

**ZONING BOARD OF APPEALS MEETING  
WEDNESDAY, October 20, 2021**

James Falvo, Chairman of the Town of Peru Zoning Board of Appeals, called the Zoom meeting of **Wednesday, October 20, 2021** at 7:00pm to order.

**PLEDGE OF ALLEGIANCE.**

**ROLL CALL:**

JAMES AKEY	:PRESENT
TERRY AUBIN JR.	:PRESENT
JAMES FRANCESCONI	:PRESENT
SEAN LUKAS, VICE-CHAIR	:PRESENT
JAMES FALVO, CHAIR	:PRESENT
BOB GUYNUP, CEO	:PRESENT

**APPROVAL of August 18, 2021 minutes**

Mr. Falvo shares with the Board the minutes from the last meeting. Page 3, “planning board” needs to be changed to “zoning board.”

**MOTION:** Mr. Aubin made a motion to approve the minutes as corrected.

**SECOND:** Mr. Francesconi

**ROLL CALL:** Mr. Akey~yes, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes, Mr. Falvo ~ yes.

**MOTION CARRIED.**

**PUBLIC HEARING:**

Mr. Falvo opens the floor to public hearing. We have 4 applications this evening. He informs everyone that we are a 5 member board and everyone is present. Mr. Falvo reminds the public that the open floor is for items on tonight’s agenda.

Larry is the first to speak. He would like to remind the Board that this is a residential area. They don't increased traffic that a commercial building would bring. This would endanger pets and kids and walkers. He is also concerned that a business in the area would lower the property values of the homeowners there.

Judy speaks next. She agrees that this is not a good place for a commercial building. School buses run that road a lot and there are no sidewalks. People also walk their dogs there, and the road is in bad shape and not very big.

**Applications:**

1. Z2021-059 Appeal of Code Enforcement Officer's Decision  
A Canine Gem Rescue  
Appeal of Code Enforcement Decision  
280.-1-32.3  
692 Bear Swamp Rd  
Peru, NY 12972

Mr. Guynup explains the application. Approximately 2 months ago he presented A Canine Gem Rescue a letter informing them that a kennel is not allowed at 692 Bear Swamp Rd according to the Town of Peru Zoning Code. They wish to appeal Mr. Guynup's decision that this is a kennel. Attorney Dean Schneller is here representing Ms. Hilary Davis, the president of A Canine Gem Rescue.

Mr. Schneller explains that this organization is a 501(C)(3) not for profit animal rescue chelter. He states that the essence of the appeal is that she is operating an animal shelter off of donations and is community oriented as opposed to a for profit kennel. It is their position that there is sufficient ambiguity in the code such that her operation is either a permitted use or that it is not a kennel. The basis for the 501(C)(3) organization tax exempt status shows that ACGR is recognized as a rescue shelter by the IRS.

Mr. Schneller goes on to describe Ms. Davis as very experience in all things dealing with animal rescue. She has been involved in this operation for nearly three decades. Mr. Schneller explains that Ms. Davis is community oriented, saving dogs from this community as well as dogs from all over the country. She is well versed in this type of activity. Ms. Davis recalls contacting Code Enforcement Officer Bob Guynup back in June of this year. There is some disagreement about the content of this conversation. Ms. Davis recalls discussing this specific property along with other properties and received guidance that because this is a donation and shelter group not for profit, that it would be a permitted or appropriate use for 692 Bear Swamp Rd. Mr. Schneller

goes on to remind the Board that the property used to house a veterinary clinic, and then it housed a therapeutic business.

Mr. Schneller goes on to describe ACGR as a charity. She takes in dogs that are likely to be euthanized, suffer abuse, or live in squalor conditions. It takes time for her to find forever homes for her dogs. Because of this she must provide vet care, food, transportation costs, marketing and everything necessary in order to connect the dots to find these forever homes. Ms. Davies has a very intense process and vets families. Mr. Schneller says she strongly believes in what she does and does it well. There are costs associated with transporting dogs and she does have an adoption donation. It is not a fee, she is not charging money. This is relevant because the definition of kennel the Town Zoning Code is- Any place at which there are kept four (4) or more dogs or cats more than four(4) months of age are kept for the primary purpose of sale or for the boarding, care or breeding for which a fee is charged or paid. - So ACGR has an adoption form and takes donation. The fee can be as little as one dollar, or up to the amount that was spent on the transportation and care of the animal. It is a donation and not necessary for adoption.

