

ZONING BOARD OF APPEALS
TOWN OF LLOYD
MINUTES
Thursday, June 9, 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, Russ Gilmore, Shawn Zerafa, and Jessica Van-Houten (Via Zoom); Board Staff: Dave Barton, Paul Van Cott, Sarah Van Nostrand

Absent: Bill Brown

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 he hasn't had a chance to read the entire 6-page document, but he has an issue with the 5th paragraph that says the applicant acquired additional land, merged and constructed a parking area on the east side. It is not in the correct order.

John said that the parking lot was built before they acquired the land.

Phil replied correct.

John asked if the wording could be changed on that?

Paul replied that he would.

John asked Phil if he was bringing anything new to table?

Phil replied no.

John asked if there was anyone from the public that wished to speak?

No comments

John asked for a motion to close the public hearing.

Motion made by Paul G, 2nd by Russ

All ayes motion passed to close the public hearing.

John asked if the board was comfortable with Paul V. changing the sequencing without going on for another month?

Board agrees.

Paul V. said if he could make another suggested change, if the board is okay with it. That would be on page 4, paragraph 3, in the discussion of the standard whether this is a substantial variance. The sentence says, "The applicant's proposal to maintain a paved parking area." He suggests that it should say the applicant's request for a variance to maintain a paved parking area in a required 50-foot agricultural buffer area with only 12.4 feet of the required buffer to be established and maintained in a vegetated condition, is substantial.

John asked if the board was comfortable with that.

Board agrees.

John asked if the resolution needed to be read into the record or was it enough that the board read it?

Paul V. said that it is important that the board have a discussion about the board interpretation and the standards, to make sure that he captured everything the board thought was important.

John mentioned that the balancing test is separated out in the resolution for the board to run thru.

Paul V. said that the board should also go thru the interpretation.

Board agrees.

Paul V. read the resolution. The zoning code section that applies to this project is §100-15 (B)(11)(a) which provides: "Buffers adjacent to actively farmed lands within a New York State certified agricultural district shall be established in new residential subdivisions and other nonfarm uses. The buffer area as part of the new residential or other nonfarm use shall consist of an enhanced setback of at least 50 feet and, at the discretion of the Planning Board, up to 100 feet depending on the type of agriculture or farm use, the topography, and the proposed design of such buffer. Appropriate landscaping and/or vegetative screening shall be established and maintained on such buffers. Such buffer and its standards shall be noted on any approved subdivision plat or site plan." Then there are a bunch of whereas clauses based on public comment from the owners of the agricultural land adjoining the eastern boundary of the site provide ample support for the decision of

the ZBA that their property remains “actively farmed lands” for purposes of this regulation. Specifically, the owners have indicated their continuing intention to farm the land, as has apparently occurred for 100 years, and are in the process of diversifying their crops and farming, including plowing in older fields and allowing the land to temporarily lie unplanted in order to grow stronger crops; and

WHEREAS, the Applicant contends that the language of Zoning Code § 100-15(B)(11)(a), because of its use of the term “setback,” is meant only to require an “enhanced” 50-foot setback for structures and that the Applicant complies with the regulation since the warehouse building itself is more than 50 feet from the property line shared with the adjoining agricultural use; and

WHEREAS, the ZBA finds that the intent of this regulation is to respect the right of agricultural uses to farm all of their lands by protecting adjoining “residential or other nonfarm” uses through the requirement of a minimum 50-foot vegetated buffer, measured from the property line of the existing agricultural use, on the lands associated with the “new residential or other nonfarm use” (the “Agricultural Buffer”) and

WHEREAS, consistent with this legislative intent, the regulation expressly requires the 50-foot buffer area for “new residential or other nonfarm” uses, including but not limited to the structures associated with those uses, and expressly requires that “[a]ppropriate landscaping and/or vegetative screening shall be established and maintained on such buffer;” and

WHEREAS, the Applicant proposes, after-the fact, a new parking area for its warehouse on the eastern side of the Site and has applied to the Planning Board for site plan review for this new use of the Site; and

