

THE VILLAGE OF PAWLING ZONING BOARD MINUTES

Date:	June 24, 2020
Present:	Michael Keupp, Chairman Ann Hardeman, Member Nicholas Vorolieff
Also Present:	Lauri Taylor, Trustee Earl Slocum, Trustee Curt Johnson, Architect Diana Tomassetti, Applicant Kelly Libolt, Applicant John Furst, Attorney

On Wednesday, June 24, 2020 at 7:00 PM, the Zoning Board held a Zoom conference. The Meeting was called to order by Jennifer Strehle, Secretary, and began with the Pledge of Allegiance and the roll call as above indicated.

ANNOUNCEMENT: Due to public health and safety concerns related to COVID-19, the Village of Pawling Zoning Board of Appeals will not be meeting in-person. In accordance with the Governor's Executive Order 202.1, the June 24, 2020 Zoning Board of Appeals meeting will be held via Zoom Video Conferencing, and a transcript will be provided at a later date.

Mr. Keupp read a letter of resignation from Board Member Fred Feindel. All members thanked him for his service and wished him well.

Main Corner Properties, LLC – 146 East Main Street

Mr. Keupp made Motion to open the public hearing. Mr. Vorolieff seconded the Motion and all Members were in favor.

Curt Johnson of J Group Design LLC agent for the applicant gave a presentation of the project which included the past history of the parcel. All records are on file at the Village Hall.

Variations sought for the construction of the new, two-story restaurant are as follows as referenced in Zoning – Chapter 98 of the Code of the Village of Pawling, New York:

Schedule C: Area and Bulk Requirements

Reduction of front yard setback from 35' required to 9'; reduction of side yard setback from 15' required to 7'; increase in lot coverage from 20% maximum to 80%

Section 98-22.E Off Street Parking

Reduction of parking space depth from 19' required to 18'.

The applicant has demolished the existing restaurant and will demolish the separate accessory residential structure to construct new, 2-story 8,321 sq. ft. restaurant with related site improvements.

There will be 41 proposed parking spaces on site. The building will be closer to East Main Street. Sidewalks will be extended. The dumpster will be enclosed with a fence.

Mr. Keupp read the 5 questions on the area variance application. Mr. Keupp asked the Village Engineer Joe Berger to give his review. Please see attached Memo dated June 9, 2020.

Mr. Keupp asked if any ZBA members had any questions, they had no questions at this time. Mr. Keupp has a concern of parking of large functions and asked where the employees are going to park. On weekends the previous restaurants patrons would park up and down on East Main St. and the adjacent street Holm Run and South St. South Street. is where the fire department is and it would be hard for them to get through with cars parking there. It's more than an inconvenience it's a hazard.

He hopes the restaurant does great. Increasing the size of the restaurant would increase parking. The parking is a dangerous situation. The size of the restaurant and the parking need to be balanced out otherwise it's going to be a disaster. Mr. Johnson said that the owners of this project own the property next to this parcel to the North and it does have an area in the back that they could possibly use which can be a discussion for the Planning Board.

Mr. Vorolieff said He agrees with Mr. Keupp about the parking situation. He is concerned about the aspects of the code being applied. He has never been to a restaurant where 5 people come out of a car, it's usually 1 person and their partner. There will be at least 10 to 12 staff working there. The realistic use is that the parking will be short. He feels the Village needs to revisit the parking code for changes.

Mrs. Hardeman would like to echo concerns about parking. She had a question about #3 of the application is the variance substantial? What does the zoning allow, Mr. Johnson replied 20%. Mrs. Hardeman said not only is it substantial but a good deal over? Mr. Johnson said they are lessening the non-conforming. Mr. Johnson said that they are trying to make a better approach into the Village of Pawling by taking the asphalt away from the front of the building on the East Main St. side. The parking was not very defined at the last restaurant. Now they are creating defined spaces and handicap spaces which will be reviewed with the Planning Board.

Mr. Keupp now read the emailed questions:

1. Robert Caccamo – 75 South Street his concerns are parking and size of building.
2. Kevin Gardiner – Would like the public hearing to remain open.
The secretary read the comments entered into the Zoom Chat
3. Kyle Kristen – Would like the meetings to be broadcasted live.