As far as Hilary Davis' practice on site, she has attempted to not create any adverse impacts on any neighbors and she is working her schedule around the businesses on either side of her. It is not a residential area, there are two 9-5 businesses on either side and she is accommodating her schedule to not bother them.

Mr. Schneller goes on to cite some laws which highlight the fact that anytime there is ambiguity in the code, which he says there is here, that ambiguity must be construed in favor of the applicant. He states that courts have many times ruled in favor of the applicants whenever the code is unclear. Mr. Schneller respectfully requests that the Board should overturn CEO Guynup's determination. He restates that this is Not a kennel, this is a rescue shelter.

Mr. Falvo asks if Mr. Schneller can find what he wants this business to be called in the use table for the Town of Peru. Mr. Schneller replies that he cannot. Mr. Falvo states that if it is not listed in Appendix A (use schedule) then it shall be considered to be prohibited. He goes on to say that whether we call it a kennel or whatever else you want to call it, neither one is allowed. According to Mr. Schneller's letter, there is reference to adoption fees and donations. Mr. Falvo argues that in the letter, it says that money changes hands. The Kennel definition is also described in the Atty letter. Nowhere in the definition does it say there has to be a profit, only that money or fees need to be exchanged. Mr. Falvo states that there is no ambiguity whether it's commercial, retail or for profit. Money is changing hands for these pets. It is a great cause, but according to the Zoning Code of Peru it is not an allowable use for this location.

Ms. Davies describes a boarding kennel, and says her operation is Not that. The IRS calls it a "tax exempt event" not a sale. Ms. Davies goes on to describe her own personal adoption of her daughter. There was an adoption fee. This was not a sale, it is a fee to cover costs. A Canine Gem Rescue has building costs, utility costs, gas prices for transportation, vetting, food, and

foster care payments. Money changes hands but there are no profits. Mr. Falvo explains that the Zoning code makes no mention of profit. The fee is exchanged whether it is a sale or a donation. The Code doesn't have a monetary amount, only stating that money changes hands. Mr. Schneller is frustrated because he can read the definition two different ways, which makes it ambiguous. He argues that there is no charge, no price tag. Mr. Falvo again explains that there is no mention of profit in the Zoning Code definition of kennel. Ms. Davies accepts money which means she is being paid.

Mr. Schneller asks if she has less than four dogs at her facility is that a permitted use while they pursue other avenues. Mr. Falvo responds that that would be a separate interpretation. Mr. Guynup asks how many dogs she has at this time. He reads the definition of kennel again. He asks Ms. Davies is she has contacted Ags and Market about operating a business with animals in the State of NY. She claims to have left many messages without a response.

Mr. Falvo says unfortunately a kennel is not an approved use in this area. Mr. Lukas notes that although he thinks it is a valuable thing to rescue dogs, as a board there is a responsibility to the Town in regards the interpreting the zoning code. This is not a 9 to 5 business, and the purpose of the different zoning districts is to keep things separate.

Mr. Falvo explains that the Board is trying to clearly define kennel, and to see if A Canine Gem Rescue would be considered a kennel.

**MOTION:** Mr. Falvo makes a motion to support Mr. Guynup's interpretation of this business, as money is exchanged (as stated in Atty Schneller's letter) and this fits the Town's definition of kennel.

**SECOND:** Mr. Aubin

**ROLL CALL:** Mr. Akey~no, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes, Mr. Falvo ~ yes.

**MOTION CARRIED**

2. Use Variance Z2021-060

Ryan Darby  
Use Variance Warehouse/Distribution  
258.-1-18  
Rock Rd

Mr. Darby is present.

The Board views the application and map. Mr. Guynup explains the application. Mr. Darby is interested in purchasing this parcel and is applying for a use variance to build a warehouse on it.

Mr. Darby explains that he lives in this neighborhood and understands the concerns people have. He describes a small operation with 2 small trucks, 2 employees, no extra traffic or noise pollution. Mr. Darby already has a Snap-On business in Plattsburgh, and is interested in bringing his business to Peru.

Mr. Falvo explains what is actually required for a use variance. There has to be no other use available for the property. Mr. Aubin says that they will need to prove that any permitted uses in that area cannot produce a profit.

Mr. Falvo explains that the Board can vote on what was submitted or they can rule that this is an incomplete application and applicant can come back and supply more information.

**MOTION:** Mr. Falvo made a motion to declare this application incomplete. Applicant needs to provide complete financial data, and if it is received in time, it can be put on the agenda for the December meeting.

