
Call to Order

The May 5, 2021 Work Session portion of the Town of LeRay Zoning Board of Appeals meeting took place in person and via teleconference. The meeting was called to order by Chairperson Oatman at 6:02 P.M.

Roll Call

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

Approval of Work Session Minutes – March 15, 2021

The Work Session minutes from March 15, 2021, were reviewed by the Board members. A motion to approve the minutes was made by Member Favret and seconded by Member Tunstall.

The vote went as follows:

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

The motion passed.

Interpretation Meeting for Matthew R. Leary, of the decision by ZEO on April 2, 2021, for Article XV Section 158-120 A (10) of the Municipal Code, located on Chrysler Drive.

Chairperson Oatman read to the Board that an appeal may be taken to the Zoning Board of Appeals from a decision of the Enforcement Official who issued a permit, thus where permit had been issued a neighbor may file an appeal with the Zoning Board of Appeals claiming the issuance was incorrect and asking the Board to interpret the zoning regulations and reverse the decision of the Enforcement Official. Chairperson Oatman said that Amanda Craig was issued a permit to have a home occupation and their neighbor was challenging that decision.

Chairperson Oatman said she had looked up the definition of a home occupation under section 156-6 of the municipal code, which read as follows:

HOME OCCUPATION

A profession or other occupation customarily conducted within a dwelling by one or more members of the family residing therein and clearly incidental, accessory and secondary to the residential use of the property. An occupant must be the principal practitioner of the home occupation. Home occupations do not include telecommuters. Home occupations are subject to the regulations in accordance with the provisions of Article **XV** of this chapter.

A. MAJOR

A home occupation requiring site plan approval and a special use permit pursuant to Article **XX** and Article **XVI**, respectively.

B. MINOR

A home occupation requiring a home occupation permit.

Chairperson Oatman said she had looked up the definition of “dwelling” under section 156-6 of the municipal code, which read as follows:

DWELLING

Any building permanently used or occupied as living quarters for one or more families. The term does not include bed-and-breakfast inns, travel trailers, recreational vehicles or trailers utilized for purposes other than living quarters.

Chairperson Oatman said she had looked up the definition of “garage” under section 156-6 of the municipal code, which read as follows:

GARAGE, PRIVATE

See “accessory structure.”

Chairperson Oatman said she had looked up the definition of “accessory structure” under section 156-6 of the municipal code, which read as follows:

ACCESSORY STRUCTURE

A subordinate structure located on the same lot with the principal structure, occupied by or devoted to an accessory use. Where an accessory structure is attached to the principal structure in a substantial manner, as by a wall or roof, such accessory structure shall be considered part of the principal structure. Examples include but are not limited to the following: greenhouses not associated with an agricultural use; private detached garages; sheds and other storage buildings; pole barns; carports and swimming pools. Further, an accessory structure shall meet the following conditions:

- A. A building originally constructed for its intended use.
- B. For purposes of this chapter, cargo containers, railroad cars, truck vans, converted mobile homes, trailers, recreational vehicles, bus bodies, vehicles and similar prefabricated items and structures originally built for purposes other than the fixed storage of goods and materials are not accessory structures.

Chairperson Oatman stated that based on the definitions the garage could be considered a part of the dwelling and in her opinion was acceptable.

Chairperson Oatman read a section of section 158-118 of the municipal code as follows:

PURPOSE

“...In accommodating such activities, it is the intent that there will be no degradation of the character, functionality or quality of life of neighborhoods in which these activities occur. A home occupation shall be conducted in a manner which does not give the outward appearance of a nonresidential use or business being conducted on the premises, does not infringe on the right of neighboring landowners to the quiet enjoyment of their land, is not a nuisance...”

