

Zoning Board of Appeals Minutes

Meeting Date: November 29, 2023

Present: Nicholas Vorolieff, Chairman
Ann Hardeman, Member
Fred DiVitto, Member
Tom Zarecki, Member

Also Present: Caren LoBrutto (Village Planner)

APPROVED
VILLAGE OF PAWLING
ZONING BOARD OF
APPEALS

On *Wednesday, November 29th, 2023 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 Nicholas Vorolieff, Chairman, and began with Roll Call as indicated above and The Pledge of Allegiance.

Project Name: 95 East Main Street Area Variance
Owners: Brian Durkin
Location: 95 East Main Street
Parcel ID/Zoning District: 7056-05-150860/R-2

Area Variance Applied For

Mr. Durkin said that one 15-inch step off a deck that he built in his backyard encroaches 15 inches into the side-yard setback to the property line. The Applicant is seeking two area variances as follows:

Bulk Regulation for Minimum side yard: 2 side yards aggregating 50 feet/15 feet each side yard is required. The house is preexisting non-conforming, with 28.1 feet on the north side yard and 14.2 feet on the south side yard, aggregating to 42.3 feet.

The applicant is seeking an area variance of 7.7 feet for the aggregating side yard setback as well as an area variance of 15 inches for the south side yard setback.

Member Zarecki motioned to open the public hearing for public comment. Member DiVitto seconded the motion. The motion passed with all present members in favor.

Village of Pawling resident Andy Durkin said he owns the property across the street and he is not opposed to the area variances that the Applicant has applied for.

Member Hardeman motioned to close the public hearing on the Durkin Application. Member DiVitto seconded the motion. The motion passed with all present members in favor.

Chairman Vorolieff said a number of us were at the site this past weekend. We had taken a look at the deck and asked a number of questions during the site visit. Mr. Vorolieff commented that in his opinion, this is not a very big ask, we often get asked for much more. It's only viewed by one neighbor and that's if they look through a hedge in the fall or winter when there are no leaves. The project looks

Zoning Board of Appeals Minutes

like by having the step there actually makes that deck much more usable because otherwise, the only way to get to the back of the property would be by going down a long set of steps and walking up a hill. Village Planner Caren LoBrutto commented that this property falls within 500 feet of a farm operation in an agricultural district, triggering General Law 239m requiring a referral to the County's Planning Department. After discussion amongst the Board about whether the proper referral was made to the County Planning Department or if there are exemptions that might apply to this application. Ms. LoBrutto texted the ZBA Secretary, Vivian Nikolatos, who was out sick to ask if the application had been circulated to County Planning. After discussion, the Board concluded that they would move on to the next applicant while waiting for a response from Ms. Nikolatos.

Project Name: 28 Walnut Street Major Subdivision

Owners: Brian & Jean Senno

Location: 28 Walnut Street

Parcel ID/Zoning District: 6957-20-971145/R-3

Area Variances Applied For

Bulk Regulation for Minimum Lot Road Frontage 100 feet required (Lot 2), a minimum lot frontage of 30 feet is proposed, and an area variance of 70 feet is requested.

Schedule B/Urban Regulations appealing the Mandatory Garden Wall/Fence (Lots 1 and 2.)

Schedule B/Urban Regulations appealing Type III Infill House 50% Minimum Frontage Buildout for existing house on Lot 1. Requiring the existing home to be a minimum of 51 feet in width. The existing house is 34.68 feet in width equaling a 34% minimum frontage buildout; therefore, the applicant is requesting an area variance of 16% for minimum frontage buildout.

Applicant/Owner Brian Senno said that he is seeking to subdivide his property into two lots. The current Lot 1 is a two-family house in which the Applicant and his family of four currently resides. On Lot 2, the Applicant is proposing to build a single-family residence. The Applicant came before the ZBA in February of 2023 with a request for an area variance to allow for 30 feet of road frontage for the 2nd lot. The ZBA granted that area variance during that meeting but later rescinded after the Board became aware that the zoning code they were following for that plan was incorrect. The Applicant was then notified that they had to follow the Village Code for the Urban Regulations. As a result the site plan had to change in order to comply with Urban Regs. The changes include: the driveway for the current house on Lot 1 was moved behind the house and because the side yard setbacks per Urban Regs are different than the bulk schedule, the proposed new house was moved up 12 feet. As a result, the new house on Lot 2 is completely out of the wetlands eliminating the need for the stamp of approval for DEC permits (see attached). The Planning Board declared a Negative Declaration for SEQR. The Applicant received a notification from the Dutchess County DOH that approval is not required because the water and sewer connections are considered to be "simple service connections" (see attached). Two of the Area Variances the applicant is requesting today are for a front yard fence for both lots. Mr. Senno said he is willing to add the fence to the site plan if the ZBA doesn't approve this variance and pointed out that no other house on the street have front yard fences. Mr. Senno explained that they currently live in the existing two-family house where his in-laws live upstairs and the he and his family live downstairs

Zoning Board of Appeals Minutes

and the apartment is too small for his family of four. Additionally, his in-laws would like to maintain residence in Pawling and his father would move into the second apartment.

