

# Town of LeRay

## Zoning Board of Appeals - Minutes

December 6, 2023

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### Call to Order

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On December 6, 2023, the LeRay Zoning Board of Appeals held their meeting in the Conference Room of the Town of LeRay Municipal Building. The meeting was called to order at 6:30 PM by Chairperson Oatman, who led the room in the Pledge of Allegiance.

### Open Regular Meeting

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In attendance: Jan Oatman – Chairperson, Christian Favret – Member, Ned O’Brien – Member, David Mushtare – Member, Lee Shimel – Zoning Enforcement Officer, and Morgan Melancon – Secretary to Planning and Zoning. Additionally, Leland Carpenter – Town Board Member, Kevin Bamann – GYMO, George DeVita, and Sylvia DeVita were in attendance. Member John Hallett was absent.

### Acceptance of Minutes – November 1, 2023

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The minutes from the regular meeting on November 1, 2023, were reviewed by the Board members. A motion to accept the minutes as drafted was made by Member Mushtare and seconded by Member O’Brien. The vote went as follows:

Member Favret:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent
Member Hallett:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input checked="" type="checkbox"/> Absent
Member O’Brien:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent
Member Mushtare:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent
Chairperson Oatman:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Absent

The motion passed.

### Correspondence and Communication

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Chairperson Oatman asked if there was anyone who was not on the agenda that wished to address the Board. George DeVita, owner of a nearby parcel, inquired about the purpose of the proposed building. Chairperson Oatman explained that their plan was to build an office building for their existing accounting firm. She said the Zoning Board of Appeals (ZBA) was not approving the project itself, but rather considering a request to allow the building to be set further back from the road than the code permitted.

Mr. DeVita asked how much space the 10,068 square foot building would occupy in relation to the total land area. Mr. Bamann responded that it would take up about 3 to 4 acres of the entire 84-acre parcel. Chairperson Oatman added that since the parcel was on a corner lot, both Waddingham Road and US Route 11 were considered front yards under the Town Code, and both had to meet the front-yard setback requirements. In a Mixed-Use (MU) District, there was a maximum 100-foot setback, and they were asking to place the building more than 100 feet back from both roads.

Mr. DeVita voiced his support for setting the building further from the road, stating that it would be advantageous to the existing neighbors. Mr. Shimel told him that the Planning Board would review the project next, with a Public Hearing where there would be another opportunity for discussion. He mentioned that the Planning Board would have more detailed plans than what the ZBA had. Mr. Bamann mentioned that one of the reasons they had proposed setting the building further back was to maintain some privacy, knowing the area was mainly residential.

Chairperson Oatman asked Ms. Melancon if there was any correspondence to which she replied there was none.

**Public Hearing @ 6:30 PM for an Area Variance Application for Wewer Holding Corp.**

The applicant is requesting a variance for a front-yard setback of 115 feet on Waddingham Road and a front-yard setback of 49 feet 9 inches on US Route 11. The setbacks are being requested to facilitate the implementation of Storm Water Prevention measures for the proposed construction of a new 10,068 SF office building. The project is located on the corner of US Route 11 and Waddingham Road, tax parcel #65.09-1-15.21.

Chairperson Oatman asked the Board to review the Area Variance Application for Wewer Holding Corp, and read section 158-21, subsection A(2) of the Town Code as follows:

“Maximum front yard setback: 100 feet unless specified otherwise (Examples: junkyard, self-storage, storage facility).”

She then read section 158-59 of the Town Code as follows:

“In the case of a corner lot, yards on two roads shall both be considered front yards and must meet appropriate front yard setbacks for the respective district.”

Kevin Bamann, GYMO, was in attendance as the representative and was asked to give a brief presentation of the proposed project. Mr. Bamann provided the revised plans that showed the proposed stormwater areas for the project. He stated that the property was purchased to construct a new 10,068-square-foot office building for the applicant’s existing accounting firm. The property was located close to Fort Drum, where a lot of their clientele was located.

Mr. Bamann said the main reason for the setback requests was to implement stormwater features near both low points on the property, especially considering the way the stormwater flowed downhill towards US Route 11. He stated that the proposed landscaping would allow for more gradual stormwater ponds, creating less noticeable and harsh ditches. Mr. Shimel asked if there would be any control fences around the ponds. Mr. Bamann replied that there were no plans for any fencing as the larger area for the ponds allowed for more of a gentle slope, removing the risk of anyone being able to fall into them. He said their hope was that it would look like a natural part of the land.

Mr. Bamann said maintaining the privacy of surrounding residential properties had also played a role in their request. With that, the proposed lighting for the project would be set further back from the neighboring residences.

