

Meeting Date: October 27, 2021

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

Also Present: Jonathan Bardavid, Village Council
Caren LoBrutto, Village Planner
Steve Goldberg, Planning Board Chairman

On, *Wednesday, October 27th, 2021 at 7:00 PM*, the **Zoning Board of Appeals** met in the meeting room at the Village Hall on 9 Memorial Avenue, Pawling NY. The Meeting was called to order by Michael Keupp, Chairman, and began with Roll Call as indicated above and The Pledge of Allegiance.

Minutes

Member Nicholas Vorolieff motioned to Approve August 25, 2021 ZBA Minutes. Member Mike Mersand seconded the motion. All were in favor

Member Hardeman motioned to Approve September 22, 2021 ZBA Minutes. Member Tom Zarecki seconded the motion. All were in favor

Pawling Commons (Building 71)

Chairman Keupp referred to Village Council Jonathan Bardavid for discussion on whether or not Urban Regulations should apply to this entire project. Discussion ensued and the Board agreed that the Urban Regulations SHOULD apply to the entire project.

Chairman Keupp referred to Village Planner Caren LoBrutto for discussion on the four Variance questions. Discussion ensued, the Board concluded as follows:

- Building Placement (Bldg. 71): The Urban Regulations require the building to be built at the frontage line. The approved site plan indicates that it is setback from the frontage line by 27 feet. Therefore, an Area Variance of 27 feet is required.

- Building Placement (Bldg. 71): The Urban Regulations allow a maximum building depth of 84 feet. The proposed third building (71 East Main Street) extends in depth in excess (building extends 117 feet in depth from the frontage line) of the 84-foot maximum allowed. Therefore, an Area Variance of 33 feet is required.
- Building Placement (Bldg. 71): The Urban Regulations require a minimum frontage build-out of 90%. Therefore, an Area Variance of 90% is required.

Chairman Keupp referred to the Board for comment.

Village Council Bardavid explained that he emailed the Board two draft Resolutions (one for Building 67 and one for Building 71.) The Resolutions describe in detail the variance questions and the rationale for using the Urban Regulations.

Chairman Keupp made a motion to open the floor for Public Comment, Member Vorolieff seconded the motion. All were in favor.

Audience member Steve DeGennero expressed his opinion that the Urban Regulations were not meant to apply to this property and cautioned that this could be an issue down the road with other properties in the Village.

Planning Board Chairman Steve Goldberg expressed the same concern stating that this interpretation is setting a precedent that could cause future issues with other Village properties.

Village Attorney Bardavid explained that the term “precedent” is not being used in any binding legal capacity and stated that the Resolution speaks for itself.

After some discussion, Chairman Keupp explained that he doesn't think this is setting a precedent, he believes this is an attempt to correct an ambiguous section of the Code.

There was no further comment from the Public.

Chairman Keupp made a motion to close Public Comment, Member Vorolieff seconded the motion. All were in favor.

Member Vorolieff made a motion that the following variances should be required for building 71:

- Building Placement (Bldg. 71): The Urban Regulations require the building to be built at the frontage line. The approved site plan indicates that it is setback from the frontage line by 27 feet. Therefore, an Area Variance of 27 feet is required.
- Building Placement (Bldg. 71): The Urban Regulations allow a maximum building depth of 84 feet. The proposed third building (71 East Main Street) extends in depth in excess (building extends 117 feet in depth from the frontage line) of the 84-foot maximum allowed. Therefore, an Area Variance of 33 feet is required.

- Building Placement (Bldg. 71): The Urban Regulations require a minimum frontage build-out of 90%. Therefore, an Area Variance of 90% is required.

Member Mersand seconded the motion. All were in favor.

Pawling Commons (Building 67)

Chairman Keupp referred to Ms. LoBrutto for further comment on building placement of building 67. She explained that a variance is not required for placement on Building 67 because it's pre-existing non-conforming and there is no change in the location of the building. She further explained that while it has already been established that Urban Regulations apply to height; she noted that it's also subject to Local Law 1 of 2018 which allows four stories of 50 feet.

The Board began their discussion on where to measure to and from then the following motions were made:

Chairman Keupp made a motion that the measuring point is going to be from East Main Street. It can be adjusted later but for right now, the measuring point is going to be *from East Main Street*. Member Mersand seconded the motion. All were in favor.

Member Vorolieff made a motion to interpret the code to measure *to the mid-point of the gable*. Member Zarecki seconded the motion. All were in favor.