Mr. Vorolieff asked Mr. Senno to confirm if part of his plan is to demolish the two-car garage and if the new home that he is proposing would have a two-car garage underneath the new structure. Mr. Senno said, that's correct.

Mr. Vorolieff said it looks to me that the new structure is approximately double the footprint of the current garage. Mr. Senno replied that the garage is approximately 600 square feet, and the footprint of the proposed house is about 1,100 square feet.

Mr. Vorolieff asked Mr. Senno what it was that led him to the solution of a two-lot/two-deed subdivision as opposed to some other possible solutions. Mr. Senno said they started this process 16 months ago with a Sketch Plan to the Planning Board. He explained our first plan was to put an addition on the existing garage and have a second dwelling on the current lot. However, we were discouraged by the Planning Board's findings that going that route would result in needing a number of variances including a Use Variance, which is typically more difficult to obtain. We came up with this subdivision plan and at the time, originally going by the Bulk Schedule where only one variance was needed because our property is large. Mr. Senno pointed out that he provided examples of comparable properties on the three surrounding streets and stated that his lot being subdivided into two lots is still larger than the majority of the other lots on all three streets. He said this has already gone through the SEQR process where it was determined that the project had no adverse impact on the surrounding neighborhood.

To clarify, Mr. Vorolieff said your initial proposal was to keep the property as one lot, but the Planning Board had turned you in a different direction, thinking at that point that there might be too many variances and that would be too big of a hurdle for you. Mr. Senno replied the opinions that they had led me to think that, but they didn't force us one way or another, saying that we could or couldn't do anything. We just came up with the subdivision plan as a less intrusive and obscure plan, more streamlined if you will.

Member DiVitto said your original plan was to keep one deed for the two lots. Mr. Senno replied it's currently one lot and explained at the sketch conference with the Planning Board that this wasn't an engineered set of plans like you have now. The original plan was, yes, to put an addition above the garage that's there now and then there would be two dwellings on the one lot, one deed. Mr. DiVitto reiterated even with the new home you were still thinking of the single deed with two dwellings on the lot. Mr. Vorolieff commented except at the time, you were considering building onto the existing garage, and now the current plan is actually moving the structure a bit and demolishing the garage. Mr. Senno said the reason we would be moving the structure is to comply with Village Zoning Codes. Mr. Vorolieff said right and it would be further from the wetlands. Mr. Senno replied the Urban Regulations pulled the house up away from the wetlands.

Ms. LoBrutto added they have a two-family house in a single-family zoned district so to add an additional house on that lot is what he's saying would've been a Use Variance which is a hard thing to come by, not to mention there were square footage limits based on accessory building structures and a bunch of different issues that were objected too or otherwise difficult for the Planning Board and so that's how they came to the subdivision. Mr. Senno said the Planning Board also did bring up because

Zoning Board of Appeals Minutes

they were worried about precedent thinking that everyone in R-3 zones would start putting flag lots up everywhere. At that time we were given an assignment, and that was to find out how many R-3 zoned properties would be capable of proposing a project like this. He presented the Board with exhibit two in the packet and explained that of the 181 properties that are zoned R-3 that could potentially do a flag lot, 15 could possibly meet the criteria. We gave parcel access maps of all of the 15 properties of the 181. Wetlands, steep terrain, flood plains, and the current location of house on those lots prove to make it very difficult, if not, impossible for anyone else in the Village to do a flag lot so as far as precedent, our lot is very unique to this project.

Member Zarecki motioned to open the public hearing for public comment. Member DiVitto seconded the motion. The motion passed with all present members in favor.

No Public Comment

Chairman Vorolieff motioned to close the public hearing on the Senno Application. Member DiVitto seconded the motion. The motion passed with all present members in favor.

Chairman Vorolieff said I was looking at scores of lots in the Village for property line designations and how things are marked and the proposal for your project has a very odd cut in the property to accommodate these needs. From what I'm seeing here, I don't believe any other applicant has come before us to change variances so that they could divide a lot into two and make two deeds. One of the concerns I have and, obviously, there is precedent concerns that you brought up, is that anybody who is able to do this would possibly be motivated to also ask to divide a lot. Right now your solution here would solve a problem that would possibly be something that you would need for maybe the next 50 years. Statistically in this country, most people live in their home for 8 to 13 years. Whatever changes that are made to your property/deeds are likely going to stay with that property for more than 100 years so it's a very major decision. It is a big precedent; those things concern me. We're often appealed to by our fellow Villagers or our neighbors like you, I mean we all live here, about things that would make it easier for them to live in this Village and we appreciate that kind of loyalty. We appreciate families staying here but just two doors down from you at 22 Walnut Street, about 4 years ago, we had an applicant who had come to us, they had lived in Pawling for years, they loved it here, they needed three variances, they just needed more space they were going to be too close to the road, too close to the side, they wanted to stay here and I think they wanted family to live here and we granted them the variances and a year later after the changes were made they sold the home and moved out of Pawling. So one of the things that the Board is vulnerable too is that people say they want something to be done for a solution but the solution is temporary or their lives change perhaps beyond their control. One of my concerns about dividing the lot is that one lot can be sold off as a separate property and if other people in the Village are motivated to start dividing up their lots and selling a piece of property and making a whole bunch of money back then it's a major change to the neighborhood for somebody's gain and I feel a bit uncomfortable with that.

