

## Town of Washington Zoning Board of Appeals

A meeting and continued public hearing of the Town of Washington Zoning Board of Appeals was held on November 19, 2019 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the application of Mimas Farm LLC (Oliver and Rima Lordonnois) 301-303 North Tower Hill Road for area variances from the Town Zoning Code, Article III, Section 330B (5) Accessory Residential Housing to allow construction of a new residence on the parcel. The property is zoned RR 10. **Dutchess County Tax Map Grid No. 6966-00-575147**

Members Present: Chairman, John Parisi, Fletcher Coddington, Frank Redl, also, attorney Alan Rappleyea. Al DeBonis, councilman/liaison, Howard Schuman, Conservation Advisory Commission Representative.

Chairman Parisi opened the meeting at 7:30 P.M., announced the agenda, read the Mimas Farm LLC public notice, gave a brief summary of the October 15, '19 meeting regarding this application, announced this is a continued public hearing from October 15<sup>th</sup>, that this application is not a SEQRA issue since it was learned that the animal rescue service that is being conducted on the property and the owner has a license, that the stream that was brought up at the last meeting is not an issue because the animals are kept 100 ft. from the stream and the manure is property disposed. Chairman Parisi next called for a motion to accept the October meeting minutes. **A motion to accept the October 15, 2019 meeting minutes as submitted was made by board member Coddington, seconded by board member Redl. 3 ayes**

Chairman Parisi referred to the October 15<sup>th</sup> meeting, the applicant was left with the understanding of two possible options 1) the owner to purchase five additional acres 2) or get a variance to build with the condition that the cottage would be demolished. Chairman Parisi questioned Mark Graminski, P.E., L.S. who is in attendance representing the applicant. Mark said the option to purchase the additional five acres is not an option right now, he cannot speak to the demolition of the structure.

Chairman Parisi spoke relative to the animal sanctuary and SEQRA requirements, said he spoke to the town attorney who said there is nothing in the Town of Washington Code that prohibits an animal sanctuary but needs to be registered with the U.S. Department of Agriculture. Chairman Parisi checked with the owner, and the U.S. Department of Agriculture, the owner is registered with the Department of Agriculture so this is not an issue. The other possible issue was regarding the runoff from the animals into the stream, The building inspector and zoning enforcer looked at the property, found that the animals are kept more than one hundred feet from the stream and that the manure is removed every two weeks. These two possible issues are not longer valid, the board is able to move forward on the SEQRA requirements.

Chairman Parisi next questioned if anyone from the public wishes to speak to this application?

Attorney, Alan Rappleyea addressed the board, said he was hired by the owners, Oliver and Rima Lordonnois, Mimas Farm property owners about one month ago. He is new to this application, did not represent the owners when they first appeared before the board. Aside from talking to the owners he doesn't have a lot of knowledge about the application, if the board has voted on any part of the application.

In looking at the area variance standards, perhaps the board has completed them already, Said, he came early thinking the meeting began at 7:00 P.M., Reflecting on the variance standards, may be repeating some facts that the board is aware, unaware, doesn't know the precise date but believes there are files on the property when Jeff owned it 2012, 2013. Said he talked to Susan Whalen last night, to try to understand the facts. The owners told him that they purchased the property with the understanding that the house could be rebuilt. That understanding he believes was accurate but was also flawed. When the fire occurred in 2012, 2013, they closed on the property in 2017. By then they were not operating under that assumption, asked Susan if she ever asked the town about what they could or could not do then. What the board has is a series of unintentional mistakes.

One of the things that the board could do would be to close the conditions on the variance. The owner is willing to entertain the screening of the bad structures so they won't offend people. It is their hope not to take down the small residence in the front, instead, to build a smaller residence where the old large residence was.

Going through the variance standards of impacts upon the neighborhood etc. the board could make a good argument that this is an improvement, that its not deleterious or harmful. Putting the animal question aside, when he spoke to the owners about it, didn't know what the board had said, or not said, said to make sure you don't have any zoning violations on the site because if they do you cannot proceed with the variance and that will hurt the neighbors. It is his understanding that there are no zoning violations on the property.