Adjournment

Member Vorolieff made a Motion to adjourn until the next meeting on November 17th, 2021. The Motion was seconded by Member Tom Zarecki. All were in favor.

Submitted by:



Vivian Nikolatos, Secretary

At a Meeting of the Village of Pawling Zoning Board of Appeal held at 9 Memorial Avenue, Pawling, New York, on the 27th day of October, 2021, at 7:00 PM

RESOLUTION OF THE ZONING BOARD OF APPEALS THE VILLAGE OF PAWLING

Identifier: Interpretation Questions Pawling Commons Building 67

The meeting was called to order by Chairman Michael Keupp and the following were:

P R E S E N T:

__ Chairman Michael Keupp
__ Ann Hardeman
__ Michael Mersand
__ Nicholas Vorolieff
__ Thomas Zarecki

The following Resolution was proposed by **Chairman Keupp**, who moved its adoption, and seconded **Member Mersand**.

WHEREAS, the Village of Pawling Zoning Board of Appeals (“the “ZBA”) has received a referral from the Village of Pawling Planning Board for interpretation of the following questions:

1. Whether a variance is required for building placement in Schedule B, for “0 ft required,” meaning no setback permitted, on the lot frontage for buildings 71 and 67?
2. Whether a variance is required for a maximum of 84’ building depth in Schedule B from the side of the building that faces the street, to the rear of the building for building 71 as it faces the street?
3. Whether a variance is required for 90% minimum building coverage on the lot frontage in Schedule B for buildings 71 and 67
4. Whether a variance is required for height as it is measured from the fronting street elevation in Schedule B to the maximum building height in Schedule C for buildings 71 and 67?

WHEREAS, the ZBA makes the following findings with regards to Building 67

1. The Following Variances Are Required for Building 67

The only potential variance that is required is for height as the building placement, frontage and buildout are prior non-conforming uses that are not changing with the proposed development.

With regards to height the ZBA finds that height should be measured from **East Main Street to the mid-point of the gable**. The Applicant must submit new measurements using these guidelines and to the extent the height exceeds 50 feet the Applicant should apply for a variance for same.

The question of the foregoing Resolution was duly put to a vote, the Zoning Board of Appeals voting as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>
Chairman Michael Keupp	<u>X</u>	<u> </u>	<u> </u>
Ann Hardeman	<u>X</u>	<u> </u>	<u> </u>
Michael Mersand	<u>X</u>	<u> </u>	<u> </u>
Nicholas Vorolieff	<u>X</u>	<u> </u>	<u> </u>
Tom Zarecki	<u>X</u>	<u> </u>	<u> </u>
Total	5	0	0

I hereby certify that the above is a true and correct copy of the Resolution passed by the Village of Pawling Zoning Board of Appeals at a meeting held on **October 27, 2021**.

Date: December 15, 2021


Vivian Nikolatos
Zoning Board of Appeals Secretary

At a Meeting of the Village of Pawling Zoning Board of Appeal held at 9 Memorial Avenue, Pawling, New York, on the 27th day of October, 2021, at 7:00 PM

RESOLUTION OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF PAWLING

Identifier: Interpretation Questions Pawling Commons Building 71

The meeting was called to order by Chairman Michael Keupp and the following were:

P R E S E N T:

___ Chairman Michael Keupp
___ Ann Hardeman
___ Michael Mersand
___ Nicholas Vorolieff
___ Thomas Zarecki

The following Resolution was proposed by **Board Member Vorolieff**, who moved its adoption, and seconded **Member Michael Mersand**.

WHEREAS, the Village of Pawling Zoning Board of Appeals (“the “ZBA”) has received a referral from the Village of Pawling Planning Board for interpretation of the following questions:

1. Whether a variance is required for building placement in Schedule B, for “0 ft required,” meaning no setback permitted, on the lot frontage for buildings 71 and 67?
 2. Whether a variance is required for a maximum of 84’ building depth in Schedule B from the side of the building that faces the street, to the rear of the building for building 71 as it faces the street?
 3. Whether a variance is required for 90% minimum building coverage on the lot frontage in Schedule B for buildings 71 and 67
 4. Whether a variance is required for height as it is measured from the fronting street elevation in Schedule B to the maximum building height in Schedule C for buildings 71 and 67?
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WHEREAS, “the ZBA has received an application from the owner of 63 East Main Street in the Village, (the “Applicant”) for a variance from Section 98-11 (A) of the Village of Pawling Code (the “Village Code”), which states, “there shall be not more than one (1) principal building on one (1) lot, except as specifically permitted elsewhere in this chapter” in order to construct a third building exclusively for residential use , including 20 apartment units (the “Application”);

