

Zoning Board of Appeals Minutes
February 27, 2013

Present: Michelle McIntyre, Chairwoman
Douglas Hooper
Robert Whitman
Richard Nygren
Thomas Danielson

Also present: J.P. Strand, Jerry K. Milliron, Town Supervisor Jesse Robbins, and Councilman Richard Thor

A public hearing before the Zoning Board of Appeals of the Town of Busti was held on Wednesday, February 27, 2013, at 7:00 p.m. at the Town of Busti Administration Building, 121 Chautauqua Avenue, Lakewood, New York, on the following applications:

Application of John P. Strand, 2897 West Lake Road, Ashville, New York 14710, to renew a special use permit to operate an existing self-storage facility at 4748 Cramer Drive, Ashville, New York. Property is owned by him (Lakewood-Busti Properties, LLC) and known as Section 401.00, Block 2, Lot 3.2 of the official tax map of the Town of Busti. Property is in the Light Manufacturing and Research and Development District. Douglas Hooper made a motion to grant the application of John P. Strand to renew a special use permit to operate an existing self-storage facility at 4748 Cramer Drive, Ashville, New York. The permit will be issued as granted before and will be for a three year term and there are no changes in the operation. Seconded by Richard Nygren. All aye. Carried.

Application of Cynthia A. Reiss, 1007 Hunt Road, Lakewood, New York to renew a special use permit to operate an existing insurance office. Property is owned by her and is known as Section 385.03, Block 2, Lot 14 of the official tax map of the Town of Busti. Property is in the Conservation Residential District. Property owner was not present and no correspondence has been received from the neighbors regarding this application. Robert Whitman made a motion to grant the application of Cynthia A. Reiss to renew a special use permit to operate an existing insurance office at 1007 Hunt Road, Lakewood, New York. The permit will be granted for a three year term and there are no changes to the business. Seconded by Thomas Danielson. All aye. Carried.

Application of Gail Foust, 2938 Riverside Road, Jamestown, New York to renew a special use permit to operate an existing hair salon. Property is owned by Armondo Calimeri and Jeffrey Eggleston and is known as Section 455.00, Block 1, Lot 26 of the official tax map of the Town of Busti. Property is in the Conservation Agricultural District. Applicant was not present and we have received no correspondence from the neighbors regarding this application. Thomas Danielson made a motion to renew a special use permit to operate an existing hair salon at 2938 Riverside Road, Jamestown, New York. The permit will be renewed for three years with the same stipulations. Seconded by Douglas Hooper. All aye. Carried.

The following interpretation applies to property owned by Jerry Milliron, 3837 Baker St., Lakewood, New York, section 402.00, block 2, lot 43.1:

The Town of Busti Zoning Board of Appeals hereby resolves as follows:

WHEREAS, Section 405-12(3) of the Town of Busti Zoning Code permits “Nurseries, orchards and greenhouses” as uses permitted by right in the Conservation-Residential (C-R District), and

WHEREAS, the question has arisen whether the term “greenhouse” includes the sale of products to the public as well as the growing of plants and shrubberies, and

WHEREAS, the Zoning Board of Appeals has the authority to offer interpretations of the Zoning Law under Section 91-1302 thereof, and

WHEREAS, the Zoning Board of Appeals makes the following findings as a basis for its interpretation:

1. The Zoning Code contains no definition of “greenhouse”, nor of “nurseries” and “orchards”.

2. However, the grouping of “greenhouse” together with “nurseries” and “orchards” suggests the Town Board intended to permit on-site retail sales at greenhouses, for, in common parlance, a nursery is where one a customer can *buy* a plant or tree and an orchard is where a customer can *buy* a bushel of peaches or apples. It would be odd for “greenhouse” to be treated differently from the other terms in the grouping, particularly when, in common parlance, it, too, is a place where plants and other horticultural products are raised and *sold*.

2. Ambiguity in the Zoning Code should be construed against the municipality that has enacted it. If the Town Board wishes to prohibit the retail sales normally associated with greenhouses it should amend the Zoning Code to adopt a clear and precise definition of a “greenhouse”.

NOW, THEREFORE, BE IT

RESOLVED, for purposes of Section 405-12(3) of the Town of Busti Zoning code, we interpret the term “greenhouse” to include the retail sale of plants, trees, shrubberies and other ordinary and customary horticultural products.

The following was added to the above resolution. Signage is to be no larger than 20 square feet and placed no closer than 58 feet from the center of the road: 33 feet for county regulation and an additional 25 feet for the Town of Busti regulation and is to be centered in the front with the neighbors boundaries.

Motion made by Michelle McIntyre and seconded by Richard Nygren. All aye. Carried

Motion made by Michelle McIntyre to adjourn the meeting at 7:25pm, seconded by Douglas Hooper. All aye. Carried.

Respectively Given,

Darlene Nygren
Deputy Town Clerk