Going through the zoning standards saying about impacts upon the property, everyone on the board's mind is about setting a precedent if we allow two residential structures on a fifteen acres parcel. Perhaps there is another way of achieving this without setting that kind of precedent, doesn't believe the ZBA will avoid a precedent, makes a determination based upon the facts. The ZBA can vary the zoning code in any way possible. One way of solving this problem without a concern about that precedent is to extend that limitation period to rebuild the burned down structure. That structure will be smaller, the site has already been cleaned up. Part of the reason that it is smaller is because there wont have to be a secondary apartment or places for the owners to live in that bigger structure. From what he knows and has seen on the plan it looks like it is going to be a pretty nice house. Doesn't think that anyone can say that the owners knew they couldn't build there and are trying to build there anyway, that clearly is not the case from what he knows.

One thing he struggled with a little, his knowledge of the Heidi Otto years, those years that we all want to put behind us, doesn't know how those structures got there in the first place. Heidi

Otto had a very strange relationship with honesty so doesn't know how those buildings got to be built. We all remember the hotel, as we called it and the other structures, so in theory those were probably nonconforming from day one. How did they get built, they were residential structures. The only reason he is pointing this out is it was there, however it got there may have gotten there incorrectly. There is a way of solving this problem. If you put controls on it, can vary the two year requirements. If another structure goes up there it isn't concerning density. One of the ways to solve the problem without granting a variance is just to say we are the zoning board of appeals, we can vary anything. Given the fact that this was an unexpected casualty, it took a while for Jeff to resolve, the property was then marketed by that seller, they paid a lot of money for it then relying on that building site, realized they can't do it. Under those circumstances they are all very unique, doesn't think that looking at the variance standards one could say this is a self created hardship. It's not a self created hardship it is a pre-existing condition that existed that nobody knew about. Could change the nature of the application, thinks it is Code, Section 393 that talks about how quickly you have to rebuild in the case of a nonconforming use. That is probably what this is, that it isn't concerning density.

Attorney Rappleyea said he gave secretary Caul copies of three letters that he received, one letter is from Philip J. Balshi and Pamela C. Scott, 238 North Tower Hill Road, dated November 17, 2019 reads, "As neighbors of Oliver and Rima, we support the variance request and the plan to rebuild the main house at 301 North Tower Hill Road filed by Oliver Lordonnois. We also request that this letter be read at the hearing to be held on November 19, 2019."

A letter from Jennifer G. and Erik R. Oken, 636 Deep Hollow Road, reads, "We are writing in support of Oliver and Rima Lordonnois and their proposed building project at 303 North Tower Hill Road in Millbrook. We have been home owners at 636 Deep Hollow Road for eighteen years and are pleased to know their family among our neighbors. We are aware of the Lordonnois project and have no objections as we have been told the house would be built to half the size of the previous one. We kindly ask that the Board grant Oliver and Rima's requested variance. Please do not hesitate to reach out to us for any further information or assistance."

An email from William and Elizabeth Hewitt dated November 18, 2019 at 7:49 P.M. was received, reads "Hello Allan, I hope you are well. Elizabeth and I are sending this in favor of the Lordonnois application to rebuild the main dwelling on their property. To the zoning board of Washington town, I hereby request that this statement is added to the minutes and read at the meeting taking place on November 19<sup>th</sup>. We have no objection to the ZBA granting their variance so that they may keep the small home that exists and rebuild the main home. We live at 105 Bontecou Road, Millbrook, N.Y. and my property is almost touching the 15 acres of Oliver and Rima Lordonnois. I am aware of their project to rebuild the main house on their property and I am in full support of it. Thank you for your consideration in this matter."  
Will Hewitt

Attorney Rappleyea referred to the idea of extending the rebuild, is a bit of a curve ball to the board but as he looked through the variance standards, is it harmful to the neighborhood, will it represent a significant change, is it self created. He doesn't think it is full scale to any of

those standards. The fact that it is a substantial variance is probably true. One of the questions asked, is there another way of solving this problem. The uniqueness of the fact here, one of the ways to solve the problem is to say lets vary something different, lets vary the rebuild period, let's condition it to the size it can be. If there is something that makes it more palatable. If there is real concern maybe those can be addressed in that way.