Member Zarecki said I personally understand your concerns, Nicholas, and I think they're very relevant and your projection of the community and what is exactly our purview is a little grey but in this circumstance, I think I mentioned back when we had our last meeting that the project is unique and it's a flag lot and there are some opportunities that in the future, as Nicholas mentioned, things will change but even if approvals are granted it's still a difficult project to get everything working. I don't get the

Zoning Board of Appeals Minutes

feeling that he's trying to flip the property as an investment and it's tucked away in the backside of the community. It doesn't seem to me that it's going to affect the character of the neighborhood adversely. I personally want people who come to the community to have an opportunity to better themselves, and their families and if at some point one of the lots have to sell so they can pay the bills to maintain the one other property then so be it. If he wants to take the challenge of developing that lot out, I don't have the feeling that the lot is going to be developed poorly. He's making every effort to make all of the considerations and follow the code, he's vested in the Village, this isn't someone who just moved here and bought the property. I would like to see some kind of resolution where we can all give the applicant the ability to continue forward.

Mr. Vorolieff pointed out that the proximity of the new home on the proposed new lot to the current home on the current lot is 8 or 9 feet. This is a very unusual lot cut and I looked at scores and scores of other properties all over the Village. It appears to me that this is the first time something like this has come before the Board and I know, Mr. Senno, you did a lot of research on frontages. One of the things that the Board tends to do when they're making decisions is look at how properties are going to fit into the character of the neighborhood nearby. Although every property is unique; they don't veer too far off. I want to try to find a way to solve your problem. I think what you're trying to do with having family nearby is wonderful. A lot of people don't have those attachments to family. Obviously, you're going to be living very close to them and I think that one of the reasons that I'm uncomfortable with this is, should these come under the ownership of two different people, you're going to have two very close neighbors and I sure would hope they get along. We have problems once in a while with family, I think that it's probably a much more agreeable situation if one family is on the lot and one name owns the lot. Due to Urban Regs, part of your proposal also involves the requirements of putting in a driveway that takes away the green space. There's a parking area behind the building, taking out some of the green space and lawn as well as the driveway which is putting in another curb cut. There's no other home on that street or couple of streets that I can see that has curb cut like that. Most of what you cited was the oddball properties in the area that also don't meet code but there are a whole lot that do and what the ZBA tends to try to do with our decisions is to not make more oddball situations with the decisions we make and to have them fit in more. In fact, it's part of our charter to try to make our decision such that we have to comply more with what the neighborhood is looking like. I personally would like to help find a way to solve your problem but not do it by dividing the deed. I know that this will push this into perhaps a Use Variance and those tend to be harder to come by but I think in this instance that the Board would consider finding ways to still grant this even with the Use Variances because of the lower impact without the driveway, there would be more preservation of green space. I don't know how the rest of the Board feels about the fence issues, nobody else on that street has a fence and that really isn't a concern for me. I think that the Board may not feel like the fence is a big issue. As far as the Urban Regs being required to make the home wider, again that's going to take up some of the green space. Right now the way your house sits on that lot is very nice. The way that garage sits on that lot is very nice, there's a sense of space and it matches the look and feel of a lot of the other properties on that street. I think that having another curb cut and a driveway is going to cut back a lot on that green space.

Member Zarecki said I agree with that. I think that part of what I said is an uphill battle is sneaking that driveway in between utility pole and the drainage and the parking lot. Yeah, if we were able to explore getting a use variance to keep it all one lot then you're going to not have the expense of creating the driveway and all of those obstacles.

Zoning Board of Appeals Minutes

Mr. Vorolieff pointed out that there would be savings in not having to add utility as well. Here's what I'm thinking, and I'm welcoming any input from Ms. LoBrutto as well. I'd like to see the least geographical disruption to your property, which I think sits very nicely right now with the structures on it. What I would hope is we could accommodate your needs in some way with a different set of variances by finding a way to have you have a 3-family combination of structures on the property but not have to disrupt with another driveway, not have to disrupt with a parking area that would also allow you not to have to run new water, sewer and electric line. Although it may be more of an effort paperwork wise and you would likely have to go before the Planning Board again. I think that this, in the end, is far less disruptive to the look of the neighborhood, and it would also solve your problem and your need to have family close by especially since your initial thought was to try to find a way to do this. I would think that this is probably still agreeable if we can still find a solution for you that doesn't involve having two deeds. Mr. Senno replied, to be honest with you, this has been almost a two-year process, so if you don't mind, I would like the rest of the Board members just to vote on the plan as it is now because we have put a lot of time and a lot of money into this at this point and what you're suggesting is going to take a lot more time and a lot more money, and the Planning Board voted on this. The Planning Board is in favor of this plan. They officially recommended that these variances be granted for us, so I would like the opportunity for the Board to vote on the plan as is and then explore options later if that's what the Board sees fit.

