

APPROVED:

MOTION BY:

AYES:

NAYS:

SECONDED BY:

ABSTENTIONS:

ABSENT:

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By:

Rosaria Peplow, Town Clerk

## ZBA MEETING MINUTES

### TOWN OF LLOYD ZONING BOARD

Thursday, September 13, 2018

1 CALL TO ORDER TIME: 7:00PM

2  
3 PLEDGE OF ALLEGIANCE

4  
5 ATTENDANCE Present: John Litts, Chair; Paul Gargiulo, Vice-Chair; Russell Gilmore; William Brown;  
6 Alan Hartman; Michael Guerriero, Town Board Liaison; Anthony Giangrasso,  
7 Deputy Building Inspector; Rob Stout, Town Attorney; Andy Learn, Town  
8 Engineer; Laura Oddo-Kelly, Administrative Assistant to Planning and Zoning.  
9

10 ANNOUNCEMENTS: GENERAL, NO SMOKING, LOCATION OF FIRE EXITS; ROOM CAPACITY IS  
11 49, PURSUANT TO NYS FIRE SAFETY REGULATIONS. PLEASE TURN OFF ALL CELL PHONES.  
12  
13

14  
15 New Public Hearings

16  
17 **Bark Place of Ulster, Inc, 296 Route 299, SBL# 87.2-1-14 in DB Zone.**

18 Expansion of non-conforming use - Applicant is seeking commercial use variance to construct a  
19 3000 sq ft, one story building for a dog training, boarding and daycare facility for an established  
20 business since June 2008. Applicant is also seeking site plan approval from the Planning Board.  
21

22 Stout read from Exhibit A from the application which lists the use variance criteria.

23 Litts read the Ulster County Planning Board recommendation letter into the minutes (see  
24 attached).

25 There was a discussion of the UCPB recommendations. The applicant had already addressed all  
26 the topics contained in the letter.

27 Stout said the UCPB did not make any findings consistent with their jurisdiction.  
28

29 A **Motion** was made by John Litts, seconded by Paul Gargiulo to open the public hearing. All  
30 ayes.

31 There were no comments from the public.

32 The applicant said she had a letter from her neighbor that was read into the record (see attached).

33 Stout read through the balance test for a use variance to which the Board discussed. The Board  
34 unanimously agreed that the applicant was in accordance with criteria the balance test.

35 Stout said there was ambiguity in the UCPB recommendation letter. He additionally said he  
36 would redraft the resolution to reflect the use variance balance test that was discussed.  
37

38 A **Motion** was made by Bill Brown, seconded by Russ Gilmore to close the public hearing. All  
39 ayes.

40 A **Motion** to grant the use variance was made by Paul Gargiulo, seconded by Alan Hartman. All  
41 ayes.

42 **Roll Call:** Litts, aye; Gargiulo, aye; Brown, aye; Gilmore, aye; Hartman, aye.

43  
44 **Metrande, David, 831 N Chodikee Lake Road, SBL# 79.2-2-2.200 in R1 Zone.**

45 Applicant is seeking a residential area variance relief of 8' on the left side yard setback to add a  
46 10' x 20' carport attached to an already existing garage.

47  
48 Applicant brought in photographs and the measurement from the neighbor's house to applicant's  
49 driveway which is 58 feet.

50 A **Motion** was made by Bill Brown, seconded by Paul Gargiulo to open the public hearing. All  
51 ayes.

52 There were no comments from the public.

53 The Board went through the balance test for an area variance and it was discussed that the  
54 applicant complied.

55 A **Motion** was made by Russ Gilmore, seconded by Alan Hartman to close the public hearing.  
56 All ayes.

57 A **Motion** to grant the area variance was made by Bill Brown, seconded by Paul Gargiulo. All  
58 ayes.

59

### 60 **Extended Public Hearing**

61

62 **MCBS DG Highland LLC, 3584-3594 Route 9W, SBL# 88.17-6-25.110 & 88.17-6-16.110, in**  
63 **GMU zone.**

64 Dollar General / Multifamily

65 **\*Applicant is seeking an area variance for side yard parking in the GM Zone**

66 Development project of 21.7 acres of land along Route 9W. The applicant desires to take three  
67 lots (SBL: 88.17-6-15.11, 16.11 and 25.11) Lot 3 will contain a proposed Dollar General retail  
68 store with parking on the side.