A volunteer who works at Mimas Farm, has been in the community for thirty six years, has two children in the school district, said, she was probably one of the first people that Rima and Oliver met when they came to Millbrook. She has been there since they started the farm. They asked her why she wanted to come here to her property, were curious, They were always under the assumption that they were going to build a house on the hill because there was a previous house there.

Said, unfortunately she knows nothing about zoning, variances, etc, but can attest to the fact that the owner employs local people when possible because she comes to her to find people to employ. Two of her children are special needs, are always welcome at the farm, has been therapeutic for them. Everybody is always welcome at this farm, girl scout, boy scout troops, it is an amazing contribution to Millbrook. She urges everyone to come to see the farm to see how well the animals are kept. Rima has taken animals from local people that were unable to care for them, takes care of them with out of pocket monies. Rima will need people to take care of the farm at all times, will need people to take care of her home. Rima has honestly improved that land and whole area, is amazing at how she keeps this place, has increased the value of the properties around her. Knows to maintain the property need to build more structures, you need to obtain more permits, tax increases give more money to the town.

Rima is more than willing to make changes that need to be changed, is trying to work with her neighbors. There is no eyesore on the property, the shared driveway is always kept clean, there is never anything blocking the driveway. The volunteer said she has always parked in Rimas driveway. Anything that was run down such as the fence is repaired. Millbrook needs more people like Rima to contribute to the town, this is what Millbrook is about, making things look more beautiful, having people that are welcome to many different organizations and children's organizations in Millbrook. Rima welcomes them all at anytime at no charge. She would like to get more special needs children up there to become involved, she knows that animals can be very therapeutic. Thinks there are ill feelings among the neighbors this is why they are protesting this variance. Mimas Farm owners have done nothing but add to this community as she has a lot of people employed. The volunteer spoke very strongly in support of this farm rescue operation and the variance request.

Terence Donoghe, adjoining neighbor, spoke to the ten acre zoning required to build the house that the owners should comply with the zoning, as does everyone else. The line has to be drawn somewhere.

One adjoining neighbor spoke to the problem with the driveway being blocked, what will happen when construction of the new house begins.

Another neighbor questioned how they are going to be able to handle truck delivery, trucks delivering to the house, its not a huge driveway. Chairman Parisi is not able to address this since it is a common driveway, was addressed at the last meeting. There is a lot of controversy regarding the blocking of the driveways, cars needing to go on the side of the driveway to get past to their destination.

Attorney Rappleyea spoke to the possible construction and blocking of the driveway, is not saying this is not important, is saying the houses were there, the way of solving the problem, perhaps not to everyones pleasure, is to not grant an area variance, instead grant an extension of time to rebuild the burned down home. There is more than one way of solving the problem. He can count more fingers and hands of the properties that have second homes on them. With Heidi Otto it was instigated because someone wanted to build another home and they were required to do a subdivision. The timing of rebuilding the burned down house wasn't suggested as an option in terms of a variance, rather than an area variance. He didn't represent the owners at the last meeting, doesn't know if he would have caught this anyway. Believes it was presented, got some letter from the town that said the property complied, that doesn't mean that you can go ahead and build a second house.

Board member Coddington said he has been sitting here, listening to this debate over this piece of property that seems to center around the road. He doesn't understand why people couldn't put in a wider road from Tower Hill Road to the turn off of the other folks house, so that even if they parked semi on the road you could get by it. That road would be in existence. This seems like a solution. Heidi Otto was a known zoning violator, caused a lot of people a lot of pain. Board member Coddington said he is somewhat familiar with the property, it is his opinion, is not a town opinion, if you put in the laws of the Town of Washington to accommodate somebody that did not do their due diligence on the purchase of this property means its their responsibility ro remedy it. Said, is sure if they had done the due diligence on the property and wrote the zoning laws they would have found out that there is a two year limit, bought it a long time after that. It would make sense to him to build a bigger house and take down the other one just to keep the zoning laws of the community intact. That is what protects this community and keeps it the way that it is.

An adjoining neighbor who lives adjacent to the Donoghue property spoke to not having any idea what the owner is going to do with that house. Are they going to rent, is it going to be a bed and breakfast, is it going to be a donation time sharing for the animal rescue, this is what the concern is. One is not looking at a stable environment. Said he has lived, built there, twenty years.