Mr. Vorolieff replied at this point, I'm not comfortable bringing this to a vote because, at this point, I feel that there's another solution here, and although it may take more effort on your part for the paperwork, I think that it will be far less disruptive and it will fit more with the neighborhood. I would like to see the possibility of another proposal brought before the Board, although the Planning Board recommended it, the Planning Board isn't the Zoning Board, and they have different concerns than we do, and they look at things differently than we do.

Member Zarecki asked if it's the applicant's right for the Board to vote on this proposal.

Ms. LoBrutto added that it's up to the Applicant if he wants to submit an application for Use Variance. What he's brought today is an application for an Area Variance, and he can't exchange it for the other at this point, so I think you are obligated to vote on the Area Variances, and if he chooses to bring a Use Variance application then you can consider that and vote on that, but I do think that you have to close the one application first. You can't have two open applications, and you can't exchange one application for another.

Member DiVitto asked if the Board could have the opportunity to speak amongst the Board in an Executive Session.

Member DiVitto motioned to go into executive session. The motion was seconded by Member Zarecki. The Motion passed with all present members in favor.

Before going into Executive Session, Mayor Lauri Taylor informed the Board that a referral wasn't made to County on the 95 East Main Street, Brian Durkin project. Village Clerk Jennifer Osborn noted that per DutchessNY.gov and there is an exemption that can be done for Special Permits, Use Variances and Area Variances for residential uses where referral to County Planning can be exempted. Ms. LoBrutto said the Village has to have an exemption agreement on file with the County. After discussion

Zoning Board of Appeals Minutes

amongst the Board, the Board concluded it would be prudent for Mr. Durkin (95 East Main Street) to return before the Zoning Board for the December 27th ZBA meeting after the secretary has the opportunity to research the possible exemption or the referral agreement or the referral has been circulated to DEC properly.

The Board then went into Executive Session.

The executive session began at 7:50 pm and ended at 8:14 pm.

Member Zarecki motioned to close the executive session. The motion was seconded by Member Hardeman. The Motion passed with all present members in favor.

Member DiVitto motioned to open regular session. Chairman Vorolieff seconded the motion. The motion passed with all present members in favor.

Chairman Vorolieff said we decided that the best thing moving forward here is for us to take a bit more time to evaluate the situation that you have; the solutions you're proposing; and possible solutions that may be available. Village consultants Joe Eriole and Caren LoBrutto will be looking further into some of the requirements, restrictions and needs for Use Variances which tend to be more challenging in some ways and get back to the Board about what the possibilities are with that. I know this has taken a bit longer than you hoped. This is a complicated project and there's a lot going on. We want to be sure with how we move forward with this and if we can solve this for you what the best way might be. If we were to take a vote right now it might not be in your favor because we want to have the information about the Use Variance possibilities. We are going to hold off on this and get more information.

Mr. Senno replied, with all due respect, it has been 16 months and I feel like we've ironed out a lot of the details on the project as it is proposed. This is the plan that we've all agreed on. The reason we kept on pursuing this plan was because in February, the ZBA voted in favor of the road frontage variance. We've spent \$10,000 more since then to continue this plan. Now the Board doesn't feel the same, I'm curious what changed between February and now when the plan really hasn't changed that much since then.

Mr. Vorolieff replied there are more variances needed now. There are additional considerations that this Board has made walking the property and talking about it both here and in Executive Session. It is something we want to be sure about, we want to see how we can do this with least disruption.

Member Zarecki commented that the Board is not saying this plan is off the table. Mr. Vorolieff and Mr. DiVitto both concurred.

Mr. Vorolieff said we have another meeting scheduled on Wednesday, December 27th. I'm sorry, I know this has cost you money and I'm not unaware of your efforts your time and the cost this has had for you. I'm not insensitive to that at all. I'm trying to find the best way to move forward for you and the Village as best as the Board can.

Member Hardeman commented that she agrees that we need to take the time. She said I didn't come here tonight necessarily thinking that but after the discussion in Executive Session, I do think that.

Zoning Board of Appeals Minutes

Mr. Senno asked if another plan is going to be presented at the next meeting. He said we've been the one creating the plan and submitting it up to this point.

Chairman Vorolieff replied Ms. LoBrutto and our legal counsel Joe Eriole are going to discuss other options that would be available in keeping it a one-deeded lot and going with Use Variance...

Ms. LoBrutto clarified that the intent is to not come back with a deliverable. The goal that the attorney set forth is that he would like to further vet the Area Variance criteria against the proposed project and he suggested that he and I confer on how a Use Variance criteria could be applied to a different project; however, it's clear that the Applicant hasn't brought a Use Variance application before the Board; so I think we are generally going to take a look at what the Use Variance criteria are and see how applicable that would be to a project in a different scenario.

Mr. Vorolieff said what we're doing is consulting with our experts to see what possibilities there are and we need some time to look into that further. I guess based upon what our experts here come up with in their conclusions, we'll talk to you about what the next step would be moving forward from your end.

