

**ZONING BOARD OF APPEALS**  
**TOWN OF LLOYD**  
**MINUTES**  
**Thursday, February 10, 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.**

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**Attendance:** Board Members: John Litts, Paul Gargiulo, Bill Brown, Russ Gilmore, and Michael Guerriero (Town Board); Board Staff: Dave Barton, Paul Van Cott, and Sarah Van Nostrand

Absent: Shawn Zerafa, Jessica Van Houten

**Extended Public Hearings**

**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 based on the new plans and eliminated a bay, so there is no need for sideyard, total side yard and believes they have alleviated the parking as well.

Brian (applicant's agent) said that the applicant has removed part of the building in the Northeast corner and put some parking back there to eliminate the need for a parking variance. The other change was the dock in the Southwest corner, the applicant dropped a dock and widened the drive to 55-feet. That just leaves lot and building coverage.

John said yes, and he does see where they left parking in the front. The board did a little research on the building uses and previous applications and variances. The area where you are leaving the parking, if you reduce the building edge shrink the building line. Instead of having one continuous building line along South St., make a step. Reducing the building and breaks up the building, it is more of a Planning Board issue, but for this board they are looking at building coverage, as the board would like the building reduced as much as possible. His feeling is that in the back of the building the neighbors cannot see it, it is blocked by the natural vegetive buffer from the stream, is okay with section B (on site plan) expansion, but would like to reduce the building footprint by however much they can in the front, it not only would make it more aesthetically pleasing and reducing the requested variance.

Brian said that the with the reduction in the building the coverage is now 39.74% down from 41.51%.

John said that where the parking is in the front, if you go 3 spaces deep and bring it to the existing building line, he would like to know how many square feet that is and what that would reduce the percentage to.

Brian said it would be 1363 square feet. He understands what the chairman is saying that it will be another jog in the building.

John said it is more of a Planning Board issue, but this board wants to reduce the coverage as much as possible. He asked what the percentage of coverage would be with the jog removed?

Brian said that they bring it down 0.5%, to 39.25%.

John asked if this needed a 2<sup>nd</sup> variance for increasing the coverage for more than 50%?

Dave replied in his opinion it does not, the building is now a conforming use, so when the law changed in 2010 the use table allowed warehouses in the zone, which created a legally conforming building use.

John said so when it became a legal conforming use the building lost its use variance for light industrial.

Dave replied that he knows where the board is going. When the law changed this created a legal conforming use, the building no, the building is way over coverage and the setbacks are what they are. When it lost its original use, it changed when the Town Board adopted the new language of the code and used warehouse as a definition of what the use would be and it's a conforming use in the zone.

John asked does it trip the threshold?

Dave replied they are changing the building, so the question is when the use became a legally conforming use, it created the building as a pre-existing non-conforming structure.

John said it was a pre-existing non-conforming area not use.

Dave said the question for the board is does the expansion trip the 50%? He doesn't think it does.

John replied it doesn't, if you go by the map, it doesn't. The only variance that is needed is building coverage.

Dave replied total lot and total building coverage.

Brian agrees that it would be just those two variances if the board agrees that it does not trigger the 50% increase.

John said that the project does not trigger the 50% increase.

John mentioned that lot coverage is going down. A building coverage variance of 39.25% and lot coverage of 68.56%. The lot coverage will not go down unless that is made green space.

Brian said that they would have no reason to pave that area, so they would put green space in.

John said so that area will come out of the lot coverage as well and reduce that number even further.

Brian replied that with the jog in the building the applicant might put the offices and entrance to the building there, so it would be a mix of green space and landscaping.

John said that the board would leave the public hearing open and do a straw pull to have a draft resolution crafted.

Board agrees that a draft resolution be crafted.

### **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 two members had a chance to visit the site since the last meeting. Also submitted a memo showing the chain of title of the parcel and 304 Station Rd. Also, they got the septic system out to the site to find where the system is and supplied pictures of where it is.

