

ZONING BOARD OF APPEALS
TOWN OF LLOYD
MINUTES
Thursday, May 12, 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, Paul Gargiulo, Bill Brown, Russ Gilmore, and Mike Guerriero (Town Board); Board Staff: Dave Barton, Paul Van Cott, and Sarah Van Nostrand
Absent: Shawn Zerafa, and Jessica Van Houten

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 last month they submitted new plans to minimize the requested variances. They plan on having the same number of spaces (12), they are just moving them from the front to the side and tearing up the excess asphalt, in its place they are going to put in a retention pond to collect all the stormwater that is generated from the roof and the pavement. They have minimized the design to what was originally approved which is 12 parking spaces of which 2 are handicap spaces. They have addressed the boards concern with the vegetative screening with a two-foot-high berm with staggered evergreen trees on it, to provide screening for the neighboring property. They have minimized the width of the asphalt to the 18-foot parking lane together with the 26-foot fire lane.

John asked where did they come up with the 26-foot fire lane?

Cory (a part of the applicant's team) replied that it is part of the fire code 26-feet is required for aerial apparatus for buildings over 30-feet tall.

John said that he does not think the vegetative buffer is enough, he feels that it needs to be bigger and denser because right now it is a single row of trees. He is comfortable leaving the 26-foot fire lane for safety and fire access as it protects the building and workers. He is not comfortable with

the parking. He proposes that parking be put back to where it was on the original site plan, when you eliminate the parking, it gives you 18-feet to develop a denser vegetative buffer. He likes what they did with the biorientation pond, it's exactly what the board is looking for. The applicant has brought lot coverage down, and would like to see what it would be if the parking was in the approved location and letting them keep the fire lane for safety. As far as the buffer in a fire lane there is nothing parked there you don't have the potential for overspray or dust falling on cars. That would give you a 30-foot buffer, which would make a denser vegetative buffer than originally proposed. The fire lane stays and you put the parking back where it was originally supposed to be.

Bill said that there is an environmental issue with drainage from the parking areas. They are going to have runoff of oil and other stuff.

John replied that the applicant is going to collect all the runoff from the roof and parking area and put it into the bioretention pond.

Bill asked who is going to maintain the pond?

John replied that the applicant will.

Paul said that is something that the Planning Board is going to look at and would be included in the conditions of a resolution.

John said that when they bring something like the pond to the board to reduce coverage and mitigate runoff it's great. He wants them to speak to the balancing test and wants to see a written balancing test response from the applicant.

Phil replied that he feels it will not impact the community character as it has been there for 20-years, it complies with the current zoning code in that it provides parking on the side of the building. It is screened from the neighboring properties by existing vegetation. The request is minimal because they are just moving the 12 spaces from the front of the building to the side of the building. He thinks that they are enhancing it by proposing an additional bioretention pond to capture the stormwater runoff, that is currently not being contained. The effect on environmental conditions is going to be enhanced because of the biorientation pond that will collect the runoff and any oil dripped from the vehicles. The alternatives like the board proposed will increase the variance needed because they would have the original site coverage in addition with the whole new driveway and 26-foot-wide pavement down the side.

Paul G. said that they don't need pavement down the side.

John replied that he proposed that the fire lane stays and that is paved. What Phil is saying is that he doesn't want to use that as coverage, so he wants the board to take the fire lane out and just go with the parking in the front.

Phil said that the proposal is a minimal increase in site coverage. If they go back and pave the front of the building which they are going to have problems with because of the septic, if they pave the front of the building and keep the driveway and fire lane that it will increase their site

coverage more than what they are proposing with this plan. This plan calls for a 4.7% increase, if you include the fire lane with the driveway and the prior parking it will be much more than a 4.7% increase, so the proposal is less of a variance request. If they had not already installed this, had they come in fresh and had the parking lot in the front and went to the board then and asked to move the parking to the side, it would not be detrimental to their approval as that would be self-created.

