

Meeting Date: May 25, 2022

Present: Michael Keupp, Chairman
Freddy DiVitto, Member
Ann Hardeman, Member
Nicholas Vorolieff, Member

Absent: Tom Zarecki, Member

Also Present: Dave Daniels, Village Counsel
Jeffrey Rothschild, Cappillino, Rothschild & Egan LLP (Heinchon Attorney)
Kenneth Stenger, Stenger, Diamond & Glass, LLP (Heinchon Attorney)
Sean Hilderbrand, Five Oak Street Renovation
Lauri Taylor, Mayor

On, **Wednesday, May 25th, 2022 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 Mike Keupp, Chairman and began with Roll Call as indicated above and The Pledge of Allegiance.

Approval of Minutes

Member Hardeman made a motion to approve the minutes from March 30, 2022. Member DiVitto seconded the motion. Member Vorolieff abstained. All present members were in favor.

Applicant: Heinchon Dairy, Inc. & Eastern Hay Corporation
112 East Main Street (7056-05-210817, 219835, 226800)

Chairman Keupp asserted that the matter in front of the Board was to make a decision regarding authority of the Village of Pawling Clerk to issue the Notice of Violation.

Mr. Rothschild began by stating he wants to be conciliatory but he wants everyone to know that they received Mr. Daniels latest letter and to us it only confirms and strengthens our argument that the Village Clerk was without authority to enforce the Zoning Code. That being said, when we were here a couple of weeks ago, we heard the complaints of the Board and we heard the complaints of Pawling resident, Andy Durkin. Mr. Stenger and I spoke with Mr. Johnson immediately the next day and explained to him he had to clean it up. Mr. Gleason went out today to the site and took pictures and it has been cleaned up. This is what this matter is all about. Honestly, the Village should rejoice at this point. The eyesore that was the complaint of a lot of residents of the Village has been cleaned up. That's the reason we're here; it's not to argue every minor legal detail. It's to clean up what is perceived as an eyesore for the Village. Even though for many years, we believe that it was there legally based upon the Department of Ag and Markets interpretation of whether it was considered a farm operation. What I asked based upon this is that proceeding forward, the Notice of Violation be withdrawn which can be conditioned upon the permanent removal of the trailers so they don't reappear. I think it would be strange to prosecute this matter when, at this point, Mr. Johnson complied with the request from the Village.

Mr. Stenger added there is legislation in front of the Village that they will be adopting as they should which specifically gives the Village Clerk the authority to sign the enforcement notices. Now I have never met Mr. Durkin before, and he's right, the mess had to go. It appears to be resolved. If there's more that needs to be removed, I'm here to identify it. It is permanent, the trailers are not coming back. The Johnsons do have property in the Town of Pawling to make a new home completely for the business there. So what's left is that the Board has to interpret the code, which what the Johnsons have

asked for. You can interpret the code and say you are in violation of the code, what's next. It seems to me there is nothing left, if that's permanent. The Board can write an interpretation of this paragraph and whether or not it applies to this situation. We're not hear because of who signed the Notice of Violation; we're here because of the mess that location was and we're here because of some history prior to the events that brought us here indicated this wasn't acceptable.

Chairman Keupp made a motion to close the meeting to go into Executive Session to consult with Counsel for legal advice. Member Vorolieff seconded the motion. All present members were in favor.

Having returned from Executive Session, the Chair referred to the Board for comment. Member Vorolieff asserted that he had reviewed the documents from Jonathan Bardavid and some of the interpretation and it appears that there's going to be some language re-written in the future to make this even clearer. Referring to the validity of the Notice of Violation, Mr. Vorolieff agrees that the Village Clerk may not having the full knowledge of the Village Code to be able to determine if there are violations or not; however, he feels very strongly that the Village Clerk has the confidence in the Village consultants, at the time Chazen Company (now LaBella & Associates), who is hired by the Village of Pawling for this purpose and has the expertise to determine if there are violations and if the enterprise is being operated within the bounds of the Village Code. She is there to sign the notices as a representative of the Village at the recommendation of the consultants hired for this purpose. Without that possibility then the Village does not have the means or ability for any possible violation to be examined, determined and enforced. I think that in order for this process to work appropriately at the Village of Pawling, this has to be allowed as part of the process.

Member DiVitto agreed and stated that he interpreted this finding in the same way.

Member Hardeman agreed as well.

Chairman Keupp stated there's also the matter of the Time Bar. If an objection to this was going to be filed and registered, it had to be done within the 60 day time limit and it wasn't. So that kind of throws it out right there. The next matter up for discussion is whether or not the property on East Main Street is an agricultural enterprise. Chairman Keupp stated that in his opinion, the current operations at that location doesn't comply with the Code on agriculture. The decision from the NY State Department of Agriculture and Markets confirms this. That enterprise is not a farm operation. There are no crops being produced there; there are no animals, cows, horses, pigs, chickens, etc. The whole operation as it stands is more in line with a Tractor Supply, Agway type of business. According to the Code a business such as a Tractor Supply or Agway has to be enclosed within the structure of the building unless it's ruled as agriculture. This is not the case with this operation. Some of the merchandise are inside but many of it are outside and that doesn't work under the Village of Pawling Code. The products are not supposed to be displayed that way on this parcel in the Village.

Member Vorolieff asserted that he is in agreement with the Chair based on the determination by the NY State Department of Agriculture and Markets which has determined that a this enterprise is not a farm operation on this property. There isn't anything grown at the location and based on the evaluation of the property and the enterprise, I agree with the NY State Department of Agriculture and Markets' findings. There is no agriculture use going on there. Again, as the Chair said, there's no livestock and there's nothing being grown there. It is an area where things are collected and resold mostly as a resale operation.

