

TOWN OF ERWIN

Zoning Board of Appeals

MINUTES 08/22/17 MEETING

PRESENT: Frank Thiel, Ruth Fisher McCarthy, Mariana Huber, Jay McKendrick, Ralph Truitt, Wes Strzegowski (Alternate)

GUESTS: Richard Luce, Kristopher Wieland, Brian Stoyer, Hyung Lee, Marvin Lee, Rita McCarthy

CALL TO ORDER:

At 7:00 PM, Chairman Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY, 14870.

The Chairman stated that as is their usual practice, and the practice of many Boards, the Zoning Board of Appeals will consider matters up until 9:00 PM, and will continue any unfinished business to the next regular scheduled meeting.

MINUTES:

Minutes of the July 25, 2017 meeting were approved by unanimous consent.

2017-13

APPEAL FROM KRISTOPHER WIELAND OF THE CODE ENFORCEMENT OFFICER'S DETERMINATION THAT THE BEE HIVES AT 21 OVERBROOK RD ARE A HAZARD TO PUBLIC HEALTH AND SAFETY NOR DETRIMENTAL TO PUBLIC HEALTH, SAFETY , OR GENERAL WELFARE, VARIANCE OF §130-7.F AND §130-12.B.1 IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **33** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on August 13, 2017.

The appeal of the Code Enforcement Officer's determination is a Type II action under the State Environmental Quality Review Act. ***No SEQR action is required.***

The property is located in R-12.5 Residential District.

Applicant has 8 bee hives on his residential property at 21 Overbrook Rd.

On July 11, 2017, the Code Enforcement Officer (CEO) observed the bee hives and significant activity of a large number of bees at the subject property. The CEO issued a violation dated 7/11/17 citing §130-5 Definitions, Agriculture, For Livestock and Appendix A Use Regulation Table as prohibiting these bees from a Residential District:

AGRICULTURE, FOR LIVESTOCK – Any parcel of land used for the raising of animals for commercial purposes, including ... bees...

In an electronic communication, the applicant informed the CEO that his keeping/use of the bees was not for commercial purposes, specifically he does not sell bees nor honey.

2017-13

In a subsequent electronic communication, the CEO informed the applicant that his keeping/use of bees was a violation of §130-7.F and §130-12.B.1, to wit:

§130-7.F - Regardless of other provisions of this chapter, any use that ... presents a hazard to public health and safety, is prohibited.

§130-12.B – Uses Prohibited in all districts

1. – Unless conducted under proper and adequate standards, no use shall be permitted which will produce ... objectionable features so as to be detrimental to the public health, safety, or general welfare.

The CEO has determined that the number of hives, and the number and density of bees on the property is such that:

- it precludes neighboring properties from quiet enjoyment of their property, which is detrimental to the public
- the concentration of the bees in a populated, residential neighborhood, presents a safety hazard of physical harm to children and individuals in the vicinity

The CEO further stated:

1. I believe that the INTENT of the Town Zoning Law is to not allow the keeping of bees in our more densely populated Residential Districts.
2. My other safety concern is that the hives will eventually attract our bear population. Bears are known to shred bee hives. Bears are in Woodland Park; have been reported in many areas including Overbrook Rd and I have seen them coming down off the hill onto Chatfield.
3. I personally observed the hives and the bees flying around while I was in the neighbor's driveway doing an inspection.

Chairman Thiel explained that this is not a variance, but the task for the Zoning Board is to affirm or reverse the decision of the CEO that 8 bee hives is a safety concern, especially as it relates to bears, and, as the Chairman emphasized, that is the *intent* of the zoning law not to allow the keeping of bees and other agricultural animals in densely populated areas. The Chairman explained that while this is not a commercial use, and therefore not agricultural livestock, but rather a concern for health and safety.

The application was presented by Kris Wieland, owner of the property and the bees.

Mr. Wieland distributed printed material explaining the difference between bees, wasps and honey bees; a survey depicting where the bees are located on his property; photos which demonstrate that as they are handling the bees they are not wearing special apparel.

Mr. Wieland explained that the bees are 15 ft. from the property boundary. The hives are back from the road, and in fact not visible from the road.

Mr. Wieland pointed out that New York City, Los Angeles and Hong Kong all allow honey bees within the city limits, a precedent that bees are safe for large, metropolitan areas, and that "grow your own" is encouraged and permitted within metro areas.

Mr. Wieland explained that his father was a beekeeper, and that he is interested in perpetuating that. As his photos show, all three generations, his father, him and his son, share this activity. He established the hives 3 years ago, checked with neighbors who expressed no objections, and checked on state laws. Was unaware that any local laws applied.

In three years there has only been one sting, which is similar with dogs – occasional bites happen.

Mr. Wieland stated that there is no intent to sell honey. In response to a Board member's question, he stated that they now put water out for the bees since the bees were getting water from the neighbor.

Board members Huber and Truitt questioned Mr. Wieland regarding the bees attracting bears, and as evidenced by Mr. Wieland erecting an electric fence to protect his property from bears, that bears do come around and cause a safety hazard to neighboring properties.

Mr. Wieland's response was that the bears are already present, there is no increase in bears due to his bees; that the practice is to bait the electric fence and hang tin foil and the bears remember the encounter and avoid the area.

Member Truitt reiterated that if Mr. Wieland felt the need to protect with an electric fence, then the hives attract bear.

