

APPROVED
3-13-2023

February 28, 2023
Town of Taghkanic
Town Board Meeting

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6:39 pm: The Taghkanic Town Board held a Special meeting on the above date to continue with the review of the Draft Zoning Code. Attendance as follows:

Town Board:

Present:	Ryan Skoda	Supervisor	
	Joyce Thompson	Deputy Supervisor	ZOOM
	Elisabeth Albert	Board Member	ZOOM
	Elizabeth Craig	Board Member	
	Kara Gilmore	Board Member	ZOOM
	Linda Mirabelli	Board Member	
	Cheryl Rogers	Clerk	ZOOM

Public Audience: [Via Zoom](#)

Barbara Hermance

Supervisor Ryan Skoda:

Supervisor Ryan Skoda: email to Attorney Fitzsimmons as follows:

1. Idea has come up to establish a 3 acre residential corridor along a county road that is currently 7 acre residential. How will that effect given parcels?

Attorney Fitzsimmons: You could set a distance by feet from the road to create an allowable 3 acre zone. Parcels that are already developed would be “grandfathered” meaning pre-existing non-conforming. So those parcels would be governed by Section VI of zoning, pages ZO-46 to ZO-48 which allows them to continue.

This does not really answer the question that arose at the meeting, which was about a property being divided into two districts (for instance, R2 and R7). The question will be rephrased and resubmitted to Attorney Fitzsimmons.

2. In current zoning there is a catch phrase that states 'any use not listed is strictly prohibited'. We would like to amend that statement to allow uses that aren't listed, a chance to be heard in front of the ZBA for allowance of use. What language would accomplish that for us?

“Section 40-A.1. The portion of the section in bold type, reading “Any use not listed as permitted or subject to issuance of a Special Use Permit within the District Schedule of Use Regulations is prohibited in the Town of Taghkanic” is revised as follows: “Any use not specifically listed as permitted is subject to review by the Planning Board. This will allow for new uses or uses not listed but which might be appropriate for a rural town to be considered.”

Attorney Fitzsimmons: On this one, most codes have that catch all “NO” to prevent weird commercial uses from randomly appearing in residential zones. I would probably advise not to remove it, but in the use table, under commercial or business uses, add a broad category or categories that are pretty inclusive. Like:

“Multi-use commercial” - allows a shopping plaza, or shops, strip mall.

“Personal services shop or store” - allowing barber, day spa or similar business.

“Offices for business or professional use” Dr. Lawyer, accountant, medical building.

“Retail establishments” a pretty broad one. But retail not wholesale or manufacturing.

The key would be to allow them in zones, maybe with a special use permit, and site plan review (reviewing – lot size, building size, parking, setbacks, lighting, hours, employees, traffic).

Your current table of uses is like a long diner menu, too many random items. Generalize it a bit, disallow what you don’t want “slaughterhouses” “mines” “salvage yards” and list what is allowable. Like allowing commercial uses under 30,000 sq. feet.

If you are set on removing it, you could, but it would be hard to give the ZBA the power to deny something that residents believe unappealing. For example, Claverack recently had the “Getaway” project, 45 +/- tiny posh campers on a large residential lot. It was challenged as really a resort, not a campground, and only got stopped when a neighbor took an appeal to the ZBA and then to court challenging the use under the zoning table.

It appears that Attorney Fitzsimmons is referring to the existing zoning code in answering the questions posed. It would be helpful to provide him with a copy of the draft code. This question will be rephrased and resubmitted to the attorney.

3. Do we have to specifically list as an allowed use, "Adult Use, Passive"? We would like to strictly prohibit.

Attorney Fitzsimmons: On adult uses, you can’t specifically zone them out. There are first amendment rights in play. So, there are two ways to zone them:

§ 18:02. Types of adult use zoning laws, 2 N.Y. Zoning Law & Prac. § 18:02

There are two general types of zoning regulation for adult uses. The method chosen by the municipality will depend on the configuration of the municipality and which method will work best.

