

**ZONING BOARD OF APPEALS**  
**TOWN OF LLOYD**  
**MINUTES**  
**Thursday, December 9, 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: John Litts, Paul Gargiulo, Bill Brown, Russ Gilmore, Mike Guerriero; Board Staff: Dave Barton, Paul Van Cott, and Sarah Van Nostrand.  
Absent: Alan Hartman, Shawn Zerafa, and Jessica Van Houten.

**New Business**

**Peppino's Foods-304 Station Rd., SBL #86.4-1-22- Commercial Area Variance**

Applicant is seeking an area variance for max lot coverage of 10% max to actual coverage of 35.3% (5.9% increase from previously approved site plan) and a determination that the §100-15 (11)(B) 50ft buffer setback is adequate to permit the amendment of the applicant's site plan originally approved on 3/21/02 to delete the 12 parking spaces on the north side of the building and add 17 parking spaces on the east side of the building.

According to Phil, the Applicant's agent: Peppino's Foods is in an old apple cooler that was converted to a warehouse. There was an old railbed that ran along the side of the property in 1990 the County sold the lot at a sale, they offered to the adjoining owners to sell them the railbed. What they did was they sold a lot the length of your parcel to the center line of the railbed. The County Legislator approved the sale of these parcels per a resolution in March of 1990. The County Attorney drafted deeds, and then were mailed to the property owners. The deed was not filed, so the transfer was never legal. The previous owners sold the property in 1992, and the deed was lost for the railroad parcel. The parcel was sold again in 1995, the current owner acquired the parcel in August of 2001. When the current owner acquired the parcel there was a dirt driveway and parking lot on the old rail bed parcel, which allowed the owner access to the east side of the property which is where the offices are. In 2002 he got site plan approval to open up his business. He started using the parking lot which was dirt up until 2008, at which time he blacktopped it and continued to use it until approximately last year when a neighbor complained and a building inspector came out, who pulled out the site plan and mentioned that there was no parking shown on the original site plan. At that point they went though and found out the deed for that parcel was lost. Since then, they have formalized the ownership with 304 Station Rd. and consolidated it with 304. The applicant was asked to submit an amended site plan to the Planning Board to move the 12 spaces on the north side of the building to the east side. In that process the Zoning Administrator pointed out that there is this section in the zoning

code §100-15(B)(11) which deals with agricultural buffers, so they have to come to the ZBA and seek a variance. That section of code states that it recognizes the potential incompatibility between certain agricultural uses and residential, it does mention and other uses, but he believes that the legislative intent was for subdivisions. Subsection (a) states buffers adjacent to actively farmed land, the neighbor to the east in their letter stated that they are plowing under their trees farm and is not an active orchard anymore. The section also states that if it is actively farmed the site requires an enhanced side yard setback of at least 50-feet. The buffer mention is not defined in the zoning code and the definition of a setback is the distance between a structure and a property line and the definition of a structure as a static construction or materials that require a fixed location on or under the ground. Nowhere in the definition of structure does it mention driveways or parking lots. The Planning Board feels that the amended site plan violates this section because the parking would be within that 50-foot buffer. They are seeking 1<sup>st</sup> an interpretation of the zoning code to see if it even applies to a parking area and if it does, they are seeking a variance. The building originally was only 5-feet off the property line, now they have added a 50-foot parking lot which is 5-feet off the property line, so in that 5-foot buffer they could put in some trees and bushes. He hopes that if the ZBA interprets that this buffer applies that they could get a variance from 50-feet, to just 5-feet, for landscaping and shielding that the planning board wants.

John said that he is related to the apple farm and it will not have any bearing on his judgement what so ever.

John said on the original site plan, it only shows lands belonging to Zimmerman, so the applicant never laid claimed to that 50-foot railbed or it would be shown on the site plan.

Phil replied that his client hired someone, but they didn't do their homework because had they would have known that Zimmerman didn't own the property.

John asked so the applicant thought that he owned the property?

