

ZONING BOARD OF APPEALS
TOWN OF LLOYD
MINUTES
Thursday, January 13, 2022

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.

Attendance: Board Members: John Litts, William Brown, Russell Gilmore, Shawn Zerafa, Jessica Van Houten, Mike Guerriero (Town Board), Board Staff: Dave Barton, Paul Van Cott, and Sarah Van Nostrand.
Absent: Paul Gargiulo

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.

*Only looking at the roads as the treatment plant is off the table.

No public comments

John asked for a motion to close the public hearing.

Motion made by Russ, 2nd by Bill.

All ayes, motion passed to close public hearing.

Paul mentioned that at the last meeting the ZBA did a straw pull suggesting that they would like to uphold the Code Enforcement Officers determination with respect to this project. This parcel is unique in that it is spilt into 2 zones the R-1 (residential 1-acre) and Light Industrial and what is proposed is a residential access road through the Light Industrial zone, to be able to access the residential lands for purposes of a subdivision. There are maybe 2-3 other parcels in the town that are spilt between the Residential zone and the Light Industrial zone. The parcels have about 36-acres in the Light Industrial zone and the bulk of it 483-acres is in the R-1 zone, if the access road is denied then no one can build a residential development on the 438-acres. Also, for this parcel if the access road through the Light Industrial zone is denied the parcel will be landlocked as there is no other way to access the R-1 zone part. Having the driveway cross the Light Industrial zone will have minimal impact. They also, did some legal research to asset the authority of the Zoning Board of Appeals to modify an interpretation of the Zoning Officer based on what is good law. What was found was a 2018 case involving the city of Saratoga Springs

there was a similar situation where a parcel was spilt between zoning districts, and in the one the driveway was not allowed and the ZBA decided that a use variance for the driveway was not required. The court upheld the ZBA decision, and determined that the ZBA had the authority to make a different determination. A draft resolution was created based on dealing with the uniqueness of the parcel and would not set a precedent for the town. The drafted resolution would uphold the Code Enforcement Officers determination because that is based on sound law, it would reject the applicant's appeal and would modify the interpretation done by the Code Enforcement Officer to allow this parcel an exception to that law.

John asked Paul if he could speak to the use in the Light Industrial, the spilt use?

Paul said that the ZBA is making this portion of the applicant's lands using it for a residential use, if the resolution is approved. Based on the zoning code and that is the applicant's option to either use it for Light Industrial or for Residential, they are choosing to use it for Residential, so it will be Residential and no Light Industrial use of those lands will be allowed.

Andy (Applicant's agent) asked if the appeal is denied, this is still within the context of a zoning code interpretation, so that there is no SEQRA determination required? In the event that this resolution is approved that would then render the use variance application moot?

Paul replied procedurally you are in the same place.

John asked Paul to read the resolution into record.

Paul read the resolution.

John asked for a motion to accept the resolution as read.

Motion made by Russ, 2nd by Bill.

Roll Call Vote:

John-aye

Bill-aye

Russ-aye

Shawn-aye

Jessica-aye

All ayes, motion passed to accept the resolution.

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 said he doesn't think the board has to formally close the public hearing.

John replied that it becomes moot.

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 said that board has review all the responses, he feels that the board still needs another variance requested and that is for building and lot coverage. §100-17 in the code allows for a 50% increase for building coverage, which means 50% more than the structure was when the code was enacted.

Brian (Applicant's agent) asked so if the applicant buys the building at 87,000 sq. ft., that applicant cannot make the building 50% larger?

John replied no, it reverts all the way back to 1974 when the zoning was enacted. In 1974 the building was around 25,000 sq. ft., so once you get beyond that 50% it trips another variance that is needed.

Brian asked if the board had prior applications and variances to how the building got above 50%, to 87,600?

John replied that he would have to check with Dave on that.

Brian asked so they are going to be subject to that because no previous applications or resolutions were applied for?

John replied that just on what was submitted, the map shows what the building was originally and all the additions.

John asked based on the map submitted there are currently 15 loading areas?

Brian replied yes.

John said you want to consolidate them down to do 5 and all in one area, by doing that in his opinion it will be too close to the property line, and feels that it will be hard for trucks to transverse that without going on to the other property. He thinks that last time he asked for where they got the data for their turning radius.

Brian said that the templet used is a standard 53-foot-long trailer. In his experience that if the pavement shows they can make the turning radius, then the trucks can.