Mr. Daniels asked a clarifying question regarding the NY State Department of Agriculture and Market findings that indicated the fact that the majority of the products were acquired from purchase agreements as opposed to being grown on land owned or rented. If it was all grown on their property or rented property, they could resell it.

In audible several people speaking at the same time.

Chairman Keupp asserted that the operation is not an agricultural use under the commonly understood meaning of agriculture. It's a retail use.

Mr. Vorolieff added and of course one of the things that not having an agricultural interpretation would mean is the buildings at that location would also have to go through regular Zoning and Planning Board approvals.

With no further comments from the Board, Chairman Keupp made a motion to recognize that the Village of Pawling Clerk did have the authority to issue the Notice of Violation letter. Member Vorolieff seconded the motion. All present members were in favor.

Member Vorolieff made a motion that the ZBA agrees with the State of New York Agriculture and Markets' assessment that this is neither a farm operation nor is it an Agricultural Use going on at that property. Member DiVitto seconded the motion. All present members were in favor.

Member Vorolieff asked Mr. Daniels if he will be drafting the resolution.

Mr. Daniels replied, yes.

Five Oak Street Renovation Variances (6957-20-986028)

Bulk Regulations Schedule C: Lot Coverage

Urban Regulations: Parking Location

Urban Regulations: Required Minimum Setbacks on Front – Arch Street

Urban Regulations: Required Minimum Frontage Buildout – Arch Street/Oak Street

Urban Regulations: Garden Wall

After Mr. Hilderbrand gave the Board a brief description of the project, the Board reviewed and considered the variance criteria for each of the variances being sought.

Member DiVitto asked the applicant how close the back of the building will be to the adjacent building.

Member Vorolieff commented that it looks like it's only a few inches.

Mr. Hilderbrand said the drawings doesn't show the exact measurement on here. The front left corner of the building shows it's basically on that property line. We're not obviously going any farther there. The main extension is going towards Arch Street.

Member Vorolieff asked if he is moving the back line of the structure forward and asked if the corner is going to stay where it is?

Mr. Hilderbrand replied, no. He will not be moving the back line of the structure forward and, yes, the corner is going to stay where it is. He said the side where the garbage cans are proposed has to change a little bit because there's currently steps and concrete and bulk head doors.

Member Vorolieff asked the applicant to provide the Board with a copy of the drawings.

Mr. Hilderbrand handed a copy to the Board and explained the idea is to replicate a similar architectural look as the building right next to it (7 Oak Street). It will be the same type of roof lines and same type of roof pitch. We proposed the brick façade approximately 3 to 4 feet up on the front and side. The vinyl siding will be a medium gray with charcoal/black asphalt shingle. The height of the overall building will be approximately, give or take, two feet taller than the building next to it which is nowhere near the Dutcher House or any of these larger structures located in other sections of the Village asserting that they're nowhere near any kind of height restrictions at all. Again, it's only a two story building. If it was an issue we could even flatten it and bring the height down but it would flatten the roof pitch and kind of throw the look off. So to keep that same type of look to give that corner a more cohesive look.

Chairman Keupp referred to Village Planner LoBrutto's "Next Step" comment of her planning analysis which states that "the Zoning Board should consider the variance criteria but must wait until the SEQR determination to make a decision."

The Board discussed this with Mr. Hilderbrand and suggested he get back on the schedule for the June, 22 ZBA meeting. The Board reviewed Ms. LoBrutto's parking analysis.

Mr. Hilderbrand explained the interesting thing about the lot coverage variance that we're asking for is that the addition of the building is actually getting added on to already impermeable surface which is black top. What's pushing us over that 10% is to try to meet the Zoning Code of going out to the zero lot line so we have to extend a little bit out to the Oak Street which is where you see on the design with the overhang. Adding that covered area keeps it within Code.

Mr. DiVitto asked if that covered area is part of the second story.

Mr. Hilderbrand replied that it comes off the second story for the commercial space. So if you were walking into the store front you would be under coverage. By adding that we meet the Code to get to the lot line but now we jam up the 10% over.

Mr. Vorolieff commented that you don't want to have the first floor go out that far then you lose all the parking. If you try to meet the Code having zero setback from the curb.

Mr. Hilderbrand replied, exactly.

Mr. DiVitto asked if the other side is the entrance to the basement.

Mr. Hilderbrand explained that the entrance to the basement will be inside the first floor area pointing it out the actual location entrance in the drawings to the Board.

After reviewing Planner LoBrutto's report, discussion ensued regarding the pre-existing non-conforming nature of the buildings in the Village. Building a garden wall in this case would result in not having the space to provide parking for the buildings' tenants. Further discussion ensued regarding the current condition of the building being renovated. The overall sentiment of the Board is that the renovation will improve the overall aesthetics and character of the building and that section of the Village.

Member Vorolieff reiterated that the Planning Board is Lead Agency. SEQR has to be complete before the ZBA can make any determinations. He again stated that it's very important that we do get our own copy of the drawings before the next ZBA meeting so we can look at them. One of the other issues that the Board has been attentive to lately is making sure that things don't stand out, that they blend in. It looks to me like that's one of your goals here but I want to make sure we have copies of the drawings as part of the record and part of what is being presented to us so that the variances that we grant are also dependent upon how well we feel things are blending into the character of the surrounding area.

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

Member Vorolieff made a motion to open the meeting to Public Comment. Chairman Keupp seconded the motion. All present members were in favor.

Adjournment

With no Public Comments, Member Vorolieff made a motion to adjourn until the June 22nd, 2022 ZBA meeting. The motion was seconded by Member Hardeman. All present Members were in Favor.

Submitted by:

Vivian Nikolatos, Secretary