

COMPLIANCE History of Otsego Apple Growers, LLC and the Town of Otsego:

Secret/Private Meeting - November 2005

In November of 2005 Town Zoning Officer, Sal Furmanti, visited the Fly Creek Cider Mill and told Mr. Michaels that he was to follow him to the Town Building to meet with Supervisor Breiten regarding complaints about the Mill. Mr. Michaels said that he was unavailable to meet at that time and a meeting was set for December 14. Following are Mr. Michaels' notes from the meeting.

Date: December 14, 2005 Town of Otsego of Building
Present: Tom Breiten - Town Supervisor
Margaret McGowan - Town Attorney
Sal Furmanti - Zoning Code Enforcement Officer
Brenda & Bill Michaels
Les Sittler - Attorney for Michaels

NOTES:

Q: Les Sittler - Why are we having this meeting?

A: Tom Breiten - I am tired of listening to all the complaints about the Mill and its increase in activity... the busses and all.

A: Margaret McGowan - there is more than one problem here.

Q: Les Sittler - Have there been specific written complaints and may we see them?

A: Tom Breiten - we will not produce complaints and they do not have to be written. We have received a complaint from Nancy Duda who was denied expanding the Christmas Barn Business into the residence. "She said why not, the Mill continues to grow."

After some conversation regarding the nature of various complaints it was determined that the Town would not seek to modify or place restrictions on any expansions for which the Mill has received permits. The zoning officer was unaware of any existing permits as none existed in the file. Copies of the various permits were presented exchanged between all parties.

Margaret McGowan stated that she has a problem with the Mill parking vehicles on the lot on CR 26 and the restaurant.

Tom Breiten stated that the Church has questions on how the Michaels were able to place the restaurant in its current location. Photographs were presented that showed the restaurant operation in use around 1985. It was also stated that the Michaels closed down the restaurant operation during all Church functions held at the Mill.

Margaret seemed confident that with the photo evidence the restaurant use was pre-existing and can remain within the foot print of the building.

In regards to the parking, the Michaels are to take the under advisement that they should conform to the land use law before continuing any future parking. It was also brought to the attention that there are provisions in the law that does permit gathering activities that last under three days under section 7.03. All will be taken under advisement.

Public Meeting September 2006

At a Town Board meeting on September 13, 2006 the new zoning officer, Mike Miller told the board that he was asked by Supervisor Breiten to look into alleged zoning violations by the Fly Creek Cider Mill. This request from the Supervisor came after Mr. Michaels was verbally berated by Supervisor Breiten at the July 2006 Town Board Meeting when the Fly Creek Cider Mill sought a fireworks permit approval for their 150th anniversary fundraiser for the Friends of Bassett.

Deputy Supervisor Kiernan conducted the meeting in absence of Supervisor Breiten. When the Zoning Officer asked to discuss issues of concern Mr. Michaels was granted permission to speak.

Mr. Michaels presented his notes of the special private meeting of December 14, 2005 and the resulting conclusions. Town Attorney Martin Tillapaugh confirmed the accuracy of the notes as he had previously confirmed them with former Town Attorney Margaret McGowan and that issues were resolved at that time.

TOWN MINUTES FROM September 13, 2006 (APPROVED)

Town Attorney Martin Tillapaugh reported that Chairman Breiten has filed a complaint against the Fly Creek Cider Mill stating that some residents have expressed dismay with the Cider Mill's yearly expansions. The Cider Mill is a pre-existing, non-conforming business, which means that it's allowed to continue operating, but not allowed to increase its non-conformity. Chairman Breiten is asking the Town Board to revoke a permit issued to The Cider Mill by the former Zoning Enforcement Officer to build a pavilion.

Bill Michael's, owner of the Cider Mill, submitted minutes that he took of a meeting he and his attorney, Lester Sittler, had last fall with Chairman Breiten, Zoning Enforcement Officer Sal Furnari and former Town Attorney McGowan. The meeting was to discuss renovations and additions made to the Cider Mill over the years. After Michaels had submitted permits, pictures of buildings, and uses in question, it was decided that none of the permits issued would be withdrawn, but that any renovations or additions thereafter would be subject to review and scrutiny by the Town. It was also decided that the lot on County Highway 26 would not be used for parking on an on-going basis. Michaels was reminded that his business is classified as a pre-existing, non-conforming use, and that he is not to do any more expansions to his footprint or use. The pavilion was one of the permits discussed at that meeting.

The Board discussed whether or not complaints should be in writing. The complaints allegedly made by neighbors to Chairman Breiten were not in writing.

MOTION by Councilman Schallert, seconded by Councilman Burch, that complaints must be in writing before any action is taken.

Second Story Renovation 2014 – Interpretation of ZEO statement before the ZBA – Final

Meeting Minutes APPROVED:

Otsego Apple Growers, LLC (Bill Michaels, Les Sittler, Doug Zamelis) –

Interpretation, December 30, 2014 determination by Zoning Enforcement Officer Austin –
288 Goose Street (#98.00-1-30.00)

Applicant Bill Michaels was present, along with his family members and two attorneys, Les Sittler and Doug Zamelis. Michaels said that he had given tours of the site to individual ZBA members. He said the current retail space covers 4,061 square feet, and the proposed addition would add 2,782 square feet, making 6,843. Michaels submitted a summary (filed) of various Town permits issued since 1987. He said the Town Zoning Enforcement Officers had consistently told him that, as long as he stayed within the existing building footprint, he would not require Planning or Zoning Board intervention.