Phil said the applicant hired someone to get him site plan approval and then hired a contractor to build out the building, so he can run his business. The applicant believed that he owned the dirt parking lot and that dirt driveway. Roehrs across the street told him that he owned it because the County sold half the rail bed to adjoining owners.

John said that there is documentation that he didn't own it because it clearly states lands of Zimmerman.

Phil replied that if he looked at the site plan and understood it, as he is not sure the applicant knows how to read or understand a site plan.

John asked if the applicant understood the site plan as it was issued to him?

Phil mentioned that he doesn't think that his client was involved at all in the site plan process. What he speculates happened is that the surveyor took the deed that was provided at closing

which is the main parcel because the parcel in question is a lost deed. If you pull up the Zimmerman deed it mentions that 100-feet on the western boundary is owned by the railroad.

John asked if his client's deed says the same thing?

Phil replied that his client's deed says it runs along the railroad. In the original site plan the parcel was incorrectly mapped as lands of Zimmerman and perhaps they just looked at the tax map and never did the research. Surveyors are supposed to read the deeds of the neighboring properties to make sure there are no problems with the neighboring properties.

John said that another issue is that on the original site plan the parking is in the front of the building?

Phil replied that whoever did the site plan put the parking there, the problem is that the septic is out there and the other problem is the ADA entrance ramp is in the far bottom corner where the office is. In the new proposed site plan the ADA parking is directly across from the ramp.

John mentioned so your client is going against the approved site plan?

Phil responded that his client was not involved in the process of getting the site plan approved, but as soon as the issue was brought up to him, they hired a surveyor and found that BBM still owned the lot because it was deeded to them and they never filed the deed, but the County said they sent the deed. He had to go through a year's worth of legal process to get the deed.

John asked the variances being sought is lot coverage?

Phil replied it is hard to tell what the original lot coverage is because it doesn't show the parking. The new amended site plan is calculated out.

John asked so with the new site plan you exceed the 10% allowed?

Phil replied that the original site plan exceeded the coverage and believes they must have gotten a variance at that time, including a use variance as they are in the agricultural district. If you look at the new site plan it shows that they were over the lot coverage allowed at the time, now they are further exceeding the limit.

John asked one of the variances you are seeking is for 5.9% relief for lot coverage?

Phil replied correct.

John asked if the applicant could provide a paper trail of the deed and a time line of when everything happen.

Phil replied that he would get that for the board.

Russ asked about the aerial maps that were provided and why it seems the parking is on the neighbor's property?

Phil replied that is what the County has, they fly 10,000 feet up with the aerial photography equipment, they match up markings in the photographs with the ones on the ground, so they never line up perfectly.

Dave responded that part of the issue is the projection, the ones for the photographs and the one they use for the parcel are two different projections, so they will never line up.

John asked if the distance from the blacktop to the property line dimensioned on the site plan?

Phil replied that the engineer said it is 5-feet, but will add it to the site plan.

John asked for a motion to set a public hearing for January?

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

All in favor, motion passed to set a public hearing for January 13, 2022.

Paul G. asked if they could make the parking lot 45-feet instead of 50-feet?

Phil asked so you are asking if we can tear up 5-feet of the parking area?

Paul G. said we are just looking to see if it is possible, as a 10-foot buffer is better than a 5-foot one.

Phil replied that he would rather tear up 5-feet of the parking area instead of the whole thing.

John said that the parking area in the original site plan was over the septic? Phil said that to get to the parking spaces the driveway crossed the septic area.

John asked for the dimensions on the septic area.

### **Extended 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.

John asked if the treatment plant can be removed from the discussion?

Dave replied yes it has been moved.

John asked if the board wanted to do a straw poll and have a resolution drafted for next meeting and keep the public hearing open for that?

Board agrees with that.

John said he feels that the project is a residential use in a Light Industrial Zone, which is not allowed.

