

Hamlin Zoning Board of Appeals *Minutes*  
Monday, February 16<sup>th</sup>, 2004  
7:30pm

The regularly scheduled meeting of the Hamlin Zoning Board of Appeals was held in the Hamlin Town Hall at 1658 Lake Road and was called to order by Chairman Norman Baase with the location of the fire exits explained for those present.

**Present:** Norman Baase, Terry Dingee, Rocky Ellsworth, Ed Haight, Jerry Hoffman, Klaus Pohl and Donna Stassen.

**Also present:** Support Board Attorney Charlie Welch, Building Inspector Dick Bauman, Conservation Board Member Tammy Palumbo, Planning Board Member Judith Hazen, Supervisor Austin Warner, Town Councilman Dave Rose and several interested citizens.

A motion was made by Ed Haight, seconded by Jerry Hoffman to approve the minutes of the January 19<sup>th</sup>, 2004 meeting. Members polled Baase aye, Dingee aye, Ellsworth aye, Haight aye, Hoffman aye, Pohl aye and Stassen aye. Motion carried, minutes approved.

**THE CLERK READ THE PROOF OF PUBLICATION**

**PUBLIC HEARING**

**Mr. and Mrs. Frank DeLapa  
5728 Wautoma Beach Road**

Chairman Norman Baase opened the Public Hearing and stated that he would like to set some guidelines for the meeting. He said that late arriving information pertaining to this Public Hearing had come in and the Board hasn't had time to analyze it all. In addition, no decision will be given tonight. Mr. DeLapa can state his case tonight, however the Board will have 60 days to make a decision. At the end of the Public Hearing tonight it will be closed. Any comments should be made tonight before closing the Public Hearing.

Mr. and Mrs. Frank DeLapa were present to seek classification of the Rick Vito structure located at 5733 Wautoma Beach Road. Mrs. DeLapa explained that after three years of dealing with this property, the case for the appeal has been made many times. Mrs. DeLapa cited a lack of action by the Town has contributed to diminished property values. She stated that the conditions are still present at 5733 Wautoma Beach Road and asked that the letter by the New York Department of State be made available at the Town Hall for interested residents. Mrs. DeLapa also requested that the new Building Inspector Dick Bauman enforce the Zoning Codes as they are written. Chairman Baase asked if anyone was present to speak for or against this proposal? Fred Brandford 5714 Wautoma Beach Road stated his concern regarding the building permit that was issued to Mr. Vito after the house was built. He stated that the house shouldn't be there. James Krempaski of 1960 Redman Road asked if Mr. Vito has requested any variances? Attorney Welch replied that in the early 1990's several variances had been applied for pertaining to that property. Attorney Welch explained that one of the conditions of Mr. Vito's plea bargain, is that if he intends to use that structure as a storage facility, he will need to obtain a variance. If the Board decides it is a garage with storage he will need a variance since he

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is not a resident of this lot. Peter Toney of Moscow Road stated that this situation has been going on for perhaps 3 years, this is not the kind of thing that should happen in our Town and this has caused our residents thousands of dollars. This Board cannot be lethargic and passive any longer. This matter has been dragging on month after month without any action whatsoever. The DeLapa's hired an attorney to bring this matter forward. There is failure of leadership on this Board, failure of legal accountability. Former Building Inspector Larry Gurslin said our Town didn't have a definition of a garage and a house. This has been a house from the beginning. Mr. Gurslin put a Stop Work Order on the project, however the building continued. Electric and walls were put in. This Board cannot be so passive, you must do whatever is required in training, change of leadership so that these kinds of things stop happening. Building Inspector Dick Bauman read the definition for living facilities. He explained that while this structure may look like a house he had trouble defining it as a house. Mr. Bauman and Chairman Baase toured the house before the meeting and noted that it has no heating, no toilet, no kitchen, no plumbing, no sewage disposal system and no water supply connection to any fixtures. Chatfield Engineers looked at the stamped plans and stated that there was no indication of any heating, plumbing, or a sewage disposal on the plans. Mr. Bauman said he does not consider it to be a dwelling unit and this time, right now it is being used for storage. The Building Department will be conducting twice annual inspections. Mrs. DeLapa stated that the only reason electric wasn't hooked up is because she saw the electrical truck outside one day and immediately called Larry Gurslin who came out and stopped the installation of the electric. Mr. Toney stated that Mr. Vito's intention was to continue building the structure and turn it into a house. Chairman Baase stated that the Code does not state what a garage is supposed to look like. Board Member Terry Dingee asked if a Certificate of Occupancy could be issued without electric and plumbing? Attorney Welch stated that a Certificate of Occupancy could not be issued as the building stands now. Dick Bauman said he could issue a Certificate of Compliance if it is to be used as a garage with storage. At that time Clerk Cindy Olds read a letter from Jim Fairchild of 5728 Wautoma Beach Road regarding the Rick Vito structure. Tom Jenson of Roadside Drive, asked if there was rough plumbing and HVAC in the building? Chairman Norman Baase said he hadn't seen any finished plumbing. We are just trying to sort out the facts as best we can. Attorney Welch read the perimeter and stated that this is not a regular variance issued from the Board; you don't use a balancing test. The decision needs to be supported by evidence. Is it a rational and reasonable decision in regards to what former Building Inspector Larry Gurslin classified as a garage with storage? Mrs. DeLapa said that Mr. Vito still continues to conduct an on-going business at 5733 Wautoma Beach Road. She asked if this structure could be used for other people's storage also, since that is what occurs on a regular basis. Peter Toney read the definitions of a garage in Chapter 125-9 (page 12). He asked that the Board take a good look at the documents provided by the DeLapas. These are letters written by Mr. Gurslin sent to Mr. Vito throughout the year in 2002. Chairman Baase stated that