Mr. Senno asked if the consultant's time will be billed to his escrow account with the ZBA. Ms. LoBrutto replied, yes. Mr. Senno replied so I'm going to be charged for the consultants to discuss the Use Variances. Ms. LoBrutto replied, yes. Chairman Vorolieff commented that it's part of the process and I'm sorry, Mr. Senno, I know you've got a lot into this already and I am not unaware of that.

Approval of Minutes

Member DiVitto made a motion to approve minutes from Wednesday, June 21th, 2023 ZBA meeting. The motion was seconded by Member Hardeman. The Motion passed with all present members in favor.


Other Business

Member Hardeman made a motion to approve the ZBA meeting schedule for 2024. The motion was seconded by Member Tom Zarecki. The Motion passed with all present members in favor.

Adjournment

Chairman Vorolieff made a motion to adjourn the meeting to the Wednesday, December 27th, 2023 ZBA meeting. The motion was seconded by Member Zarecki. The motion passed with all present members in favor.

Submitted by:



Vivian Nikolatos, Secretary

All submission applications, documents, and consultant reports can be found on file at the Village Hall.



**New York State
Parks, Recreation and
Historic Preservation**

KATHY HOCHUL
Governor

ERIK KULLESEID
Commissioner

August 15, 2023

Jenai Rohlf
16 Duboise Lane
New Paltz, NY 12561

Re: DEC
28 Walnut Street Minor Subdivision and One New Single Family Home
28 Walnut St, Pawling, NY 12564
23PR06621

Dear Jenai Rohlf:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the project in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the OPRHP and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and its implementing regulations (6 NYCRR Part 617).

Based upon this review, it is the opinion of OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

R. Daniel Mackay

Deputy Commissioner for Historic Preservation
Division for Historic Preservation

rev: T. O'Connell

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3
21 South Putt Corners Road, New Paltz, NY 12561-1620
P: (845) 256-3054 | F: (845) 255-4659
www.dec.ny.gov



Department of
Environmental
Conservation

October 25, 2023

Jenai Rohlf, Environmental Consultant
Via email only

**RE: Senno Property Subdivision – 28 Walnut Street *updated*
Permit Jurisdiction Determination – No Permit Required
Village of Pawling, Dutchess County
DEC ID#: 3-1340-00296/00001**

Dear Jenai Rohlf:

The Department of Environmental Conservation (DEC or Department) has reviewed the jurisdictional determination request for Senno Property Subdivision, dated August 20, 2023. I apologize for the delay in response. The proposed project includes the subdivision of the existing lot into two lots and construction of a new single-family residence. The existing residence is to remain, with the existing garage to be demolished for the installation of the new residence and the associated water, sewer, and electrical connections. There are approximately 0.30 acres of ground disturbance proposed, including grading.

Based upon our review of your inquiry, we offer the following comments:

PROTECTION OF WATERS

The following stream is located within or near the site you indicated: Swamp River, DEC Water Index ID no. Conn 15-4, Class and Standard C(T), and considered "protected." A Protection of Waters permit is required to physically disturb the bed or banks (up to 50 feet from stream) of any streams identified above as "protected." A permit is not required to disturb the bed or banks of "non-protected" streams. According to the provided information, there are no proposed disturbances to either the bed or banks of this waterbody, therefore, an Article 15 Protection of Waters Permit is not required.

If a permit is not required, please note, however, you are still responsible for ensuring that work shall not pollute any stream or waterbody. Care shall be taken to stabilize any disturbed areas promptly after construction, and all necessary precautions shall be taken to prevent contamination of the stream or waterbody by silt, sediment, fuels, solvents, lubricants, or any other pollutant associated with the project.



Department of
Environmental
Conservation

-OVER PLEASE -

FRESHWATER WETLANDS

The identified project site is near or in Freshwater Wetland DP-22, Class 1. According to the provided site plan, there are no disturbances proposed within the wetland proper of the aforementioned wetland or its associated regulated 100-foot adjacent area. Therefore, an Article 24 Freshwater Wetlands Permit is not required.

STATE-LISTED SPECIES

DEC has reviewed the State's Natural Heritage records. We have determined that the site is located within or near known occurrences of the following state-listed species: Bog turtle, NYS-listed endangered.

The submitted materials included a Bog Turtle Education and Encounter Plan. Please note the attached Bog Turtle Education and Encounter Plan has been updated. With the implementation of this education and encounter plan, the Department does not anticipate direct adverse impacts to this species, and an Article 11 Incidental Take Permit is not required. If project plans change significantly, please contact the Department for further review.

The absence of data does not necessarily mean that rare or other state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

CULTURAL RESOURCES

A "No Impact" Letter from the New York State Office of Parks, Recreation and Historic Preservation was included with the submitted materials.

FEMA FLOODPLAINS/FLOODWAYS

The project site indicated is located within a Federal Emergency Management Agency (FEMA) Floodplain/Floodway. The project sponsor should contact the local municipality to determine if any additional jurisdictions are applicable to the proposal.