69 **Addendum to area variance application and SEQRA EAF, Part 2 draft responses by**  
70 **applicant received from Michael Moriello, Esq. 08.01.18.**

71 **UCPB recommendation letter received 09.13.18.**

72 **Moriello response letter to UCPB recommendation letter received 09.13.18.**

73

74 Stout said the applicant is also seeking light trespass along Route 9W because light will exceed  
75 .25-foot candles along Route 9W and shade trees will not be planted along Route 9W in the 40-  
76 foot intervals that are required because of the physical restraints of the property and the overhead  
77 power lines – 3 variances.

78 Michael Moriello Esq., applicant's attorney, Barry Medenbach, applicant's engineer, and John  
79 Joseph, developer were present.

80 Medenbach presented the site plan to the Board and a more detailed map of the parking.

81 Medenbach discussed the plantings being proposed.

82 Litts read the UCPB recommendation letter into the minutes (see attached).

83 Litts said he felt the county overstepped their bounds by giving an alternative layout and a  
84 requested modification of the project.

85 Litts asked if there were any public comments.

86 Mark Reynolds, reporter, asked Litts if could explain further why he feels the County  
87 overstepped.  
88 Stout explained that by virtue of the statute the county or regional planning agency should  
89 comment on county wide impacts. Both recommendation letters to the ZBA tonight were specific  
90 to Town impacts as opposed to the wider categories.  
91 Litts said basically the County's job is to comment on the inter community and the letters in  
92 question were specific to the Town of Lloyd.  
93 Stout said with that said, it is the Board's responsibility, if they were to find contrary to UCPB  
94 recommendation, they would need to approve the resolution by a majority plus one, a super  
95 majority, to overrule the county because the county did not recommend approval.  
96 Litts said the ZBA specifically is addressing just the parking, not the orientation of the building.  
97 Reynolds said it is his understanding that the position of the building and the parking are not part  
98 of the Gateway code.  
99 Litts responded yes and that is why the applicant is in front of the Board tonight for a variance  
100 for the parking on the side.  
101 Litts asked Moriello to read his response letter to the UCPB recommendation letter into the  
102 minutes (see attached).  
103 Moriello commented on his letter addressing the UCPB recommendation letter saying that the  
104 UCPB has a certain jurisdiction to operate under and he felt that they were exceeding their scope  
105 and delving into issues that are not under their authority.  
106 Hartman discussed with Medenbach on having crosswalks and speed bumps near the retail store  
107 from, in his opinion, a public safety standpoint. Hartman also inquired if the parking lot was  
108 wide enough to accommodate all the parking.  
109 Litts said the applicant is not in front of the ZBA to reduce the parking but to obtain a variance  
110 for parking on the side.  
111 Medenbach said the portion was 30 feet wide and the Town only requires it to be 25 feet wide.  
112 There was a discussion on the parking and crosswalks.  
113 Stout said internal circulation is the responsibility of the Planning Board's approval.  
114 A **Motion** was made by Paul Gargiulo, seconded by Russ Gilmore to close the public hearing.  
115 All ayes.  
116 Litts read the resolution of approval.  
117 Litts asked Stout if language could be put into the approval for crosswalks, as per Hartman.  
118 Medenbach said they are already in the site plan.  
119 A **Motion** to grant the area variance was made by Paul Gargiulo, seconded by Russ Gilmore.  
120 **Roll Call:** Litts, aye; Gargiulo, aye; Brown, abstain; Gilmore, aye; Hartman, aye.  
121 Stout said the vote satisfies the super majority requirement.  
122  
123 **Jackson, Vicki, 11 Milton Avenue, SBL# 88.69-8-4, in CB Zone.**  
124 Applicant is seeking a residential use variance to convert an existing ground floor commercial  
125 space of approximately 2200 square feet into two equal sized apartments.  
126 \* **Please refer to attached use table in code book.**  
127 **The ZBA requested a more accurate site plan at the next meeting.**  
128  
129 A **Motion** was made by Russ Gilmore, seconded by Alan Hartman to close the public hearing.  
130 All ayes.  
131 Gargiulo asked if the applicant showed adequate hardship on economic feasibility.