4. Joan Robersts – How many people will the restaurant seat? Mr. Johnson said 200.
5. Lou Musella – How many distance between bumpers of the parked cars.
6. Gene Mulford – are the mature trees staying in the proposal.
7. Steve Goldberg – did the architect say that the owners own the adjacent property? Mr. Johnson said yes. Mr. Goldberg wrote, so purchased from Mayor Liffland?

Mr. Keupp made a Motion to end the discussion. Mr. Vorolieff seconded the Motion and all Members were in favor.

The secretary said that letters or comments will be received for up to the next 7 days. Mr. Johnson asked Mr. Berger that SEQR needed to be completed by the Planning Department before the ZBA can render a decision. The ZBA cannot due SEQR because the Planning Board was declared Lead Agency. The secretary told Mr. Johnson that 146 East Main St. is on the Planning Board agenda for the July 14th meeting. She said she will be in the office on Monday and will need him to do the Legal Notice so it can be published.

Mr. Johnson asked if Diana or Sam the applicants wanted to say anything. Unfortunately they were having trouble with the wi fi signal on their end. From what the secretary can transcript the applicant didn't understand why they were not receiving the variance and that the questions were addressed by the Planning Board and the Planning Board referred them to the Zoning Board. The delay is causing them a hardship, it has already been 1 year. Diana is asking them to reconsider.

Mr. Johnson asked Mr. Berger that the ZBA cannot act until SEQR is done by the Planning Board. The secretary asked the Village Attorney Jonathan Bardavid to answer that question. Without SEQR being completed the ZBA does not have the authority to act on the variance. Mr. Vorolieff said he knows it's an inconvenience but there is a process that they have to follow. Mr. Bardavid asked the secretary to unmute his partner Bob Lasardi to answer the question. He said once lead agency is established it can't be undone. The Planning Board has to make the Negative Declaration for this project and render SEQR.

The secretary asked the chairman if he is going to extend the public hearing until the next meeting. She asked if there was any information that he wants from the applicant for the next meeting so that they can be prepared. Mr. Keupp said no, if they are going to Planning Board they are going for a plan that allows for more parking and a smaller scaled restaurant. The parking is going to be a major issue. He doesn't want to see them tear down the other house for parking.

Mr. Johnson asked the board if they would do a vote just to see where they stand on the variances. Mr. Keupp said that they were not in favor of doing that and that they said how they feel. He doesn't see the need for two stories. Mr. Johnson said the cost isn't going to be viable for one story. Mrs. Hardeman said the concerns are the size of the building and the parking which is a hazard. She said that the Tomassetti's need to understand that the ZBA's hands are

tied and she has given them her opinion that she would like to see a restaurant but they can't do anything tonight. Mr. Vorolieff suggested a pull in drop off area for safety of patrons who find an over parked lot.

The secretary introduced the next applicant on the agenda.

2K Development – 112 East Main Street

Mr. Keupp made a Motion to open the public hearing. Mr. Vorolieff seconded the Motion and all Members were in favor.

Kelly Libolt was representing the applicant requesting the following:

Application by 2K Development LLC for three area variances regarding (1) total density, (2) FAR (floor to area ratio), and (3) total maximum lot coverage by all impervious surfaces, involving tax lot numbers 7056-05-210817, 7056-05-219835, and 7056-05-226800 located at East Main Street, Pawling, New York. The Applicant proposes to remove three of the four existing structures and is seeking approval for two multi-family structures, a hotel and conversion of the existing 'barn' structure for use as retail, office and a restaurant. The property is located in the B-2 District and the Urban Density regulations apply.

Ms. Libolt said that they are formally withdrawing two of the area variance applications as they have received a letter from the Building Inspector where he determined that the FAR and the lot coverage are not applicable under the zoning code. Mr. Keupp said that there was a discussion about it earlier today. Ms. Libolt asked if she can complete her presentation. Mr. Keupp asked the secretary and she said for the applicant to continue and questions at the end of the presentation. (secretary lost internet connection) Ms. Libolt is sharing the screen showing her plans. All files are on record at the Village Hall.