OTHER

Please note that this letter only addresses the requirements for the following permits from the Department: Protection of Waters, State-listed Species, and Freshwater Wetlands. Other permits from this Department or other agencies may be required for projects conducted on this property now or in the future. Also, regulations applicable to the location subject to this determination occasionally are revised and you should, therefore, verify the need for permits if your project is delayed or postponed. This determination regarding the need for permits will remain effective for a maximum of one year unless you are otherwise notified. Applications may be downloaded from our website at www.dec.ny.gov under "Programs" then "Division of Environmental Permits."

Date: October 25, 2023

Please contact this office if you have questions regarding the above information. Thank you.

Sincerely,

Katherine Coffin

Katherine Coffin
Division of Environmental Permits
Region 3, Telephone No. (845) 256-3158

Enc: Bog Turtle Education and Encounter Plan *updated*

CC: Sarah Pawliczak, DEC BEH
Wildlife, R3 DEC
Village of Pawling

NOTE: Regarding erosion/sedimentation control requirements:

Stormwater discharges require a State Pollutant Discharge Elimination System (SPDES) Stormwater permit from this Department if they either:

- occur at industrial facilities and contain either toxic contaminants or priority pollutants OR
- result from construction projects involving the disturbance of 5000 square feet or more of land within the NYC Department of Environmental Protection East of Hudson Watershed or for proposed disturbance of 1 acre or more of land outside the NYC DEP Watershed

Your project may be covered by one of two Statewide General Permits or may require an individual permit. For information on stormwater and the general permits, see the DEC website at <http://www.dec.ny.gov/chemical/8468.html>.

For construction permits, if this site is within an MS4 area (Municipal Separate Storm Sewer System), the stormwater plan must be reviewed and accepted by the municipality and the MS-4 Acceptance Form must be submitted to the Department. If the site is not within an MS4 area and other DEC permits are required, please contact the regional Division of Environmental Permits.

October 2023-basic

Bog Turtle Education and Encounter plan – NYS DEC issued

This project site is located in an area of known Bog turtle habitat. Bog turtles use primarily wetland habitats but can make periodic movements over land to new habitats during dispersal events. They are particularly active on the landscape between April 1st to September 30th. This document is intended to minimize impacts to Bog and other turtles that may be encountered during otherwise lawful activities and be used in accordance with the Department's Permits and jurisdictional response letters for the above referenced project, including all other species take avoidance measures proposed. This information should be provided to construction contractors and occupants at the proposed location.

The bog turtle is listed as "Endangered" on the New York State Endangered Species List.

- As a listed species, the bog turtle is protected under the New York State Environmental Conservation Law.
- As provided by the law, it is illegal for any person to approach, touch, move, threaten, harass, disturb, injure, or kill a bog turtle. It is also illegal to take import, transport, possess, or sell any bog turtle, its skin, or other parts, except under a permit or license from the New York State Department of Environmental Conservation (DEC).
- A violation of the Environmental Conservation Law is punishable by both criminal and civil penalties.
- The bog turtle, or other turtle species, may be encountered along roads, near homes and yards, in construction sites, and in undeveloped areas. If encountered, move away and do not attempt to injure or collect the turtle.
- If any turtle species is seen in the work area, stop all work immediately.
- Contact the contractor in charge and delay work in the area until the turtle has moved safely from the area. Allow the turtle to continue on its way if it is safe to do so.
- If the turtle does not move out of harm's way on its own, and unless a qualified monitor licensed in New York State to handle and relocate the species has been retained who will promptly arrange for the turtle to be moved, please contact the NYS Department of Environmental Conservation Region 3 Bureau of Wildlife at 845-256-3098 for information regarding next steps and moving the species in accordance with New York State Law.
- If the turtle is found in the roadway (or in immediate danger), it can be moved out of harm's way to the side of the road in the direction it is heading (ECL 11-0919). Do not move the turtle large distances or take possession of the turtle.
- Please report any encounters within 24 hours at 845-256-3098 or Wildlife.R3@dec.ny.gov. Please provide the location, the project name, and explanation of the encounter.



Photo Credit L. Masi

ALL NATIVE TURTLES ARE PROTECTED.

LEAVE TURTLES IN THE WILD.

**HELP PREVENT ILLEGAL COLLECTION OF NATIVE TURTLES BY
PROTECTING LOCATION INFORMATION**

*Do not share location information or post locations of protected
turtles online.*

Accompanying handouts:

- Turtles of New York PDF.
https://www.dec.ny.gov/docs/administration_pdf/turtles2.pdf
- NYS DEC Bog Turtle Fact Sheet. 2021
<https://www.dec.ny.gov/animals/7164.html>

Species description

The bog turtle is New York's smallest turtle, reaching a maximum length of 4.5 inches. It is one of seventeen species of turtles found in New York State, including marine turtles. A bright yellow or orange blotch on each side of its head and neck are a distinctive feature of this species. The body color is dark with an orange-red wash on the inside of the legs of some individuals. The carapace (upper shell) is domed and somewhat rectangular, often with prominent rings on the shell plates (scutes). In some older individuals, or those that burrow frequently in coarse substrates, the shell may become quite smooth and polished. Although generally black, the carapace is sometimes highlighted by a chestnut sunburst pattern in each scute. The plastron (lower shell) is hingeless, with a pattern of cream and black blotches.