WHEREAS, the proposed parking area for the warehouse is within the 50-foot Agricultural Buffer of an adjoining agricultural use and, pursuant to Zoning Code § 100-15(B)(11)(a), requires an area variance for any portion of the proposed parking area within the 50-foot Agricultural Buffer; and

WHEREAS, the requirement of an area variance for the proposed encroachment on the Site’s Agricultural Buffer supports fulfillment of the intent of the restriction provided in Zoning Code § 100-15(B)(11)(a) by ensuring sufficient buffering for the “nonfarm” use on the Site, including the use of the proposed new parking lot for the warehouse, from the adjoining agricultural operations; and

WHEREAS, accordingly, the Building Department Director’s October 13, 2021 determination correctly required an area variance for the Applicant’s proposed parking area pursuant to Zoning Code § 100-15(B)(11)(a); and

WHEREAS, review of the Applicant’s proposal seeking authorization for the paved parking area on the eastern side of the Site as a request for an area variance from the Agricultural Buffer standard is appropriate.

Paul V. said that concludes that section of the resolution.

John said again it says “proposed parking area” and it should probably be the same as changed in the other section.

Paul V. said here it would be appropriate.

John said another thing that should be noted is that it says in here the topography and proposed design of the buffer. That means it is not intended to be anything but vegetative because a rolling

hill would enhance that buffer, not flat asphalt. It backs up what the board is saying.

Paul V. read the balancing test portion of the resolution.

WHEREAS, the applicable standards for reviewing the Applicant's requested area variances from the Zoning Code are set forth in NYS Town Law § 267-B(3)(b); and

WHEREAS, as required by NYS Town Law § 267-B(3)(b), in making its determination on the Applicant's variance application, the ZBA has applied a balancing test that takes "into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;" and

WHEREAS, in applying the balancing test and standards required by NYS Town Law § 267-B(3)(b) the ZBA makes the following findings:

1. Pursuant to NYS Town Law § 267-B(3)(b)(1), granting area variances for the parking area on the eastern side of the Site would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

The requested variance from the required Agricultural Buffer standard would adversely affect the agricultural use of the adjoining farmed lands. The proposed 37.6-foot paved parking area within the Agricultural Buffer would limit the agricultural operations of the adjoining farm by not providing a sufficient vegetative buffer to protect users of the parking area from such operations, including the spraying of crops for pests. In order to ensure that an adequate buffer is provided, the adjoining agricultural use would not be able to farm all of its lands in order to compensate for the substantially reduced buffer provided on the Site.

John asked if the board was good with that?

Board is good with that.

Paul V. went through the second standard.

2. Pursuant to NYS Town Law § 267-B(3)(b)(2), the benefits sought by the Applicant from the proposed relocation of the parking area to the eastern side of the Site can be achieved in a feasible way without the requested variances.

In 2002, the Applicant obtained site plan review approval from the Planning Board for the warehouse which included approval of a parking area on the north side of the building. This alternative was approved by the Planning Board and remains feasible and would not require any variances from the ZBA, according to the Building Department Director.

Paul V. said that this speaks to an alternative that does not require a variance.

John asked if the board was good with that?

Board is good with that.

3. Pursuant to NYS Town Law § 267-B(3)(b)(3), the requested Agricultural Buffer variance is substantial.

The Applicant's request for a 4.7% increase in maximum lot coverage alone is not substantial, however, the requested variance cannot be separated from the requested Agricultural Buffer variance as both involve the proposed parking area on the eastern side of the Site. The Applicant seeks nearly 75% relief from the Agricultural Buffer standard. The Applicant's request for a variance to maintain a paved parking area in the required 50-foot Agricultural Buffer area on the eastern side of the Site, with only 12.4-feet of the required buffer to be established and maintained in a vegetated condition, is substantial.

John asked if everyone on the board understands that?

Board understands.