Chairman Crowell read aloud a June 16 letter (filed) from Senator James Seward, supporting the application. The application had been tabled during the April 21 meeting. Michael Pelcer moved to “take it off the table” so the Board could proceed on it. Christopher Voulo seconded the motion and it was approved, 5-0.

Chairman Crowell again said he feels that the pertinent sections of the *Land Use Law* are 1.04, which says “Non-conformities of lots, buildings, or uses of land or buildings may not be increased, expanded, or exchanged for other non-conformities,” and 1.05, which says “Preexisting uses shall not be altered in such a way as to create a non-conformity or to increase the degree of non-conformity.” He said he has no problem with expanding the viewing gallery, stairways, etc., but the retail space is another matter. Voulo cited another part of section 1.04, which says “Modifications, alterations and necessary repairs to an existing structure may be subject to building permit requirements but will not require Planning Board review.” He said that the previous Town permits set a precedent that the current project is allowable. Voulo said that defining an increase in non-conformity is a “gray area,” and the Town Board should clarify the law. He mentioned the Blue Mingo.

Meg Kiernan also cited the wording regarding modifications. She said that both sides of the issue can be argued. Kiernan noted that the Cider Mill predates most of the houses in the neighborhood. She also noted the smaller font size in the last sentence of Section 1.05.

John Tedesco said he agrees with Crowell, also citing Sections 1.04 and 1.05. He asked whether the proposed project would increase traffic and, if so, would that not constitute an increase in use?

Zoning Enforcement Officer Austin explained the rationale behind his December 30, 2014 decision. He said that the Cider Mill was grandfathered when the *Land Use Law* was implemented in 1987, allowing it to maintain and perpetuate its existing operation, but “typically you don’t allow expansion” under those circumstances.

Attorney Zamelis said that most Town laws that he deals with are much more precise than Otsego's. He said that if a law is ambiguous, it should be construed in favor of the property owner and against the municipality.

Chairman Crowell acknowledged possible ambiguities, but said that he thinks the intent of the law is to discourage retail activity in a residential area.

Pelcer said that he thinks the proposed project is commendable, but agrees with Crowell and Tedesco that it is not allowable under the law.

At this point, Michaels submitted an alternate plan dated June 16, "Plan B," which would not increase the retail space. Michaels explained the new plan. At the advice of Town Attorney Kennedy, Chairman Crowell invited the public to examine the revised plan and make comments. Speakers did not identify themselves and many were unintelligible. Rob Bohm said that this is another example of the Town discouraging business. Sheila Ross agreed. With no further comments, Crowell closed the floor.

Secretary Bill Deane reminded the Board that the application before them seeks an interpretation of Zoning Enforcement Officer Austin's December 30, 2014 decision: "Following review of the Town of Otsego Land Use Law, and after consulting with the Town Attorney, my determination regarding the aforementioned project is that your client, Otsego Apple Growers, LLC, may not proceed with their desired project prior to making an application to the ZBA for expansion of the non-conforming use with a use variance." The public hearing notices cited interpretation of that decision, which had nothing to do with "Plan B." Town Attorney Kennedy said she felt that, under the circumstances, the Board could interpret the law based on the revised plan.

At the advice of Attorney Kennedy, Chairman Crowell moved to declare the revised plan as a Type II action per State Environmental Quality Review Act (SEQRA) section 617.5(c)(28) and 617.5(c)(31). Kiernan seconded the motion and it was approved, 5-0. Kiernan moved that the "Plan B" submitted is allowable under the *Land Use Law* as a modification, alteration, or necessary repair, and does not require a use variance. Chairman Crowell seconded the motion and it was approved, 5-0.

Town of Otsego Building Permits 1987-1998

OWNER: Michaels HC & BA Michaels

No. 00324 – May 2, 1989 – LOADING DOCK – completed



No. 00924 – July 8, 1998 – Metal & Wood Awning on Snack Barn – Completed



No. 00947 – September 9, 1998 - Shed roof on Green Building – completed



Town of Otsego Building Permits 1999 - Present

OWNER: Otsego Apple Growers, LLC

No. 1289 – January 8, 2003 – Restroom Facilities – completed



Engineer: deWaal Engineering
Builder: Wm. Ryan & Associates
*Men's and Women's ADA Compliant
restrooms with extension of shed roof
on green building*

No. 1384 – February 25, 2004 – Renovation of Green Building – completed



Engineer: deWaal Engineering
Builder: Wm. Ryan & Associates
*Removal of shed roof replaced with
production area. Electric upgrade.
Permit transferred to Otsego County
Codes BO-2006-10227 in 2006.*

No. *no Town number*, February 7, 2005 – walk way and pavilion – not completed



Engineer: deWaal Engineering
Builder to date: Croft Construction
*Creation of millpond boardwalk and
pavilion with walkway to chicken coop.
County Building Permit BO- 2005-10037
issued. Project not complete*

No. *no Town number*, June 2, 2011– relocation of oil tank and exit porch renovation-completed



Engineer: deWaal Engineering
Builder: self
*Relocation of oil tank and replacement of
shed with exit porch. County Building
permit BP 2012-0049 issued.*

No. *no Town number*, June 30, 2015 – second story renovation – completed



Engineer: James Forbes
Builder: Howard Construction
Renovation of first level and addition of second level "Plan B". County Compliance Certificate #CC-2016-0019 issued.