John said if you had done it right the first time and came back and asked to do it wrong the board would have said no, but your client just took it upon himself to not do it right. If it was done as per site plan you wouldn't be here.

Phil said that if they had followed the original site plan, they would still be asking the board for relief due to where their handicap entrance is. Had they learned about the lot next to them earlier they would have gone the board earlier.

John replied your client was before the boards earlier, and had an approved site plan and didn't follow it. Now they are asking for relief for something that they did wrong. The board is trying to say that you did it wrong and are going to allow you to have a safe passage for fire apparatus, but you are not going to encroach. You are already encroaching on the buffer now, its supposed to be 50-feet and you are at 12-feet.

Phil replied that is the board's interpretation of the zoning law, he interprets it differently. When they apply the zoning law for active farming which they have taken the position that the neighbor is not actively farming at the time of the application. He feels that the enhanced setback is the definition of the buffer, "the buffer shall mean an enhanced setback," because the normal setback is 35-feet and it is enhanced to 50-feet.

John replied that it could be up to 100-feet.

Phil replied that's why our application states that 50-feet is adequate as they cannot move the building and the building is 55-feet away.

John said we agree with you we are not going to ask you to move the building, but they will say move your parking.

Phil said that parking is not restricted in the current definition of the agricultural buffer.

Paul V. asked that you are seeking a variance, and not challenging a zoning determination that has been made? You are seeking a variance to allow within a 50-foot buffer a parking area for all but 12-feet of it. The language of the law is very clear that it applies to new development and what it requires is that in the buffer that there is vegetation. It does not speak to having a parking lot where that buffer would be. What you are proposing is a 50-foot buffer that you need a variance for and 38-feet of parking area and driveway and you said that it is no more because it is still only 12 spaces, but in terms of the buffer area that is like 60-75% of the buffer area that is being covered with pavement. That would be a substantial variance under any test of that standard. Relative to the lot coverage issue, you are probably right, you will come out with a higher number

in terms of overall lot coverage.

John said that is something he would like them to provide in actual numbers and he feels it is less of an ask for a small percentage of lot coverage then it is to encroach on a buffer.

Paul said that the buffer is there for a specific reason. The other thing that he has heard that is important to the board is that there was a site plan approved that had parking in front of the building 12 spaces and your client violated that site plan approval and put the parking where it is now and you are in after the fact to seek blessing of that. He is hearing from the board is disinclined to validate the violation, but they are willing to potentially accommodate the fire lane, but not the continuation of the violation of the site plan.

Phil said that on their ZBA application they asked for two things. One was what is now a 4.7% increase in site coverage they asked for an area variance for it. They also asked for a determination by the ZBA that the 55-foot setback was adequate because the existing zoning law defined the agricultural setback if it applied would be 50-100 feet and they were asking for a determination that the 55-feet was adequate rather than 100-feet. That's what the original application was for, at the first meeting when it was contested that the applicant cannot have a parking lot in the agricultural buffer, they took the position and have since kept that position, that the definition of the agricultural buffer in the zoning code shall mean an enhanced setback instead of a normal 35-foot setback for a sideyard setback, it would be 50-feet. The zoning code at the time of the application was the distance between a sideyard property line and a structure, no where in the zoning code did it define a parking lot or a driveway as a structure. Consequentially you can have a parking lot and/or a driveway within a sideyard setback.

Dave said in addition to the 50-100-foot, that appropriate landscaping or vegetative screening shall be established and maintained on such buffers.

Phil said at the board's request they have proposed a raised berm that is 12-feet wide with vegetation as was discussed at the prior meeting, where the board suggested staggered evergreen trees.

Dave said that the board's determination would have to say that it would be appropriate landscaping and or vegetative screening.

John said that he doesn't feel that it is adequate.

Cory said that a registered landscape architect designed the plan.

John replied that they don't sit on this board and the applicant is in violation. If you brought the plan to the Planning Board with what you already did, he feels that they would say no. He asked if they want to take off the table leaving the fire lane and moving the parking to where it was originally proposed, so you are not agreeable to that?