Andy (applicant's agent) said that he does not disagree with the board or their counsel, but the issue is an access road to a residential subdivision off of Upper North Rd., the difficulty arises as the entire frontage is along Upper North Rd, and there is no other available road frontage for this 520-acres. This property is split between 2 zoning districts, the bulk being residential, but all the access is in the Light Industrial Zone. If the determination is upheld then the property in the R-1 zone could not be developed in the way it was intended. They feel that this project should be an exception to the rule as it the only access point into the property. He feels that the determination should be overturned otherwise the property would become land-locked and unable to be used.

John said that it is not an allowed use, but you can go for a variance which they are doing. In his eyes the determination is correct, as the building inspector cannot change the law.

Andy said the use to which the access road leads must be allowed in all districts over which the access road traverses is not stated in the zoning law it is stated in case law of New York, which is what the building inspector applied in this situation. There is also an exception in case law of New York regarding an otherwise land-locked property and having the zoning code applied in a way that does not allow the property from a zoning perspective to be used.

Russ asked if the zoning was the same back when the applicant bought the property why didn't he look at the access then?

Andy replied that any property owner has the right to look at access to their property and what the applicable law is, even though the zoning map and zoning code show Light Industrial, he doesn't think that anyone would conclude that even though the vast majority is R-1 zone, that the owner couldn't use the property for an R-1 use the way it is laid out, meaning that the only frontage is only along Upper North Rd. He mentioned that this property is a unique situation, and is split between 2 zoning districts, most of the time the zoning districts will follow property lines. John said that they will keep the public hearing open until next month.

Bill said that he doesn't understand where the Constitution comes into play for this project.

Dave replied the 5<sup>th</sup> amendment of the Constitution prevents taking from government without just compensation. The applicant's position is if they cannot have access to the property it acts as if the Government acted to forbid them from achieving some value of the property which would act as a taking.

Straw Poll Informal Vote on whether to uphold the CEO's determination:

Russ-uphold  
Bill-uphold  
John-uphold  
Paul G.- uphold

John asked Paul V. to draft a resolution upholding the Code Enforcement Officer's determination.

### **New Public Hearings**

#### **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.

John said that part of the use variance is to show a financial return, which he believes the board received today. He thinks the applicant did supply an actual dollars and cents breakdown.

Paul V. said that in the applicant's previous submission they addressed all the criteria for a use variance and have provided 2 supplemental letters one in September and this one just in the last 24 hours, to further build on their rationale for a use variance.

John said that the use variance is not for the residential it is for the Light Industrial.

Paul V. replied correct.

John said if the board grants a residential use, though a light industrial zone does it change the characteristic of the Light Industrial zone?

Paul V. said that is one of the criteria.

John asked for a motion to open the public hearing.

Motion made by Russ, 2<sup>nd</sup> by Bill. All ayes public hearing open.

Andy (applicant's agent) said that if the board upholds the zoning determination, the only way to construct the public subdivision road they would need a use variance for the Light Industrial district. That without a variance there would be a hardship to the applicant as the R-1 zoning district couldn't be developed. One of the variance criteria is an economic hardship. Which is whether a property owner could realize a reasonable economic return for any allowed use of the property. In this case Light Industrial uses are not allowed in a residential zone, and with the zoning determination there are no residential uses allowed in the Light Industrial zone, according to the use table the only uses allowed in both the R-1 and LI are conservation and open space. A conservation area as defined by The Town of Lloyd code as keeping the land in its natural state undeveloped, a wildlife refuge which is not defined in the code, but generally is a place of safety or shelter it is designed as a safe place for wildlife kept in its natural state or it could be used for public recreation purpose. They had an appraiser look into large parcels that have been sold in recent years for open space uses. They took the per acre amount and applied it to this parcel and found that based on the investment the applicant has made in the property to date that return ends up being a net negative return on investment. If the determination is upheld there is no use to the

