

Town of Pompey Zoning Board of Appeals  
April 29, 2013

David Tessier, Chairman, called the meeting to order at 7:00 PM. Board members present: David Hale, Patrick Frazee and Kevin Sharpe. Rick Penhall, Code Enforcement Officer and Jeff Brown, Attorney, were also present.

The Public Hearing was duly advertised

David Tessier welcomed everyone and introduced the members.

David Tessier read the application of William and Karen Strickland of 4088 Gibbs Rd., Manlius. Mr. Strickland passed away last fall but the application was written by him on 9/13/2012.

The application stated that the subject barn is for private personal use only for horseback riding by his daughters and his wife. No boarders or lesson provided to others. Top quality material used by CB Structures. Undo hardships – this is not movable. The barn, fencing was built according to all town codes and regulations. Lloyd Sutton (former code enforcement officer) visited twice and took measurements regarding setbacks. The permit issued by Lloyd was forwarded to CB Structures. With approvals given, site prep and the construction began. They were careful building the barn to match the house to enhance the area.

The application has attached Survey map by Cottrell – dated 10/8/2004 and revised 10/10/12.

This project has history to it. The permit was approved by Lloyd Sutton. Our current code officer, Rick Penhall, has made a determination that the building is a private stable. The ZBA application does not ask for an area variance, height or distance reduction. This board, by state law, can issue special permits, area variances, also act on interpretations requested by citizens, and can also act on our own interpretations for our own benefit.

We need to see the building permit and the certificate of occupancy. Karen Strickland has the original building permit, and all the information from CB Structures for building the barn. Her husband, before purchase of the home, checked with the town to see if they could build the barn and have horses. He met with Lloyd Sutton on the property and he said it would not be a problem. CB Structures were contacted then and they got all the information and worked with the town. Karen stated that she received two letters from Rick Penhall in 2012 regarding the placement of the building and manure storage. Karen stated she would put it by the woods line and they were told they couldn't put it there. James Stearns comes every other Friday and takes it away.

Jeff Brown had discussions with Mr. Strickland last fall. Mr. Strickland was to go before the ZBA to request an appeal of Mr. Penhall's determination that this is a private stable and to have the board decide whether Mr. Sutton's determination or Mr. Penhall's was appropriate. If the interpretation is correct, that this is a private stable, then the applicant could request an area variance for set back requirements from 100' to 19' from the property line. It is very important that Mrs. Strickland understand the conversations with Mr. Strickland and that she aggress with this. This is her application now.

SEQR – it is a variance type II and no further action is required.

Board Questions – David Hale - What is the town’s code on a horse barn? Code 165.39 and 165.2  
Jeff Brown – we need to know where the applicant wants to go with this. A special permit does not come into play because this is a private use.

Karen Strickland showed a plan of the barn showing the interior with ~~X~~ horse stalls and this was included with the building permit application. The barn was built approximately 11/9/2011 and finished six weeks later. A copy of the certificate of occupancy could not be found per Rick Penhall. There intent was to build a horse barn.

The building permit application states personal barn and the permit was for a horse building. The manure placement started this complaint. The manure was being placed next to the barn still on owner’s property and next to the Colone property. After this complaint, she moved the manure to the opposite side of the property.

The Public hearing was opened.

Jim Stokes, attorney, representing the neighbors complaining about the horses and manure. He is disappointed hearing the discussion and expressions of some of the board members. It appears to indicate that you have already made up your mind before you hear the evidence and he feels that you must recuse yourself as required by law. This was not an innocent mistake or the towns. The application clearly asked the question of intended use – personal farm. A stable is a use. It was an incorrectly filled out application. The town was misled by this application. This is not the case of the town feeling it has to make up for. He has never seen a stronger case for denial of this situation.

Jim Colone of Gibbs Rd, first house on the left next to Strickland. He showed a power point presentation of photos of his property. When the structure was built, he should have asked questions but didn’t. The manure was piled next to his property line and the drainage from the whole area runs onto his property. The barn is about 30’ from his line. He called the town and talked to the interim code enforcement officer in the spring of 2012 and was told there should be a 100’ setback for the barn. His other concern is the flies and smell. The code is there for a purpose and with the property of this size it is not meant to have a structure of this size. All properties are about 3 acres. His house was built in 1999. He doesn’t believe there was anything set up at the time of building for the run off problem.

Karen Strickland stated that with the new area for the manure, it is out of the drainage area, and the driveway they put in for the barn allowed the water to drain thru it. It helped the water issue.

Pat Frazee asked if this house and stable could actually be on this property. David Tessier felt it would be tight. Pat thinks it would fit by moving the barn 100’ from each line. This would be a legal structure then.

Jim Stokes stated that the board is missing the point. This is a use error. A private stable is a use. No manure can be deposited within 100’ of any property line. The horses have trampled the grass in the paddocks, causing more of a drainage problem. This is an unlawful stable. The issue of public health and safety is a concern.

Harry Hale – Indian Hill Rd. – He is concerned about many of the same issues as Mr. Colone except the drainage. Flies and smell. The manure near the tree line is actually on his property. At the Back corner of his property, the paddock is about 10’ from his property line.

Ravi Shukla of 4082 Gibbs Rd neighbor on right side of Strickland. He e-mailed Carol Marsh on 5/7/2012 with questions of the pile of manure next to his shed. He didn't get a response. He wrote to Mrs. Marsh in September about the fly situation and the effect on the value of my property. She did not respond.

Mark O'Connor of 4085 Gibbs Rd- He has the same concerns of property value, health, wells. Depth of wells are approx. 180' - 200' deep.

Dave Hale - ~~X~~ Lloyd Sutton may have misled the applicant in looking at the building permit which indicates a horse building, and on the building permit application indicating personal barn.

Karen - the plans for the barn showed the stalls right from the beginning.

Dave Hale - Does the town require engineering stamps? Not for agricultural buildings.

Jim Stokes - To summarize, there is no evidence to indicate Lloyd was or wasn't misled. This is a totally irrelevant issue, and it doesn't matter. This is an unlawful use. The owners should know the law. Whether they are given incorrect information by the Code Enforcement Officer is irrelevant. The building permit improperly issued confirms no win. The only thing relevant now is whether or not we have an existing unlawful use. All aspects of the stable use must be discontinued. If you treat this as an area variance, then the over riding standard of the benefit to the applicant is out weighed by the detrimental effects to the health safety and welfare of the neighbors. This is an undesirable change to the character of the neighborhood if this is allowed to continue without the 100' setbacks as required by town law. If you allow this to continue, you are adversely impacting all of the neighbors. We are asking for the use to be discontinued, and keep the barn as storage only. We don't want to ask the town to create a hardship on the applicants.

Dave Tessier - the board has a lot of work to do.

Kevin Sharpe - should this property sell, can we put a restriction on the new owners that it can't be used as a horse barn. This is not our issue now. Our issue is a non-conforming structure or use.

We may need to make some recommendations to the town board.

Dave Tessier - next meeting May 20 at 5PM. to continue this hearing. The applicant and the neighbor agreed to this date

Dave Hale made a motion to continue the hearing to May 20 at 5PM and seconded by Kevin Sharpe

Roll Call Vote:

	Aye	Nay	Other
David Tessier	X		
Kevin Sharpe	X		
David Hale	X		
Patrick Frazee	X		

All in favor - Motion carried to continue the Public Hearing on May 20 at 5PM

The meeting adjourned at 8:10 PM