John asked Paul if the board could talk about coverage or if they had to wait?

Paul replied that the board could look at it as the board is still thinking about the standards from the same standpoint of minimizing the impacts.

John asked if any of the board members had any other questions on the sideyard setback, which 35 feet is required and they have 26.7 feet.

Russ feels that the variance is not unreasonable.

John feels that it is in this case because the board has to look at what they are planning on doing in that area, if they were at the 35 feet, there would be more room for access, trucks and everything else. The applicant is proposing to reducing that to 26.7 and 30.2 feet. He feels that it does bear on the determination.

Jessica asked what is on the parcel next to the loading docks?

John replied that he knows the septic system for the property is over there.

Dave mentioned that there is a house on the parcel, adjacent to the docks.

Dave asked about the concrete pad that appears to be on another property according to Ulster County Parcel Viewer.

John replied that it is a concrete pad that was shown to be on another parcel according to one of the maps the applicant has submitted.

Brian said that Dave is correct that pad is on another property and would be removed as part of this plan.

Brian said that even if the board grants the variance the Planning Board may not allow the placement of the docks. He feels that the applicant is trying to improve the site.

John said that for building coverage they are allowed 8%, as of right now they are at 30.69%, and what they are requesting is 41.5%, he feels that is significant.

Dave asked if that area in the back (labeled B on the map) if that was included in the calculation for coverage (lot)?

Brian said that it is not including in the building coverage, but is included in the lot coverage as it is asphalt.

Dave said that if it wasn't it would change the dynamic of what would need to be considered for relief.

John said that isn't for building coverage it's for lot coverage?

Dave replied that is correct.

John asked if there were any variances granted to previous owners to get the building coverage up to 37% and can that be deemed an existing condition?

Brian replied that he does not know if any variances were granted.

John asked if the area in the front was currently parking and not building?

Brian replied that area is all paved, multi-tiered where it is ramped up.

John said that is not a building, so it doesn't count for building coverage. That area is all parking correct?

Brian said that it is more of a loading area than parking, cars sometimes park there, but there is no striping, out along South St., there is.

John said that area in the front is currently not building, but the applicant wants to make it building.

Brian replied that area is a concrete apron further west is the asphalt, there really are no striped spaces per say there.

John asked for the loading dock key map to be shown. He pointed out that the area in question was shown as a parking area.

Brian said that the exhibit came from the applicant, he doesn't know where they got that site plan. It was meant to be a key map, not a site plan map.

John said that it may not be parking now, but it was in the past. The point is that the area is not a building. He would like to see the front not extended; he would rather see the expansion in the back where it won't be seen. If the applicant is willing to remove that area from that from the proposed building to see where that puts them for building coverage.

Brian replied that they can come back to the board with that answer.

John thanked that applicant for providing the deeded septic discharge. He also asked Paul if it was satisfactory?

Paul replied that it covers the bases.

John asked if any one from the public wished to speak?

No Public Comment

John said that they would leave the public hearing open. The applicant needs to figure out what variances need to be applied for, sideyard, total sideyard, building coverage, lot coverage and parking. If the applicant amends the building footprint and actually stripes the area they were looking at, you would not need a variance for parking.

Brian agrees that doing that would make up for the lack of parking.

John said that the applicant might have enough to reconfigure some of the other parking and feels that the parking issue would go away. The last variance the applicant might need is whether they tripped the 50% threshold. He asked if the applicant had any questions?

Brian replied that he wants to make sure that the applicant has covered the five outstanding items from the previous meeting. Those 5 items were: sanitary easement, talked about the 3 variances and possible needing more, truck volumes were discussed, removing a loading dock, building addition history and the concern of the board about trucks crossing the double yellow line on South St., it can be adjusted.

John asked if the applicant was dead set on the 5th dock?

Brian replied they are, for example a floor loaded truck has to go to a dock that is stationary (doesn't move) as it takes 2-3 days to unload. Two docks of the five are stationary one is usually 2-3 a week, the other is usually for UPS who come in and out twice a day. The other 3 will be used for ins and outs. They are also trying to consolidate that all in one area as well.

John suggested that the applicant take one dock off and put it onto the back of the building, which would eliminate the need for a variance. It was mentioned that a dock is needed to be stationary as the truck has to be unloaded by hand, you won't have traffic in the way, it might be beneficial to have a dock in that area.