Ms. Libolt said that this project has had an extensive review with the Planning Board. It was a quarinated review by the Planning Board. The involved agencies were: Planning Board, Zoning Board, NYSDOT, OPRHP, NYSDEC. There were countless meetings for this project with the Planning Board back to 2019 June 8, August 27, September 11, October 8, November 5, December 10, January 14. Also a joint Planning Board & ZBA Workshop September 24. There were many meetings and discussions with representatives of the Kane House whom is involved with the design of the project. As a result of the comments from the listed agencies, the public, Planning Board and the PB consultants they did make changes to the design of the project. As a result of this long process the Planning Board did issue their SEQR decision in January of this year and granted a negative declaration.

Ms. Libot now shared her screen showing a table to discuss the total number of units. They are proposing 72 units of 1 and 2 bedroom. Building 1 is 40 units with 34 two bedroom units and 6 one bedroom units. Building 2 is 32 units with 26 two bedroom units and 6 one bedroom units. Total is 72 units. Bedrooms is the trigger for impact not units.

John Furst, attorney for the applicant added that the environmental impact would be less and the project is consistent with the master plan and won't harm the community in any way. It is not substantial because the impacts are much less because of the bedroom count.

The secretary asked if the board has any questions for the applicant. Mr. Keupp said he had a conversation earlier today with the Village Attorney. Mr. Bardavid said that the applicant has asked to withdraw the 2 variances. Mr. Keupp said that the applicant is basing it on an expired special use permit. Mr. Furst said that the Urban regulations prevail over the Bulk Schedule. Mr. Keupp said he has talked to numerous people regarding this and they all agree that the special use permit should not weigh in on this. Mr. Furst said that is not what they are trying to do. What they are trying to show is that what was approved 2 years ago is less of an impact than what they are proposing now.

Mr. Vorolieff said he did a lot of homework on this and that this is likely the largest scaled project that has come across the ZBA. It is huge. It is important to the board that procedures are followed and that they get accurate information. That things are calculated and submitted properly for review. When this project was first discussed there were no less than 4 variances. Mr. Vorolieff was impressed with so many of the details that were changed. The special use permit for parking from the applicant Darrel's House is being wrongly applied here. That permit was for a 296 car gravel lot not an asphalt lot. The parking area was never created and permit never used and expired 2 years ago.

Mr. Vorolieff read the code for Special Use Permits. That use is no longer applicable to this use, its mute. A letter was received by the Building Inspector and Village Engineer and the ZBA and several consultants disagree with that letter. They do not believe that FAR was calculated correctly. The ZBA wants more clarification on the language and regulations regarding this matter.

Mr. Keupp said that he had discussions with the Planner for Pawling, County Planner and Commissioner of Planning for Dutchess County whom said that Urban Regulations are misinterpreted.

Mr. Vorolieff has a concern regarding the water situation and this project. Mr. Keupp had a question about the units.

Ms. Libolt said that some of the comments made have been addressed by the Planning Board and the negative declaration was granted and encouraged the Village Attorney to speak on that issue and recognize these issues have already been addressed.

Ms. Libolt said a comparative analysis is required to do as part of the variance which will provide you with less of an environmental impact than what would be permitted under the current code, which is the process that they are following. Ms. Libolt again suggested that the Village Attorney speak up on the issue. There was a lengthy discussion about the bedrooms.

Mr. Keupp said he is asking her to do what is good for the village not what is good for the applicant.

The secretary asked the Village Attorney if he would add a comment to this please. The secretary asked again for the attorney to speak. Mr. Bardavid said that the ZBA is entitled to ask questions as well as the public. Mr. Furst, Attorney for the Applicant said that the approval from 2017 was not really the issue, the Building Inspector has determined that the urban regulations prevail the bulk regulations. This board does not have jurisdiction to decide that they don't like it or not. The Building Inspectors interpretation is what historically been done within the village the same procedure that was followed in 2017 must be followed now and the Building Inspector has confirmed that and has determined that and if someone doesn't like it they can challenge it but this board doesn't have jurisdiction.

Mr. Vorloieff feels that the application is not complete and wants to see the language being used for the FAR. The secretary asked if Bob Lusardi was still with us. She asked again if the attorney Bob Lusardi from Daniels & Porco still with us? Mr. Lusardi answered I am. The secretary asked him to comment please.

Mr. Lusardi said they gave their opinion to the chairman of the Zoning Board, Village Engineer, and Building Inspector and to the applicant's attorney. They all know what his position is about this matter and he doesn't know that the applicant is necessarily making the right decision but that is the applicant's decision to make. He doesn't believe that the ZBA can hear an appeal that has not been referred to it. If the application is based on a shaky foundation, the Building Inspector could change his opinion, Planning Board could refer back to the Zoning board or file for article 78. It's up to the applicant on what they want to do. He does understand the questions from the board and he doesn't think they are inappropriate. They can only act on the variances that are in questioned as an appeal board.