Other more common species that may be encountered. – All turtles are protected from collection. Leave turtles in the wild unless injured (see below).

Box Turtle (Special Concern) *Shell length: 4.5 – 6 inches*



New York's most terrestrial turtle, the box turtle spends most of its time wandering open fields and forests, only retreating to shallow pools or

wetlands to soak during very hot and dry periods. It can completely close its shell, distinguishing it from other turtle species. The box turtle's high-domed carapace is brightly highlighted; the plastron is hinged. Males and females can be told apart by eye color—usually brown for females, red for males. Box turtles eat a variety of fleshy fruits such as strawberries and raspberries, mushrooms and other soft vegetation, worms, slugs and snails. They will also scavenge dead birds and mammals.

Wood Turtle (Special Concern) *Shell length: 6 – 8 inches*



The wood turtle gets its name from its preferred wooded habitat, as well as from the color of its carapace—the prominent annuli

give it the sculpted appearance of weathered tree rings. Wood turtles are usually found in or along clean, fast-flowing trout streams, foraging during the summer in the woodlands bordering the streams. Like other turtles, females move into open areas for nesting. Wood turtles eat berries, mushrooms, small fish, slugs, worms and tadpoles. They have also been known to feed on carrion.



Snapping Turtle *Shell length: 10 – 16 inches*

Easily recognized by its large head, long saw-toothed tail, stocky legs with large claws, and the jagged, saw-toothed rear edge on its dark shell, the snapping turtle is our largest freshwater turtle. Known for its defensive nature, this turtle will attack on land, but prefers to flee in water. Highly aquatic, this species is found in freshwater and brackish marshes, ponds, lakes, rivers and streams. Snappers often scavenge, but they also take live food ranging in size from small invertebrates to young waterfowl or small fish.

Painted Turtle *Shell length: 5 – 7 inches*



Our most common species, the painted turtle is often seen basking in large numbers on logs and stumps in marshes, ponds and lakes, disappearing into the water quickly when disturbed. Bright stripes

on the neck and spots on the head can be seen when the turtle is basking. The dark carapace is bordered with red. The plastron is plain yellow in the Eastern painted turtle, and has a dark central blotch in the Midland painted turtle. Males have long claws on their front feet; females have longer shells. Painted turtles eat a variety of invertebrates, tadpoles and vegetation, but will also scavenge carrion.

If you encounter an injured turtle, please contact a local NYS DEC licensed Wildlife Rehabilitator by scanning the QR code, or calling the Regional Wildlife office at 845-256-3098



SCAN ME

https://www.dec.ny.gov/cfm/xtapps/sls_searches/index.cfm?p=live_rehab

PB Secretary

From: LoBrutto, Caren <clobrutto@LaBellaPC.com>
Sent: Thursday, November 30, 2023 3:56 PM
To: Lauri Taylor; PB Secretary; Jennifer Osborn; Nicholas Vorolieff (nicholaspawlingbiz@gmail.com)
Subject: Village of Pawling - Exempted County Referrals
Attachments: Contract 21-0019-12-21-PL CA File 15738 .pdf

All,

The exemption with Dutchess County is in effect until 1/1/26, see attached. The agreement permits an exemption of area variances for residential uses.

3. **REFERRALS TO BE ELIMINATED:** The following actions shall be eliminated from the referral and review process:

- a. administrative amendments (zoning amendments regarding fees, procedures, penalties, etc.);
- b. special use permits, use variances and area variances for residential uses; and
- c. renewals/extensions of site plans or special permits that have no changes from previous approvals.

So, unfortunately, the area variance could have been voted on last night.

Thanks,
Caren

Caren LoBrutto

LaBella Associates | Senior Planner | Team Leader

845-486-1458 direct

From: Tuttle, Dylan <dtuttle@dutchessny.gov>
Sent: Thursday, November 30, 2023 2:19 PM
To: LoBrutto, Caren <clobrutto@LaBellaPC.com>
Subject: [Ext] Re: Village of Pawling - Exempted Referrals

Hi Caren,

The agreement is attached - let me know if you need anything else. All the best,

Dylan

From: LoBrutto, Caren <clobrutto@LaBellaPC.com>
Sent: Thursday, November 30, 2023 1:22 PM
To: Tuttle, Dylan <dtuttle@dutchessny.gov>
Cc: PB Secretary <pbsecy@villageofpawling.org>
Subject: Village of Pawling - Exempted Referrals

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Dylan,

I hope you are having a nice holiday season.

I am assisting the Village of Pawling in planning matters, and we are wondering if they have a current exemption agreement with Dutchess County. Please let me know who I should contact about this.

