



Town of Canaan

Zoning Board of Appeals Regular Meeting Minutes – **UNAPPROVED**
December 28, 2021

Present: David Cooper
Brian Lossow
Craig Dillon
Heather O’Grady
Alternate: Spee Braun

Absent: Patricia Liddle

Others Present: Jillian Kasow, Zoning Board of Appeals Clerk; Case 2021-06 Applicant David Patzwahl; Case 2021-07 Applicants Amanda Harding and John Polson; Mitchell Khosrova, Case 2021-07 Applicants’ Representative; William Better, Case 2021-07 Concerned Neighbors’ Representative; Ginny Nightingale, Town Board Liaison

I. Meeting (In-Person) Call to Order

- Chairman David Cooper called the Regular Meeting of the ZBA to order at 7:02 p.m.
- Two public hearings to schedule and a file to consider.

II. Minutes Review/Approval

The minutes of the November 30, 2021 meeting were reviewed and the minutes were approved by a motion made by David Cooper and seconded by Craig Dillon. The vote carried, as follows:

David Cooper, Chair	Aye
Brian Lossow	Aye
Craig Dillon	Aye
Heather O’Grady	Aye
Spee Braun	Aye

Motion Carried

III. Area Variance, David and Barbara Patzwahl, 77 Queechy Lake Drive, Case 2021-06

- Reading of the public notice, application is open for inspection at office of Town Clerk or on website.
- Received response from referral to Columbia County Planning Board, finding that the proposed action is no significant impact. The ZBA may therefore take final action.
- Draft SEQR Part 2 (no major or significant impacts identified) and 3 (action as presented is a listed Type II), no further review is required.
- Residence is in buffer area of Queechy Lake, overlay of project area to be disturbed does not contain habitat associated with endangered bat species. Area is regulated on the county road speed zone (30mph) through the area.
- Chair inquires whether Applicant has anything to add to file? Answer: no.
- Board has no questions of Applicant.
- Chair explains projects (addition to front porch and addition of a garage).

- Craig Dillon: is the addition adding onto the existing front porch? Answer: Yes.
- Heather O’Grady: Please explain the digging for the foundation for the garage? Answer: standard 10” wide wall with 3,000 lb concrete mix. Seeking variance to avoid digging back any more than necessary.
- David Cooper: garage will be 58 ft from center line of road, and porch 47 feet.
- No further questions from board and no public comment offered.
- Motion to close the hearing by David Cooper, Heather O’Grady seconds.
- For deliberation:
 - All members agree application is straight forward.
 - Chair walked the site, with driveway already existing, there is reasonable site distance of 150-200 ft in both directions.
- David Cooper motions to approve, seconded by Heather O’Grady:

David Cooper, Chair	Aye
Brian Lossow	Aye
Craig Dillon	Aye
Heather O’Grady	Aye
Spee Braun	Aye

Motion is approved.

- Chair explains to Applicant the board will complete the decision timely and will immediately notify the Town Clerk and Zoning Officer that area variance is approved.

IV. Review of File for Interpretation Request from Planning Board

- Received correspondence from Planning Board regarding Case 2021-07, which is unable to proceed without interpretation on specific issues from ZBA.
- ZBA will need to conduct a separate hearing on these issues thereafter.

V. Special Permit Application, Amanda Harding and John Polson, 111 Schoolhouse Rd, Case 2021-07

- Hearing opened, reading of the notice.
- SEQRA Part 2: Draft, will not be complete until ZBA approves it is completed.
 - Impact assessments: Items 1-11, the impacts are small and possibly mitigated through the actions of the Site Plan Review and the process of the special permit conditions.
- SEQRA Part 3: Current draft. Review is based on submitted files and two site visits. Chair reads project summary and explains current status and that draft will continue to be updated, anticipating also that neighbors’ concerns may be addressed through site plan.
- Town of Canaan Planning Board request for interpretation read by Chair.
- Chair states that the ZBA has received additional letters to add to file from Bill Better (attorney for concerned neighbors) and anticipates more may be coming.
- Chair confirms Applicants’ attorney Mitch Khosrova not necessary to read into record letters received regarding any extra requirements regarding public water and septic, including from Columbia County DOH, all three agreed no further requirements are triggered by application.
- Chair inquires whether Mitch Khosrova has anything to add to file? Answer: ten letters from neighbors in support of application have been submitted. Also, sent a letter outlining how Applicants meets zoning criteria. Chair states that these letters can be added to file by reference, according to Town Attorney. Mitch Khosrova reads names: Bret Sandford-Chung and Tom Chung, Amy Kaufman, Lynn Cole, Ian Rosenblum, Richard Kraham, Hallie

Halpern and Mark Dickerman, David and Shalva Gliner, Nancy Cuddihy, Mariam Duhan and Terrill Jory, Carol Buskirk, Andrea Camuto.

