

**ZONING BOARD OF APPEALS**  
**TOWN OF LLOYD**  
**MINUTES**  
**Thursday, October 14, 2021**

**CALL TO ORDER TIME: 7:00 PM**

**PLEDGE OF ALLEGIANCE**

**ANNOUNCEMENTS: GENERAL, NO SMOKING, LOCATION OF FIRE EXITS, ROOM CAPACITY IS 49, PURSUANT TO NYS FIRE SAFETY REGULATIONS. PLEASE TURN OFF ALL CELL PHONES.**

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**Attendance:** Board Members: Paul Gargiulo, Bill Brown, Russ Gilmore, Alan Hartman, Jessica Van Houten, Shawn Zerafa, Mike Guerriero (Town Board); Board Staff: Dave Barton, Paul Van Cott and Sarah Van Nostrand

**New Business**

**Public Hearings**

**ADC Ulster (Falcon Ridge)- 301 Upper North Rd. & 357 Upper North Rd., SBL # 80.3-1-18.110 & 80.3-1-31- Appeal**

Applicant is seeking to appeal a determination from the Town's Code Enforcement Officer about the treatment plant and a portion of the road being in an LI zone, that are intended to serve single-family residences.

Andrew (applicant's agent) said that the nature of the appeal is on the determination of the code enforcement officer as he applied the Town's zoning law to this project. This zoning applied to this project is the whole issue on the appeal. He feels that the board cannot ignore the facts of how the code enforcement officer has applied the zoning code to this project. The thrust of the appeal is that the zoning law doesn't allow this project to proceed, and he thinks the law supports the conclusion that the application of the zoning law in that manner in that it takes his client's property, as his client cannot develop the property for the use allowed in the R-1 zoning district. He doesn't feel that a variance is necessary even though one has been applied for.

Paul V. said that he supplied an analysis of the appeal that was made. To put this back in context the board has a determination was made by Dave Barton in June 2021 and what happened is that ADC Ulster has appealed that determination. The decision of the ZBA will set a precedent for other projects like this. What you have is that Dave said that you cannot have a road or a package plant in the LI zone as residential uses are not allowed in the zone. There are two main questions to break the analysis into, one is that you have the appeal of the zoning determination, which is what is in front of the board, whether to affirm, reverse or modify the determination. The other is

the impact of the determination on the subdivision project. His advice for the board is to uphold the determination at the next meeting and then open the public hearing on the use variance.

Paul Souleotis (Resident at 395 Upper North Rd) said that he is against the variance being approved because a wastewater treatment plant should not be allowed, due to the fact that they have a high energy demand to aerate the water. Also, finding skilled workers to run the plant is hard. Long-term what guarantee will the town have to keep the plant in good working order? If it is not upkept, he thinks that the residents would be demanding the town to take it over. Also, the road that the driveways will be on is narrow and people speed all the time on the road and feels that it is a safety concern.

Paul V. said that they were good comments for future review of the project. They become very relevant when it comes to the subdivision review that the Planning Board will undertake if the project manages to make it through the Zoning Board. Those concerns may also be relevant to the question of whether a use variance would be appropriate in terms of the impact on the allowed use on Upper North Rd.

Andrew said that the wastewater treatment plant will be relocated into the R-1 zoning district to comply with the code enforcement officer's determination. The appeal deals with the access roads.

Paul G. said that the board needs some time to look at everything they have received before making a decision and that the public hearing will remain open.

Andrew said that he would like to leave the board with this point: the thrust of the appeal again is how the zoning law was applied to the project and as applied to the project the result is that the determination of this project cannot be built. You cannot use the property in the R-1 zoning district for the use that is allowable in the zoning. The town has identified that land as suitable for residential but the way the law has been applied to the 500-acres, the client is unable to build. He read the review of the counsel and it would be fine to use the property as undeveloped or as a park according to the uses of both residential and LI zones. The way he takes that is that means not using your property or using it for a public purpose, which is called a public taking.

Paul V. said that the relief that the applicant seeks should be appropriately considered as part of a use variance application. The law is the law and that is the call the board needs to make because when you make that call, it's not just on this project, but it is a precedent that the board sets and it could apply for other circumstances. For this project you might find that the road is acceptable and that the applicant meets the burden, but in another case the road might cause a change in the character of the neighborhood significantly.

## **Old Business**

**ADC Ulster (Falcon Ridge)- 301 Upper North Rd. & 357 Upper North Rd., SBL # 80.3-1-18.110 & 80.3-1-31- Use Variance**

Applicant is seeking a use variance to create a road in the LI zone.

Paul G. asked for a motion to set a public hearing for next meeting.

Motion made by Russ, 2<sup>nd</sup> by Bill.

All in favor. Motion passed to set a public hearing for December 9.

Paul V. said that since the issue with the treatment plant is off the table as the applicant is able to move it out of the Light Industrial zone, so the determination does not change, but the real question is what do to about the roads. If the board upholds Dave's determination, then the relief the applicant would need is a use variance. It would be a use variance to allow the access roads from Upper North Rd. into the residential property for the subdivision at that point if a use variance was granted the project would return to the Planning Board, who would then review the subdivision, including environmental impacts, traffic and other impacts. If the board reverses Dave's interpretation and say that the roads should be allowed then there would be no need for the applicant to obtain a use variance, the project would just go back to the Planning Board at that point.

**Administrative:**

Minutes to approve:

September 9, 2021