Board member Coddington said he understands his position, guesses there are at least three hundred homes in the town that this happens on a regular basis. When peopel come up for the weekend, have friends come to stay, cannot legally say you cannot have your friends come up, stay in your house. What is important is maintaining the ten acre zoning. Maintaining the ten acre zoning means there is ten acres for one house, its for one house. In the past the board had previous property where the owner wanted to tear it down and rebuilt it, was on a nonconforming lot, the board said no. Thinks in order to preserve the community and the

population density that we have, maintaining the ten acre zone with one house per ten acres, if there are twenty acres you can have two houses, if you have fifteen acres you can't. Said, he thinks its important to maintain the integrity of the zoning laws of the town. This is not the town's opinion, it's his opinion.

Attorney Rappleyea said he understands the concern of perhaps what is going to happen there, that is the sort of thing that can be addressed with conditions on variances. Chairman Parisi disagrees with attorney Rappleyea, Said, if an area variance becomes a use variance, they haven't shown the use that they financially need that is done.

Claudia Justin addressed the board, said she works with Rima and her husband, looked at a lot of properties, came across this property, thought it was marketed as a property in Parcel Access, the address is 301-303 Tower Hill Road. Understood it to be a parcel you lived in the cottage and you built the main house as a deal. She went to the building department, spoke to the tax assessor, told her all the stories about the B&B, the ten thousand square foot house, how it burned down. She asked what do we do to rebuild the property, sat down with the building inspector. Everyone was extremely nice. Said, she lives in Pawling, NY, she needs two houses that have cottages, never dawned on her that you couldn't have a main house and a cottage on a property. Pawling is very similar to Millbrook.

The building inspector told her she needed to fill out a foil request, go to the Department of Health, get all the drawings, take all the drawings make sure they go to an engineer, they would certify, tell her if the well and septic could be used, the septic was oversized. She told the building inspector that they didn't want to put up anything near a ten thousand square foot house, to be much more modest. At no time was she told that the stature of limitations were off the table, needed to be built within a year, if you were going to rebuild you should take the cottage down. There was nothing to lead us to believe that you couldn't rebuild. Rima and her husband never, ever, thought that this was something that couldn't be rebuilt because it was there, its two addresses 301-303. Chairman Parisi interjected that the 301 and 303 addresses have nothing to do with it, the numbers of a street have to do with the 911 system that says every so many feet you get another number. If you have two hundred feet frontage on his property technically there would be four addresses to that from the 911 point of view. The number on that property has no bearing on this application.

Claudia questioned if in the Town of Washington it is allowed to have a main house and a cottage but need to stay within a certain size? Chairman Parisi said it is according to the area lot size in the zoning district, if there are ten acres you are allowed one residence, if you want more residences you need an increase in the acreage. Claudia questioned, if the fact that it was there could the variance be considered that there was structures there? Chairman Parisi said if there was a variance for the residence the board would have to find it in the system, doesn't believe there was a variance for any of Heidi Otto's structures.

Attorney Rappleyea spoke to continuing the public hearing. Chairman Parisi thanked him for his comments, disagrees with him, he left the meeting last month with the understanding that the owner consider two options, one option was to purchase the additional five acres, the second

option was if the board granted approval to build his house, he willingly committed to tear down the cottage.

One member of the public questioned the purpose of the cottage? Chairman Paris said they live there. One adjoining neighbor questioned why the owner is not present? Attorney Rappleyea said Rima is not here because he told her not to come, he understands at the last meeting about the negative comments made that were not going to do anybody any good.

Chairman Parisi remarked that the Zoning Administrator and the Building Inspector looked at the property, they returned and said there were no violations in terms of the zoning.

Attorney Rappleyea questioned if this was converted to a non residence, if they wanted another barn, or wanted to have a structure to house the animals, removed any evidence of a dwelling, would they still need to appear before the board to represent that? Chairman Parisi said if he put together a resolution now to allow them to build the house, they wanted to keep that second current cottage, convert it into a barn, he personally would have no problem with that.

