

**ZONING BOARD OF APPEALS**  
**TOWN OF LLOYD**  
**MINUTES**  
**Thursday, April 14, 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: Shawn Zerafa (acting chair), Bill Brown, Russ Gilmore, Paul Gargiulo (via Zoom), Mike Guerriero (Town Board); Board Staff: Dave Barton, Paul Van Cott, and Sarah Van Nostrand.

Absent: John Litts and Jessica Van Houten

**New Public Hearings**

**DiValentino, John- 8 Merritt Ave., SBL #88.13-7-32. Residential Area Variance**

Applicant is seeking an area variance to renovate the empty space below the pre-existing apartment in the garage due to a handicap condition. The empty space currently is serviced by sewer, water, natural gas and electricity.

Shawn made a motion to open the public hearing, 2<sup>nd</sup> by Bill.  
All ayes, motion passed to open the public hearing.

John D. (applicant) said that he has submitted a site plan and, on that plan, where it says garage with apartment over it, he wants to turn the 1<sup>st</sup> floor of into an apartment. As it is on the ground floor and he will be able to roll in and out of it. He is not changing anything else, right now it has water, sewer, electric.

Paul G. asked what about the density of the parking with 5 cars?

John D. replied that there is 2-car parking in front of the house with a 3<sup>rd</sup> space if need be. In the upper driveway there is parking for 3 cars if needed. He plans on putting blacktop in the back area that goes into Wood Rd. for his 2 cars near the apartment. On the right-hand side of the property there are two town drains.

Russ asked if the board could assume that he was going to move out of the house and move into the apartment?

John replied that is correct.

Russ asked what is to become of then existing house, who is going to live there or is it going to become a rental?

John replied that if his sons don't want it, then it will become a rental.

Paul G. asked if what was existing was staying, and that there is no change in coverage?

John replied what is there is staying and there are no changes to the footprint.

Paul V. said that the board's options are that they continue the public hearing or to close it.

Shawn asked for a motion to close the public hearing?

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

All ayes, motion passed to close the public hearing.

Paul V. said that this project is a type II SEQRA, so no review is required. The board can go through the standards for an area variance and can make a vote on the application and have him provide a resolution based on the board determination. Or the board could do a straw pull this month and he could draft something for the board next month.

Shawn said I this case he thinks expedience is important, so if the board could go a head and vote on the application today and when a resolution is drafted, he will come in and sign it.

Bill said that the board should go ahead as it is in the applicant's favor because if there was a fire in the main house where the applicant currently resides that he wouldn't be able to get out.

Paul V. went through the balancing test with the board.

1. Undesirable change in neighborhood character or to nearby properties?

Board agrees no change.

2. Whether benefit can be achieved by other means feasible to applicant?

Board agrees it cannot be done another way.

3. Whether the request for relief is substantial?

Board agrees that it is not as it does not change the footprint.

4. Whether the request will have adverse physical or environmental effects?

Board agrees that there will be none.

5. Whether alleged difficulty is self-created?

Board agrees that it is not.

Paul V. asked is this the minimum relief possible?

Board agrees that it is the minimum relief possible.

Shawn asked for a motion to accept the project?

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

All ayes, motion passed to accept the resolution.

### **Extended 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) said that they reduced the number of parking spaces down to a direct replacement of the previous site plan which was 12 spaces, they are proposing 10 regular spaces and 2 ADA compliant parking spaces. Where they are removing the asphalt parking, they are going to put in a biorientation pond to collect all the stormwater runoff from the roof and the parking lot. The natural grade of the parking lot is toward that pond, and they will also install a curb directing the water to the pond. Also, between that curb and the property line they are proposing a 12-foot-wide berm consisting of evergreen trees. It will be 12-feet wide and 2-feet high berm the length of the parking lot with the trees staggered to create the vegetative screening.

Bill asked how do you access the rear of the building?

Phil replied that at this time they don't access the rear of the building as there is an abandoned concrete foundation.

Bill said that he is talking about for fire protection.

Phil said the parking lot has a 26-feet wide fire lane down the length of the building and on the other side of the building there is loading docks that would provide access on both sides of the building.

Bill asked what about the back of the building?