John asked for the original site plan to be shown. Looking at the site plan and the pictures he doesn't understand how the site plan was approved when the parking would have been over the septic system. He asked when was the septic system installed?

Phil replied 2001/2002, the applicant moved in, in 2002 so probably in the spring.

John said something doesn't seem right with the site plan being approved with parking over the septic system. He also doesn't find that it is credible that the applicant didn't understand the site plan and just parked on the old railbed when they didn't own the property nor was there parking there.

Phil said that there used to be two coolers on the site and they probably loaded directly onto the trains, so there was probably parking area between the train and the building. There is an old ramp coming out of the warehouse.

John said that he sees it differently, in that the rail siding probably came right up to the side of the building. He wouldn't see parking between the rail siding and a building. He thinks that the rail car would be placed along side of the building to be loaded and unloaded and taken away.

Phil asked how wide do you think the siding would be? The railbed was 50-foot to the center of the railbed.

John replied that across the street there was a siding with a small platform and they would be able to transfer goods to and from the train.

Phil said in the back they have a ramp down which is their handicap entrance.

John asked if he can tell the board when it was put in or what it was for?

Phil replied it was to get to grade, but he cannot tell when it was installed or what it was used for. That ramp and garage door were on the building when the applicant bought the property. That is also where the office door is and that was there when the applicant bought it. The applicant didn't build the addition with that door, nor did he put the ramp in. He is assuming that they would load the trains on that side of the building, there would have been no siding, they would have just rolled the stuff right out of the building and somehow got it up onto the train, so they are assuming there was a parking area there. The reason the septic system is on an angle is because there was a dirt driveway going through the septic area already existing with parking on the side.

John asked why the approved site plan was presented to the previous board the way it was?

Phil replied that the applicant hired someone to come up with the plan as he doesn't understand the process or the drawings.

John said the applicant signed the map.

Phil replied yes, he unknowingly signed it. He believed that he owned the land beside him, but if not for the lost deed he would have owned it. The County deeded that 50-foot railbed to the applicant's predecessor in title.

John said all the board has to go on is what was approved, so there was a very short time frame from when the project was approved to when the septic was installed and started parking on the side of the building and went against an approved site plan.

Phil said that the applicant was in violation of the site plan for 20-years and now is back to make it right, so they are seeking an area variance because moving the parking to the side to comply to the current zoning which wants parking to the side or rear of buildings for the increase in lot coverage and a variance from the 50-foot actively farmed property. The variance would be for that the 50-foot buffer is sufficient because the zoning code §100-15(B)(11) says that buffers adjacent to actively farmed lands the buffer area as part of the new residential or non-farm use shall consist of an enhanced setback of at least 50-feet. Setback is defined in the zoning code as the distance between the property line and any structure. A parking lot is not defined as a structure, a structure is defined as a building, billboard.

John said in the agricultural zone it also says a 50-foot buffer. In one part it does mention a setback.

Phil said that it says the buffer shall include a 50-foot setback. It defines the buffer as an enhanced setback which is more than the normal setback for the zone. It also, says that appropriate landscaping and or vegetive screening shall be established and maintained. What the applicant is asking for is that the 50-foot setback to the building is adequate and then are asking for a vegetive screening and landscaping between the edge of the blacktop and the property line. It was proposed by a board member if they could increase what they have now which is about 5-feet to 10-feet. Which is possible as they would need a 26-foot fire lane and an 18-foot parking space, for a total of 44-feet. They know that the applicant acquired 50-feet from the railbed and the building was originally 5-6-feet from the property line. They are proposing a 10-foot landscape area between the edge of the blacktop and the property line.

John asked if they had a landscape plan with what kind of vegetation will be there?

Phil replied that there is a hedge row already there and an embankment.

John asked if the hedge row was on their property or the neighbors?

Phil replied he was not sure.

