

Village of Pawling Zoning Board of Appeals Minutes

Approved: September 22, 2021

Meeting Date: July 28, 2021

Present: Michael Keupp, Zoning Board of Appeals Chairman
Ann Hardemann, Board Member
Mike Mersand, Board Member
Tom Zarecki, Board Member

Absent: Nicholas Vorolieff

Also Present: Lauri Taylor, Mayor
Jonathan Bardavid, Village Council
Caren LoBrutto, Village Planner
Curt Johnson, Architect for Applicant

On, *Wednesday, July 28th, 2021 at 7:00 PM*, the **Zoning Board of Appeals** met in the meeting room at the Village Hall on 9 Memorial Avenue, Pawling NY. The Meeting was called to order by Chairman Michael Keupp and began with roll call as indicated above and The Pledge of Allegiance.

Pawling Commons

Variance to allow a 3rd Building on Site

Chairman Michael Keupp introduced Curt Johnson; Architect for the applicant, KJ Rant Realty.

Mr. Johnson explained that this is a 4.2 acre site on the southern end of the B1 Zoning District which represents the largest lot in the B1 Zone. This property was before the Planning Board and Zoning Board of Appeals back in 2006/2007. The former AG Market and the existing, currently occupied, 13,000 square foot, one story commercial building was on site at the time. In 2006/07, the former owner was before the Planning & Zoning Boards to discuss the proposal of a new two story commercial building at the south eastern corner of the property. No residential uses were being proposed at that time. In 2006, a Variance was granted by the Zoning Board of Appeals to allow for the third building on the lot. In 2018, the Village Board amended some of the Zoning and Comprehensive plan elements which required the owner to go before the Planning Board to seek a Site Plan Approval, which it did. A Site Plan Approval was granted in 2018 to allow no changes to the existing 13,000 square foot commercial building. The existing vacant AG Market was going to be converted into a first floor commercial use as well as

residential uses and amenities such as a gym at the rear of the building and then three stories of residential units above. In 2018, a Special Use Permit was approved by the Planning Board to allow for the new, third 4 story, residential use only building on the lot. Fast-forward to today, we are back before the Zoning Board of Appeals with a continued Public Hearing to consider re-granting the Variance to allow for the third building on the lot.

Chairman Keupp asked if any Board Members had any questions for Mr. Johnson and reminded the Board that this should not be a discussion on how the ZBA will vote.

Mr. Johnson presented the Board with a photo shop overlay which shows how the third building might look from various aspects along East Main Street along with the proposed buildings being dropped in place (see attachments of photo shop rendering.)

Board Member Ann Hardeman asked if the height of the buildings in the photo are to scale.

Mr. Johnson confirmed that they are to scale.

Chairman Keupp asked Mr. Johnson where the residents of the third building would park.

Mr. Johnson explained that parking would be to the front and to the side of the third building and stated that parking would be shared by businesses during the day and residential at night. Mr. Johnson assured the board that there is the required number of parking spaces on the site with the waiver granted by the Planning Board.

To clarify, Board Member Ann Hardeman stated, there are 53 units, 33 units in the rear building, 20 units in the front building, five per floor.

Mr. Johnson confirmed.

Without any further questions from the Zoning Board, Chairman Keupp opened the meeting to Public Comment.

Lou Musella, member of the Village Planning Board commented that the ZBA are not bound by any of the prior decisions that they made on past applications. He explained, it could be argued that this is a Use Variance. He said; however, "the use is allowed but the third building is not." Mr. Musella stated that he reached out to a contact a he has through the ZBA classes in Albany at the Department of State. After a lengthy conference call he had with Planning Board Member Robert Pfister and Department of State Planner, they concluded that the issue in front of the board would be considered a "large scale" Area Variance. Mr. Musella said he would agree with the fact that it's an Area Variance but explained that Area Variances are normally granted for dimensional issues such as lot restrictions and building heights. Mr. Musella also stated that he believes the applicant fails in each of the five evaluation criteria outlined in the application for Area Variance, in particular test number 3, "**Whether the requested Variance is substantial?**" Mr.