WHEREAS, the Applicant has a) requested that the ZBA not issue any decision on the aforementioned variance until the Applicant has an opportunity to submit additional information in support of the variance; b) agreed to toll all deadlines to make a decision on the variance and c) requested that the ZBA answer the interpretation questions posed by the ZBA;

WHEREAS, the Planning Board has carefully reviewed the memorandum from the Village Planner Caren LoBruto which provides guidance on the interpretation questions and which guidance is expressly incorporated herein; and

WHEREAS, the ZBA makes the following findings with regards to Building 71 with the understanding and express statement that nothing contained herein shall bind the ZBA or be interpreted by the ZBA to grant the requested variance from Section 98-11 (A) of the Village Code:

1. The Urban Regulations Apply to Entire Project Site

The ZBA finds that the Urban Regulations apply to the entire project. In reaching this conclusion the ZBA notes as follows:

Section 98-13 of the Code of the Village of Pawling provides, in relevant part:

B. The Urban Regulations apply to any erection, movement, alteration, rebuilding or enlargement of a building or structure and any use, design or arrangement of any land, building or other structure which requires any one or more of the following:

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1. application to the Planning Board for approval of a Major Subdivision;
 2. application for a building permit or certificate of occupancy in a Major Subdivision created after the effective date of this Chapter.
 3. application for a building permit or certificate of occupancy in the B1 or B2 districts where site plan approval is required and which involves enlargement, extension or reconstruction of a building or structure that will increase the assessed value of the property by more than 20% and any subsequent application for a building permit or certificate of occupancy with respect to such property.

In interpreting a statute certain general principles apply. Specifically, it is well settled that the “literal language of a statute is generally controlling unless the plain intent and purpose of a statute would otherwise be defeated.” See Bright Homes, Inc. v. Wright, 8 N.Y.2d 157, 161–162, 203 N.Y.S.2d 67, 168 N.E.2d 515 [1960]. “Where the language is ambiguous or where a literal construction would lead to absurd or unreasonable consequences that are contrary to the purpose of the [statute's] enactment, [adjudicative bodies] may [r]esort to legislative history.” Anonymous v Molik, 32 NY3d 30, 37 [2018]; see also Roberts v Tishman Speyer Properties, L.P., 13 NY3d 270, 286 [2009] [“If the language is ambiguous, we may examine the statute's legislative history.”] Moreover, “even when the plain meaning [of a statute] d[oes] not produce absurd results but merely an unreasonable one plainly at variance with the policy of the legislation as a whole [the] Court [of Appeals] has followed that purpose, rather than the literal words.” New York State Psychiatric Ass'n, Inc. v New York State Dept. of Health, 19 NY3d 17, 25-26 [2012].

The language in Section 98-13B of the Code is ambiguous. Specifically while the beginning of subsection 3 refers to “application for a building permit or certificate of occupancy in the B1 or B2 districts where site plan approval is required and which involves enlargement, extension or reconstruction of a building or structure that will increase the assessed value of the

property by more than 20%” the end of that section states and “any subsequent application for a building permit or certificate of occupancy with respect to such property.” Given that the later portion of this subsection references any subsequent application for a building permit or CO for any property there is an argument that once one of the buildings on a site falls within the Urban Regulations that all other construction on the site would also fall within the Urban Regulations. That is if the drafters intended §98-13B(3) to only apply to a specific building on the site the drafters would have said any subsequent applications with regards to that building. By adding the word property it creates an ambiguity which allows the ZBA to review the legislative history as discussed below.

An interpretation that the Urban Regulations only applies to new construction of major subdivisions and to reconstruction of existing buildings runs counter to the purpose of the enactment of the Urban Regulations. Specifically, the Urban Regulations were a key component of the 1994 Comprehensive Plan. See Comprehensive Plan at p. 58 (“The future land plan, urban regulations, architectural guidelines and landscape guidelines ... and the conceptual plats for the large parcels form the major physical components of the Plan”); see also Comprehensive Plan at Appendix D (Duany Presentation October 8, 1991). The residents of the Village raised over \$100,000 to retain the services of Andrés Duany to draft the Comprehensive Plan and in particular the Urban Regulations with the clear understanding that the Urban Regulations would be applied in the B-1 and B-2 districts. Indeed, the section of the Comprehensive Plan that discusses the Urban Regulations is found under the heading “Urban Regulations for New Construction” and states that the “Urban Regulations classify the types of **new construction**—called building Types I, II, III, IV and VI—which will be provided for in the Village.” See Comprehensive Plan at p. 93.