John said that he did a rough measurement when he did his site visit and believes that the vegetation is on the neighbor's property. The board is looking for vegetation on the applicant's property and possibly a retaining wall to get the vegetation up higher so it doesn't die out as that area is wet.

Phil said that the parking lot drains to a drainage ditch there that goes to the road in underground pipes. He asked if the board wants to see the landscaping plan or is that something the Planning Board would look at?

John replied that they want to see the landscaping plan so they can feel comfortable granting relief. In past situations the board has requested a landscaping plan to grant relief and then send it to the Planning Board with a recommendation and then they take it further.

Phil asked if the board had any recommendations for the plantings.

John replied that in the past it's been evergreen, maple, oak, something that stays green in the winter time and also due to the location you will have to consider spray material, dust, you might want to put something small as well to catch that.

Bill asked if there were wetlands on the property.

Phil replied that there are no wetlands on the property. There are wetlands behind the property and on the side.

Bill said that all the runoff will be going onto the neighbor's property.

John said after a retaining wall is put in, he would have to collect it all in front of the retaining wall and any sheet flow he would have to put into a drop inlet to get into the existing system, which the applicant will have to do if they decide to go that route.

Phil said that the runoff goes into the drainage system the runs along Station Rd.

John said that Bill's question was that right now it sheet flows off the parking lot into an existing drainage. If there was an impervious retaining wall, you would have to collect that sheet flow and put it into a drop inlet and get it to the drainage system.

Phil said that the surveyor was unable to come before the meeting, but should be coming to the site next week and they will have an updated site plan for next month's meeting.

Public hearing:

Scott (neighbor) said that the history of the parcel is that in 1969, the cooler was purchased by Hudson Valley Apple from Clitondale Cold Storage. Clitondale Cold Storage purchased the cooler from Clitondale Feed in the 1950's. His father who has lived in the area for over 70-years stated that no railcars were loaded after Clitondale Feed left, so stating that the building was used to load railcars was not done prior to 1960's. It wasn't until 2018 that Patti (surveyor) made them aware that the railbed was added to their parcel. He spoke with the town and that was quickly taken off their map, then went to the County which took him 2 months. It wasn't until September of 2019 that a quick-thinking clerk who remembered working on the railroad maps in the 1980's and retrieved them from the archives. It was then that they found out September 28<sup>th</sup> of 2019 that yes, the County intended to sell the property and had the public auction, but the deed was never filed. The deed was never lost, it was never filed and therefore the applicant didn't own the property for over 20 years. It wasn't until March of last year that the County granted the applicant the property. Also, when he went and measured the distance from the property line and found that the applicant installed a swale on his property.

John asked is the stormwater an open system?

Scott replied yes and there are also French drains all along the farm.

John asked where do the drains go?

Scott replied that the deeds state that they go to the right-of-way for the railroad.

John said that the swale is in the right-of-way for the railroad.

Scott said that where this swale is, it pools at the other end and makes what used to a functioning drainage system worse. Another neighbor's property now floods due to this. There is also a shed and outside storage on that side of the building in addition to the parking area. He asked if the board members who went out to visit the site noticed what the handicap accessible entrance was?

John replied that it is a loading dock with an overhead door.

Scott said according to NYS a handicap accessible door must be a door that can be pushed, pulled, slide under its own weight or have a button in order for it open. All of the mechanisms have to be use with less than 5 pounds of force. The person using the door cannot use a call button or ask for help to open the door. In the Town of Lloyd code, it states that buffers should be in place in agricultural zones for any non-farm use. The buffer should be a vegetative buffer or screening according to the code.

John said that the board threw out the idea of a vegetative buffer with a reduced footprint, reducing it from 50-feet to 12-14-feet, landscaped with a retaining wall and stormwater. If that is the case it would have to be collected, put into a closed system with a drop inlet to catch the sheet runoff, collected and then brought to Station Rd., is that something as a neighbor you would entertain?