- Chair requests if anyone would like to speak in favor of application?
 - Gliners speak: no issue with project, they have a privilege to do activity, not hurting property, increasing value of properties in the area. Owns properties at intersection of Schoolhouse Road and Route 24, have not had any issues whatsoever, no noticeable change that would diminish anyone's quality of life. Believes that other concerned neighbors are further away are not affected.
- Ginny Nightingale, speaking as resident of Red Rock only (personal opinion): lived in Red Rock for 43 years, very few or no commercial additions or schools. Has concerns with both sides of the issue. Number of people and number of weekends requested seems to be the issue. Wondering if ZBA approval could restrict these numbers. In the past, before Applicants sought permit, participants usually would stay at an STR down the street. There is the potential to work with STR which would increase traffic on road. Would like to see number of participants limited to those that can stay on site only. The events in total should not all happen in the same season to avoid events every weekend over a period of time (perhaps limited number of events per month). Attendees need to be told need to stay on the property—in the past, participants have wandered onto other private properties. Outdoor events should be limited. The one handicapped space should be next to the barn and not on the road, and another designated parking spot off the road for deliveries and caterers.
- Chair: list of general standards during review, deliberation will consider several standards for approval, there are twelve categories of standards, and work to balance needs to make sure the project fits into community's needs. In this particular zone there are other specialized permitted uses—nursing homes, day care, home occupation in an accessory unit or building.
- Chair: any other comments on the application?
 - Bill Better (attorney for concerned neighbors): many clients have submitted letters, including from Bob and Diane Mackey (contiguous property owners), Suzanne Michael, Marilyn Webb, Brian Lifsec. Discusses open issues.
 - Chair responds that ZBA will be considering interpretations separately, likely in a special meeting for that issue only with no other business.
 - Bill Better seeking to have clients make statements in follow up to their letters and also acknowledge several other items he has submitted to the ZBA, including Facebook postings.
- Chair requesting any other public input on the application. Bill Better invites his clients' comments:
 - 1. Bob and Diane Mackey (Bob speaking): closest property owners, cottage within 120 feet of the barn. Inherited their property in 2001, subdivided into an 8-acre parcel, encompassing main house, the barn and some other outbuildings, initially sold to another owner. After her death in 2012, property was purchased by the Applicants, who immediately renovated barn to turn into apartment and yoga studio. After use violations, now applying for permit to allow their yoga business. Have screenshots dated June 2014, Applicants announcing that renovation of yoga retreat barn is in progress, which clearly indicated the project was likely planned at least as early as 2013. Asserts this is a commercial endeavor—internet screenshots for Air B and B ads and yoga retreat flyers (seven held in 2019, for example), which is all proof of commercialization of a barn in a residential area of historical significance. Mackeys were aware of the renovation with exercise area, had no idea this was for a commercialization. Barn is 20 feet from property line, and 120 feet from cottage that is Mackeys' residence. Mackeys were seeking to approve building plans to replace the cottage, those plans were delayed, restarting the project this past Spring with final

check of construction plan, at which time realized that barn was being listed as an event space on Air B and B and yoga retreat. Mackeys were upset that this was an Air B and B. If this barn were way off the road and far from other houses, likely no issue. This barn however is 20 feet off road, 120 feet from Mackeys house. These events have been sold out, 18-30 people. Large groups of unrelated transient guests will be exploring Schoolhouse Rd, some of whom have trespassed on Mackey and neighbors' property, as recently as six hours ago. Sometimes these advertisements are planned with a raincheck date that takes up fair weather weekends. Bonfires in the ads, maybe such an activity can be restricted, but really how. Requesting Board to vote against commercial application that will impose hardships on neighbors.