The first type requires dispersion of adult uses. A dispersion law requires adult uses to be more than a certain distance from other adult uses, residential areas, churches, schools, or other sensitive uses as determined by the municipality. The distance used will depend on the size of the municipality and it varies in local legislation from 250 to 2,500 feet. The legislation should state where the distance is measured from—the property line, the front door of the establishment, or other criteria—to avoid a challenge based on the appropriate method of measurement.

¹ Dispersal of adult uses has been used successfully by many municipalities and upheld in numerous court cases.

The second type of law restricts the adult uses to a certain area of the municipality. The adult uses are only allowed in one district, in many cases the industrial district, and excluded in all other districts. Again, this type of regulation has been used successfully by many municipalities and upheld by the courts. Some larger municipalities use a combination of both types of regulation.

You can research this a lot, but the way it is commonly dealt with is to define “adult uses” well and allow them in some zones or areas (that frankly are not likely to work well). I have attached what we did in Claverack for regulations and the zoning map. It is only allowed in the overlay zone (light green lines) in one lot in the town (Off Route 66, south of Stottville road and north of Humane Society road – next to a mine.

4. How do we, in a simple way, create a definition that distinguishes the differences between commercial and home based business, to allow small scale business in residential districts?

Attorney Fitzsimmons: Probably by adopting a better home occupation set of regulations. In a few places, again in Claverack, we set up different levels of permissible home occupations.

A Home Occupation Level 1 (HO1) – is in the residence, primary dwelling, limited, to one person and one employee. These are permitted uses, with a permit from the CEO.

A home Occupation Level 2 (HO2) – is bigger, and some codes allow this in accessory structures. For instance, the house the owner resides in, and the outbuilding is a retail use, limited in size, and to appear like a traditional structure. These are specially permitted uses, which require a PB review for parking, hours, lighting, septic, water, etc.

5. Opinion on how much of the residents is allow to be used for a home based business? Regulations on home based business in a residential district.

Attorney Fitzsimmons: If they are traditional home occupations, not noticeable, then you let them have what they want. For larger ones, using accessory structures, you control the density of them by lot size, setback and access requirements (on a public road).

For the home occupations, itself, you can allow what you want, for instance no more than 50% of the residence, or no more than 2,000 square feet. Or limit the use of accessory structures to a fixed size, with applicable setbacks. I think the building code itself has a size limitation on the allowable square footage in a residence converted to office. Where people may have issues, is when you convert residential to commercial, the code is different. Building standards, ingress, egress, accessibility, can all be different. The NYS Code for business uses is in section 304. Residential is in section 310, and they are different.

6. Can we define the residents or home as the entire property, in relation to home based business?

Attorney Fitzsimmons: I may need more of what you mean on this one, but I believe yes, a home occupation could be allowed utilizing the whole property. Like

a 7 acre lot, with a single-family home, and then an office in an accessory building.

The Board had a lengthy discussion about home-based businesses.

- Two levels of home occupation; Level 1 would be within the principal dwelling and Level 2 would be in an accessory building, would require a Special Use Permit and Public Hearing
- Need to have a process in place to address any business that “outgrows” the allowable scale within the residential district. The Special Use Permit should scale things appropriately on the front end so that people will know how the business is supposed to operate.
- If a Level 2 home occupation goes into an accessory building that does not meet setbacks, a variance would be required.
- The Use Table could show Home Occupations as a heading (similar to the “Lodging” heading) with Level 1 and Level 2 below

All Board members agreed that the two levels of home occupation seems like a good framework. Many of the uses in the draft use table, if they are done to scale could be home occupations in one of the two levels; with Level 1 permitted in all districts and Level 2 having certain limitations and regulations. Linda will get the relevant sections from the Claverack code so that we can see how they handled it and email it to the Board.

