

# Village of Pawling Planning Board Minutes

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Date: October 11<sup>th</sup>, 2022

Present: Robert Pfister Jr., Chairman  
Mike Mersand, Member  
Lou Musella, Member

Absent: Adam Muroski, Member  
Peter Pennelle, Member

Also Present: Bob Lusardi (Village Council)  
Dave Daniels (Village Council)  
Kendra Self (Applicant Duane Lake Academy)  
Clayton Livingston (527 Route 22 Property Manager/DLA-Applicant Representative)  
Diana Tomassetti (Applicant 146 East Main Street)  
Mr. & Mrs. Tomassetti (Applicant/Owner 146 East Main Street)  
Ben Gailey (146 East Main Street Attorney)  
Curt Johnson (Architect 146 East Main Street)  
Lorraine & Roy Foster (Applicant Happy Life Animal Rescue)  
Joe Zarecki (Happy Life Animal Rescue Consultant)  
John & Donna Schutz (Owner 550 Route 22)

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On, **Tuesday, October 11<sup>th</sup>, 2022 at 7:00 PM**, the Planning Board met at the Village Hall. The Meeting was called to order by Robert Pfister, Chairman and began with roll call as indicated above and The Pledge of Allegiance.

## **Approval of Minutes**

*Member Musella made a motion to approve minutes of September 13<sup>th</sup>, 2022 Planning Board meeting. The motion was seconded by Member Mersand. All present members were in favor the motion passed.*

## **Sketch Conference**

**Lorraine & Roy Foster**

**550 Route 22/Grid#: 7057-17-229013/R1 Zoning District**

**Happy Life Animal Rescue**

**Site Plan Discussion: Change of Use from Animal Hospital to Animal Rescue**

Joe Zarecki, representing Applicants Lorraine and Roy Foster (Happy Life Animal Rescue) explained that the applicants are before the Board to discuss what steps need to be taken in order to change the of use of this the property located at 550 Route 22 from an animal hospital to an animal rescue facility. The property is currently owned by John and Donna Schutz (also present) who operated the facility as an Animal Hospital for approximately 20 years.

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Mr. Zarecki explained the property was originally granted a variance in 1961 which predated zoning. The use was then reaffirmed in 1999 when Mr. Schutz was granted variances to build an addition to the property. Happy Life Animal Rescue is a facility that will shelter and rehab animals (dogs and cats) and keep them until they are adopted by a foster family. Mr. Zarecki stated there is never more than 10 or 15 animals at a time; there will not be any interior changes to the structure; no increase in water usage; no increase to the sanitary disposal needs and no traffic increase. He explained that customers come in by appointment only to pick up the animal they adopted. Once a week Happy Life hosts adoption days at another location where the animal is brought for rescue and pick up. There will be no veterinarian operation on site or anything of that nature, a veterinarian comes in on an as needed basis. He further stated that we're here to see what needs to be done to continue the use hopefully as it is because we didn't/are not going to change anything and to gain an understanding of how we can move this to continue the use as an animal rescue before they purchase the property to make sure everything is above board and transparent.

Chairman Pfister commented that it's his understanding that Use Variances do not expire and are attached to the property no matter who buys the property. The Chair asked if the Applicant has other plans for their operation at that location besides the continued use. Mr. Zarecki replied just the continued use, no site plan improvements, there's enough parking. All of that was taken care of when the site plan and the variance were approved in 1999. The Chair asked if there will be anyone staying overnight at the facility. Mrs. Foster said no and commented three to four volunteers come in the morning, maybe we go out for lunch and then we're back again and there's usually three to four people rotating around. She said kids can come in for community service hours to help out and so forth. Mr. Apple commented that's only during the day.