Phil replied no.

John said you would rather have nothing?

Phil replied that his client would rather have the board vote on this plan and take it from there.

Paul V. asked if they are challenging the zoning officer's determination? As to the applicability of the 50-foot buffer and the need for a variance for what your client is proposing?

Phil said that his interpretation of the zoning officer's determination was that they fell into this 50–100-foot range and that they needed the ZBA to decide if the building's 55-foot setback from the property line was adequate.

Paul asked if he was challenging the zoning officer's determination? In the letter it stated that you needed a 50-foot buffer with vegetation or a variance?

The zoning officer's letter was read.

John said what they are asking for is not a determination, they are seeking a variance.

Paul said that the applicant says they are seeking an area variance to allow parking on the east side of the building. It also asks for a determination that the 50-foot setback buffer is adequate.

Discussion about the agricultural buffer zoning law occurred.

Paul said he sees both pieces as area variances and not a challenge to the zoning director's interpretation. To him the way the application reads is that they conceded the point and applying for an area variance, both for the lot coverage and a less than 50-foot vegetative buffer.

Phil said that when he received the letter then they filled out the ZBA application that the current at the time zoning code provided that a vegetative coverage was not a requirement for the entire 50-foot buffer area, the buffer area was defined shall mean an enhanced setback of 50 to 100-feet and that they needed a determination initially that the 55-feet was adequate. Once they got here the board took the position that you cannot have pavement in the 50-foot buffer and created a new issue.

Paul G. said that he doesn't see why the applicant needs parking in the buffer when it will affect the safety and welfare of the community. Also, the farmers are fighting for the buffer and the code requires it. He feels that there should be no parking, 26-foot fire lane and 29-feet of vegetation. He just wants the 26-feet left there so they can run a vehicle down there for maintenance and have safety for the building and 29-feet will be vegetation.

John asked is it you're understanding that asphalt is a buffer?

Phil replied that he interprets the zoning code by the language that is used.

John said which says vegetative buffer.

Phil replies that it says the buffer is an enhanced setback. In the next sentence it states that there should be vegetation in the buffer area. It doesn't say that it has to be the whole 50-feet, nor does it say how much it should be.

Discussion about the agricultural buffer zoning law occurred.

Cory asked what would appropriate landscaping be for the board?

John replied in your first proposal you had 12-feet of landscaping. He feels that is not appropriate.

Cory asked on what grounds was that determination made?

John replied that it is 12-feet wide, if the code says you need 50-feet and it was reduced down to 12-feet, he doesn't think it is enough.

Cory said that a licensed landscape professional designed the landscape plan.

Paul V. replied that this is not site plan review this is based on area variance standards. There are alternatives; one is moving the parking area back to where it was supposed to be which would require less of a variance. That is one of the requirements for an area variance and that is where the chair is coming from.

John asked the applicant if they were not willing to bend, that they wanted what was proposed?

Phil replied the whole purpose is to have parking. That's what it was installed originally and why they are here trying to appease the town.

John replied that parking could be where it was supposed to be. He is trying to work with the applicant to leave the fire lane and put the parking where it was supposed to be. The alternative is to take it out, go back to your originally site plan and that's it.

Phil replied that they are before to move the 12 parking spaces and the board is telling them no, they cannot.

Cory asked is there any agreement they can come to, like a combination of screening to keep the parking and fire lane where they are, like a fence and evergreens that the board would accept in this 12-foot area.

John replied that he doesn't see any. The board gave them an alternative to what was proposed.

Phil said that the board didn't give them an alternative to the application which was to move the parking spaces from the front of the building to the side.

John said parking puts vehicles in the buffer zone next to a farm. The farmer has a right to farm right up to their property line. It puts vehicles right next to whatever it may be. If you take the vehicles out of there and just leave a fire lane you are reducing that. The buffer is to protect the

farmer, so they don't get complaints of noise, dust, smell, or whatever the case is. You are more likely to get a complaint with a car parked there, rather than just asphalt that a fire truck would need in an emergency.

