

**TOWN OF NORTH HARMONY  
ZONING BOARD OF APPEALS  
WEDNESDAY, 12/18/2013, 7:30 PM**

**MEMBERS PRESENT:**     **JAMES LEVESQUE**             **GREG MICHALAK**  
                                  **DICK BARTON**                 **LOUISE ORTMAN**  
                                  **HELEN EMICK**                **DAN THOMAS**  
                                  **Brad Lawson, Zoning CEO**  
                                  **Dave Stapleton, Attorney**

**OTHERS PRESENT:**     **Rico Chandra**             **Brian Kulpa**             **Micah Meredith**

- 1. Rico Chandra & James Howard requesting a Special Permit to locate an Artisan cheese making facility with café, tasting and retail at property owned by Barbara & Warren Berry and located at 5889 Magnolia Stedman Rd. (corrected to 3943 Rt. 394), specifically Section 314.00-2-31 thru 33.**

Mr. Levesque opened the meeting at 7:30 PM. Mr. Levesque corrected the address on the legal notice to 3943 Rt. 394 for the record. Mr. Stapleton swore in all who expressed intent to speak at the hearing.

Mr. Lawson gave some background on the application. He stated that the applicant came to him about the creamery proposed for the Berry Bookstore location across from Camp Chautauqua. He said they had discussed a plan for application and site plan review. He said the application would be a Special Permit because of the change in use, as artisan cheese factory is not specifically addressed in our Zoning Code. He said the applicant had discussed a possible future restaurant at the location as well as future relations with local wineries. Mr. Lawson said the restaurant was by right and the introduction of wine would be by Special Permit. He said the Planning Board had reviewed the application under all the criteria applying to our new minor site plan review rules and had overwhelmingly approved the project at their 12/10/13 meeting.

Mr. Levesque asked Mr. Chandra what his intentions were. Mr. Chandra gave a description of artisan cheese making as a small batch production using very high quality milk. He said they will be producing around 40,000 lbs. of cheese per year at year 4 to 5 of operation. He said they hope to source the milk in Western New York. He said eventually he hopes to serve food (possibly year round) using mostly local organic produce. Mr. Levesque asked if the sale of the Berry Bookstore was pending. Mr. Chandra said the contract is contingent upon approval by the PB and ZBA of their plan with a deadline of 1/31/2104. He said the location is ideal as it was a restaurant before with septic, a floor drain, an area with a concrete wall that can be easily converted into an aging space, etc. Mr. Chandra said it would take 6-9 months to do the initial work on the building. He said they will start with the creamery first and hopefully branch into the café later. Mr. Chandra said there would be inspections by NYS during the work process.

Mr. Thomas asked if there are any odors associated with the process. Mr. Chandra said he does not think so. He said the whey does cause some odor but he will be working with Nancy Loster of the DEC and local farmers for disposal of the whey which can be used for animal feed and fertilizer. He indicated that by his calculations there will be very little whey created in the process and he may use some for fertilizer of a raised organic garden in the rear. Mrs. Ortmann asked if there is any waste byproduct in the process. Mr. Chandra said the only byproduct is the whey.

Mr. Levesque asked what the open hours of operation would be. Mr. Chandra said for the creamery they would probably be 9:00 AM – 5:00 PM. He said when the café is added later, the hours may be extended into the evening. He emphasized that the creamery would not be open to the public because of temperature control constraints. He said the store and café would be run in conjunction. Mr. Barton asked if

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or when wine is served would the hours be extended. Mr. Chandra said he did not anticipate the café ever being open any later than 10:00 PM, perhaps just on the weekend.

Mr. Levesque said he has reviewed the signage portion of the application and it appears that it falls within our zoning. Mrs. Emick asked about the parking. Mr. Kulpa said there have been some minor site plan changes to the area. He said they do need to make some changes for small truck access to deliver milk and take cheese shipments to local markets. He said in actuality the number of parking spaces will be reduced from the current use. Mr. Thomas asked about the number of employees. Mr. Chandra estimated that during the first 2 years of operation there will be he and perhaps 2 part-time employees and beyond that maybe as many as 5 employees.

