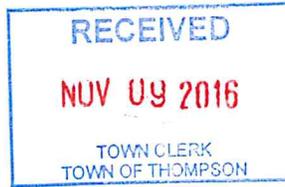


**TOWN OF THOMPSON  
ZONING BOARD OF APPEALS  
Tuesday, October 18, 2016**



**APPROVED**

**IN ATTENDANCE:**

Chairperson Richard McClernon, Robert Hoose, Pamela Zaitchick, Jay Mendels (alternate), James Carnell, Director of Building/Planning/Zoning, Paula Elaine Kay, Esq. and Kathleen Brawley, Secretary

Absent: Richard Benson and Jose DeJesus, Alternate,

Chairman McClernon called the meeting to order at 7:00 p.m. with the Pledge to the Flag. Chairman McClernon appointed Jay Mendels as a voting member for tonight's meeting in Richard Benson's absence.

A motion to accept the September 13, 2016 meeting minutes was made by Jay Mendels and seconded by Robert Hoose.

4 in favor, 0 opposed

**NYSEG**

**Property is located in the HC-2 Zone at 21 Katrina Falls Road,  
Rock Hill, NY; S/B/L: 51.-2-41.2  
Josh Silver, Esq.**

The applicant requested that this matter be adjourned to the Board's November 8, 2016 meeting to allow the Town Engineer time to review the application.

A motion to hold this hearing open until the November 8, 2016 meeting was made by Pamela Zaitchick and seconded by Jay Mendels.

4 in favor; 0 opposed

**AMERICAN COLLECTOR'S & EXOTIC AUTO BROKERS LLC**

**Property is located in the HC-2 Zone at Old Route 17/Cimarron Rd, Monticello, NY  
S/B/L: 31.-1-62.4 and 31.-1-93  
Glenn Smith, P.E. and John Makovic**

Jay Mendels recused himself from participating in this application.

Satisfactory proof of mailing was previously provided to the Board.

Mr. Smith provided the Board with aerial photos of the premises. The applicant proposes to put up a warehouse building to store cars. The lot is too small, it requires a 40,000 square feet and this lot is just under 18,000 square feet. This lot is 95 feet wide, and 150 feet is required which also

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requires a variance. The side yards must be 70 feet and they only have 45 feet. Mr. Smith advised that they reviewed the neighbor's deed (McCague) and there does not appear to be an easement for Mr. McCague's use.

#### PUBLIC HEARING:

Helen Mauch, Esq., Zarin & Steinmetz attorneys for EPR Properties and development partners. EPR owns 1,700 acres from Cimarron Road to Kiamesha Lake Road and west of that (the former Concord Resort). EPR has been for the past five years designing and building the destination resort and casino. The area around Exit 106 has been significantly improved by EPR with a new entry road and landscaping together with bio-retention pond. All of these improvements have been approved by the Town Board and the plans have been approved by the Planning Board. In fact, the State of New York chose this site for significant economic development. Hundreds of millions of dollars are being put into this project and Exit 106. The last thing that people want to see is a storage building coming off of the exit. EPR is very concerned about the approval of this application. Ms. Mauch provided the Board with a letter from her firm stating, amongst other things, will the harm to the community be great

Their letter provided cases from other Boards which have been upheld by the Courts. These are substantial variance requests. The applicant knew that this was a non-conforming lot when they took title, which is a self-created hardship and the applicant should have no expectation that he could do more with the lot. Ms. Mauch reminded the Board that other neighbors and the County Planning Department have all raised concerns due to the fact that this is so close to the casino project.

Ms. Mauch advised that EPR feels very strong that these variances should be denied for the reasons set forth in her letter.

Correspondence was also received from Brown, Sharlow, Duke & Fogel, Esqs., in opposition to this application.

Kevin McCague, adjacent property owners. This project will fall within 20 feet of his front door. They would have purchased the right-of-way had they known it was for sale. They have owned the property since 1983. They did understand that it was highway-commercial when they purchased the property, since they felt good about the area. He understands that the ramp has had substantial improvements which are not always easy to deal with. Mr. McCague advised he has maintained that driveway and right-of way for the last ten years. If he had not, there would be no access, let alone emergency access. There is no other place to park cars other than the lawn. Mr. McCague advised that he feels permitting this application would be unfair to his parents and it would greatly impact their lives in a negative way. There is a trailer on the property and they are permitted to replace the same. If this building was allowed to be constructed, the fence would be less than 20 feet from the trailer. This is a residential area as well. There are many different animals in the area. The neighbors of the road were not made aware of the improvements to the exit improvements. Mr. McCague was concerned that neighbors have not been made aware of any

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developments in the Planning Board and Attorney Paula Kay advised that the application in Planning Board is stalled.