Discussion about the application occurred.

John asked Paul V. does the board do a straw pull and everything that was talked about go away and it becomes whether they can be in the buffer zone at all?

Paul V. replied that the board can grant any variance it, want's or deny it all together. It is relevant that the applicant's purpose is the parking area, so if there are no alternatives that the board would entertain or can think of that would provide for the parking then he feels denial would be the only option. If the board insists that the parking be moved to the front of the building.

Bill said why have a buffer zone if you are going to put parking there?

Phil said he feels that the intent of the law was to keep buildings and structures away from the property line.

John said then why would it spell out vegetation?

Bill said that you are basically doing away with the buffer zone. It's mandated in the town.

Phil replied that they are not doing away with the buffer zone.

Discussion about the agricultural buffer zoning law occurred.

Paul V. told the board that if they wanted to grant just the fire lane they could, but it doesn't achieve their purpose.

John said what happens if we grant the fire lane and they park cars there? Had you come in before the parking was put in this board would have said no.

Board agrees.

Paul G. said that the board should just vote as they gave the applicant an option, to move the parking back to the front, but allow the 26-foot fire lane to be kept and then they would have 29-feet of vegetation. The applicant said no they want parking there.

John asked Paul V. if the board denies everything and put the parking in the front because that is already an approved would he need a variance at all for coverage because he is already working off of an approved site plan?

Dave asked so not give him the fire lane?

John replied not give him anything. If the board doesn't give them anything on side and has them

go back to the original site plan then there is no need for a variance.

Dave said then there would be no variance needed.

John said we will finish this public hearing, do a straw poll and a draft resolution. Does not want to close the public hearing in case they come back next month with new plans.

Paul said you are also going to want to refer it to the Planning Board to see if there are any comments.

John asked that they wouldn't need any comments for the vegetation from the Planning Board that would become moot?

Paul V. replied that they would be commenting on the outcome of your straw poll and say if they agree with it or not. He asked if the board wanted to go over the standards?

John said that he wants to see if there are any other public comments and then go through the standards and do a straw poll, then a resolution can be drafted whether it is for or against it.

Jim Anzalone (neighbor) asked what would the fire lane be used for?

Bill replied for fire apparatus if there is an emergency.

Jim said that if the building is on fire, you would never park anything that close to the building. Also, the fire lane for emergency access so people can get out, would be through the handicap access which is the overhead door?

John replied that he believes that it is.

Jim asked if that is complainant?

John replied that is not for this board to get into.

Jim suggested a sidewalk as that is what they do everywhere else in the town. There would be enough room for a sidewalk along with the 50-foot buffer. He fears that the fire lane would become a parking lot.

The board went through the balancing test for the parking which is in the buffer and for coverage.

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

Board agrees that there is undesirable change as they are putting parking in the buffer zone of an agricultural zone.

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

Board agrees that there is an alternative, they can comply with the previously approved site plan, by a Town of Lloyd board.

3. Whether the request for relief is substantial?

Board agrees that the coverage relief request is not substantial as the original site plan had parking for 12 cars, they are increasing but it is not substantial. The buffer request is substantial because they are putting parking in a vegetive buffer zone.

Paul V. said that out of the 50-feet of buffer they are requesting 38-feet of relief.

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

Board agrees yes as they are removing the buffer area. The code requires a 50-foot vegetive buffer in agricultural zone. There area would be impervious compared to pervious and there would be limited vegetative screening.

5. Whether alleged difficulty is self-created?

Board agrees yes, it is self-created.

John asked the board for a straw poll to draft a resolution.

Russ-Deny

Bill-Deny

John-Deny

Paul-Deny

Board in agreement to deny the relief.

Administrative:

Minutes to approve:

April 14, 2022

Tabled until next month.