Member Huber stated that in addition to the citations quoted by the CEO, Mr. Wieland is also in violation of §130-7.e any use not specifically permitted is prohibited, and §130-12.a uses not listed in the Use Regulation Table are prohibited.

Member Truitt also emphasized the danger to neighbors who are allergic to bees, citing even possible death from a sting.

Alternate Strzegowski raised the issue of liability if there were an injury. First, Mr. Wieland is liable, but is there additional liability for the Town if the Town specifically allows this use.

Member Huber also provided examples of the loss of quiet enjoyment of the neighbors of their own property and cited the bee sting that had already occurred. Member Huber also finds that Erwin is not similar to the large cities mentioned by Mr. Wieland. The large cities do not have bears, we do.

Member McCarthy cited data as to why such a small operation as 8 hives cannot be successful commercially. Member McCarthy disagrees with the notion that it prohibits quiet enjoyment and does not think that the prohibition against unspecified uses applies here. This is a hobby, not a prohibited use.

Mr. Wieland stated that this is not a nuisance such as other farm animals such as cows mentioned by Chairman Thiel or chickens. The hives are not noisy or smelly. Member McKendrick agreed.

Alternate Strzegowski asked if Mr. Wieland could move the bees. Mr. Wieland stated he could, but it would be less instructive, less convenient and more difficult to maintain the hives.

CHAIRMAN THIEL OPENED THE PUBLIC HEARING AT 7:30 PM.

Richard Luce, 23 Overbrook, Painted Post:

Took a course from Cornell on bees; understands the difference between yellowjackets, wasps and honey bees; finds no undesirable change in the neighborhood. His son keeps bees. His wife is the sting that happened and she was stung by a yellow jacket. Yellowjackets and wasps nest in the ground are aggressive, honey bees are defensive.

Honey bees are not to be feared. The bees Mr. Wieland keeps are good, normal, defensive bees. He is in favor of Mr. Wieland keeping the bees.

Brian Stoyer, 3032 S. Oakwood, Painted Post:

My backyard backs up to Kris. I have seen all kinds of wildlife – bears, foxes, wolves. There are no additional bears due to Kris' bees. We love honey bees. My wife is allergic to bees, but hornets, not honey bees. We have a lot of flowering plants and vegetables which are aided by the bees. Honey bees are very docile. We are in favor of the bees.

Marvin Lee, 1 Woods Path, Painted Post:

Cities allow bees but cities do not have wild animals. You never see a bee handler without protective gear. A bee sting is poison. I do not have an electric fence to protect my property. More people are allergic. Bee venom stays in the body 14 years. Snake venom stays only 7 years. The first sting causes antibodies. The second sting brings a more severe reaction. The more bees there are, the more chance to be stung. I support bees for agriculture and they are better than other insects, but I don't want them in my backyard.

The Chairman asked about the data in Mr. Lee's comments and asked if he was a medical professional. Dr. Lee stated he was.

Hyung Lee, 1 Woods Path, Painted Post:

We have lived here since July 1975. I am afraid of the bear that come to the bees. I have all kinds of flowers. The bees come to my yard for the flowers. There was a bee sting. I am very afraid of the bees and the bears. There is no leash law for bees. They come in my yard where I don't want them. Bees come more and more into our yard. It is not safe for us.

CHAIRMAN THIEL CLOSED THE PUBLIC HEARING AT 7:45 PM.

The Zoning Board had a protracted discussion about livestock, detrimental effects, quiet enjoyment, safety and danger from bears and bee stings.

Chairman Thiel noted that if there is a decision against the applicant, that the applicant can appeal the decision of the Board via an Article 78 before the State Supreme Court.

Chairman Thiel asked the Board if anyone had any comments not already discussed or addressed.

THE ZBA CONSIDERS THE APPEAL AND THE PUBLIC COMMENT AND MAKES A RULING ON WHETHER THE APPLICANT IS IN VIOLATION OF §130-7.F and §130-12.B.1. AS DETERMINED BY THE CODE ENFORCEMENT OFFICER.

Members McKendrick and McCarthy spoke in favor of reversing the CEO's decision on the basis that this is a hobby, bees exist in nature and are not a safety hazard, this is not a commercial operation, it is not a detriment.

Members Truitt, Huber and Chairman Thiel spoke in favor of affirming the CEO's decision in that the keeping of these hives is a safety hazard; it attracts bears; it poses a threat to those with allergies; it precludes quiet enjoyment; it is not the intent of the zoning law to allow this type of activity within a densely populated residential area.

MOTION TO AFFIRM THE DECISION OF THE CODE ENFORCEMENT OFFICER THAT THE BEE HIVES AT 21 OVERBROOK RD ARE A HAZARD TO PUBLIC HEALTH AND SAFETY NOR DETRIMENTAL TO PUBLIC HEALTH, SAFETY , OR GENERAL WELFARE, AND ARE A VIOLATION OF §130-7.F AND §130-12.B.1

MOTION: Mariana Huber

SECONDED: Ralph Truitt

DISPOSITION: 3-2 (McCarthy, McKendrick)

The Chairman informed the applicant that he has 30 days from the date he receives the written notice of the decision to file an appeal.

THE MEETING WAS ADJOURNED AT 8:00 PM BY UNANIMOUS CONSENT.