Brian replied that he would take that into consideration.

John asked for a motion to leave the public hearing open.

New Public Hearings

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 (B)(11) 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.

Phil (applicant's agent) mentioned that he is still working on verifying where the septic system location is. The plans show that it was designed to be placed to the east side of the driveway. The applicant is working on enlisting someone who can snake the septic system with a sensor to locate where it is, but was able to do so before this meeting. He is working on getting copies of all the deeds and should have them all by the next meeting. The last item was if a 10-foot buffer would work between the edge of pavement and the property line, currently it is about 5-feet. They looked into it and they need a 26-foot fire aisle next to the building and an 18-foot parking space and they have roughly 55-feet, so they could accommodate the 10-foot buffer area between the edge of pavement and the property line.

John asked so from the building to the edge of the property line in question is 55-feet?

Phil replied they roughly have 55 to 56-feet to work with.

John said you have 55 to 56 and you need 44-feet.

Phil replied that is correct.

Phil said that the new site plan complies with §100-29 (D)(2) where all off-street parking should be in the back or on the side of the building. It also complies with §100-29 (A) where it talks about the purpose of off-street parking, so by putting the parking on the side it is shielded by the landscaping.

John asked when they did the original lot coverage calculation, there was a parcel owned by someone else was that added to this lot?

Phil replied they took the 4.6-acres then the concrete slab, parking and existing building were added and divided by the 4.6-acres of the consolidated parcel.

John asked for a motion to open the public hearing.

Motion made by Russ, 2nd by Bill.

All ayes motion passed to open the public hearing.

Patti Brooks (Surveyor from Brooks & Brooks) said that she is not speaking in favor or against the project, but thought it was important to clarify some of the comments said at last month's meeting. There was a comment about the parking being in place on the east side in 2001 when the applicant purchased the property, that was the not the case as shown on the original site plan that was not paved, there was no driveway there. If you look at the 2001 aerial map, there is no driveway, no parking and it was wooded. Another statement made was that the surveyor didn't do their homework with regard to the ownership of the property. At the time the property was surveyed in 2001, they surveyed the only property that was conveyed to Peppino's Foods, they did the proper deed research and at that point the deed stated that it was bounded on the east by the Penn Central railroad. When surveying it is not custom to survey all the surrounding parcels and the border was clearly defined and that was the boundary that was held.

John asked in the narrative it clearly said the railroad?

Patti replied that it did. In 2018 when she surveyed the Zimmerman property that is when it was discovered that although they were being asset for the property, they didn't own it. At that point in time, she made the Zimmerman's aware of that, she believes that when the issue arose. The current deed of record which is available from the County Clerk is a consolation deed that was filed April 9, 2021 which includes the original Mill Bridge Company parcel that was conveyed in 2001, together with premises that Roehrs (the small front parcel), together with the premises awarded to Peppe and Sara Realty Corp., judgement March 23, 2021 to file an article 15 for that.

The lost deed was never found, even if the deed was found it was never filed with the County Clerk, she never would have been able to find it. She was hired in June or July of 2001 after the use variance was given for the property. Mill Bridge were the ones who had to get the variance because they were the ones who purchased the property, it wouldn't have made sense for Peppino's Foods to apply for it because then they would have created their own hardship, by purchasing the property. At that point she FOIL requested the Town and asked for a complete file of the use variance, so she made sure the site plan was prepared correctly. In the documents supplied to her there was a map called selected site features map of 304 Station Rd., at that time it showed the 2-story vacant warehouse, the gravel parking area on the westerly side and they actually call it grass and wet area of standing water on the easterly side of the building. There was also a question on if a variance should have been required at the point of time that the site plan was done, regarding building and lot coverage. At the point in time the site plan was done the A-zone had a maximum building coverage of 10% and there was no lot coverage requirement. If you calculate the building coverage of 10,875 sq. ft. at the time the lot was 152,895.6 sq. ft. it was only a 7% building coverage, so no area variance was required at that time. With regard to the septic system plans there is no driveway shown and the Board of Health approved the map, if there was a gravel driveway or roadway or anything else it would have had to been shown on the plan because the septic tank was supposed to be place right outside of the northeast corner of the building and then the laterals were on the other side of where the driveway now is, so there has to be some kind of piping crossing that. One of the other statements made was that Patti is rarely accompanied by clients and that the owner did not participate in the site plan process. It is true that she is rarely accompanied by her clients because she seeks counsel with them before and after the meetings, they are always involved in the process. Her firm in the 70's were the 1st ones to have an owner's certification on a map, they did that to protect themselves, the client and the Planning Board. She clearly went over the site plan with the owner at the time, he signed the site plan saying he review it and agreed to everything on it.

