primary use. James Bacon understands that that is not the same use that Ms. Stucki presently has, it would be a supplementary use to the residential use. He noted that with Ashokan Dreams the weddings were deemed an allowed use in the residential zone.

Chairman Perry asked if there are any members of the audience wishing to speak on this application. He explained that the board has received a number of letters, but if you are present in the audience we would rather hear from you in person.

--Don VanKleeck, 13 Nissan Lane, said that in looking around the room he believes he has lived on Cold Brook Road longer than anyone sitting here. He said that he is in favor of this project, and is a neighbor to it. He said that in looking at the petition that has been generated there are signatures from Shandaken, Olivebridge, and Shokan which are everywhere but where the project is proposed to be and wonders if it would be bothering them. Mr. VanKleeck asked that people get behind Ms. Stucki and support her. Mr. VanKleeck said that he wouldn't mind hearing a little music but said that he doesn't hear the County trucks starting up at 2:00 in the morning when they have to deal with snow and he doesn't hear the high school activities.

--Irwin Marcus, 4 Deerhaven Park Road, said that he is against the project on Cold Brook Road and is one of the signers of the petition. He said that Cold Brook Road is not much bigger than her 12' wide driveway. He said that when he is traveling Cold Brook Road and comes up over the hill there are UPS trucks and FedEx trucks you almost have to stop to allow for clearance, Mr. Marcus said that his daughter had a wedding in Maine and they needed a tent and food trucks, and other equipment delivered. He said that if two people come to the event per car, you are talking about 75 cars and feels that it is a lot of traffic and things going on on a very small road. Mr. Marcus said that there was the same type of thing when the Rail Riders wanted to send a bus up Cold Brook Road to have them take the Rail Riders up the other way.

--Michael Biondo, Cold Brook Road, he wanted to clarify that his family is the longest continually owned family property on the road going back 100 years. He wanted to point out that there are no speed limit signs on the road and when there was Covid he asked Supervisor Sofranko what the speed limit is and

was told 55 mph. Mr. Biondo asked the supervisor what could be done about all of the NYer's flying up and down the road because there were many near miss accidents, himself included. He said that at least half of the road is a one-lane road. Mr. Biondo was told that in order to change the speed limit he would have to get a petition signed by all the neighbors on the road and present it to the town and then it would go to the State D.O.T. and how long will that take? Mr. Biondo said that with no speed limit on the road it is dangerous and all of these proposed venues would create a lot of traffic and a safety issue. Mr. Biondo also said that during Covid the road was dangerous not just because of the speed limit, but because everyone thought that there was a swimming hole at the end of the road but, there is a sign there posted by the DEC stating No Swimming, Fishing Access Only. He said that there were a lot of confrontations with people trying to swim there and people fishing. Mr. Biondo said that he has a direct line with one of the rangers and law enforcement has been called a number of times because of that issue.

--Pat Surak, Cold Brook Road, she said that she has lived on Cold Brook Road for 28 years and has lived in the area her entire life. She said that she can see Ms. Stucki's house from her back yard. Ms. Surak said that she has an Air BnB next to her that is rented out pretty regularly, to the point that the owners of the property live in the apartment that was built in the garage when the house burnt down and never hardly live in the house since it was rebuilt. She said that she has had incidents with the renters who have come over to her house and asked her not to mow her lawn because she was interrupting nature and they were up for the weekend, she's had dogs come over to her yard and she had one come after her one day that she reported to the Town of Olive Police. Ms. Surak said that it is not very nice to have an Air BnB next door. She said that they even advertise that they have a private swimming hole in the creek across the street and have moved rocks around and disturbed the creek. Ms. Surak said that she does not oppose the project because she believes Suzanne Stucki will be a responsible neighbor overseeing the events. She feels that if there is a traffic problem it can be addressed again, and with all of the Air BnB's on the road Ms. Stucki should be allowed to do what she wants to do.