There was discussion amongst the Board regarding the ambiguity of the Code Section 98-5 Definitions of (Veterinary Clinic) and whether or not the use as an animal rescue falls under the same use as an animal hospital. Member Musella disagrees with the Building Officials finding that the use as an animal rescue falls under the same use as animal hospital. The Chairman Pfister commented that NY State Building Code Occupancy Classifications 304.1 B which groups animal hospitals, kennels and pounds together. Village Attorney Dave Daniels commented that the boarding aspect of the operation may not have been an approved use and suggested that the safest thing to do is to have the Zoning Board of Appeals review the application for interpretation and possible Change of Use. Mr. Lusardi explained that when the application is submitted, it's a particular applicant that is seeking a use variance so the application that comes in is the application which receives the variance and there may have been a condition to this variance that we don't know about so we really do need to look at what the application was that received the variance. With a veterinary hospital, my understanding is dog boarding is incidental to the care and treatment of the dogs, not a separate business where you board dogs whether they're healthy or not for a fee and for no other reason other than to board them. There's a distinction between these two particular uses. The Chair asked Mr. Schutz if he boarded dogs at the animal hospital. Mr. Schutz replied, yes, we'd have them for weeks sometimes. During the time the animal hospital was there, there was only one complaint about barking and it was addressed and there hasn't been any complaints since. Mr. Foster commented that the animal rescue has been operating there for over two years now and has not received one complaint. Mr. Zarecki commented, with building inspector going having visited the site and not giving a violation, you would assume that boarding was ok. Discussion ensued regarding best options moving forward for the applicant.

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To confirm his understanding, Mr. Zarecki said if the interpretation is the same then the applicant does not need to come back to the Planning Board for a site plan approval. Chairman Pfister replied, right. Mr. Daniels said he will need to confirm that. Mr. Zarecki said to Mr. Daniels if you could check on it that would help us have a direction.

*Member Musella made a motion to refer the applicant to the ZBA for Interpretation and possible Use Variance (depending on the outcome of the Interpretation.) Member Mersand seconded the motion it passed with all present members in favor.*

## **Sketch Conference**

**Kendra Self (Duane Lake Academy/Applicant)**

**527 Route 22/Grid#: 7056-05-206939 (B2 Zoning District)**

Mr. Livingston, property manager of 527 Route 22, said Duane Lake Academy moving its operations to 527 Route 22. They are a tutoring school consisting of 10 or 12 students and 3 or 4 staff members.

Member Musella asked if it's similar to a regular public school. Mr. Livingston replied it's kind of like a bridge between home schooling and a traditional school. Home schooled students are brought to Duane Lake Academy for state mandated testing they need in order to advance from one grade level to next. Even though they primarily get home schooled, this is the certification phase for home schooling. The space they'll be using is half of the first floor with access from the back of the building with ground level walk in with two steps up and two steps down as well as an entrance and exit for their space. The only construction anticipated will be needed in order to comply with state mandates is to change the entry door to push out from the inside of the building and upgrade fire extinguishers with an estimated cost of construction of \$500.00 to change the door.

Village Planner Caren LoBrutto asked for clarification on the total square footage of the leased area. Mr. Livingston replied the square footage is somewhere in the neighborhood of about 1,600 or 1,700 sf and part of that is storage area so it's a little bit less that they're actually going to be using. Ms. LoBrutto asked if 517 Route 22 is right next door and if Pawling Central school district occupies the next adjoining building. Mr. Livingston said the buildings are attached. Ms. LoBrutto asked if the first floor and second floor are exactly the same square footage. Mr. Livingston replied the second floor is larger because the back of the building goes into the hillside so there's more square footage on the Route 22 level then there is on the Mizzentop level.

Ms. LoBrutto requested that the applicant submit a copy of the updated survey with the full submission packet for the next meeting and stated that the maximum number of students is going to be written into the special use conditions so the applicant will need to determine what that actual number will be and submit it writing. She asked for clarification on the number of days the facility will be utilized and the hours of operation. Mrs. Self replied the building will not be occupied on Monday, Wednesday and Friday except for maybe a staff member. Students will occupy the facility on Tuesdays and Thursdays and the hours of

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operation are 9:00 am to 3:00 pm and parents are always in the building with their kids so there won't be any drop off and pick up and commented that parents are part of the staff too.

