

STATE OF NEW YORK  
TOWN OF ONEONTA: COUNTY OF OTSEGO

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TOWN OF ONEONTA ZONING BOARD OF APPEALS

In the Matter of the Application of

DECISION

**Peter and Eileen Hill, David and Jenny Koehn, Thomas and  
Karen Rowe, Paul and Heather Babbit**

for an interpretation of municipal official's decision regarding

TAX MAP NO. 275.00-1-63.01. 198 Lower Reservoir Road (the "Property")

At a meeting duly scheduled for the 18<sup>th</sup> day of December, 2023, the Town of Oneonta Zoning Board of Appeals (ZBA) held a public hearing for and considered the appeal of Peter and Eileen Hill, David and Jenny Koehn, Thomas and Karen Rowe, Paul and Heather Babbit (collectively, the "Appellants") for an interpretation of the Town of Oneonta Zoning Code (the "Town Code") concerning the Clapper/Clapper's Maple Ridge Ranch LLC's ("Clapper") application for a campground on their Property. The current use of the Clapper Property is classified as an agricultural use.

On or about September 11, 2023, the Town of Oneonta Code Enforcement Officer received an application for Site Plan Review from Clapper to construct ten (10) one-room cabins on their Property (hereinafter a "Campground"). Clapper intended to rent these cabins to sustain their agricultural pursuits, which includes agritourism by allowing the renters to participate in the daily activities associated with the existing agricultural use of the Property. This application was reviewed by the Town Code Enforcement Officer ("CEO"), who determined that the addition of the Campground was an allowable use in the RA-40 Zoning District, that a use variance was not required for the application and the site plan review application was sufficient for the Oneonta Planning Board's review.

Douglas H. Zamelis, Esq., on behalf of Appellants, timely filed an appeal with the ZBA appealing the CEO's decision that the Clapper's application to construct the cabins did not require a use variance and that the application was sufficient for the Planning Board's review.

Pursuant to New York Town Law §267(a)(6), the filing of the appeal by the Appellants stayed all proceedings and required the ZBA to undergo an analysis of the Clapper's application to determine whether the Site Plan Review application to add the Campground to their Property is a separate use on the same property that already had an existing agricultural use or if the Campground should be considered part of the agricultural use of the Property.

### **Summary Conclusion**

The crux of the appeal hinges on the type of Permitted Uses in the RA-40 Zoning District. Both the Clapper's and Appellants acknowledge agricultural pursuits and campgrounds are permitted uses within the RA-40 Zoning District. After listening to the public comments and reviewing the written comments, the ZBA had an open discussion at its January 22, 2024 and denied the Appellants' appeal for the reasons set forth herein.

### **Discussion**

In its deliberations, the ZBA had two primary questions to analyze when reviewing the appeal. The first was to determine if "agricultural pursuits" as defined under §103-16 of the Town Code includes "agritourism" as an allowed use. The second was to determine if having a campground on the same parcel that had an existing agricultural use (1) fell under allowable activities of agritourism (assuming agritourism is an allowable activity) and (2) whether the Campground would violate the rules of one principal use per lot as set forth under §103-63 of the Town Code.

## **Agricultural Pursuits:**

The Property is located in the RA-40 Zoning District, which is “intended to provide for areas in the Town of Oneonta where low-density residential development, agricultural and general open space land uses can be established in harmony with one another.” Under Town Code § 103-16, agricultural pursuits are an allowed use in the RA-40 Zoning District. However, the term “agricultural pursuits” is not defined. Absent any guiding legislation or binding legal authority on the definition of pursuits and agricultural tourism, the ZBA turned to available sources to define these terms.

Merriam-Webster defines “pursuit” as “an activity that one engages in as a vocation, profession or avocation.” Furthermore, under New York General Obligations Law §18-302, Agricultural Tourism is defined as:

*“...activities including the production of maple sap and pure maple products made therefrom, farm and winery tours, equine activities both outdoors and indoors but excluding equine therapy, u-pick Christmas trees, hiking, hunting and other forms of outdoor recreation offered to farm visitors, conducted by a farmer on-farm for the enjoyment and or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the precuts of the farm and enhance the public’s understanding and awareness of farming and farm life.”*

Additionally, the U.S. Department of Agriculture defines agritourism as “[a] form of commercial enterprise that links agricultural production and/or processing with tourism to attract visitors onto a farm, ranch, or other agricultural business for the purposes of entertaining or educating visitors while generating income for the farm, ranch, or business owner.”

