

**Town of Geneva
Zoning Board
January 26, 2021
DRAFT**

Present: James Smith, John Robbins, John Wilson, and Phillip Ilacqua

Absent: Robert Rose

Staff: Floyd Kofahl, Code Enforcement Officer, Amy Naegele, Clerk of the Board, Steve High, Ontario County Planning Board Representative

Others present: 10 members of the public

Chair John Wilson called meeting to order at 6:30 pm.

Pledge of Allegiance

**Public Hearing (Continuation)
Bournique Property ZB2020-011**

The Applicants, Marissa Turnbull Bournique and Neal Bournique, request that the ZBA review the Code Enforcement Officer's interpretation of 165-39. John Wilson confirmed that the board had received written correspondence that had been submitted to the file since the last meeting and asked if there were any members from the public wishing to speak.

Mary Alice Wheeler spoke. She explained that she and her husband own two properties in the town. They believe that the rules, regulations, and ordinances that the town has put into effect should be taken seriously and that is the owner's responsibility to know and abide by these regulations. She stated that she and her husband were present to support John Cleere's position that the decision of the Code Enforcement Officer be upheld.

John Cleere spoke in support of upholding the Code Enforcement Officer's decision. He spoke about the letter submitted by the applicants' attorney, Tim Buckley and the points that he disagreed with. He asked for the Board to uphold the laws created by the town.

Tim Buckley spoke on behalf of the applicants. He spoke about a previous meeting in which he recalled Floyd stating that there were no current code violations at the property. He explained that this was a timing issue and that they are asking the board to allow the property to be used as it has been for the past 13 years. The town has put regulations in place regarding consequences if there are issues at the property. He explained that equity is important in the law and the old code was vague and the applicants did not realize the correct process.

John Wilson confirmed that there were no other members of the public wishing to speak. Motion made by John Robbins to close the Public Hearing with a 2nd by Phillip Ilacqua. All in favor. Motion carried.

John asked Floyd for his comments. Floyd explained that there were two code sections that the Board should consider in this case. He reminded them that the decision before them is an interpretation. He based his decision to deny the application based on the code that was in place

when the application was received, which requires the property to be owner occupied for 7 months out of the year.

He gave the board an example of someone having an architect draw plans for a house and then waiting to submit their application for the house build. If the codes were to change before they submit their application, the plans would have to be reviewed based on the codes in place when the application was received. He explained that, like his example, he based his decision on the codes in place when he received the application.

Tim Buckley asked to address the Board and John Wilson explained that Public Hearing was closed and he would be unable to.

John Wilson opened the discussion up to the Board. John Robbins explained that although he thought it was unfortunate, he feels that the Board must uphold Floyd's decision. Phillip Ilacqua explained that the Town Board made the changes to the code for the reason and that he also feels they must uphold Floyd's decision.

John Wilson discussed the fact that other residents were contacted by Code Enforcement. He explained how this was done by looking for properties that were being advertised online and that if they already had a permit on file, they were not contacted. Code Enforcement thought there was a permit on file for this property, so the owners were not notified. He expressed that he could not see how it would be reasonable for Code Enforcement to contact everyone when that happened. He also discussed the lack of a timeline under the old code for permit transfers. He explained that the fact that the new owners did not transfer the permit at the time of purchase as was allowed under the code is unfortunate, and it is unfortunate that they received misleading direction. He also stated that it seemed that the transfer issue would not have come up if there was not a noise complaint, which implies that there was not an intention to do a transfer. He expressed that it is unreasonable to assume that the lack of a time frame for transfers in the old code would translate to a long time or an unlimited time. He concluded that this boils down to the fact that the applicant was ignorant of the fact that the permit transfer was allowed at the time of purchase. He feels that the Board cannot overrule the Code Enforcement Officer's decision in this case, just because the applicant was unaware of the current code at the time of purchase and unaware of subsequent changes. Ignorance of the code is not an excuse.

Motion made by John Wilson to uphold the decision of the Code Enforcement Officer regarding Code Section 165-39 and Local Law No. 3-2020. 2nd by Phillip Ilacqua.

Roll Call Vote:

James Smith: Yes John Robbins: Yes

John Wilson: Yes Phillip Ilacqua: Yes Robert Rose: Absent

Motion carried.

Meeting Minutes from December 22, 2020

Motion made by John Robbins to approve minutes with a 2nd by James Smith. All in favor. Motion carried.

Steve High's Report

Steve went over the 2020 Ontario County Planning Board Annual Report. He talked about referral numbers and then highlighted specific concerns from the County. He discussed the County's recommendation that all municipalities make sure their Comprehensive Plan and Zoning cover Commercial Solar Generation Facilities from 100 to 1,000 acres. He talked about

the State's plans to take over any projects of a certain size and highlighted projects in the area. He talked about other municipalities that have put moratoriums in place.

John Wilson asked Floyd if this was something the town was working on. Floyd explained that they were but the Zoning Board could motion to have him take their concerns to the Town Board.

Motion made by John Wilson for the Code Enforcement Officer to take the concerns of the Zoning Board regarding commercial solar facilities to the Town Board with a 2nd by John Robbins. All in favor, motion carried.

Other Business

Floyd updated the board members on upcoming projects in the town:

CCMI is working on a project on 14 North, moving their current operations out of the city.

The new owner of the old BJ's will be doing a walkthrough with Floyd next week to go over the plans for the mini storage. They are hoping to start work in March. They have also purchased the old Dollar Tree.

The old Pizza Hut had a party looking to open a beverage center at the location. They had gotten site plan approval from the Planning Board last year. Their sales contract ran out and there is now a new sales contract in place. Geneva Foreign and Sports will be looking to open a satellite office at the location.

There are potential projects at both Cheribundi, including the auto parts store, and the old Alison's. Hoping to have something by the end of the year.

Missick has contacted Floyd and is finishing a project in California, after which he plans to come back and work on the unfinished projects here. He has also hired a new engineer.

Motion made by Phillip Ilacqua to close the meeting with a 2nd by John Robbins. All in favor. Motion carried at 7:02 pm.