**SECOND:** Mr. Aubin

**ROLL CALL:** Mr. Akey~yes, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes, Mr. Falvo ~ yes.

**MOTION CARRIED**

3. Area Variance Z2021-061

Everett Ezero  
35 ft relief front setback for SFD  
280.-1-60.33  
Union Road

Mr. Ezero is present. The Board views the application and map. Mr. Guynup explains the application. Mr. Ezero is looking for relief from the 75 ft front set back for building a SFD on this lot. He shows that most homes in the area have only a 40 foot setback.

Mr. Falvo explains that in order to have a buildable lot, this variance is necessary due to the slope of the land.

No further questions from the Board.

**MOTION:** Mr.Falvo made a motion to approve the variance.

**SECOND:** Mr. Aubin

**ROLL CALL:** Mr. Akey~yes, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes, Mr. Falvo ~ yes.

**MOTION CARRIED**

4. Special Use Permit with SEQRA Z2021-062  
Verizon Wireless  
Special Use Permit to replace antennas  
280.-1-14  
9 Cross St.

Scott Olsen from Young/Sommer LLC is here representing Verizon Wireless  
Mr. Guynup explains the application and the Board views the diagrams and photos.  
Verizon Wireless will be removing 12 antennae and will be replacing them with 6 new ones.

No further questions from the Board.

**MOTION:** Mr. Falvo made a motion to declare as an unlisted action and the Town of Peru Zoning Board of Appeals as Lead Agency.

**SECOND:** Mr. Aubin

**ROLL CALL:** Mr. Akey~yes, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes, Mr. Falvo ~ yes.

**MOTION CARRIED**

Mr. Falvo and Mr. Guynup go over the SEQRA. The Board concurs that there are no negative impacts.

**MOTION:** Mr. Aubin makes a motion to declare a negative declaration

**SECOND:** Mr. Lukas

**ROLL CALL:** Mr. Akey~yes, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes Mr. Falvo ~ yes.

**MOTION CARRIED**

**MOTION:** Mr. Falvo made a motion to approve the application as submitted , contingent on approval from the Town of Peru Planning Board.

**SECOND:** Mr. Aubin

**ROLL CALL:** Mr. Akey~yes, Mr. Aubin ~ yes, Mr. Francesconi~yes, Mr. Lukas~yes Mr. Falvo ~ yes.

**MOTION CARRIED**

**FURTHER BUSINESS**

**Code Enforcement Report given by Bob Guynup: August 2021**

1. 35 Building Permits issued
2. \$2951.10 in fees collected
3. Attended Planning Board, Zoning Board and Town Board Meetings
4. Received 4 Planning Board applications
5. Received 2 Zoning Board of Appeals applications
6. Scheduled zoom meeting for Planning Board
7. 7 Certificate of Occupancy/Completions issued

8. Continued inspections on open permits
9. Review of plans for New Residential construction
10. 3 Order to Remedy Violations issued
11. 3 Court Appearance Tickets issued
12. Investigated 2 Noise Complaints and 2 Rubbish issues
13. Completed 2 hours of required building codes training
14. Phone calls with Town Engineer on future projects
15. Phone calls and emails with Town Attorney.

**Code Enforcement Report given by Bob Guynup: September 2021**

1. 14 Building Permits issued
2. \$7858.60 in fees collected
3. Attended Town Board and Planning Board meetings
4. Received 3 Planning Board applications
5. Received 2 Zoning Board of Appeals applications
6. Scheduled Zoom meeting for Planning Board
7. 3 Certificates of Occupancy/Completions issued
8. Continued inspections on open permits
9. Review of plans for New Residential construction
10. 2 Order to Remedy Violations issued
11. Court Appearance for 3 cases
12. Completed 6 hours of required Building Codes training
13. Phone calls with Town Engineer on future projects
14. Phone calls and emails with Town Attorney

**MOTION:** Mr. Aubin makes a motion to accept the CEO Report for the months of August and September, 2021

**SECOND:** Mr. Lukas

**VOICE VOTE:** ALL AGREED

- The Board also all agrees that Mr. Guynup does not need to read this report out loud at each month's meeting, as they all have received copies of the report before the meeting.

**ADJOURNMENT:**

**MOTION:** Mr. Falvo



**SECOND:** Mr. Lukas  
**VOICE VOTE:** ALL AGREED  
**Meeting adjourned at 8:17pm**