Robert Hoose asked if the McCagues had a survey prepared. Mr. McCague advised it was in his deed and provided the Board with a copy of their survey map. The Board noted that there is a portion of the map which shows the road/easement. Jim Carnell advised that when the County Real Property Department did improvements to their system, they assigned parcels such as the easement/right-of-way in question with parcel ID numbers. It was sold at tax sale, the County took title and then Mr. Makovic purchased it thereafter. There is a lot of confusion to who owns the purported right-of-way, which are from 1955. Attorney Paula Kay explained the situation to the McCagues and suggested they speak to the County Real Property Department concerning the same. Mr. McCague reiterated that he maintained the road for the entire time Mr. Makovic owned the road and prior thereto.

Attorney Paula Kay advised that the Board also received a letter in support from Michael Taylor a member of Orchard at Towner Farm, LLC.

**AREA VARIANCE CRITERIA:**

(1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted yes. Robert Hoose advised that there is a larger parcel next door which the applicant could use.

(2) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance? 2 voted yes; Pamela Zaitchick explained that there are no storage buildings in the area now. Richard McClernon advised that the building is too large for the site. Jay Mendels and Robert Hoose voted no, although Mr. Hoose acknowledges the site is small.

(3) Is the requested area variance substantial? All voted yes. Pamela Zaitchick advised that 55% is substantial and she does not want to set a precedent. Chairman McClernon agreed with Mrs. Zaitchick and added that approving this will cause problems down the road. Robert Hoose agreed, as the building is too large for the site.

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All voted yes. Richard McClernon expressed concerned about environmental issues with blacktopping etc.,

(5) Is the alleged difficulty self-created? All voted yes.

A motion to deny all three variances as requested was made by Pamela Zaitchick and seconded by Robert Hoose  
4 in favor; 0 opposed

**MARY NORDEN**

**Property is located in the SR Zone at 161 Anawana Lake Rd, Monticello, NY  
S/B/L: 13.-1-9**

Satisfactory proof of mailing was previously provided to the Board.

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Attorney Paula Kay advised that the request of the applicant is really for an interpretation which means that the Board won't be voting on the criteria but actually to vote whether the petting use is an accessory use to the farm property. Research has been done and the Town's records reflect that the property has been used by a farm for many years. Jim Carnell advised that NYS Agriculture and Markets and the property is consistent with the permitted accessory use.

A motion to confirm that the petting zoo is an accessory use of the existing farm and not consider the same as an expansion of the non-conforming use, was made by Pamela Zaitchick and seconded by Robert Hoose

4 in favor; 0 opposed

**NEAL LUBIC AND ISNIJA GASHI (SOLAIA RESTAURANT)**

**Property is located in the RR-2 Zone at 3317 NYS Route 42, Monticello, NY; S/B/L: 59.-1-45**  
Isnija Gashi and David Ryan, P.E.

Chairman McClernon read the public notice: Applicants are requesting area variances from §250-9 of the Town of Thompson Zoning Code for the following purposes: 1) permitting an increase in signs identifying the permitted use from one sign to two signs; and 2) permitting an increased sign size from the required 20 square feet to 126 square feet.

Satisfactory proof of mailing was provided to the Board.

Mr. advised that the original sign was in the DOT right-of-way. The site plan shows the schematics of the sign. The proposed billboard was 4'x11'. They wanted to reuse the existing pole but the DOT advised they would not permit the same. They are keeping basically the same signage, just moving it into private property, not in the DOT right-of-way. The dimensions of the new sign are proposed to be 3'x6' (18 square feet). The overall structure is 9'x7'. Robert Hoose confirmed that the proposed sign will be double sided. There will be no signs on the building itself, although the applicant has a sign on the building for now which was from the sign on the pole. The total square footage of this sign is 126 square feet because it is a double sided sign (56 square feet each side). Jay Mendels asked the applicant to confirm that the prior sign was double sided and Mr. Ryan confirmed it was.

Pamela Zaitchick advised that this is not setting a precedent since there was previously a two-sided sign. Jim Carnell advised that if the Building Department had documentation on the prior sign, they would have permitted the sign to be simply replaced. Since they have no documentation, they had to go through this process.

There was no public comment.

**AREA VARIANCE CRITERIA:**

(1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted no.

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- (2) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance? All voted no.
- (3) Is the requested area variance substantial? All voted no.
- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All voted no.
- (5) Is the alleged difficulty self-created? All voted yes.

A motion for negative declaration motion under SEQRA was made by Pamela Zaitchick and seconded by Robert Hoose.

4 in favor; 0 opposed

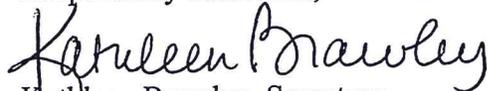
A motion to approve the variance as requested, subject to the receipt of a signed owner's proxy from Neal Lubic, was made by Pamela Zaitchick and seconded by Robert Hoose

4 in favor; 0 opposed

A motion to adjourn the meeting at 7:41 p.m. was made by Jay Mendels and seconded by Robert Hoose.

4 in favor; 0 opposed

Respectfully submitted,



Kathleen Brawley, Secretary

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