Chairman Parisi called for a motion to close the public hearing. **A motion to close the Mimas Farm continued public hearing was made by board member Redl, seconded by board member Coddington. 3 ayes**

Chairman Parisi next called for a motion to classify this application a Type II Action, **A motion to classify this application a Type II Action was made by board member Redl, seconded by board member Coddington. 3 ayes**

Chairman Parisi stated his position on this application is that he was under the impression that the owner committed to removing the cottage if given the permission to build. He would propose to grant a variance to build the house with the condition that when they get the certificate of occupancy that take out a demolition permit for the cottage, that they have ninety to one hundred forty days to remove it. Board member Coddington said this sounds reasonable to him. Board member Redl said he agrees with chairman Parisi, also agrees with attorney Rappleyea,, the house was there, however does agree that if the board grants permission to build the main structure, the cottage should be eliminated. Would need to give them a Sunset Clause that once the house is issued a certificate of occupancy the cottage has to be dismantled or rendered uninhabitable within a certain time frame.

Attorney Rappleyea said he is looking for the first time at some records that Mark Graminski just handed him from the county assessor dated 1992, Read from the Town of Washington record that states, the plans call for a well and septic system for two residences on one fifteen acre parcel. One is a six bedroom house, the second is a two bedroom apartment conversion of an existing barn. Attorney Rappleyea is asking, before the board votes on this application, the board gives him time to review the town records. Somebody approved something in 1992, dated January 2, 1992.

Chairman Parisi said he gives attorney Rappleyea a second option, he can come back and appeal whatever the board does. Said, the code says if there is a nonconforming structure that ceases to exist, after one year you no longer have that nonconforming. When the house burned down, the fire was two years ago, you have one year, it didn't happen. Attorney Rappleyea said the approvals are referring to something else in 1992. Attorney Rappleyea doesn't agree with chairman Parisi. Board member Redl questioned if would make that big of a difference if the board gives the applicant thirty days to search the town records before the board make a motion on the application? The board has sixty days for the close of a public hearing. Board member Coddington said he doesn't see why it would be bad to let the applicant look through the town records. If there is some sort of record of the town approving , (can't believe Heidi Otto got approval for anything), but if the town approved this previously then there is preexisting verbiage that the board should be aware of before a decision is made.

Attorney Rappleyea is requesting thirty days so he can make sure exactly what happened.

Chairman Parisi questioned who is representing the owner, attorney Rappleyea or Mark Graminski. Both attorney Rappleyea and Mark Graminski stated they both are representing the applicant. Chairman Parisi questioned if they are both committing waiving the ninety days? Attorney Rappleyea said he already said that he represents the owner as attorney, he and Mark are waiving that. Said, he thinks we should have all of the information, its probably exactly what chairman Parisi thinks but he doesn't want to guess. It probably won't yield anything but guessing what Heidi Otto did, none of us want to do that. this letter of record that Mark presented is pretty remarkable because the town knew it.

Chairman Parisi said to do the research on it, whatever is found to bring it back to the board. Attorney Rappleyea questioned secretary Caul if given a foil request around that time period does that give her enough time to go through the records? Said, he is happy to come up and go through the minutes. Secretary Caul said she is unable to go through the numerous boxes of Heidi Otto records and minutes and maintain her current planning and zoning board duties. Chairman Rappleyea questioned if he could sit at a table and do that? There are just too many meeting minutes and records to review. Attorney Rappleyea said we have a 1992 date now. Attorney Rappleyea said he is happy to do it. Secretary Caul said there are probably two or three boxes of Heidi Otto records, if he feels that he can do that, fine.

Chairman Parisi called for a motion to accept the owners representation to waive the ninety days limit on this application. **The motion was made by board member Redl, seconded by board member Coddington. 3 ayes**

Chairman Parisi called for a motion to continue the Mimas Farm application to December 17, 2019. **A motion to continue the Mimas Farm application to December 17, 2019 was made by board member Redl, seconded by board member Coddington. 3 ayes**

**A motion to adjourn the meeting was made by chairman Parisi, seconded by board member Redl. The meeting was adjourned at 8:40 P.M.**

Respectfully submitted,

Nikki Caul, secretary

