

# Town of LeRay

## ZBA - Minutes

February 2, 2022

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### Call to Order

On February 2, 2022, the LeRay Zoning Board of Appeals held their meeting in person in the Conference Room and via teleconference. The meeting was called to order at 6:33 P.M. by Chairperson Oatman, who lead the room in the Pledge of Allegiance.

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### Open Regular Meeting

Board members in attendance: Chairperson – Jan Oatman, Jacalyn Tunstall, Christian Favret, Zoning Enforcement Officer – Lee Shimel, and Clerk – Morgan Melancon.

The applicant Kristie Baker was not in attendance, and Mr. Shimel had to call her as she was at her son’s hockey game. Therefore, Mrs. Baker was then in attendance via telephone.

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### Approval of Minutes

The minutes from the Meeting on January 5, 2022, were reviewed by the Board members. Clerk Melancon had an edit on the first paragraph of page six to amend what Chairperson Oatman had read from. A motion to approve the minutes as amended was made by Member Favret and seconded by Member Tunstall.

The vote went as follows:

Member Favret	Yes	Member Mushtare:	Abstain
Member Tunstall	Yes	Chairperson Oatman:	Yes

The motion passed.

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### Correspondence and Communication

Chairperson Oatman asked if there was anyone who was not on the agenda that wished to address the Board. There was no response. Chairperson Oatman asked Clerk Melancon if there had been any correspondence to which Clerk Melancon said there was none.

**Review of a Use Variance Application for Northern Optics** – the applicant would like to install a freestanding sign for their business. Freestanding signs are not permitted in a Residential Single-Family District per section 158-99 ‘Signage Standards in Residential Districts’, of the Municipal Code, located on State Route 3, tax parcel #83.08-2-13.1.

Chairperson Oatman asked the Board to review the Use Variance Application for Northern Optics. Kristie Baker was in attendance as a representative. Mrs. Baker asked if the Board has received the letter from Mr. Abbey to which Chairperson Oatman replied that was a different topic and they would only be discussing the Use Variance Application that evening.

Chairperson Oatman said, as discussed the last meeting, there were four (4) criteria that needed to be addressed in order for the Board to consider the Use Variance, and all four (4) needed to be met. Chairperson Oatman asked Mrs. Baker if she was able to complete the Use Variance Tests. Mrs. Baker said the last time they discussed questions, Chairperson Oatman could not explain to her exactly what the question meant, and she only kept going through the Code and the Code only referred to if someone had a home office and wanted a sign.

Chairperson Oatman disagreed, and said there was four (4) criteria, one of which was that she could not realize a reasonable return from the property in question and would need to prove that with financial evidence. Chairperson Oatman elaborated that she would not need to maximize her profits, but only have a reasonable return, and she knew that Mrs. Baker had a sign in place since the business opened but should that sign not be there would that have meant she would have no business or reasonable return. Mrs. Baker said she wouldn't be able to say if she would or would not have any business because she had a sign the entire time. Chairperson Oatman asked her realistically, to which Mrs. Baker said yes, realistically, it would hurt her business. Chairperson Oatman replied that she was not asking if it would hurt her business, she was asking if she would not be able to realize a reasonable return. Chairperson Oatman said she would still have customers and patients that had appointments, and she may lose some walk-in traffic, but would she not be able to realize a reasonable return if she did not have a freestanding sign. Chairperson Oatman said she would still have the sign on the building. Mrs. Baker said that was correct, she felt she would lose business if they did not have a freestanding sign.

Chairperson Oatman said the question was not if they would lose business to which Mrs. Baker said they would lose revenue. Chairperson Oatman told Mrs. Baker that she was not understanding what she was saying, and that the Law required proof that you could not realize a reasonable return and it was not that you could not realize maximum profits, but that your business would suffer such catastrophic loses that you would not be able to operate. Mrs. Baker replied that she would agree to that. Chairperson Oatman said she would need some form of financial evidence to which Mrs. Baker said she would take her sign down so her business could go under to prove to the Town they needed a sign, and asked Chairperson Oatman if that was the avenue someone was supposed to go, and if it was realistic.