- Diane adds: this is an emotional impact because it impacts their dream to build a retirement home at this location.
- 2. Brian Lifsec: Family has owned the property at 137 Schoolhouse road for 18 years right next store to Applicants' property. No supporters are as close as Lifsec and Mackeys—and noting that all opponents to this project are close to this property. Everyone in his family has friendships and acquaintances in this area, very surprised by email John sent to Red Rock residents on Christmas Eve. Do not want a mixed use zone next to their property (46 yards from his front door). Asking body to uphold public land zoning system and uphold peace and safety of residential properties: traffic (yoga, Air B and B, catering, cleaning crews), noise already occurring on property in current commercial operation, this use should be of concern to everyone. Likely concentrated during summer. These are not school hours. These are 24-hour 3-day stays. Can hear everything in that barn, including conversations. There have been misrepresentations—for examples, advertising for overnight parties, weddings, and retreats, and pulled down only once discovered. In April of 2021, after verbal complaint, inspector had to visit and issued a warning, in August a notice of violation was issued. Permit should have been sought in 2014. Applicants created an LLC back then. Group represents only those neighbors most impacted, others are concerned too. Only intention of participants would have a commercial purpose. Applicants never believed anyone would notice or care—and that is a quote.
- 3. Suzanne Michael: Purchased house just off of Schoolhouse in 1999, in Spring 2019 moved here fulltime. Rural beauty and quiet, an amazing community of individuals and families who love and respect nature and developing close relationships with other residents. Volunteers time and skills in community, including historical society. Active member in the restoration of the Red Rock schoolhouse, and volunteered time with Town of Canaan Planning Board on short term rental law. Have never met either Applicant in past ten years. Increasing cars parked in front of barn and along Schoolhouse, observed increased activity at the barn and suspected commercial activity. Deeply upset to read John's Dec 24 letter to Red Rock's residents as untruthful and disturbing, especially about the yoga plan being organic, and those opposing the project as "greedy bullies." Those opposed here will have their property immediately affected. The request for the special permit has been changing in the last several months, materials do show this has been a conscious plan and a use that does not conform to code as currently interpreted. Recent picture of 29 people on the barn porch. Asking the ZBA to consider noise and traffic on the road. Very concerned about preparation of food, with posting advertising Feb 4 food retreat and appears to be at the barn. Asking the ZBA to consider what has happened so far, to consider pattern of inconsistencies. If the ZBA provides a special permit, please place special limitations, including that retreat max is only once per month and not only in the

summer. National Institute of Health, states that there is evidence, that yoga supports mental health, and it is ironic that this project and proposal is doing the opposite.

- Martha Parrish: lives on County Rte 24. Far side of property is adjacent to Polson-Harding property. See this space as a continuum of many people who have loved this land and the nature here. House is one of the oldest in the community, one room dating to 1729. Has lived there for 25 years and moved here full time 12 years ago. Served on Board of Directors for Flying Deer Nature Center, and member of Historical Society and participated with Habitat for Humanity. The neighbors love and enjoy and value the nature in this area. Was offended by Mr. Polson's letter calling neighbors "greedy bullies."
- Chair speaks to refocus inquiry on current application, and cannot speak to modifications or past applications/requests by Applicants. Chair seeking further comment on standards of review as board reconvenes on application in future.
- Bill Better: wants to clarify according to some of the general standards.
 - 1. Such use will be in harmony with and promote the general purpose and intent of the Canaan Zoning Law.
 - 2. Plot area is sufficient and appropriate and adequate for the use, operation, and expansion thereof. Will not interfere with the use of adjacent properties.
 - Explains that Mackeys' and Lifsecs' use of their adjacent properties have been severely impacted.
 - 3. Site is suitable for location and use in the community.
 - Submitted many graphics including map and posting on Facebook, that shows barn under renovation, which shows Schoolhouse Road, how close the barn is to the road, and the steepness across the street, where people are supposed to walk from parking on a dark road. Questions makeup of parking spots, also how larger vehicles including firetruck, oil truck, school bus could get down that road.
 - Applicants state they want finite number of 2-3 day retreats and 1-day retreats. What about dwelling status? Better had a stenographer at the Planning Board meeting, and now is identifying three uses on property: single family residence, two bedroom apartment, and now yoga school. Objects to three uses in Town of Canaan Zoning Law. Does not permit a single family residence, a dwelling, and a private school.
 - Not possible to permit on one lot, a residence and a private school—would need a subdivision, and would need an area variance because of the density.
 - Issue regarding meals, bonfires, swimming in pool across the street at single family residence. ZBA needs to consider exact nature and extent of impact that the target has to stop moving—need to understand where parking is going to be, but this information keeps changing. Applicants needs to finalize and specify their application, photographs show 15, 19, and 30 people attending events with no discussion on where people are going to sleep. There are only two bedrooms in the barn. Dormitories not allowed in that district. Ads talk about massages, facials, cooking events, these are all commercial activities. It is not an activity for a residential and agricultural neighborhood on a single lane road. One photo shows Bob Mackey's cottage and how close it sits.
 - Marilynn Webb comments: in addition to her letter, wants to add that they live on Schoolhouse Rd, which is a one lane road, already as cars go by, anything larger than a regular pickup truck, need to turn into culvert, with folks turning into driveways to allow cars to pass. This will be a lot of extra traffic—fumes and dirt and dust is making difficulty for residents (she is survivor of lung

cancer and husband has heart condition). Although not contiguous to property, impact on that road is very difficult for them.