Phil replied that at this time there is no access in the back of the building because of that abandoned foundation. He mentioned that the applicant would like to expand the warehouse at a future date once this issue is resolved. At that point they would propose a circular access road.

Bill said that there should be one as it is a flat roof and if a fire breaks through you aren't going to be sending any one inside the building, they will be fighting it from the top.

Phil said that is why they are providing a 26-foot-wide lane to provide access to both sides of the building.

Bill asked about the ADA entrance.

Phil replied that it is just a pre-existing concrete ramp.

Bill asked does it go into your offices?

Phil replied that it goes into the offices and warehouse spaces. When you go up the ramp and through the garage door and the door opens it is a flat concrete floor that goes into the warehouse and to the right is an ADA doorway that goes into the office space, so it provides ADA access to both the warehouse and offices.

Bill asked how a person in a wheelchair opens the door.

Phil replied that there is no button for it right now, if an ADA person was to come, the applicant would know as he has no ADA employees, it would be a visitor or a customer, so he would meet them and open the door.

Bill thinks that the front entrance where the office is should be the main entrance because if someone comes in a wheelchair, they will have to get the door open to get access to the building.

Phil said in warmer weather he thinks that garage door is left open. The other side has a number of loading docks for larger trucks, but there are a number of vans that come in, customers that something was left off of their delivery and they run up and pick up whatever was missed, they show up in vans and the merchandise is delivered through that door.

Bill said that it is only 12-feet 4-inches from the parking lot to the property line, shouldn't it be 15-feet?

Phil replied that in order to have the 26-foot fire lane and an 18-foot parking area, that is what it provides us. Currently the asphalt is closer to the property line, but they are cutting it back to the absolute minimum. They have minimized the parking width and minimized the number of spaces down to the approved 12.

Bill asked is this ample parking for the entire site?

Phil replied that there is parking on the other side for the trucks. These parking spaces are only for the office staff and for any visitors and for any ADA access to the building.

Russ said that he was still stuck on the original plan from 2002 and would like to know if there has been any discussion with the applicant for returning the parking to where it should be?

Phil replied that they have to provide a 26-foot fire lane, so they need blacktop down the side of the building anyways. The ADA parking also, has to be near the ADA entrance. The parking was never out front and with where the septic system is it is not a good location for parking.

Russ said that he still wants to know why the site plan was not followed and have no parking on the side.

Phil replied that the original site plan was somewhat faulty, with that the railbed property belonged to the neighbor, when in fact it wasn't. The applicant claims that there was always parking along the side and believed that the property was his regardless of what the document shows. He has shown through chain of title that the property should have been his, but a deed was never filed. As for the septic system he believes it was installed where it was, due to the existing driveway. Where the ramp and garage door are, there must have been parking there otherwise why was it there?

Russ said that it seems there were a lot of misunderstandings from the applicant and he doesn't see why the neighbor should have to deal with it.

Phil replied that if you look at the aerial this parking does not impact the neighbor at all as there is woods between the parking and the neighbor's property. If you look at the topography of the parking there is about a 7-foot dirt embankment and it goes up from there. He said that the applicant does not understand how this parking lot impacts the uphill neighbor. He has shown that the property is not being actively farmed. There is already a vegetive buffer and they are proposing more screening. Has shown that this parking lot complies with the current zoning code, which requires parking to be on the side or the rear.

Russ said that he is looking out for the applicant as what a farm will often do is that they will pile the brush up away from the trees and then there is a berm, and then they would typically burn that. He doesn't know if the farm still practices that or not, but if they do, you will have a fire right on your parking lot.

Phil replied that there is a 7-foot embankment, so they are not going to be right on the parking lot and they have co-existed for over 20 years now and there hasn't been an incident.

Paul G. would like a clause in the resolution that the farmer has a right to spray and that the applicant cannot complain about it as they are the ones who encroached on the farm.

Paul V. replied that he doesn't think that it can be a condition of the resolution as it is not a reasonable request related to the area variance. He asked if the applicant was planning on expanding the warehouse in the future?