Ms. LoBrutto requested that vehicular circulation be demonstrated on the site plan documentation and said we need to know how many parking spaces are on site. My count based on the aerial was something like 42 but we'll get the updated survey and that will help us understand that and suggested the applicant check to make sure it correctly allocates the spaces before it comes in because sometimes the surveyors don't actually delineate that. Ms. LoBrutto explained the Board needs to make sure there is enough parking for the school. The school is only required to have one parking space and the Board has the ability to waive that per Code. If we can determine if there's adequate parking then I don't think it should be a problem per say but we don't know that there are parents coming with 10 to 12 students only five currently but we should consider that as we move forward through the application.

Chairman Pfister said that's the only problem I see. If you do end up with 15 kids it's going to be 15 cars. If it's only one spot for every 20 students but you're saying that parents are always with the kids then you really need up to fifteen spaces. Mr. Livingston replied, yes, but if you come to the property you would see that anytime between the hours of 8 am to 6 pm any day of the week, seven days a week that there's at least twenty empty spots. Chairman Pfister said that's assuming that the tenants are staying exactly the same for the entire period you are there. Mr. Daniels pointed out that it's up to the Board to consider a parking waiver.

Mr. Livingston agreed to include the written response to Ms. LoBrutto comment letter; written rationale for the parking waiver as well as include the deed in the next Planning Board submission for the November 15<sup>th</sup> Planning Board meeting.

Ms. LoBrutto asked for more clarification regarding the soccer field. Mr. Livingston explained that the field is owned by the Mizzentop School except for a small portion of the field that falls under the ownership of the Golden Rose Holdings LLC (527 Route 22 property.) I've spoken to the Director at the Mizzentop School and she said that Duane Lake has used the soccer field for their recreation or going outside to stretch their legs for the last eight years and that they would continue to allow them to do that. To answer your question as to that portion of the field that's owned by Golden Rose Holdings and used by the Mizzentop School, we're still navigating that right now. Ms. Self commented that the Duane Lake Academy students usually use the field from 12:30 to 1:00 on Tuesdays and Thursdays.

Ms. LoBrutto classified this as a Type II Action under SEQR stating the applicant **would not** be required to complete a Short or Long Environmental Assessment Form.

The Planning Board set escrow at \$3,500 for the Special Use Permit.

**Main Corner Properties, LLC**  
**Diana Tomassetti (Owner/Applicant)**  
**146 East Main Street/Grid #: 7056-09-244711**

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Curt Johnson representing the applicant said an updated EAF was provided for the September Planning Board meeting on this project regarding the changes that were made to the siding. Based on Mr. Lusardi's

Recommendation at the last meeting, we provided a synopsis of the changes to the building as well as the site and submitted updated site plans (inaudible) that also go with that. Mr. Johnson presented the Board with the original approved renderings as well as set of the modified renderings. He said that the major changes are that we're removing one parking space and explained the NYSEG came in and put a new pole and electric panel on the site taking up one of the parking spaces so forty one parking spaces were approved, now there is forty. The overhangs on the front entry as well as on the north end of the building were extended approximately four feet beyond what was approved previously. There are window wells that have been placed in various (inaudible) around the site. There's a total of six that have been added to the building and it's shown on the updated site plan. On the landscaping plan, there will be vegetative screening on the north end of the property which would actually be on 140 East Main Street which will require an easement from the owner of 140. It's a related ownership so that won't be a problem. The sign that was previously approved has been modified. What's there now is brick peers on two sides and they would be filling that with a sign panel with whatever the name the restaurant is going to be and gooseneck lighting will be mounted on either side of that. The dumpster pad was poured slightly larger than what was approved but it really doesn't affect anything. The overall coverage on the site is actually the same as or less than what was approved because, originally, there was an entrance along the side walk into the outdoor dining area. There's some paving that has been removed. The belgian block apron at the entry is going to be removed and paved. The belgian block curbing along East Main Street is going to be removed and replaced with a concrete curb there as well.