- Mitch Khosrova: speakers were very heartfelt and understand there are going to be some impact on a number of people. Noting that there is one private school in Canaan since five years ago. Regarding commercial endeavor, believes this is not “money-making.” Information on the website were attempts to expand studio in Brooklyn. Special permit in this zone is allowed for a commercial operation, daycare center, bed and breakfast as examples. Agrees everyone loves the bucolic setting. But here the zoning law says Applicants are allowed to do something—or else change the zoning law. If there is a commercial operation with minimal impact at yoga school by caring adults coming up to the country to appreciate the country. Doesn’t set precedent. There are commercial operations in the town already. Characterizes an annual lease as a commercial operation. Comments based on social media and advertising were six or seven years old. The application represents current intended use, and has not changed. Does not agree with characterization of three uses on the property. One room with eight beds is where people will be sleeping. There will be no cooking. Not three full days (Friday afternoon to Sunday at noon). Calculation is about 300 cars per year not accurate—could be same as guests on holidays. Acknowledges that clients made mistakes previously and did not recognize zoning law. Never other complaints than cars on the road, never heard complaints about noise. Calls concerns about nearby cottage as disingenuous. Emphasizes following the law and criteria only. States that local catering will support local jobs. Impact will not be zero but mitigating for very little or no impact.
 - 1. Requesting ZBA to set parameters for timeframe of all submissions so all documents would be on file before the meeting.
 - 2. Requesting public comment period to close tonight with accepting written comments for the next week or so.
 - 3. Requesting notice for hearing for interpretation, to enable next Planning Board meeting. Should not combine public hearing for interpretation with any of the special permit hearings.
- Bill Better: ask that keep public hearing open, asked whether Applicants should receive special permit on current application—application has been inconsistent. Public comment needs to stay open as these items are clarified for neighbors to provide informed comments. Cumulative traffic impact on Schoolhouse Road will be increased or decreased dramatically, considering also retreat traffic PLUS short term rentals (also on non retreat days) for the year. Information so far seems inconsistent. Needs to review all support letters and respond. Seeking to keep public hearing open.
- Mitch Khosrova: There will not be three uses. If the CO is for private school, then that building would be a private school. Better can still review letters and submit comment in writing.
- Chair would like to adjourn tonight and continue hearing and schedule special meeting. Seeking input from members. If hearing is closed, decision must be made in 60 days.
 - Craig Dillon: deliberations on special permit application, do not object to continuing public hearing, but need to keep comments narrow.
 - Chair agrees. Purpose of public hearing is to educate the board and also to allow public to add information that is relevant to the application. Need Planning Board to complete site plan review and are held up until questions are answered.
 - No other discussion.
 - Motion to continue and reconvene on the 25th?
 - Brian Lossow motions, David Cooper seconds.
 - Hearing will be continued and reconvened on January 25.

David Cooper, Chair	Aye
Brian Lossow	Aye
Craig Dillon	Aye
Heather O’Grady	Aye
Spee Braun	Aye

Motion carried.

VI. Other Business

- Planning Board Interpretation Request incorporated.
- Code Enforcement Officer letter regarding Article 5(B) concerns incorporated.
- Letter by Bill Better requesting Interpretation of Article 5(C)(2) incorporated.
- ZBA will finalize scope of interpretation and post that interpretation.
- Motion to accept the referral of Zoning Officer to initiate an interpretation review, on parameters set forth by Bill Better’s Letter? Craig Dillon motioned, Heather O’Grady seconded.

David Cooper, Chair	Aye
Brian Lossow	Aye
Craig Dillon	Aye
Heather O’Grady	Aye
Spee Braun	Aye

Motion carried.

- Special meeting date for Jan 11 Tuesday night. Will be advertised. No objections to date.
- Mitch Khosrova inquiring whether he has any burden to notice—Chair Answer: No.
- Meeting on Jan 11 will be on Zoom.

VII. Meeting Adjourned

Meeting was adjourned at 9:29pm, motion by David Cooper and seconded by Heather O’Grady, all in favor.

Respectfully submitted,

Jillian Kasow
 Clerk, Zoning Board of Appeals