--Christina Humberger, 1007 Cold Brook Road, she thanked the ZBA for allowing everyone to speak at the meeting. She explained that the reason that you see other neighbors from other parts of Olive on the petition is because this is not just one problem for today where someone wants to do a beautiful wedding venue in a residential zone, on a road that isn't conducive to it, it is something that is happening in many places in Olive. She said that this isn't a few Air BnB's it is a high impact business. Ms. Humberger said that the road already deals with the orange County trucks and snowplows that come out about 50 yards from Suzanne Stucki's driveway creating a lot of activity on a very narrow road. She cited Town Code 155-17: H. (5)(d) Traffic generated shall not add undue traffic volumes onto town roads serving single-family residential areas. Ms. Humberger said that unless she is reading the code wrong, that sounds a lot more important than recreation and 150 people, 2-3 times per week. She said that her husband is in the music business and does festivals all over Orange County and the infrastructure that is required, as Irwin Marcus said, is a lot. Weddings are a three-day event and to the bride it is their dream, and as a business owner you will want to give that dream to your client. Ms. Humberger said that there has to be a number of other places that are legitimately zoned and conducive to having a wedding or events in Ulster County and she doesn't feel that this location has to be it. She said that 40 people signed the petition because they don't want it happening on Cold Brook Road and you don't want this to set a precedent for other roads like ours. Christina Humberger said that she has been friends with Suzanne Stucki for 20 years and her parents were the epitome of model neighbors and she is sad that it couldn't have been talked about and worked out earlier and it had to go in this direction but this is a tight neighborhood and have solved issues before.

Chairman Perry asked if there was anyone else wishing to speak. There were no other responses. The ZBA clerk read the petition submitted by the Cold Brook Coalition that has been signed with 42 signatures. She also read letters that have been received from:

--Natalie Korniloff and Maureen Ford, 21 Deerhaven Park Road, opposes the proposed project, has signed the petition.

--Felice and Harold Castellano, 11 Deerhaven Park Road, opposes the proposed project.

--Tara Scott and Craig Bronder, 1055 Cold Brook Road, opposes the proposed project, has signed the petition.

--Nickie Tiedeman and Morgan Bisconti, 12 Deerhaven Park Road, opposes the proposed project, has signed the petition.

--Paul O'Dwyer, 7 Deerhaven Park Road, opposes the proposed project, has signed the petition.

--Stephen Olenski, 7 Nissen Lane, opposes the proposed project, has signed the petition.

--Karen Miller, 1089 Cold Brook Road, opposes the proposed project, has signed the petition.

--Ken Wenger, 1003 Cold Brook Road, opposes the proposed project, has signed the petition.

Chairman Perry asked the applicant if they would like to speak in response to the audience and correspondence received. James Bacon stated that Suzanne Stucki had submitted a 14-point rebuttal to the petition and feels that there are a few points that should be brought out. He said that the major issue is that the Ulster County Highway Department has been operating on Cold Brook Road since 1985 with trucks going in and out 365 days a year. He doesn't know how many employees work out of the depot but there are a number of cars and trucks going in and out of the property. Mr. Bacon also said that Suzanne Stucki has done her homework looking at the D.O.T. road listings and it identified on page 800 that Cold Brook Road is a designated two-lane Town road.

James Bacon said that if the ZBA was the lead agency on this project they would be charged with the law to look at all of the impacts and see what all of the mitigating circumstances are and consider them when making decisions on the project, but that is not the role of the ZBA it is the job of the Planning Board. Mr. Bacon said that they are here tonight to talk about the use and definition of commercial recreation as he has looked at the code and Ms. Stucki has talked with John Ingram even before going to the Planning Board and that was the closest definition that would encompass this use. James Bacon said that the ZBA has to give justice to this property owner who has paid taxes on her properties and is coming in for a proposed use. If the use falls into one of these categories, then she would have to go back to the Planning Board and deal with all of the questions about engineering, traffic and noise. James Bacon asked that the ZBA consider that the proposed use falls under the definition of commercial recreation so she can move on to the Planning Board.

With no further comments the public comment portion of the meeting was closed at 8:00 p.m. by Chairman Perry.

Chairman Perry explained to the audience that the ZBA has to now make a determination for the Planning Board and said that over the past few years the ZBA has been faced with the hard task to define what the intent of the zoning code was trying to allow as it is very broad and outdated. He acknowledged that the ZBA's decision will set a precedent for future projects.

Chairman Perry asked the members of the board to use the input from the Town's counsel to consider if the use being presented falls under commercial recreation or as an accessory use.

Chairman Perry feels that the commercial part as an accessory use refers to the primary residence and this proposal is for the use of a separate 3-acres. James Bacon said that if the accessory use was just for the 10-acre parcel that Ms. Stucki has she could be told that a lot line revision would need to be done to include the pond parcel, he sees the chairman's point. Mr. Bacon acknowledged that the proposed event venue cannot be done on just the vacant parcel, the parking needs to be done on the larger parcel.