Ms. LoBrutto asked what happened with the concrete pad for the refuse. Mr. Johnson replied the pad was poured slightly larger. Mr. Johnson commented that the generator installed on 140 East Main Street has been removed and taken off site. It's not part of this application. If at some point the applicant decides they want to install a generator, they will approach the Planning Board at that time.

Chairman Pfister asked if the site plan shows where the curbing is being removed and the concrete is being placed. Mr. Johnson said it shows on this plan what was previously approved. So it's just going to be removed and installed as it should have been.

Member Mersand asked what's planted along Route 22. Mr. Johnson said its forsythias and evergreens.

Mr. Johnson continued, there's going to be white trim on the windows. We've talked about the brick on the building and what was supposed to be stone veneer is now brick veneer but we are going over some of that and covering it with the trim material to bring in more of the white. We're going to be removing the brick knee wall on the second floor around the dining area and installing a railing system that will match the front entry and also the entry of the north part of the building which was installed to put the HVAC units on; that will also be screened by the railing system. We're going to be adding a double column system and putting a cap along the front (East Main side) on the ground floor outdoor dining area as originally approved. We're proposing to leave the brick half wall, on the first floor only, and put evergreen planting in front of that to

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soften it up a little bit, that will keep people contained in that outdoor dining area because it is fairly close to the road. They did add a window into the kitchen. The roof color and the roof material (synthetic terra cotta tile) will remain the same as shown.

Member Musella commented I'm certainly glad that they made some changes back to the original site plan but there are still quite a few major changes that haven't been made which are of concern.

Ms. LoBrutto asked about if there are any change to what was granted approval upon with the previously approved area variances. Mr. Johnson replied, no, it didn't change any of those setbacks. The coverage is actually the same or less than what was approved and the parking space sizes which I'm changing and it's only those parking spaces that are along Route 22.

Chairman Pfister asked if the over hangs were extending over any setbacks. Mr. Johnson replied we're fine with those because those are the two sides that were actually farther away from required setbacks. So we're not extending over the setbacks. Ms. LoBrutto asked what the square footage of the building is now. Chairman Pfister said it's the over hangs. Ms. LoBrutto clarified it's the overhangs that are extended, not the building. Mr. Johnson replied, yes, the front entry went out four feet and just the roof extended over the sidewalk just to allow for the HVAC units on the roof.

Mr. Daniels asked about the siding in terms of color and anything else. Mr. Johnson replied I think it's the wish of the owner to leave it the taupe color siding but it is up for discussion with the Board; that could be a white siding. Chairman Pfister said the original rendering looked grey or off-white. Mr. Johnson said it was a white on white kind of theme.

Mr. Lusardi asked if there will be any change to the roof. Mr. Johnson said there is no proposed change to the roof as it is installed properly right now.

Member Musella said I still have my four main concerns. Regarding the roof and the bottom knee wall, initially when we discussed the knee walls, you said that the bottom knee wall was going to stay for privacy. This time around you're saying it is a safety issue. Mr. Johnson replied it's both. Member Musella said I understand it could be a safety issue and you know safety is paramount with everyone so once again I'd like to see that bottom knee wall removed and go with the original site plan. Regarding the brick, I will argue, that the motion that was made for you folks to supply us with two additional quotes for bricks. It was just that. The spirit of the motion was to bring us back documented proof from two separate suppliers that you could not get the brick. The motion did not give you permission to go ahead and continue installing the brick. So the spirit of that motion was to have more discussion on the brick after the requested documentation was received. At this point I want you to comment on the fact that during that evening when we were discussing potential suppliers for the stone, O&G was one of them, and in my naivety looking at the world with rose colored glasses. I assumed that you would've, in good faith, actually contacted that stone supplier because based on our own research, there was no six, eight, ten month lead time to get stone. You could've gotten stone, any stone, and you can get stone today. Lastly, a major thing is the brick sign. More brick that wasn't



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approved on the original site plan that I'm against. Those are four things that have got to be changed in my opinion.