applicant that would give an economic return. The hardship is unique in this case as the only frontage is on Upper North Rd. and is in the LI zone. There will be no change of character in the neighborhood for the LI zone as there will be no homes or accessory structures in the LI zone only the public road. There will be a buffer between the road and the property lines. If the board grants the use variance, they are not approving the road as that is a Planning Board issue, they are just allowing a road to go through the LI zone. The last factor for the board to consider is whether the hardship has been self-created. There was a question if the zoning was the same as when ADC Ulster bought the property. Yes, the zoning was the same when ADC Ulster bought the property, the applicant is allowed to rely on what they feel is applicable NYS law on how the zoning would work and how access to a public road would work. He feels the hardship has been created by the town, by bisecting this one parcel between 2 separate zoning districts. It is legal to split parcels between 2 zoning districts, but it can create hardships like in this case. Cathy Hobbs (Property owner of 323 Upper North Rd.) said she is concerned that if the ZBA grants the variance that it will have an effect on her property which is in the Light Industrial zone.

John said if what you are doing is an allowed use this variance will have no effect on what you want to build.

Mark (Newspaper Reporter) asked if the decision for the variance has to wait until a decision is made on the determination?

John replied yes.

Paul V. said the board is looking at a case determination that has clarified that this would be a prohibited use and that determination was made in 2013 by a NYS court.

John asked this property was purchased in 2006?

Andy replied that yes, the property was purchased in 2006.

Mark asked if in Andy's letter actual numbers provided?

John replied that he only looked at it very briefly, he believes the applicant did give monetary value.

Andy said that they had Empire State Appraisal go through transfers from 2020 onward and it identifies the parcel, town, sale price, total acreage and a per acre price.

The ZBA continued the public hearing on the use variance to its January 13<sup>th</sup> meeting.

### **180 South Street LLC-180 South St., 87.3-5-14. Commercial Area Variance**

Applicant is seeking an area variance for side yard setback, total side yard setback and minimum parking.

John asked for a motion to open the public hearing.

Motion made by Russ, 2<sup>nd</sup> by Bill. All in favor, motion passed to open the public hearing.

Brian (applicant's agent) mentioned that based on comments received from the Zoning Board, Planning Board and the Planning Board's engineer they have submitted a new site plan. The delay was due to the discussions between the applicant and a neighbor. They are still requesting the 3 variances, one is for side yard they are seeking 8.3 feet of relief, another is for total side yard and they are seeking 6.9 feet of relief, and the last is for required number of parking spaces, the previous plan had 33 parking spaces the zoning code requires 69 spaces. They have added some banked parking and a place for buses to park as the owner tries to bus the employees in from the surrounding area. Currently there is an 87,000 square foot building, which appears to have many building additions, the size of the parcel is 6.5 acres, there are wetlands on the site which has been delineated recently, it is serviced by a private well and septic system. The site is not encumbered by any easements. The proposal is to construct a 30,600 square foot addition that would incorporate 5 loading docks. The applicant also has had site renderings done. The applicant is also going to raise the roof line, unifying the floor line. There are no proposed changes to utilities, but they are adding fire suppression system, which will be done with a series of water wells and storage tanks.

Paul G. asked about the water storage tanks as they would add more coverage?

Brian replied that they would be underground or inside the building.

Paul G. asked if they would ever go to outside storage for the water tank? As he doesn't want to see the applicant come back in the future and ask for more coverage.

Brian replied that they would work with what they have and not come back to the board.

John asked if the applicant could provide a current survey.

Brian replied that he had one he could pass around to the board.

John asked for the easement or deed for the septic tank use off-site, and a plan showing only 4 bays instead of 5, so they would not need a variance.

Brian said that he does not have a copy of the easement for the board to review. The owner feels that 5 bays are needed for the operation of their business.

John asked if a building coverage variance was needed?

Brian said that they are going from 38% to 41% coverage.

Paul replied that they need a variance for building coverage of 3%.

John asked how many trucks per day go in and out of the site?

Ruben (CEO of DJ Direct owners of 180 South St.) replied that there is anywhere from 5-20 trucks per day. He sees no increase in traffic with the proposal, he just wants to make it easier.

John said that you do between 5-20 trailers a day with only 2 docks.

Ruben replied that it is challenging, as there is sometimes a long wait. They have been doing a lot of overtime, either starting early or staying late.

John asked what the hours of operation are?