Gemma Young has more issues with the term accessory use because the intent of accessory is complimentary to a principal use. She understands it is a large property but if the special events are an accessory to a primary residence, then it opens up a can of worms and she doesn't feel it is intended like that. She understands that the reason that Ashokan Dreams was interpreted as allowed was because the BnB was a commercial hospitality space and the event venue was an allowed accessory use to that.

James Bacon referred back to the commercial recreation use. Gemma Young feels that the commercial recreation definition is very straight forward. She understands that it is outdated and needs to be updated but she explained that her background as an HR director and reading employment law is to read the plain language and the intent of the examples. Ms. Young said that she doesn't see any reference to special events in the commercial recreation code for the use of mountain land with the examples being very specific commercial uses and not hospitality examples. She said that there are other references regarding lodging but the applicant has stated that nobody is staying overnight. James Bacon and Gemma Young had a brief discussion about how to interpret the words. Mr. Bacon said that the purpose of the code is to serve the public. Brian O'Rourke feels that the interpretation is asking to take a physical activity and jump to a social event and that is a big move. He feels that if that big move is made here than everybody else in town can ask to have weddings on their property. James Bacon said that skiing is a social event, Ms. Young said that the primary purpose of skiing is not as a social event.

James Bacon understands that it is a narrow reading but the ZBA is an arm of the administrative body of the Town and the Town's purpose is to serve the public. Ms. Stucki is a property owner and pays her taxes. Gemma Young said that the ZBA is normally considering setbacks and have criteria that there are no adverse effects on the physical or environmental conditions of the neighborhood and we do take these things into consideration. Gemma Young said that this is how she feels comfortable interpreting the code. James Bacon asked her if there is any other place in the code where she would feel comfortable where this would fit in as a permitted use. Gemma Young said that the case law is set by Ashokan Dreams as an accessory to a lodging that is already providing lodging and perhaps meals and social congeniality, that could be considered a permitted accessory use. James Bacon said that he did read the Ashokan Dreams case and wrote in his letter that it was an as-of-right use in residential zones.

James Bacon asked who the town was using as counsel for this, he was told it was John Lyons.

Chairman Perry pointed out that counsel also cited the case of Lavender vs. The ZBA of the Town of Bolton where the ZBA had determined that wedding events on the property were commercial in nature and not customarily associated with the use of a single-family dwelling in a residential zone. The supreme court upheld the Town of Bolton's determination. This is similar to the interpretation request being considered now. James Bacon said that he would have to look into the aspects of this case.

James Bacon said the ZBA has the discretion to look at all of the factors and make their own determination but feels that it could fall under commercial recreation, considering that ski areas and horse trails would be permitted.

Chairman Perry said that with all of the new information that has been presented he wouldn't feel comfortable making a decision at tonight's meeting. Brian O'Rourke feels that it does need to be openly

discussed and considered because the board wants to be fair. Chet Scofield agreed and feels that the decision should be tabled to the next meeting. James Bacon said that he will look into the Brophy and Lavender cases, but he feels that another important factor is that the Ulster County Highway Department is operating on property right next door to Ms. Stucki. He said that the county being there is hard to fit into the character of the neighborhood but they are there and will continue to operate from that location as they have been there for 30 years. Mr. Bacon feels that the county operation produces its own amount of traffic, lights, and noise and feels that is a mitigating circumstance.

Chairman Perry asked the applicant about the classification of Cold Brook Road. Suzanne Stucki said that she spoke with the Town of Olive Highway Superintendent, Brian Burns, who gave her the information from the NYSDOT Local Roads Listings. She remarked that it is in her rebuttal to the petition, she asked if it could be read since all of the other letters have been read. Janelle Perry, Clerk, read Ms. Stucki's 14-point rebuttal to the petition against her application.

Chairman Perry made a motion to table the decision on this interpretation request until the January meeting, Brian O'Rourke seconded the motion, all members voted in favor.

5. Adjournment:

With no further business to discuss, the meeting was adjourned at 8:35 p.m. on a Scofield/O'Rourke motion.

6. Next Meeting:

The next meeting of the Board will be held at 7:00 p.m. on Thursday, January 2, 2025 if there is business to discuss.