Musella said Department of State agrees with this finding and states that this goes way beyond the reasonable request for an Area Variance. Mr. Musella asserted that granting a Variance for the third building would set a “terrible precedence” for further development within the Village of Pawling.

Mr. Pfister, member of the Village Planning Board, explained that in 2006, when the first Variance was granted, there were no other expanded uses being proposed at that time. He believes that the conditions, today, are not the same as they were back in 2006. After having a conversation with the Department of State, Mr. Pfister believes the applicants are pushing the boundaries of “what is an Area Variance.”

Steve Goldberg, Chairman of the Village Planning Board, agrees that the Variance request is “substantial” and realizes the ZBA has a difficult decision, it is well within the ZBA’s jurisdiction to make that decision. Mr. Goldberg urged the ZBA not to pre-judge the Variance as being “too significant” without considering the other possibilities. For example granting the Variance with conditions like making the building smaller or shorter. Mr. Goldberg strongly urged the Board to consult counsel and only consider the documented evidence, not base any decisions on anecdotal hearsay and third party remarks.

Chairman Michael Keupp presented a letter from Dave J. Gamache, a former member of the Town Council and a former Dutchess County Legislator who lives on 18 East Main Street. The letter raised several concerns to the project, which included the following:

“The plan is overly ambitious for a 4.2 acre site located in a small village surrounded by single family houses. If built, the project would be deleterious to the surrounding homes, and to a large part of the Village.”

“If the Commons are at capacity commercially and residentially, the parking is severely inadequate. The proposal is for 112 parking spaces. The plan is for 53 homes which equals 122 people. Add the commercial users, employees and customers and it is obvious 112 parking spaces is inadequate.”

Mr. Johnson presented a photo rendering of what the options could be in terms of alternatives to seeking the Area Variance. Such alternatives include subdividing the 4.2 acres into ten lots and have buildings on that lot which, with Site Plan approval, would be allowable in the B1 Zoning District because there is no minimum size requirement in the B1 Zone. With the proposed project at 85,000 square feet of building space, the applicants are way below the 366,000 square feet of building space currently allowable under the Urban Regulations on that lot in the B1 Zoning District. Alternatively, the building could be set right in front, 317 feet along the property line, four stories high which would take up the entire length of that frontage which would be allowable per the Zoning Code as written. Stating that although the addition of the third building may seem to be a “substantial” request, it is way below what is allowable on that

site. Consequently, by breaking the building up and having three buildings on the site, it makes the transition into the Residential Zone, even though it's also in the Commercial Zone, a little more palatable than it could be otherwise. Mr. Johnson explained that the intent here is to try to create a seamless transition from the Residential Zone, that isn't as large and overwhelming as what it could look like that would be more appropriate for the transition into the downtown Village area. The goal here is to preserve the existing commercial use on the site because it's currently being occupied by tenants who have been there for quite a while; put a use to the former AG Market building that has been an eyesore and vacant for quite some time and bring more residential uses into the Village of Pawling with the addition to the former AG Market and the construction of the third building. This would increase the use of the parking area, have better demarcated locations and more landscaping which will help onsite commercial uses as well as the walkability into the Village and make it more vibrant.

Planning Board Chairman, Steve Goldberg added that the Planning Boards and Zoning Boards must consider what alternatives could end up being taken were they not to grant the Variance. In this case, he said, Curt Johnson made the point correctly, which is "substantiality" in nature of Variances always has to be weighed against what the alternatives could be should the Variance not be granted." Mr. Goldberg explained that Mr. Johnson just highlighted two examples of what could happen which would have greater "substantiality" on the neighborhood which, in this case, would be deeply problematic.

Chairman Keupp made a MOTION to go into Executive Session noting that no decisions would be made at this time

Member Tom Zarecki Seconded

All were in favor.

Adjournment:

Chairman Keupp Motioned to Adjourn the Meeting

Member Ann Hardemann Seconded the Motion

All were in Favor

Submitted by:

Vivian Nikolatos, Secretary