Thanks,
Caren

Caren LoBrutto
LaBella Associates | Senior Planner | Team Leader



845-486-1458 direct
21 Fox Street
Poughkeepsie, NY 12601
labellapc.com

CAUTION: This email originated from outside the LaBella organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

AGREEMENT

THIS AGREEMENT, bearing the date set forth on the signature page, by and between the COUNTY OF DUTCHESS, a municipal corporation with offices at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as the "COUNTY") and VILLAGE OF PAWLING, a municipality within Dutchess County, whose address is 9 Memorial Avenue, Pawling, New York 12564, (hereinafter referred to as the "MUNICIPALITY").

WITNESSETH:

WHEREAS, New York State General Municipal Law Section 239 requires local municipalities to refer applications for certain planning and zoning actions to the Dutchess County Department of Planning & Development for review, and

WHEREAS, the New York General Municipal Law Section 239 further requires the County to assess all such applications as to whether the requested action would have a "county wide" or "inter-community" impact and comment on same, and

WHEREAS, the current referral process results in the processing of applications each year from towns, villages, and cities to the County, a portion of which have neither county-wide or inter-community impact, and

WHEREAS, New York State General Municipal Law authorizes the County to enter into agreements with local municipalities in order to determine which, if any, of the local municipal actions subject to referral may be deemed strictly matters of local determination, and therefore, not subject to the referral process, and

WHEREAS, pursuant to Resolution No. 2015246, the County Legislature authorized municipal corporation agreements for the elimination of the necessity of the County's review and comment on certain local actions pursuant to General Municipal Law Section 239, and

WHEREAS, it is hereby mutually agreed by and between the parties hereto as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be effective as of January 1, 2021 and shall terminate on December 31, 2021, unless otherwise terminated as set forth herein. The term of this Agreement shall be extended automatically on an annual basis, for a total not to exceed five (5) years from the original agreement date. If either party decides to terminate this

Agreement, either party shall send a written notice of termination to the other party at least thirty (30) days before the end of any term. This Agreement shall terminate upon thirty (30) days written notice by either party to the other.

2. PAYMENT: None.

3. REFERRALS TO BE ELIMINATED: The following actions shall be eliminated from the referral and review process:

- a. administrative amendments (zoning amendments regarding fees, procedures, penalties, etc.);
- b. special use permits, use variances and area variances for residential uses; and
- c. renewals/extensions of site plans or special permits that have no changes from previous approvals.

4. REFERRALS NOT TO BE ELIMINATED: The following actions shall not be eliminated from the referral and review process:

- a. comprehensive/master plans;
- b. zoning amendments (standards, uses, definitions, district regulations, etc.);
- c. re-zonings;
- d. other proposed local laws and/or other authorizations adopted pursuant to zoning (wetlands, historic preservation, affordable housing, architectural review, etc.);
- e. site plans (all); and
- f. special permits, use variances, and area variances for all non-residential uses.

5. NOTICES: Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

Commissioner of Planning & Development
Dutchess County Dept. of Planning & Development
85 Civic Center Plaza, Suite 107
Poughkeepsie, NY 12601

Village of Pawling
Attn: Mayor
9 Memorial Avenue
Pawling, NY 12564

6. COUNTERPARTS: SIGNATURES TRANSMITTED BY ELECTRONIC MEANS: This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. A facsimile or signature transmitted by electronic means applied hereto or to any other document shall have the same force and effect as a manually signed original. This provision contemplates giving legal force and effect to copies of signatures. This provision does not contemplate the use of "electronic signatures" as regulated by New York State Technology Law Article 3, "Electronic Signatures and Records Act."

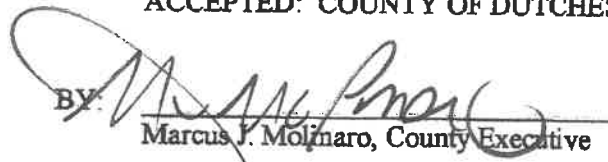
7. ENTIRE AGREEMENT: The term of this Agreement, including any attachments, represent the final intent of the parties. Any modifications, rescission or waiver of the terms of this Agreement must be in writing and executed and acknowledged by the parties with the same formalities accorded in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement made this 10th day of November, 2020.


APPROVED AS TO FORM:


County Attorney's Office


ACCEPTED: COUNTY OF DUTCHESS

BY: 
Marcus J. Molinaro, County Executive

APPROVED AS TO CONTENT:


Eoin Wrafter, Commissioner
Dept. of Planning & Development

VILLAGE OF PAWLING:

BY: 
Robert Liffland
Mayor



***Zoning Board of Appeals
9 Memorial Avenue
Pawling, NY 12564***

Tel: (845) 855-1128

Fax: (845) 855-9317

Email: bldgsecy@villageofpawling.org

Nicholas Vorolieff, Chairman

Fred DiVitto, Member

Ann Hardeman, Member

Tom Zarecki, Member

Wednesday, November 29th, 2023 @ 7:00 P.M.

AGENDA

- 1. Opening of Meeting, Roll Call and Pledge of Allegiance**
- 2. 95 East Main Street**
- 3. 28 Walnut Street**
- 4. Approval of Minutes**
- 5. Other Business**
- 6. Adjournment**