Scott Anzalone (neighboring property owner) said that between him and his parents they own about 60-acres and are a continuously operated farm. He has deeds on his end that go back to 1855, has maps from the NY-Penn Railroad from 1916 when everything around it was considered a farm. They have pulled out 1-acre of the farm as the crops change because you have spray and if you have something old that is not selling it doesn't make sense to spay everything to keep everything healthy. A lot of farmers don't replant the following year as you don't know the next market what's going to be viable, you also want to allow the land time to settle. He reached out to Jeff Keyo (Ag protection manager for NYS Ag and Markets) who pointed out that a farmer doesn't have to farm every acre of land as long as they are in an approved agricultural district, their protection is an agricultural district protection. The agricultural market law, supersedes Town law. He also brought up the town code and Jeff was surprised that the town does have the buffer requirement, which they do push local zoning to allow. He also spoke with Dennis Doyle (Ulster County Planning Board) who said that when the information came out the Town of Lloyd was very receptive in accepting the buffers and he was shocked that the in the code it states what they want. In Jeff's opinion is that the new residential district (subdivision) or other non-farm use, it doesn't say non-farm residential use, non-farm business use, it clearly states any non-farm use in the district. The applicant also stated that there was no clarification on what the buffer should include, if it should include a parking lot or not. Jeff stated that

appropriate landscaping and or vegetive screening shall be established to maintain a buffer. It falls to the non-conforming use in the district to provide the buffer not the farms. There still are no submitted elevation maps from Peppino's Foods. The applicant mentioned that they excavated about 7-8 feet, and as Patti mentioned that area was grassy and wet, so that natural buffer is gone. When he was speaking with Dennis, they went through the balancing test for an area variance. Also, they went over what allowing something like this project to go through and not upholding the buffer and what that can do to other farmers within the district. Which would set a serious precedent, that would change the characteristic of the district. It would be substantial. It wasn't until October of 2019 that he found the deed for the railroad, and it was done as a tax sale (#104) it wasn't a lost deed. It wasn't a lost deed; it couldn't be found as it was never filed. A deed isn't formalized and memorialized as law or a transfer of title if it is not filed. What ended up happened is because the titles were transferred at the time of the filing of the deed and the tax parcels were created at the same time, they were the last parcel in 1991 to transfer the title of the railroad property. In a letter from Ulster County back in 1991, let them know that they had been the winning bidder of the railroad properties that they had purchased and they had to let them know when they wanted the parcels included in their tax map, if not the town would include them. He also, has a letter dated January 1991 from the Assessor of the Town at the time that shows that all of those parcels were turned over and put into the same tax map.

John asked when you say all the parcels what do you mean? As he thought that the railbed was spilt in half and it was given to each side?

Scott replied that they purchased more than one. What wound up happening was from Hurds Rd. to Apple Greens, was considered one parcel at the time for tax purposes, when owned by Con-rail. It was 12.5-acres parcel, as each adjoining side could buy half and if they didn't want it the other owner could buy it. They had purchased three separate parcels, from Ulster County. All of those parcels in the 12.5-acres they didn't create new deeds for or new tax parcels, until the deed was filed. They were the last ones to do that, at the time there was a divorce happening, there were 12 different parcels and deeds that needed to be filed, because they were the last the deed that was never filed was added to their tax parcel, which is why since 1990 it was on their tax parcel. They had been taxed for it and was paying for it. The only deed that mentions the railroad is the 28-acre parcel that is below Peppino's and doesn't even touch their parcel, yes, the deed mentions it, but it has nothing to do with the parcel in question. They were parking in the correct area until 2013 even though the other driveway was paved. They also purchased 8.5-acres on the other side which will give them other options on the other sideyard that isn't abutting the farm.

Russ said that he would like to visit the site.

Phil replied that he can make arrangements for that.

John said that he would like it to be on a weekend if that is possible.

Phil replied that he would be in contact with the office about the best time for a site visit.

Administrative:

Minutes to approve:

December 9, 2021

Motion to accept the minutes as amended made by Russ, 2nd by Bill. All ayes motion passed to accept the minutes as amended.