**PUBLIC HEARING-Mr. and Mrs. DeLapa**

Mr. Gurslin isn't here to answer any questions pertaining to his letters to Mr. Vito. Marilyn Blandford who resides at 5714 Wautoma Beach Road asked if there were other rooms in the house? Chairman Baase stated that there is one large room in the front of the house and the rest is petitioned off into smaller rooms, and there is no argument about that whatsoever. It is on public record that Dick Bauman can inspect the structure twice a year. We inspected the structure once already on February 13<sup>th</sup>, 2004. Attorney Welch stated that Chatfield Engineers and the Town of Greece have inspected it along with Mr. Richardson from the Department of State. Conservation Board Member Tammy Palumbo asked for an explanation as to what are we deriving from the outcome of this Public Hearing? Attorney Welch read section 267 of the Town Code paragraph 5. He stated that the DeLapas are appealing the decision that Larry Gurslin made, and the Zoning Board's purpose it to make a decision. Peter Tonery quoted the letter from Kenneth Light regarding Chapter 125-81 (A) and 125-81 (B) where it says that Mr. Gurslin is guilty of a misdemeanor. He asked if somebody here could explain how the original drawing metamorphosed into what is there now? He said there are other code violations at play here. Chairman Baase explained again that the Board can't answer for Larry Gurslin because he is not here. Mr. Tonery said these letters are history of what has happened with this case. Chairman Baase said the Board would meet at another date to answer this correctly. Tom Jenson of Roadside Drive asked if the Building Department has the original plans on file? Is the current structure in conformance with what has been built? Attorney Welch said no, we do not have the original plans, however a second set of plans has been submitted. Mrs. Delapa stated that a retroactive permit had been issued to fit what has been built. Chairman Baase asked if anyone had any further questions or comments. There were no replies. He then declared the Public Hearing closed. Attorney Welch stated that the Board has 60 days to make a decision.

A motion was made by Rocky Ellsworth, seconded by Klaus Pohl to table a decision on the appeal of Mr. and Mrs. Frank DeLapa of 5728 Wautoma Beach Road for the Vito property located at 5733 Wautoma Beach Road until the March 15<sup>th</sup>, 2004 Zoning Board of Appeals meeting. Members polled Baase aye, Dingee aye, Ellsworth aye, Haight aye, Hoffman aye, Pohl aye and Stassen aye. Motion carried, decision tabled until the March 15<sup>th</sup>, 2004 meeting at 7:30pm.

**ACREAGE VARIANCE**

**Mr. Herbert Cannon  
Redman Road, North of  
Morton Road (tax acct #  
012.02-1-4)**

Mr. Herbert Cannon was present to seek an acreage variance in order to sell his lot that is located on Redman Road, north of Morton Road. Mr. Cannon explained that the property

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**ACREAGE VARIANCE-Herbert Cannon**

was set aside as a 250' x 250' lot before there were 5 acre minimum requirements. He bought the lot in the 1980's. Attorney Welch stated that the problem Mr. Cannon has is that he has no intention of building on it at the present time. The Zoning Board cannot issue a variance unless there are building plans for the lot. Mr. Cannon asked if the lot dimensions could have been grandfathered in? Attorney Welch said that there is a certain period of time to become grandfathered and that should be within a two year time frame of buying the property. Beyond that two year time frame you must obtain a variance. Board Member Terry Dingee asked if Mr. Cannon could try to sell the land with a contingency that it would be considered for a variance? Attorney Welch replied yes, as long as he is appealing for a reason or a purpose, then he could request a variance, although a potential building plan would be needed. As a matter of formality he should go to the Planning Board with a rough sketch, they will then forward him to the Zoning Board to apply for a variance. As long as the lot perks, there shouldn't be a problem. However, if a full blown raised septic system is required then the lot would not be wide enough, since a 260' lot width is required. Chairman Baase stated that this Board has nothing to do with leachfields. Attorney Welch stated that Mr. Cannon should present a rough sketch to the Planning Board. He will need to hire an engineering firm to have them perform a perk test. Mr. Cannon said he would consider this and thanked the Board for their time.

**DISCUSSION**

Conservation Board Member Tammy Palumbo stated that Jim Doan would be her replacement for covering the Zoning Board until June.

**ADJOURNMENT**

A motion was made by Ed Haight, seconded by Klaus Pohl to adjourn the meeting barring no further business. Members polled Baase aye, Dingee aye, Ellsworth aye, Haight aye, Hoffman aye, Pohl aye and Stassen aye. Motion carried, meeting adjourned.

Respectfully submitted,

Cindy Olds  
Clerk to the Support Boards

The next scheduled meeting of the Hamlin Zoning Board of Appeals will be held on Monday, March 15<sup>th</sup>, 2004 at 7:00pm. Deadline for fees is Monday, March 1<sup>st</sup>, 2004.