40-B. District Schedule of Use Regulations

Use Table Review:

	Use District	R7	R3	R2	MU	Special Conditions
Agriculture & Forestry Uses						
1	Agriculture, Commercial	P	P	P	P	Section 60-J. 2/20/2023
2	Agri-Tourism	P	P	P	P	Sections 60-J.6.c. and 60-J.7.d.
3	Animal Hospital	S	S	S	S	Section 80-D.1.
4	Farm Industry	P*	P*	P*	P*	Sections 60-J. and 80-D.19.
5	Farm Market	P**	P**	P**	P**	Sections 60-J.6.c. and 60-J.7.a.
6	Farm Stand or Roadside Stand	P	P	P	P	Section 60-J.7.b.
7	Farmers' Market	P**	P**	P**	P**	Sections 60-J.6.c. and 60-J.7.c.
8	Farming on Non-Farm Parcels	P	P	P	P	Section 60-K.

	Use District	R7	R3	R2	MU	Special Conditions
9	Forest Management	P	P	P	P	Section 60-P.
10	Greenhouse Accessory to Residential Use	P	P	P	P	Section 60-K.4.
11	Greenhouse on a Farm	P	P	P	P	Section 60-J.8.
12	Greenhouse, Commercial					Ryan definition
13	Housing for Farm Employees	P	P	P	P	Sections 60-J.9. and 80-D.2.
14	Sawmill, Small-scale Portable	P*	P*	P*	P*	Section 60-P.3.
15	Stable, Private	P	P	P	P	Section 60-K.
16	Stable, Commercial	P*	P*	P*	P*	Sections 60-J.10. and 80-D.3.
17	Timber Harvesting	P	P	P	P	Section 60-P.
Residential Uses						
18	Accessory Dwelling Units	P*	P*	P*	P*	Section 60-Q.2. requires that accessory dwelling units be developed in conjunction with a principal dwelling on the same property.
19	Bed and Breakfast Inn	P*	P*	P*	P*	Section 60-N.
20	Cabin	P	P	P	X	
21	Dwelling, Single-family	P	P	P	P	
22	Dwelling, Two-family	P	P	P	P	Sections 60-Q.3. and 60-Q.4.
23	Structure, Multi-family	P*	P*	P*	P*	Section 60-Q.5.
24	Home-Based Business Level 1	P	P	P	P	Section 60-E.
	Home-Based Business Level 2					
25	Housing, Group Home	S	S	S	S	Section 80-D.5.
26	Housing, Assisted Living or Nursing Home	S	S	S	S	Section 80-D.4.
27	Housing, Senior Citizen	S	S	S	S	Section 80-D.6.
28	Manufactured Housing	P	P	P	P	
Business Uses (Commercial Scale) ATTORNEY ADVICE						

	Use District	R7	R3	R2	MU	Special Conditions
29	Adult Use, Passive	X	X	X	S [‡]	Section 80-D.21. ATTORNEY ADVICE
30	Art Studio (moved to General Uses)	P	P	P	P	
31	Bakery	X	X	X	P*	ATTORNEY ADVICE
32	Bar	X	X	X	S	Maximum interior floor area shall not exceed 5,000 square feet
33	Business, Professional or Administrative Office	P*	P*	P*	P*	
34	Business, Retail	X	X	X	P*	
35	Business, Service	P*	P*	P*	P*	
36	Car Washing Station, Commercial	X	X	X	S	Section 80-D.7.
37	Construction Yard	S ^Δ	S ^Δ	S ^Δ	S ^Δ	Section 80-D.9.
38	Day Care Facility/Day-Nursery	P*	P*	P*	P*	State Licensing is required
39	Eating Establishment	X	X	X	S	2/28/2023 start
40	Excavation	S	S	S	X	Section 60-R.
41	Gasoline Filling Station/ Convenience Store	X	X	X	S	Section 80-D.22.
42	Kennel	S	S	S	X	Section 80-D.10.
	Lodging:					
43	Boarding House	S	S	S	S	Maximum of 5 sleeping rooms
44	Conference Center	S ^Δ	S ^Δ	S ^Δ	S ^Δ	Section 80-D.8.
45	Hostel	S ^Δ	S ^Δ	S ^Δ	S ^Δ	Section 80-D.20.
46	Hotel ^Δ or Motel [‡]	X	X	X	S	Section 80-D.16.
47	Resort or Lodge	S ^Δ	S ^Δ	S ^Δ	S ^Δ	Section 80-D.15.
48	Inn	S	S	S	P*	Section 80-D.23.
49	Medical, Urgent, Dental or Eye Care Clinic	X	X	X	P*	
50	Motor Vehicle Repair Shop,	X	X	X	S[‡]	Section 80-D.13.