4. Pursuant to NYS Town Law § 267-B(3)(b)(4), granting the requested variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

As discussed above, granting the requested variance from the required Agricultural Buffer standard would adversely affect the agricultural use of the adjoining farmed lands. The proposed 37.6-foot paved parking area within the Agricultural Buffer would limit the agricultural operations of the adjoining farm by not providing an adequate buffer to protect the users of the parking area from such operations, including the spraying of crops for pests. Granting the requested maximum lot coverage variance, which also involves the proposed parking area, cannot be separated from the impacts that would occur from the granting of the Agricultural Buffer variance.

John asked if the board was good with that?

Board is good with that.

5. Pursuant to NYS Town Law § 267-B(3)(b)(5), the Applicant's need for the requested variances is a self-created difficulty.

The Applicant seeks after-the-fact approval for a proposed parking area on the eastern side of the Site. In 2002, the Applicant received approval from the Planning Board to construct the parking area on the north side of the warehouse. Thereafter, without necessary approval from the Planning Board, the Applicant constructed the parking area in a location and on land that was not authorized through the Planning Board's 2002 Approval for the Site. The Applicant now seeks the amended site plan review by the Planning Board that it should have sought before

constructing the parking area on the eastern side of the Site. The Applicant's requests for relief thus arise from its own actions. Accordingly, the requested relief is a self-created difficulty.

Board agrees.

WHEREAS, pursuant to the above findings and NYS Town Law § 267-B(3)(b), the statutory balancing test demonstrates the benefits of granting the requested variances are outweighed by the detriment to the health, safety and welfare of the neighborhood or community arising from such grant based on the following findings:

1. The ZBA acknowledges that granting the requested variances would allow the Applicant to obtain after-the-fact approval of the proposed relocation of the parking area to the eastern side of the Site. This would accommodate the Applicant's preference for having the parking area on the eastern side of the Site for purposes of operational convenience. It would also avoid the Applicant's having to remove the paved parking area from the eastern side of the Site and to construct it in the location previously approved by the Planning Board, or in another approved location, in order to bring the Site into compliance with the Zoning Code; and
2. The ZBA believes that the benefits to the Applicant are outweighed by the detriment to the neighborhood and community because, as set forth above, granting the requested variances would: (1) produce a detriment to the adjoining agricultural property; (2) be substantial; and (3) have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Moreover, the Applicant has a reasonable alternative that does not require any variance, i.e., constructing the parking area where it was previously approved by the Planning Board. Finally, the Applicant's difficulty is entirely self-created and granting the requested variance would validate the Applicant's noncompliance with the Approval and, in doing so, adversely affect an adjoining agricultural use.

Based on the ZBA's consideration of the Applicant's application, the information described above, and the public hearing on the Applicant's variance requests, and further based upon the ZBA's findings set forth above, area variances are required by the Applicant for its proposed parking area on the eastern portion of the Site as follows:

- (1) for an increase in maximum lot coverage by 4.7%, pursuant to the dimensional table established pursuant to Town of Lloyd Zoning Code §100-13(A); and
- (2) for a 37.6-foot incursion of a paved parking area into the applicable 50-foot Agricultural Buffer, pursuant to Zoning Code § 100-15(B)(11)(a); and

BE IT FURTHER RESOLVED, consistent with the findings set forth above, the Applicant's requested area variances from the Zoning Code's standards for maximum lot coverage and for a required Agricultural Buffer, in order to provide after-the-fact authorization of a paved parking area on the eastern side of the Site, are denied by the Town of Lloyd ZBA pursuant to NYS Town Law § 267-B(3)(b) and Zoning Code § 100-56.

John asked if the board any questions, comments or concerns, or further discussion?

John asked for a motion to accept the denial resolution as amended.

Motion made by Russ, 2nd by Paul G.

Roll Call Vote:

John-aye

Paul G.-aye

Russ-aye

Shawn-aye

All ayes motion passed to accept the resolution denying the application.

Administrative:

Minutes to approve:

April 14, 2022, and May 12, 2022

April 14, 2022: Motion made by Russ, 2nd by Shawn. 4-ayes and 1-abstain. Motion passed to accept the minutes.

May 12, 2022: Motion made by Russ, 2nd by Shawn. All ayes motion passed to accept the minutes.