Chairperson Oatman stated that in her opinion, under section 158-120 *Minor Home Occupations*, that sections A (6) – A (10) were potentially in violation. These read as follows:

- (6) No tangible articles or products are offered for sale or repair services provided at the property.
- (7) There shall be no exterior display or exterior storage of materials, equipment, vehicles or supplies used in the home occupation.
- (8) The home occupation shall not generate traffic beyond that normally expected in the particular zoning district.
- (9) The home occupation shall not allow the use of the property as a meeting place or gathering location for nonresident employees for work elsewhere or the storage of materials, equipment, vehicles, or supplies for use elsewhere.
- (10) No equipment, process or activity shall be used or performed that creates noise, vibration, glare, fumes, odors, or electrical interference detectable by the normal senses of persons beyond the limits of the property. In the case of electrical interference, there shall be no radio or television disruption outside the dwelling unit or fluctuations in line voltages off the premises.

Chairperson Oatman stated that Mr. Leary, who was contesting the validity of the permit, had a concern about the noise and he wanted the Board to interpret whether it was an allowable business. Chairperson Oatman said based on the criteria, if the person with the permit met all the qualifications, in her opinion it was an allowable business in an R-1 district in the attached garage. Member Favret inquired as to what would happen if the garage were detached, to which Chairperson Oatman replied that the garage would be considered an accessory structure and would not be permitted.

Member Tunstall said she had driven by previously and did not hear any noise to which Chairperson Oatman said she did not think it was a full-time business and that the noise was not all the time. Member Tunstall said she thought they would most likely be working with the equipment in the afternoon time. Mr. Shimel said even though Amanda Craig was the one who came in for the permit, he believed Howard Selleck was the one who did the actual work.

Chairperson Oatman asked the Board if they had seen the products that they were building to which the Board said they had. Chairperson Oatman said the products Mr. Selleck was building were fairly large, so if he was using tools such as table saws and planers, they tended to be noisy. Chairperson Oatman stated that on Chrysler Drive the garages were so close they practically touched, and the way the code read, whatever noise Mr. Selleck was creating the neighbors should not be able to hear it. Chairperson Oatman said if Mr. Selleck mitigated the noise so it was not detectable to the neighbor, then in her opinion he should be able to do business out of his home. Member Favret said they would potentially need to have the garage door closed or the garage insulated. Chairperson Oatman said another option was for the Board to come up with a decibel level that the noise must not exceed, as in her opinion that is what the wording of the code intended. Chairperson Oatman said the premises of an Interpretation was for the Board to figure out the intentions of whoever wrote the code. Chairperson Oatman said if someone had 5 acres of property and the neighbors were 400ft away, the neighbors would not be able to hear as much as if they were on top of each other.

Chairperson Oatman said Mr. and Mrs. Leary should be able to have peace and quiet, but she did not begrudge someone from having a home business if they did so in a manner that did not violate the conditions.

Chairperson Oatman said, additionally, any people passing by should not be able to tell if there was a business at the home. Mr. Shimel stated that he had attempted to avoid the Interpretation to begin with by asking Mr. Leary if he would be satisfied if Mr. Selleck kept the work inside the garage to which Mr. Leary said he would not be satisfied.

The Board discussed the difference of making noise without having a business versus having a home occupation, that businesses were subjected to harder restrictions.

Mr. Shimel inquired if the hours of operation should be moved from 8:00 AM – 8:00 PM to 7:00 AM – 7:00 PM due to it being daylight savings time. Chairperson Oatman stated that the hours were 8:00 AM – 8:00 PM Eastern Standard Time and she did not think it mattered if it was daylight savings, only what zone they were in.

Chairperson Oatman said to get a better understanding of the noise levels occurring, the Board would need to know what kind of equipment was being used, if the garage door were closed or not, and anything else that would contribute. Member Favret stated that in one of the photos they had the garage door was open at 9:00 AM, to which Chairperson Oatman said they would need to know if they were working at that time.

A motion was then made to set a Public Hearing for June 2, 2021 at 6:30 pm by Member Tunstall and seconded by Member Favret.

Adjournment

A motion to adjourn the work session was made by Member Favret and seconded by Member Tunstall.

The vote went as follows:

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

The motion passed. The meeting adjourned at 6:21 PM.