132 There was a discussion on whether the applicant has had any success renting the property to a  
133 commercial tenant.

134 Litts asked how long the applicant has been actively seeking a tenant.

135 Applicant said she does not have an official listing for the property to be rented.

136 Litts said the applicant would have to show a hardship in order to be considered for a use  
137 variance.

138 Stout said the applicant would have to show financial evidence of hardship.

139 ZBA has requested proof of financial hardship information for the next meeting, i.e.,  
140 documentation that the applicant has been trying to rent the property.

141 Stout said since the ZBA has closed the public hearing they are required to act within 62 days.

142

143 **Watson, David I, 10 Bellevue Rd, SBL# 88.17-2-36.120, in R 2 Zone.**

144 Applicant is seeking an area variance relief of 5' for the front yard to build a 240 sq ft accessory  
145 structure.

146 **The ZBA requested the applicant to provide them with pictures of the property which show**  
147 **the steep grade, where the building would be situated, and a topography map of the**  
148 **property on 06.14.18.**

149 **Spiciarich complaint letter received 07.09.18.**

150 **The Board made a second request for the applicant to supply them with a survey and**  
151 **topography map of the property on 07.12.18.**

152 **\*Applicant withdrew 09.13.18.**

153

### 154 **Minutes to Approve:**

155

156 A **Motion** to approve the minutes of the August 9, 2018 Zoning Board Meeting was made by  
157 Paul Gargiulo, seconded by Bill Brown. Four ayes; one abstention (Litts absent at last meeting).

158

159 Litts asked if there were any more public comments.

160 Mark Reynolds, reporter, asked Bill Brown why he abstained from the approval vote for MCBS  
161 DG.

162 Brown said it went against the grain of the idea of the Gateway District and it isn't right. It seems  
163 like anytime something goes against the grain of what someone wants to do, concessions are  
164 made.

165

166 A **Motion** to adjourn was made by Paul Gargiulo, seconded by Alan Hartman, at 8:25PM. All  
167 ayes.

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# Ulster County Planning Board



Dennis Doyle, Director

## RECOMMENDATION

Anthony Pavese, Chairman  
Town of Lloyd Zoning Board  
12 Church Street  
Highland, N.Y. 12528

REFERRAL NO: 2018-134  
DATE REVIEWED: 9/5/2018

### Re: Bark Place – Use Variance

#### Summary

This is a request for a use variance to allow for the construction of a 3,000 square foot structure for the purposes of dog training, board, and daycare which is not a permitted use in the DB zoning district.

The following materials were received for review:

- UCPB Referral Form
- Site Plan
- Planning Board application
- Short EAF

#### Recommendations

##### Criteria for Use Variance

The details provided do not include a response from the applicant as to how they will meet the necessary criteria required for the granting of a use variance. Use variances by their nature, are considered an affront to the zoning statute and as such should be difficult to obtain. New York State Town Law requires the applicant to show all of the following (From the NYS Department of State James A. Coon Technical Series, updated 2015):

- “(1) that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof for each must be submitted);
- (2) that the property is being affected by unique, or at least highly uncommon circumstances;
- (3) that the variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the hardship is not self-created.”

If any one or more of the above factors is not proven, State law requires that the ZBA must deny the variance.”

##### Required Modification

The applicant will need to clearly prove each and every one of the above factors, per NYS Law, in

Telephone: 845-340-3340  
Fax: 845-340-3429

Email Address: rlei@co.ulster.ny.us  
Web: ulstercountyny.gov/planning/ucpb

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2018-134 Bark Place  
Use Variance

order to be granted a use variance. In particular, care should be taken regarding decisions associated with lack of reasonable return as this is often the most difficult to prove. It is also important to note that the variance granted should be the least variance necessary to remove the hardship created by the zoning statute. Use variances may include such conditions as location and/or amount of outdoor storage, size of building, increased, setbacks etc. Furthermore, if the use variance is granted, site plan review by the Town's Planning Board will also be required.

Reviewing Officer



Robert A. Leibowitz, AICP  
Principal Planner

**From:** "Edward Spates" <ewspates@optimum.net>  
**To:** ewspates@optimum.net  
**Date:** 09/04/2018 08:30:46 PM  
**Subject:** town board

To whom this may concern,

As residents of 290 rt 299 here in Highland NY I would like to say how much I feel Bark Place has been and will continue to be a great neighbor. I have heard they wish to improve and build within their area an additional bldg to improve and increase their business. As long as we have known them any improvements they have made in the business has been very well accepted and we have no complaints whatsoever. If neighboring people have to give an OK then my wife and I HIGHLY give ours.