Scott replied no because things have not happened correctly in the past and the laws are in the books to protect the agricultural lands. He asked about the stormwater system and how it would work with a retaining wall?

John said that they would have to collect from both sides and into an open system, which then would go underground in a closed system. He said that the retaining wall was a suggestion, the applicant could do a berm or even a landscaping plan with plants that can handle wet areas.

Scott asked if the 10-foot buffer is the Town's assertion that it will be adequate to comply and mitigate the complaints that could potentially arise between two non-conforming lots?

John said that they would have to put the same density of plantings in 10-feet instead of it being over 50-feet. He thinks the town intent was to put a natural buffer of native trees, underbrush where 50-feet would be enough of a buffer. What the board wants the applicant to supply is to take that 50-foot buffer and condense it down to 10, condense the vegetation, so there won't be aesthetics or dust or anything going through that buffer.

Scott said that to grant the variance there needs to be some kind of justification as to why the law shouldn't pertain to this area.

John replied that is the role of the board to grant the minimum amount of relief possible from a zoning law or code.

Ryan Miller (neighbor) asked why the 2<sup>nd</sup> driveway is not shown on the map, or truck bays, or where the parking lot was originally on the 1<sup>st</sup> site plan which had 37 parking spaces, this one has 17. Also, how many parking spots is the applicant supposed to have on the site plan?

John replied that the second driveway is shown and the spaces are as well, it just isn't bolded like the one in question.

Ryan asked why the applicant is willing to throw money at doing landscaping, water runoff control just to keep the driveway, instead of just tearing it up?

John replied that it is up to the applicant to determine if it is worth it to improve what is there and bring into compliance or to go a different route.

Phil said that it says the buffer shall include a 50-foot setback. It defines the buffer as an enhanced setback which is more than the normal setback for the zone. It also, says that appropriate landscaping and or vegetive screening shall be established and maintained. He feels that the board is within its power to approve a design where the building is 50-feet from the property line and an appropriate amount of landscaping and vegetative screening is within that buffer.

John replied that at the Planning Board can make it 100-feet.

Phil said that they are asking for an interpretation of the literal words that the setback is at least 50-feet to the structure which they comply with and that they don't need 100-feet. Wants to make sure that if putting screening between the edge of blacktop and the property line if that will comply with the zoning code.

John replied that is what the board is saying, you are going to take 50-feet of vegetative screening and condensing it into 12-feet.

Phil replied that he likes the idea of a berm as it solves both problems because if they have a raised berm in that 12-14-foot area, that would capture the water sheeting off the driveway and divert it down to a catch basin to take it underground and would also get a root ball of whatever trees they propose out of the wet ground. If the board is receptive to it, he would go back to his engineer and get some ideas.

John said a parking space is 18-feet. If you leave the access for the firetrucks and storage and ADA, but take the rest of the parking and put it where it was supposed to be originally, so spilt the driveway and split it before the septic system. Put the parking in the front, in these circumstances easier to ask for than where it is now. Instead of having a 10-foot buffer you would have a 28-foot buffer.

Phil said that you need handicap parking near the ADA entrance.

John replied that you do, but it was originally in the front of the building.

Phil said that to wheel a wheelchair from the front of the building to the side of the building vs having the handicap spots. The ramp complies with ADA law.

John said that if what was approved by a board was good enough in 2002 to wheel a wheelchair from the front of the building to the side.



Phil says the way he reads the code is that there has to be a 50-foot setback which is greater than a normal sideyard setback for that zone.

John said the way he reads the code is that the buffer is the setback and that it needs to be vegetative.

Paul G. suggested that they leave the 2 handicap parking spaces closest to the ramp, but take out all the other parking spaces and move them back to the front.

John said that for next meeting the applicant should bring a conceptual landscape plan.

**Administrative:**

Minutes to approve:

January 13, 2022

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