Considering these definitions, the ZBA determined that agritourism, and those wishing to expand into agritourism, would be engaged in an “agricultural pursuit” under the scope as noted in §103-16 of the Town Code. A motion was then made by Chairman Prouty and seconded by D. MacClintock and approved by the ZBA to interpret the definition of “agricultural pursuits” under Town Code Section 103-16 to include agritourism as an allowed use.

### **Campground and Principal Use:**

After deciding that agritourism was an allowable use, the ZBA then looked to determine if owning/operating a campground on a parcel with an existing agricultural use could be defined as agritourism and therefore an allowable use as part of an agricultural pursuit, and if having a campground on lands being used for agricultural purposes would violate Section 103-63 of the Town Code.

The ZBA noted that campgrounds are an allowed use in the RA-40 Zoning District. When taken in conjunction with New York's General Obligations Law Section 18-302 defining agritourism, and the U.S. Department of Agriculture's definition of agritourism, the ZBA determined that there was a direct link in marketing farm experience to tourists and agritourism, thus making a campground on a farm an allowable use of agritourism.

Under Section 103-63 of the Town Code, "[u]nless otherwise specified, there shall only be one principal use and building per lot in.... RA-40...District[s]." Furthermore, under Section 103-63, any property containing more than one principal use in an RA-40 Zoning District would require a use variance. The Town Code does not further define the term "principal use", again leaving the interpretation to the ZBA. After discussion, it was noted that campgrounds are an allowed use in RA-40 Zoning Districts, and ZBA agreed that a house/caretakers residence can be and should be part of a campground because it would be important to have someone at the site to oversee the grounds and ensure someone is present outside of those renting the cabins.

The ZBA then reviewed Section 103-15 of the Town Code again, paying specific attention to the provision of the Code which stated that RA-40 districts are intended to be low density, while also allowing for the ruling of agritourism as an allowable pursuit. In the interest of keeping the low-density requirement in the Town Code, the ZBA voted that for the acreage of the Property,

the number of cabins in the campground cannot exceed seven, plus the house and two existing buildings, for a total of ten.

### **Site Plan Application**

The Appellants also appealed the CEO's decision that Clapper's application was sufficient for the Planning Board's review pursuant to the requirements set forth in Town Code Section 103-74. Section 103-74 states the following:

- (1) Proposed site plan generally, showing location of buildings and structures, parking areas, drives, pedestrianways, landscaping, developed open space, recreational areas, setbacks and egress and ingress points.
- (2) Proposed utility system and location of wells and septic treatment areas and drainage system (if any).
- (3) Proposed construction sequence for building and other development, ownership and maintenance of open space (if any).

The CEO prepared a "cheat sheet" for his review of site plans that goes beyond the requirements set forth in Section 103-74. While each one of the items listed on the "cheat sheet" will be considered by the Planning Board during its review of the Site Plan Review application, these items are not required for a complete application because the items are not listed in Section 103-74. Therefore, the Clappers' application was required to include the items listed in Section 103-74 to the extent applicable. After reviewing Clapper's application, the ZBA determined that the application included the requisite information to satisfy Section 103-74(1). With respect to Section 103-74(2), the CEO indicated that the on-site sewage disposal system plans were provided and that the existing well would be used, therefore, the ZBA determined that the application included the requisite information to satisfy Section 103-74(2). With respect to Section 103-74(3), the site plan review application states that the construction time will be six months, therefore, the ZBA determined that the application included the requisite information to satisfy Section 103-74(3). Based on the foregoing, the ZBA determined that the site plan review application was

complete for the Planning Board’s review.

**Conclusion**

The ZBA determined that the definition of “agricultural pursuits” under Town Code Section 103-16 “Permitted Uses” in RA-40 Zoning Districts includes “agritourism” as a permitted use. The ZBA further determined that Campground is part of “agricultural pursuits” if used solely for agritourism. In addition, the ZBA determined that the number of cabins cannot exceed seven units. The ZBA determined that the Campground is connected to the existing agricultural use, and therefore, constitutes one principle use and a use variance is not required. The ZBA also determined that the site plan review application was sufficient for the Planning Board’s review. As a result, the Appellants’ appeal was denied.

Dated: February 26, 2024

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David Prouty, Chairman