Mr. Shimel said a reasonable return did not quantify you for having a profit or loss. Mrs. Baker asked them to realistically listen to the question, which indicated that she would have to lose her business and if she thought that would happen because her patients and walk-in customers would not know where they were other than the sign on her building. Mrs. Baker said to test that theory she would have to go out of business and said that was the most ridiculous question she had ever heard.

Chairperson Oatman told Mrs. Baker the sign should not have been up in the first place and Mr. Shimel had graciously allowed her to keep it up. Mrs. Baker said it was not stated anywhere that she could not have a freestanding sign and the Board could say it was her due diligence and that the person who owned the property should have told us but there were already posts there so obviously the previous tenants had the same problem. Mr. Shimel said that it was her responsibility as the leaser, in addition to the owner, to know what the codes were. Additionally, Mr. Shimel said he did not have the email in front of him but from memory, in one of the initial emails Mr. Abby had sent to her he had mentioned that she would probably have problems with the Town with a freestanding sign. Mr. Shimel said it was similar to

someone who would try to establish a business without knowing it if was permitted in that Zoning District. Mrs. Baker said either way, she would have a sign because she would get on a sign with her neighboring tenant, APTOW. Mrs. Baker said the questions were irrelevant to a business, to ask if they thought they would go under if they did not have a freestanding sign. Mrs. Baker continued saying that the question basically asked if the Town did not want to advance and grow, such as if a Price Chopper for example came into the Town, they would not be allowed a freestanding sign unless they proved no one would know where their store was unless they had a sign, and then asked the Board if she was correct in that. Chairperson Oatman told Mrs. Baker that she was getting off topic, and that grocery stores were not allowed in an R-1 District.

Chairperson Oatman said this was a Use Variance, which meant it was not specific to signs but was for anything on the property that was not currently permitted. Mrs. Baker asked if she was saying there were no freestanding signs in the Town unless they went through this process to which Chairperson Oatman said no she was not saying that, and that freestanding signs were permitted in other districts, but she happened to open her business in an R-1 District where they were not permitted. Mrs. Baker said that was a very problematic area of the Town.

Mr. Shimel stated that the questions were not created by the Town of LeRay, they were statue questions that came from the State of New York through their Zoning and Planning Department. Mr. Shimel informed Mrs. Baker that every Town, and possibly every Village, had to adhere to those questions. Mrs. Baker replied that he was telling her things she already knew, and that they were referencing from the Code, which she did not have in front of her as she was at her child's hockey game and said that her and Mr. Abby had both looked at the Code and determined that it was inconclusive to what they were trying to do and that none of it made any sense. Chairperson Oatman said in an R-1 District, freestanding signs were not permitted for commercial entities. Mrs. Baker said unless they were grandfathered in, or there was an unusual circumstance where the building could not be seen from the road, but it was not unusual enough to have a commercial building with two signs and no sign for the third business. Chairperson Oatman replied that the Board did not say the Variance would be permitted if you could not see the building and that Mr. Shimel had tried to give her an example of a unique property. Chairperson Oatman said there were all types of Use Variances that someone could apply for and would have to answer the same questions, but hers happened to be specific to a sign. Chairperson Oatman said a reasonable return was not specific to her optical business, it was for any permitted business that was there, and she would have to prove that no matter what permitted business was there, you could not realize a reasonable return if the Use Variance was not granted. Chairperson Oatman reiterated that the Use Variance Test was a New York State Statue and that it was normal more times than not that Use Variances were denied at all levels of government due to the strict criteria.

Mrs. Baker questioned why they were having the meeting as it seemed they already knew they were going to have to deny the application and asked if that was correct. Chairperson Oatman replied that they were having the meeting at her request as they had explained the last meeting that she had the option to withdraw the application and they would not need to have the Public Hearing. Chairperson Oatman told Mrs. Baker that her exact words the last meeting were "let's just have it and you can go ahead and deny it." Mrs. Baker said exactly and asked what Chairperson Oatman name was, to which she replied that her name was Jan. Mrs. Baker said she specifically felt that Jan was not in any way, shape, or form helpful in the situation and told Chairperson Oatman that she was not giving any suggestions on what route she could

take. Mrs. Baker told Chairperson Oatman that she only regurgitated the rules and who they came from, and they were obviously not going to get anywhere with the meeting. Chairperson Oatman replied that their job as a ZBA was to act on the Variances that came before them. Mrs. Baker commented that they didn't actually help people and said that she did not need her to regurgitate the Laws back to her.