Ms. Libolt said that the Planning Board did make a review and was referred by the Planning Board to the Zoning Board because SEQR was completed. Mr. Furst said that the issue here is the board members disagree with the Building Inspectors interpretation. The Building Inspector clarified what variances were needed. The Zoning Board doesn't have jurisdiction to overrule the Building Inspectors decision. Mr. Lusardi disagrees.

Ms. Libot said that she is confused as to where they are, they had there review with the Planning Board, countless meeting with the ZBA and Planning Board. We received the Negative Declaration with the involved agencies and at that point were referred over to the Zoning Board to seek their variances. Two of the variances were not applicable and they are here tonight to ask this board to review the number of units and the board is refusing to review the application.

Ms. Libolt said there were at least 9 meetings and several times the ZBA members spoke at the Planning Board meetings and referred themselves as ZBA members/chairman at the public hearing. Mr. Keupp said that there was only 1 meeting where the ZBA members were officially

present. Ms. Libolt doesn't want to argue the point. Ms. Libolt said that they followed all of the steps, taken all the necessary procedures filled all the applications and have been patiently waiting since March of this year to appear before the ZBA and are confused as to this point as what steps to take. Mr. Vorolieff said that the application is incomplete. Mr. Keupp said he will talk further with County Planning. Mr. Lusardi said it's appropriate to go back to the Planning Board to ask for clarification and what matters they referred to the Zoning Board for determination. Mr. Lusardi suggests to adjourn the Public Hearing until next month and hear back from the Planning Board.

Mr. Furst said he is not sure what the purpose of going back to the Planning Board when the Building Inspector already made his determination and the Planning Boards does not interpret the codes.

Ms. Libolt said that this is a Public Hearing and the applicant has the right to hear comments received from the public and then they can conclude how best to move forward from here. Mrs. Hardeman said the letters were received late today. The secretary asked the Chairman to read the letters.

1. Jane Shufer – What studies have been done on water, sewer, and traffic. What is the reasoning for a hotel?
2. Helen Grosso – Questions about market rate of apartments, taxes, who grants variances. Also, to please keep the hearing open.
3. David Gamache – Questions about SEQRA study, traffic study how the project will impact Pawling.
4. Steve Goldberg – The secretary said that Steve would also like to speak. Mr. Goldberg said that there is a lot to support in this project. It is interesting to see a mixed use application. In his memo he was echoing what board member Nicholas said. He understands the argument that they are making which doesn't really matter, you have to look at all of the information when looking at the application. The Comprehensive Plan and Zoning codes need to be updated.

The secretary said that she has 2 comments written in the Zoom Chat.

1. Jean Millard – What studies were used for environmental cap, what is the benefit to our community?
2. Joan Roberts – Where is the water coming from for this project?

The secretary said the next ZBA meeting will be on July 22nd and Planning is July 14th.

Ms. Libolt said that the ZBA is refusing to act on the application that is before them tonight and is adjourning this public hearing to the July 22nd meeting. The secretary said yes the date if July 22nd.

Mr. Lusardi said that they are not refusing to act, adjourning the hearing.

The secretary said well if were done were going to have to have a motion to adjourn this discussion.

Mr. Keupp made a Motion to adjourn the public hearing until the July 22, 2020 meeting. Mr. Vorolieff seconded the Motion and all Members were in favor.

The secretary said she will be accepting written comments or emailed comments for the next seven days.

Mr. Lusardi recommended the ZBA get clarification from the Planning Board. The secretary asked if the board needs to make a motion. Mr. Lusardi said yes.

Mrs. Hardeman made motion for the Planning Board to clarify what is being referred to the ZBA. Mr. Keupp seconded the Motion and all Members were in favor.

The secretary said is there anything else to discuss before we adjourn for the evening, if not a motion needs to be made to close.

Adjournment:

Mr. Keupp made a Motion to adjourn the Meeting. Mr. Vorolieff seconded the Motion and all Members were in favor.

Submitted by Jennifer Strehle
Secretary of the Zoning Board of Appeals