Chairman Pfister said I reached out to O&G and they had a certain amount of full bed stone in stock. It wasn't enough to cover the whole building but it was enough to get started. There was also an alternate solution, a thinner stone that could've been used in some manner just to eliminate some of the brick. It didn't seem like

Any consideration was really taken. Mr. Gailey asked the Chair when he spoke with O&G. Chairman Pfister replied right around the time at one of the meetings we had about using brick over stone. Mr. Gailey clarified, "back at that time." Mr. Pfister replied, yes, I actually brought a quote in from O&G showing the thin brick. Mr. Tomassetti commented everything that's done is done and nothing was done intentionally. It was a careless mistake. It's a thing of the past, we discussed the problem. What kind of solution can we have to correct this without getting a jackhammer and chopping up the brick? It's almost impossible to chop up the brick without affecting the integrity of the building. *(Inaudible)* to make it the best we can to my knowledge because nobody will get the benefit of this building unfinished. If this building was finished, the town would be collecting tax, people would be employed, etc. Let's make the best, we need your help now. Whatever happened, nobody did anything intentionally to go over anyone's head or disrespect anybody. If this was brought to my attention at that time, I would've have stopped him but it's too late now. The building doesn't look bad with compromise and I need your help with the best we could do. Let's finish this. We know we made a mistake and I apologize. I proved overtime the way I operate. I'm an honest person, I do everything with my strength the best I can. I want to do this right and I'm willing to obey all of you whatever you want me to do but don't make me go with the jackhammer to chop the brick. Member Musella said you're a builder; your end of business you know exactly what's got to be done and you put up a good quality building, no doubt about it. However, this is 180 degrees different than what was approved. There's a process here. Mr. Tomassetti said this building is a matter of opinion. I understand we didn't follow the drawings the way it was approved but the majority of the people like it, they say it's a nice building. It's a matter opinion but we're willing to compromise and make it better. Member Musella said you see how this goes. There are 8,000 residents in the Town and the Village of Pawling. Each one of them has an opinion about this building. It's an objective opinion. Mr. Tomassetti said you have the authority and the power and I respect you and said what we can do without getting the jackhammer. We will paint something, redesign, and modify it? We wait and wait for something, let's finish this. If you were in my spot, what would you do? Mr. Musella said first of all; if I were you, the general contractor would've been gone the first week. This would've never happened and you're right, Mr. Tomassetti, this building is the talk of the country so getting back to what I said, everybody in Pawling has got an opinion. That's a selective opinion. My opinion is an objective opinion. A selective opinion is a personal opinion. My opinion is an objective opinion based on facts, based on the comprehensive plan, based on zoning codes. Of all of those 8,000 people, the decision making comes down to five people. That's why we have a Planning Board and that's why we have a Zoning Board. Now if we are going to just disregard all of this and I say, Mr. Tomassetti you're a nice guy and let you have your way, you might as well do away with the Planning Board. I just want to make sure that the process continues the way it's supposed because if this project is to go along like this, than you might as well do away with the Planning Board because any other applicant that comes before the Planning Board will think that they can do whatever they want. Mr. Tomassetti said we have a problem, let's resolve it because by doing nothing, it doesn't help anybody. How can we fix this the right way and make it look good within reason. You see if you put stone on

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top of the brick or remove the brick or the roof, you destroy the integrity. I will paint it. I will not remove the brick; otherwise, I will abandon the building and leave it the way it is. I want to cooperate and I want to do the right thing. Mr. Daniels said you were told right at the outset, you had every opportunity to do the right thing but you didn't. You received a bunch of variances in reliance on the promises that you made and now you're coming back to the Board and now you're threatening to abandon it. If you took the roof off and made it what you originally said you were going to put on, that would solve that. I don't know about the brick but the roof

Is something that you were told to stop as it was going up and you didn't. You received very significant variances based on what was originally approved. Mr. Johnson said I think the point is we have a building, whether right or wrong, it's 90% done, if not more. How can we get to the point where we can work something out? Mr. Gailey said the court agreed that what was built is different than what was approved. Mr. Daniels said, yes, but they also addressed your argument about the stop work orders and they were very clear (Inaudible too many people talking at the same time.) Mr. Gailey commented that in order to move this forward, the next step here would be to schedule a public hearing and refer the applicant to County Planning.