Chairperson Oatman reminded her that at the last meeting, Mr. Shimel had tried to provide different avenues that she could take and had even spoken to the property owner about the options. Mrs. Baker replied that she was not referring to Mrs. Shimel but was saying that Chairperson Oatman specifically was not being helpful as she was the person the Variance had to pass through. Chairperson Oatman said she was only speaking as Chairperson of the Board and that informing applicants on what criteria had to be met to approve a Variance was her only role, and she was not permitted to do anything other than entertain the Use Variance. The whole Board weighed in and it was a vote, but the criteria had to be met. Chairperson Oatman said she did not think there was a person on the Board who would say she could not realize a reasonable return from her business should the freestanding sign be down. Chairperson Oatman elaborated that Mrs. Baker had a sign on her building, established patients, and people had GPS now and would be able to find her, granted it might have been a little more difficult. Chairperson Oatman said she did not disagree with her cause and sympathized with her, but there was a Zoning Law that was in place and the only powers the Zoning Board of Appeals had was to grant or deny a Use Variance.

Mrs. Baker said she could not provide documentation as they had a sign the whole time. Mr. Shimel said if he had been there when she opened and told her to take the sign down then maybe she would be able to prove that she could not realize a reasonable return. Mrs. Baker said agreed and asked what good it did her that he had been a nice guy when she had to prove a loss, and if she had known it was one of the main criteria to be granted the variance then maybe she would have done things differently.

Chairperson Oatman reminded her about the other questions, one being that the alleged difficulty was or was not self-created. Mrs. Baker asked what the question meant to which Chairperson Oatman said it meant the hardship was through her fault, and the ownness was on the business owner, before they signed a lease or built a building, to know the Zoning Laws which she had failed to do. Mrs. Baker again asked what that meant to which Chairperson Oatman replied that she was trying to explain it to her. Mrs. Baker said she did not know there were Zoning Laws, that she was in an R-1 District, and that there would be an issue. Chairperson Oatman said the ownness was on the business owner, before opening a business, to go to the Town and find out what criteria that was for having a business in that area, which applied to any Town. Mrs. Baker said they did not do that which she had already told her multiple times. Chairperson Oatman said therefore, it was self-created and therefore New York State said they could not, by Law, approve a Use Variance if it was self-created. Mrs. Baker said it would not have made a difference if she knew she could not have a sign and put one up anyways. Mr. Shimel said if she knew she was not allowed and did it anyways he would have issued a Stop Work Order and a Remedy the Violation, and if she did not remove the sign then he would have issued an appearance ticket to the Town. Chairperson Oatman said if Mrs. Baker had known the Zoning Law and still put the sign up then it would still have been self-created.

Mrs. Baker said the question contradicted itself and did not really matter. Mrs. Baker said question number one asked if you would go under if you did not have a sign, and question number four asked if you put up a sign knowing you should have or should not have. Chairperson Oatman told her that was incorrect, and that she failed the fourth question. Mrs. Baker said there was no sense arguing back and forth to which Chairperson Oatman replied that the Board still needed to go forward with the formality and open the Public Hearing. Mrs. Baker left the meeting.

Member Mushtare said, aside from her not understanding what Chairperson Oatman was asking, he believed she was not trying to be personal and was looking for options. Chairperson Oatman said although she wanted options, they were not permitted to provide them and she would either need to get ideas from a lawyer or someone who was qualified, such as Mr. Shimel, who had informed her the last meeting, as the ZEO, that the property owner could petition the Town Board and ask them to revise the Zoning Law to allow it. Member Favret said he should have put a sign in prior to the Zoning Change. Mr. Shimel said the situation was just as much Mr. Abby's fault as Mrs. Bakers for not disclosing the information before she signed a lease, to which Chairperson Oatman agreed. Mr. Shimel said he had made a reference in an email to Mrs. Baker that she would have problems with the Town regarding freestanding signs, so she knew about it, but he should have also been more specific.