Phil said that his client in the future was thinking of expanding as he is currently renting warehouse space due to it being at max capacity now, but would like to consolidate it on this parcel. There is an abandoned foundation from a burned down cooler behind it. He hopes to

propose to expand the warehouse, in the area of that abandoned foundation. The foundation would have to be removed as it has been abandoned for many years.

Paul V. said that the board should be looking at the whole project in terms of SEQRA. The applicant having an idea to expand now, leads him to think about potential segmentation and wondering why the board is not looking at the entire proposal, if the applicant's plan is to expand this building.

Phil replied there is no plan, they are here because the zoning officer found them to not be in compliance with the existing site plan.

Paul V. said that in terms of SEQRA the board should look at the entire project including the expansion for impacts for additional impervious surfaces, what does it mean in terms of traffic, there is the whole host of SEQRA issues that would be raised. If the applicant is thinking of expanding the warehouse, the board should be looking at the whole project in terms of SEQRA.

Phil said that his client has no plan and it would take months to get one, and in the meantime, there is a pending court case, and the site would remain in violation. If they do come back with the expansion that it is going to be a major project with a lot of studies that are going to have to be done.

Paul V. said that he suggests the board leave the public hearing open, so he can work on staff and counsel on the possible expansion.

Cory (a part of the applicant's team) asked isn't there a time frame on segmentation for SEQRA?

Paul V. replied no there is not, it is based upon the certainty of the planning of the objective.

#### **\*Public Comments\***

A Neighbor said that the applicant mentioned that they only need a 26-foot-wide fire lane. The building is about 35-feet high, and to calculate the width of the fire lane needed is that 1.5 times the height of the building, because if you park the fire apparatus too close to the building and that building collapses you will lose the fire apparatus. It was stated that the area was parking before the applicant bought the property, but the applicant provided a receipt to the town that Roehrs construction was paid by Peppino's Foods to put a parking lot in. The reason for the 50-foot buffer in Ag is for drift. Is the farm not supposed to plant trees in that area because the buffer trees won't be large enough to block the drift and then continue farming, he doesn't think that is fair. There is a reason for the 50-feet and it should stay 50-feet.

Scott Anzalone (Owner of the neighboring farm) said that if you look at the GIS (on County website) from 2001 there was no parking on the side until the applicant paid Roehrs to put it in. Pictures showed that the parking was in front of the building. When the site plan was approved parking in front of the building wasn't an issue because there was a parcel in front that was still owned by Roehrs. If the applicant had followed the site plan from day 1, they would have a grandfathered in parking lot. Has spoken with New York State building code and they will not

approve overhead doors as ADA compliant. To be an ADA compliant door, 5 pounds or less of force has to be used to open the door or a button has to be installed. The original site plan had the ADA door near the office and had the parking been put there it would have been ADA compliant. He mentioned that the plantings being in a straight line won't provide the buffer needed, staggering them and having 2 rows, so the trees grow together to provide the buffer needed. Even if they cut the parking lot back the 12-feet that they say they will, the tree will be in the middle and will have to grow out. They are proposing to use Norway Spruce and White Pine, the diameter of those trees is not small, they are about 25-40-feet wide on average. That would mean, if the Town approves this as stated, would be approving the encumbrance of his property. He also would like to know where the water goes from the retention pond if they do indeed expand the building? Where will the water go once, they put the pond in, will it go to a drain, pipe or what? The surveys show that there is a number of French drains across the properties, which led to the railroad and then it was diverted along the railroad. All of these issues are self-created. He feels that there are lot more issues that need to be addressed before this project gets approved.

Paul V. said that the board should consider the purpose of the 50-foot buffer area and the intention for having it.

Bill said that in all the plans that have been provided there has been nothing on drainage and where the water from the parking lot is going to go? There will be oil from the trucks, that will runoff into the drainage system. There was talk about piping the stormwater west and not far from this site there are wetlands, so are they going to discharge the stormwater there?

Shawn asked for a motion to keep the pubic hearing open thru May 12.

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

All ayes, motion passed to extend the public hearing.

### **Administrative:**

#### **Minutes to approve:**

February 10, 2022, March 10, 2022

Shawn asked for a motion to accept the minutes.

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

All ayes, motion passed to accept the minutes.