	Use District	R7	R3	R2	MU	Special Conditions
	Commercial					
51	Printing, Retail or Wholesale	X	X	X	S	Section 80-D.11.
52	Recreation Area, Commercial	X	X	X	S ^Δ	Section 80-D.12.
53	Shops, Craftsman or Artisan	X	X	X	P*	
54	Tavern	X	X	X	S [†]	
General Uses						
	Art Studio	P	P	P	P	
55	Cemetery	S	S	S	S	Section 80-D.17.
56	Church or Other Place of Worship	S	S	S	S	
57	Civic or Other Public Use	P	P	P	P	Section 40-A.3.
58	Club, Indoor Membership	S	S	S	S	Section 80-D.14.
59	Club, Outdoor Membership	S	S	S	X	Section 80-D.14.
60	Theater	X	X	X	P*	
61	Public Utility	S	S	S	S	Section 80-D.25.
62	Recreation Area, Non-Commercial	S ^Δ	S ^Δ	S ^Δ	S ^Δ	Section 80-D.12.
63	School, Public or Private	S ^Δ	S ^Δ	S ^Δ	P*	Section 80-D.26.
64	Senior Center	S	S	S	P*	
65	Solar Energy System, Small	P	P	P	P	Section 60-H.
66	Solar Energy System, Medium	P*	P*	P*	P*	Section 60-H.
67	Telecommunication Towers, New	S	S	S	X	Section 80-D.18.
68	Telecommunication Facilities	P*	P*	P*	P*	Section 80-D.18.

40-C. Prohibited Uses

Any use not listed as permitted or subject to issuance of a Special Use Permit within the District Schedule of Use Regulations is prohibited in the Town of Taghkanic. In addition, the following uses and activities shall be *specifically* deemed to be prohibited uses and activities within the Town of Taghkanic:

1. Adult Use, Active

2. Aircraft Landing Pad
3. Airfield/Airstrip, Private
4. Airport, Public
5. **Confined Animal Feeding Operation (CAFO) REMOVE**
6. Crematorium
7. Drive-In Movie
8. Dump
9. Eating Establishment, Fast Food
10. Excavation, Large-Scale
11. **Foundry add**
12. Golf Course
13. Hard Rock Quarrying
14. Heliport, Helipad
15. Hospital
16. Institutional Use
17. Junkyard
18. Landfill
19. Laundry/Dry Cleaning Plant
20. Light Industrial Park
21. **Manufactured Housing Park REMOVE affordable housing**
22. Non-Farm Commercial Composting Facility
23. Pet Cemetery
24. Pipe Yard
25. Race Track, Motor Vehicle
26. Recycling Facility
27. Sawmill, Commercial Large-Scale
28. Self-Storage Facility (Commercial)
29. Shooting Preserve
30. Ski Resort
31. Solar or Wind Energy System, Large
32. Tannery
33. Transfer Station

NOTES:

- Confined Animal Feeding Operations (CAFO) has been deleted.
- Manufactured Housing Park and Foundry have been added.
- Foundry, Shooting Preserve and Ski Resort all need to be defined.

Supervisor Ryan Skoda: agenda for March 6, 2023

- A. Ryan will contact Attorney Fitzsimmons to get clarification to our question and his answers
- B. Linda will get a copy of the Claverack code (level 1/level 2 and use table)
- C. Finalize the map (3 acre residential corridor) Attorney Advise
- D. Start discussing Level 1 and Level 2

Executive Session: *none*

The Town Board set the following for Joint Special Meeting with the Zoning Commission:

March 6, 2023 6:30 PM

March 22, 2023 6:30 PM

With no further business, on a motion by ***Board Member Elisabeth Albert***, seconded by ***Board Member Elizabeth Craig*** the meeting was adjourned at 8:23 **pm**, carried unanimously by all members present. The next Regular meeting will be **March 13, 2023** at the Taghkanic Town Hall.