Chairperson Oatman opened the hearing at 6:58 p.m. and Clerk Melancon read the hearing notice as published in the Watertown Daily Times on January 18, 2022. Chairperson Oatman asked if there were any comments from the audience. Hearing none, a motion was made by Member Favret and seconded by Member Tunstall to close the public hearing.

The vote went as follows:			
Member Favret	Yes	Member Mushtare:	Yes
Member Tunstall	Yes	Chairperson Oatman:	Yes
The motion passed.			

A motion was made by member Tunstall and seconded by Member Favret to review the tests for the Use Variance as a final decision.

The vote went as follows:			
Member Favret	Yes	Member Mushtare:	Yes
Member Tunstall	Yes	Chairperson Oatman:	Yes
The motion passed.			

Weighing the effects of the requested variance on the health, safety, and welfare of the neighborhood and community by:

- A. The applicant [**can/cannot**] realize a reasonable return from the property in question, as has been shown by the financial evidence that:
  - Jan Oatman                     Can    Cannot
  - Christian Favret             Can    Cannot
  - Jacalyn Tunstall             Can    Cannot
  - David Mushtare              Can    Cannot

**Can:** there was no financial evidence provided to say otherwise. The applicant has an established optical business, much of which consists of patients required to make appointments and they have the ability to inform existing patients of their new location. Although they may not maximize any walk-in traffic, there is a sign on the building itself to notify both patients and customers alike which building was theirs.

**Cannot:** N/A

- A. The hardship alleged [is/is not] unique to the property in question and does not affect substantial portions of the district or neighborhood because:

Jan Oatman	<input type="checkbox"/> Is	<input checked="" type="checkbox"/> Is not
Christian Favret	<input type="checkbox"/> Is	<input checked="" type="checkbox"/> Is not
Jacalyn Tunstall	<input type="checkbox"/> Is	<input checked="" type="checkbox"/> Is not
David Mushtare	<input type="checkbox"/> Is	<input checked="" type="checkbox"/> Is not

**Is:** N/A

**Is not:** there is nothing unique about the property.

- B. The requested variance [would/would not] alter the essential character of the neighborhood because:

Jan Oatman	<input type="checkbox"/> Would	<input checked="" type="checkbox"/> Would Not
Christian Favret	<input type="checkbox"/> Would	<input checked="" type="checkbox"/> Would Not
Jacalyn Tunstall	<input type="checkbox"/> Would	<input checked="" type="checkbox"/> Would Not
David Mushtare	<input type="checkbox"/> Would	<input checked="" type="checkbox"/> Would Not

**Would:** N/A

**Would Not:** the neighboring businesses have non-conforming, freestanding signs and the requested additional freestanding sign would not alter the character of the neighborhood.

- C. The alleged difficulty [was/was not] self-created because:

Jan Oatman	<input checked="" type="checkbox"/> Was	<input type="checkbox"/> Was Not
Christian Favret	<input checked="" type="checkbox"/> Was	<input type="checkbox"/> Was Not
Jacalyn Tunstall	<input checked="" type="checkbox"/> Was	<input type="checkbox"/> Was Not
David Mushtare	<input checked="" type="checkbox"/> Was	<input type="checkbox"/> Was Not

**Was:** the applicant/business owner did not do her due diligence to find out from the Town of LeRay what was or was not allowed on that property. The onus is on the owner/tenant of a property to find out this information prior to opening a business.

**Was Not:** N/A

A motion was made by Member Mushtare and seconded by Member Tunstall to deny the Use Variance for the reasons stated above.

The vote went as follows:

Member Favret	Yes	Member Mushtare:	Yes
Member Tunstall	Yes	Chairperson Oatman:	Yes

The motion passed.

This decision would be mailed to Mrs. Baker and would be filed within five (5) business days with the Clerk. Final action of any matter referred must be reported by mail within 30 days to the County Planning Board, including any reasons for contrary action.

## Adjournment

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A motion was made by Member Favret and seconded by Member Mushtare to adjourn the meeting.

The vote went as follows:

Member Favret	Yes	Member Mushtare:	Yes
Member Tunstall	Yes	Chairperson Oatman:	Yes

The motion passed. The meeting adjourned at 7:07 PM.