Chairman Pfister commented no matter whose fault it was, this has got to be one of the worst examples of deviating from a site plan I think the Village has ever seen. The judge did agree that procedure was not followed properly. We tried to save you money, we brought you in here every time. As soon as the brick was on site we brought you in we asked you what you were doing with the brick and they just went up anyway (in audible too many people talking at the same time). The Building Department was trying to show some leniency so work didn't have to stop inside the building even though the outside was changing so they didn't come down hard (too many people speaking at the same time.) Mr. Daniels read from the court's decision stated as follows: "On September 14, 2021 Main Corner properties appeared before the Planning Board requesting permission to substitute brick for the stone siding on an approved site plan. On September 24, 2021 Main Corner properties began installing brick siding rather than the approved stone. By letter dated September 27, the Village represented (in audible) that the Planning Board had not approved the use of brick siding and that its continued use was at Main Corner's properties own risk. Main Corner properties continued to install the brick. By letter dated November 10<sup>th</sup> the Board of Trustees advised Main Corner properties that in addition to the use of brick siding, it was also in violation of the approved site plan to other respects including use of alternative unapproved roofing materials and it's continued use was at its own risk." You're lawyer made these arguments to the judge and the judge disagreed.

Following a lengthy discussion regarding the timeline of events leading up to the stop work orders and litigation decisions, Mr. Daniels presented a resolution to the Board (see attached Resolution/Decision). *Member Musella made a motion to approve the resolution as stated (see attached resolution). Chairman Pfister second the motion.* Discussion ensued regarding whether or not the Planning Board has legal authority to rescind the Negative Declaration. Mr. Gailey asserted that there is nothing to rescind because the Board already approved this Negative Declaration on the prior application and stated that the Planning Board has to make a new SEQR determination on this current application. This has nothing to do with the old Negative Declaration. Member Mersand asked Mr. Gailey what the difference is functionally. Mr. Gailey asserted that rescinding the Negative Declaration prolongs the procedural process up to 30 to 60 days while still not addressing the actual substance of the revision that the applicant is proposing. He said whereas what I am



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requesting is that the Board proceeds with a SEQR review on this application; we hold a public hearing next month to hear what the public has to say and you also forward this application to County Planning which is required as your Planner's letter states and that way we're making some substantive process and not spinning wheels procedurally for unnecessary delay. Further discussion ensued.

The Secretary took a roll call vote on the motion as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
Chairman Robert Pfister	<u>X</u>	<u>      </u>	<u>      </u>
Lou Musella	<u>X</u>	<u>      </u>	<u>      </u>
Adam Muroski	<u>      </u>	<u>      </u>	<u>X</u>
Peter Pennelle	<u>      </u>	<u>      </u>	<u>      </u>
Michael Mersand	<u>      </u>	<u>X</u>	<u>      </u>
<b>TOTAL</b>	<u>2</u>	<u>1</u>	<u>1</u>

*Without the majority of full quorum, the motion did not pass.* Mr. Lusardi advised the Board to adjourn further consideration to the next meeting (November 15, 2022) when there is a full Board present. Further discussion ensued.

*Member Musella made a motion to adjourn this application until the Tuesday, November 15, 2022 Planning Board meeting. Member Mersand seconded the motion it passed with all present members.*

No "Old Business or Escrow" to discuss.

### **Adjournment**

*Member Pennelle made a motion to adjourn until the next Planning Board meeting scheduled for **Tuesday, November 15, 2022**. Member Musella seconded the Motion. It passed with all present members in favor.*

Submitted by:

Vivian Nikolatos  
Planning Board Secretary