Mr. Stapleton asked if there was a required list of permits for all the different agencies. Mr. Lawson said those would be NYS Dept. of Ag. and Markets; SPDES permit from the NYS-DEC; and the local Chaut. Co. Dept. of Health on the septic and well. He said when the café is applied for the County DOH would have to permit that. Mr. Chandra said there would be basically 2 permits: one to re-sell or serve food (C-20) and the creamery would require approval through the NYS Dept. of Ag. and Markets. Mr. Stapleton asked that the record reflect that a letter dated 12/16/2013, from the Chaut. Co. Planning Department based on a referral from Mr. Levesque had been received. Mr. Stapleton said in the letter they had indicated that the recommendation was for a conditional approval based upon specific conditions: 1) SPDES permit for industrial discharges from the DEC, 2) Acceptable plan documented for the management of by products. Mr. Stapleton asked what the industrial discharges might be and if in fact it is only the whey, then Mr. McCord of the County Planning Dept. is looking for a documented plan. Mr. Kulpa said the SPDES permit will involve the level of phosphate and they will have to work through that in order to get the permit. He said as far as the whey product, the DEC will govern that. Mr. Lawson mentioned that the solution to clean the tanks is what will be addressed in the SPDES process. Mr. Kulpa said the DEC will determine what the septic system can handle as it relates to the level of phosphates used in the cleaning of the tanks and areas involved in the production, as well as the number of occupants the restaurant can serve. Mr. Stapleton asked if we are requesting a letter from whomever the applicant is working with at the DEC regarding the management of the by product? Mr. Lawson said yes, we need that plan. He said what concerns him a little is the spreading of the whey on the vegetable garden. After saturation, is that a phosphate that could work its way to the lake? Mr. Chandra said fertilizing the ground with whey is his last option; his first option is to give the whey to farmers for their use. He said he intends to follow the guidelines of the DEC (Nancy Loster, DEC, Buffalo office) regarding the issue. Mr. Stapleton asked that it be documented that when all the conversations with the permitting agencies are complete, a letter be given to Brad confirming that item No. C. of the County Planning Dept. letter dated 12/16/13, has been addressed. Mr. Chandra said he would most certainly comply with this requirement at the proper time in the process.

Mr. Lawson said he would get the Planning Boards signature on the site plan review.

**Mr. Levesque motioned to take Lead Agency Status on the Short EAF SEQR for Reverie Creamery. Mrs. Emick seconded. The motion was carried unanimously.**

Mr. Stapleton reviewed the entire SEQR document Part I and Part II for those present. *Some changes/additions were made to Part I which are reflected on the form and become a part of the record as amended by the Town Clerk.* Mr. Stapleton asked if there would be any loud or unusual noise associated with any machinery, etc. used at the facility. Mr. Chandra said no. Part 3 – Determination of significance.

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**Mr. Levesque motioned for a negative declaration of environmental impact on the Short EAF SEQR for Reverie Creamery. Mr. Thomas seconded. The motion was carried unanimously.**

**Mr. Levesque motioned to grant a Special Permit to Rico Chandra & James Howard to locate an Artisan cheese making facility with café, tasting and retail at property owned by Barbara & Warren Berry and located at 3943 Rt. 394, Mayville, NY, specifically Section 314.00-2-31 thru 33 with the following conditions:**

- **Hours of operation are 9:00 AM-5:00 PM. Any change in hours to be discussed with Zoning CEO**
- **Letter be received from appropriate NYS-DEC official regarding waste by product disposal**
- **All required permits including SPDES; NYS Ag. & Markets; NYS-DOH; Chautauqua Co. DOH; any other permits required by permitting agencies be copied to the Zoning CEO**

**Mrs. Ortman seconded. The motion was carried unanimously.**

**The hearing was adjourned at 9:00 PM.**

*Nancy Thomas*  
*Town Clerk*