Ruben replied that the hours of operation are official 8am-5pm, but sometimes they start at 7am and go until 9-10pm.

Brian said that due to the uneven floors there are times when goods are moved by forklift outside and around the building to another area.

Paul V. said that the board is concerned about a potential increase in the intensity of use.

Ruben replied that he is not looking to increase, just would like to make it a smoother process.

John asked if they have trailers pulling in all around the site and not just at the 3 bays they have now?

Ruben replied yes there are loading docks in front of the building as well.

John asked if the other loading docks that are there currently are going to be removed?



Brian replied yes, all the loading docks are proposed in only one area.

John asked about the turning radius templet and if the applicant could make it less tight?

Brian replied that he could make it less tight of a turn.

John said that the applicant could gain turning area and be in compliance if there were only 4 bays there.

Brian said that he doesn't disagree with that point as it would probably eliminate the need for 2 or 3 of the variances.

John asked Ruben why there is such a range for the number of trucks per day?

Ruben replied that sometimes his vendors decide to delivery all on the same day. He just gave a broad range.

John said to keep this with a non-conforming use, the board could limit the number of trucks per day and you would be okay with that.

Ruben replied if that is what the board wants.

Bill asked what is the turn around time from when a truck backs into the dock and when it leaves?

Ruben replied it usually doesn't take it long, it depends on what is on the truck. Some goods come in on pallets and others come floor loaded, which can sometimes take 5 hours or 10 hours to unload.

John asked so, you have trailers coming in, what is going out?

Ruben replied trailers, FedEx, UPS, USPS.

John said so all of that has to be included in the truck traffic.

Ruben said they get 2 UPS trailers out a day, one FedEx truck, and one USPS truck, plus the trailers that leave.

John said that he thinks this goes beyond side yard and parking variances, it includes cover, and use, so the board would need a better handle on the volume.

Ruben replied that he would get that for the board.

John asked if there was a time line when all the additions were done?

Ruben replied that he will provide it to the board.

Jim Anzalone (neighbor on South St.) said that it is hard to get out of the existing site driveway.

John said that it looks like the truck turning radius out, puts the truck into on-coming traffic.

Jim Anzalone said that is correct to get out of there now you have to be over in the grass, it is a double yellow and you cannot have trucks pulling out and crossing it.

Brian replied that they can widen the radius to keep the trucks from crossing the line.

Jim truck traffic on Station Rd has tripled since the warehouse has started. The applicant wants to nearly double the size of the building and that the fire suppression tanks would be underground. Would like to know where the underground storage will be. During Hurricane Sandy the whole area in the back flooded and they are putting the building into the flood zone. Also, would like to know the weight rating of the County Road.

Peter DiCapua (168 South St) would like to see the renderings of the building. Would like to know where the runoff will be going. Mentioned that the creek flooded the property earlier in the year by about 30-40 yards. The hours of operation are sometimes as early as 6am and sometimes goes to 10 pm, it is not every night. Also, mentioned that there is cardboard all over the place and thinks that they should have some consideration for their neighbors. Would like to see some more trees or at least reduce the amount of light that goes off the site.

Jim asked is there any way to keep the truck traffic to daytime hours only?

Paul G. replied when have you ever seen a cop stop a truck and tell them they are on a time restricted road? There is no way to police this issue after approval.

Brian said that to build in a flood you can design the floor to be 2 feet above base flood elevation or if you cannot do that you have to specialty design the building as a flood way, so it conveys the water through.

Paul V. said that at this point in the project they haven't done a lot of the studies or finalized plans as they right now are just asking the ZBA to change the law to allow the structure as proposed to stay. They will have to do the other plans and studies for the Planning Board.

**Administrative:**

**Minutes to approve:**

September 9, 2021

Motion made by Russ, 2<sup>nd</sup> by Bill, all ayes motion passed to accept the minutes.

October 14, 2021

Motion made by Paul G., 2<sup>nd</sup> Bill, all ayes (except John who was not at meeting) motion passed to accept the minutes.