It is also noteworthy that when the zoning amendments and comprehensive plan were adopted in 1994 there were no vacant parcels of land in the B-1 that were not previously occupied by a building. As such, any future projects in the B-1 would constitute a reconstruction of either an existing or formerly existing building¹. Given that Section 98-11 of the Code does not permit more than one building per lot it is reasonable to conclude that the drafters anticipated that any new projects in the B1 or B2 would involve “enlargement, extension or reconstruction of a building” and thus they did not need to include “erection of building” in 98-13(B)(3) to ensure that the Urban Regulations would apply to all future construction in the B-1.

Moreover, an interpretation that the Urban Regulations do not apply to the construction of a third building that may be granted a variance from the requirement of one principal building per lot is plainly at odds with the policy of the Urban Regulations and could create an absurd result. Indeed, it would convert a variance pursuant from Section 98-11 into a variance from the Urban Regulations. Further, it would create a situation with different buildings on one site subject to different setback and lot placement requirements. With regards to this project it would mean that the new building (71) could have a setback of a minimum of 20 feet whereas building 67 would have a zero setback creating a very odd configuration on the property.

A review of other sites in the B-1 district further illustrate this point. Specifically, the Downey, Durkin and Hudson Valley Plastics properties are all large enough that these

¹ It should be noted that the building located at 36 Charles Colman Boulevard, the Morrison Building, was vacant when the 1994 Comprehensive Plan and Zoning Amendments were adopted, however, the site was previously occupied by a building that subsequently burnt down. When the current building at 36 Charles Colman Boulevard was erected it had a zero setback per the Urban Regulations thus illustrating the broad reach intended by the drafters of the Urban Regulations.

landowners could seek a variance to place a second building on the lot. If the Urban Regulations were held not to apply to this “new” construction it would allow these landowners to have large setbacks in the downtown area directly in contradiction to the Comprehensive Plan. See Comprehensive Plan at p. 74.

Based upon all of the foregoing the ZBA finds that the Urban Regulations apply to all buildings included in the Project.

2. The Following Variances Are Required for Potential Building 71

Having determined that the Urban Regulations apply to the entire Project the ZBA determines that the following variances are required for potential Building 71

Potential Building 71

In the event that the ZBA grants the variance from Section 98-11 (A) of the Village Code the following variances are required:

- a. **Setback-** The Urban Regulations require the building to be built at the frontage line. The approved site plan indicates that it is setback from the frontage line by 27 feet. Therefore, an area variance is required.
 - b. **Depth-** The Urban Regulations allow a maximum building depth of 84 feet. The proposed third building extends in depth in excess (building extends 117 feet in depth from the frontage line) of the 84-foot maximum allowed. Therefore, an area variance is required.
 - c. **Minimum Frontage Build Out-** The Urban Regulations require a minimum frontage build-out of 90%. The proposed third building includes a frontage build-out of less than 90%. Therefore, an area variance is required.
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The question of the foregoing Resolution was duly put to a vote, the Zoning Board of

Appeals voting as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>
Chairman Michael Keupp	<u>X</u>	<u> </u>	<u> </u>
Ann Hardeman	<u>X</u>	<u> </u>	<u> </u>
Michael Mersand	<u>X</u>	<u> </u>	<u> </u>
Nicholas Vorolieff	<u>X</u>	<u> </u>	<u> </u>
Tom Zarecki	<u>X</u>	<u> </u>	<u> </u>
Total	5	0	0

I hereby certify that the above is a true and correct copy of the Resolution passed by the Village of Pawling Zoning Board at a meeting held on **October 27, 2021**

Date: December 15, 2021



Vivian Nikolatos
Zoning Board of Appeal Secretary

VILLAGE OF PAWLING

Zoning Board of Appeals

Wednesday, December 15, 2021 @ 7:00 P. M.

TENTATIVE AGENDA

- 1. Opening of Meeting, Roll Call and Pledge of Allegiance**
- 2. Pawling Commons**
 - **Bldg. 67 (Former AG Market)**
 - **Bldg. 71 (Proposed New Third Building)**
- 3. Approval of Minutes**
 - **October 27, 2021**
 - **November 17, 2021**
- 4. Adjournment**