Bark Place I feel has bought more improvement to the area and more \$\$ in than anyone else that has tried to succeed on this property. Bark Place has been fantastic neighbors as if they were not a business but as a family as well. Glad they came to our community.

Carol Potenza & Edward Spates neighbor and friends of Bark Place..

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**RECOMMENDATION**

Anthony Pavese, Chairman  
Town of Lloyd Zoning Board  
12 Church Street  
Highland, N.Y. 12528

REFERRAL NO: 2018-133  
DATE REVIEWED: 9/5/2018

**Re: MCBS DH Highland, LLC – Area Variance**

**Summary**

This a request for a variance to allow parking in the side yard associated with the proposed Dollar General Store located on Route 9W in the Walkway-Gateway Zoning District.

The following materials were received for review:

- UCPB Referral Form
- Site Plan
- ZBA Application
- Full EAF

**Discussion**

The Town of Lloyd created the Walkway-Gateway district with a specific design aesthetic in mind; that of creating a more urban-style corridor that put structures and pedestrian access at the forefront while removing strip-style parking, and parking in general, out of view from the Route 9W corridor, per §100-26 K. (1). This factor was so intrinsic to what the Town is trying to accomplish in this area that the standard is specifically not allowed to be waived per §100-26 P. (1). Therefore, the proposed layout of the structure, as well as its associated parking, is being designed contrary to the design goals of the zoning district.

**Recommendations**

**Variance Test – Weighing Benefit to the Applicant vs. Cost to the Community – Required Modification**

A discussion of varying the standard to allow parking in the side yard should focus on the benefit to the applicant of allowing this particular layout against the cost to the community in terms of the effort it has placed in defining the standards and establishing a particular design aesthetic as a goal, as well as the precedent allowing such a variance might create in the review of future development projects in the Walkway-Gateway Zoning District.

**Alternative Layout**

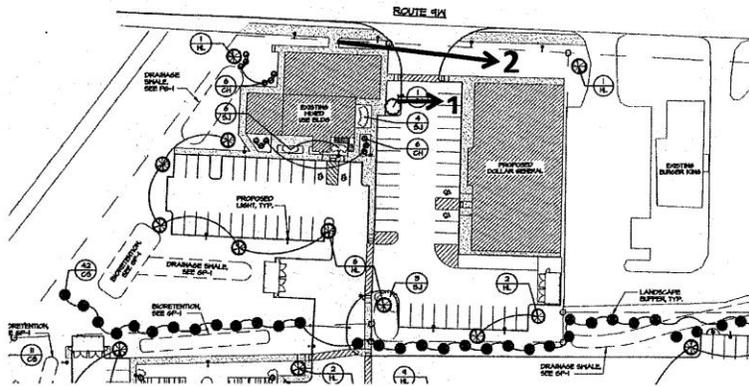
One potential solution, while not in exact keeping with the design goals of the district, could help to bring the site into more compliance via additional curbing, landscaping, and a pedestrian connection from the faux storefront on Route 9W directly to the sidewalk. The layout, as describe below, will require the removal of three parking spaces, but will achieve design more in keeping with the goals of the district.

2018-133 MCBS DH highland, LLC  
Area Variance

**Required Modification**

Should the ZBA choose to grant the variance, it is recommended that the site plan be amended as a condition of the approval as follows. An area variance on the removal of three parking spaces may be necessary:

1. Curbing as designed on the south side of the entrance should be mirrored on the north side. The curbing on both the south and north sides should be crafted in such a way as to obstruct the view of the parking area from Route 9W.
2. A sidewalk connection from Dollar General's frontage on Route 9W should occur directly as it does with the existing structure located immediately to the South. Ideally, this point of access would not be a faux entrance, but instead the actual main entrance or a second entrance into the store to meet the communities design goals with respect to the Walkway-Gateway zoning district.



Reviewing Officer

Robert A. Leibowitz, AICP  
Principal Planner

Cc: Peter Brooks, UCPB