Mr. DeVita inquired where the driveway would be located, to which Mr. Bamann said it would be located off of Waddingham Road. Chairperson Oatman explained that the New York State Department of Transportation (NYSDOT) had denied them access off US Route 11. Mr. Bamann said the NYSDOT did not like to have driveway entrances so close to an intersection. Chairperson Oatman said the longer driveway would allow traffic room to stack up while waiting to exit the property if Waddingham Road was busy.

Chairperson Oatman opened the Public Hearing at 6:41 PM and Ms. Melancon read the Public Hearing notice as published in the Watertown Daily Times on November 22, 2023. Chairperson Oatman asked if there was any comments from the audience. Hearing none, a motion was made by Member Mushtare and seconded by Member Favret to close the Public Hearing at 6:42 PM. The vote went as follows:

Member Favret:            Yes  No  Abstain  Absent  
Member Hallett:        Yes  No  Abstain  Absent  
Member O'Brien:        Yes  No  Abstain  Absent  
Member Mushtare:       Yes  No  Abstain  Absent  
Chairperson Oatman:    Yes  No  Abstain  Absent

The motion passed.

Chairperson Oatman stated that the Board had reviewed the Jefferson County Planning Board comments during their Work Session Meeting. The Planning Board had determined that the variance was of local concern only and had advised that the applicant provide drainage details on the site plan. This would help support their main reasoning for the variance, which was to better facilitate the stormwater management features. Chairperson Oatman stated that the applicant had provided a revised Site Plan which included this information.

Chairperson Oatman said the statutes provided that in making their determination on an application for an Area Variance, the Board must balance the benefit to be realized by the applicant against the potential detriment to the health, safety, and general welfare of the neighborhood or community if the variance were to be granted. In balancing these interests, the Board must consider the following five factors:

1. The requested variance will or will not create an undesirable change in the character of the neighborhood or detriment to nearby properties.

Member Favret:            Will  Will Not  Absent  
Member Hallett:        Will  Will Not  Absent  
Member O'Brien:        Will  Will Not  Absent  
Member Mushtare:       Will  Will Not  Absent  
Chairperson Oatman:    Will  Will Not  Absent

Member Favret stated that the proposed setback would allow the building to be positioned further back on both sides, which would provide more residential privacy, enhancing the overall visual harmony with the neighborhood's current character.

Member Mushtare said the inclusion of stormwater features would have a positive environmental impact by mitigating site drainage towards US Route 11. Additionally, the variance would allow the building to be setback further, which would be more in line with the current characteristics of the surrounding neighborhood.

Member O'Brien concurred that the proposed stormwater features would have a positive environmental impact and the variance would enable these features to integrate better with the natural landscape. He also said that without the variance, the building would be closer to the road. Given the land's topography near US Route 11, this would result in the building being situated more prominently on the hillside.

Chairperson Oatman said the variance would permit the placement of the stormwater features as proposed, aligning with the natural layout of the property. Moreover, with potential future developments in mind, she said the variance would enable the building to be situated further from the road. This positioning would be advantageous, particularly if the state decided to widen the road in the future and add a turning lane to accommodate increasing traffic.

It was concluded that the variance would not create an undesirable change in the character of the neighborhood or detriment to nearby properties, for the reasons stated above.

2. The benefits sought by the applicant can or cannot be achieved by some other feasible method.

Member Favret:         Can  Cannot  Absent  
Member Hallett:        Can  Cannot  Absent  
Member O'Brien:        Can  Cannot  Absent  
Member Mushtare:      Can  Cannot  Absent  
Chairperson Oatman:  Can  Cannot  Absent

Member Mushtare stated that the variance could be achieved by another method. Although, he commented that the properties topography would present grading difficulties that would make it challenging to manage stormwater effectively without the requested variance.

Member O'Brien stated that the variance could be achieved by another method but agreed with Member Mushtare regarding the topography would make it challenging for the implementation of the stormwater features.

Member Favret stated that in considering the benefits the applicant had proposed, which included the long driveway, parking, and stormwater features, she did not feel the benefits sought by the applicant could be achieved in another way. She commented that without the variance, it would significantly limit the length of the driveway off Waddingham Road and would greatly challenge the management of stormwater effectively.

Chairperson Oatman said the applicant had presented a draft Site Plan that demonstrated compliance with the existing setback regulations. She acknowledged that this did not mean that it was the best way but only that it was feasible.

It was concluded that the benefits sought by the applicant could be achieved by some other feasible method, for the reasons stated above.

3. The requested variance is or is not substantial.

Member Favret:         Is  Is Not  Absent  
Member Hallett:        Is  Is Not  Absent  
Member O'Brien:        Is  Is Not  Absent  
Member Mushtare:      Is  Is Not  Absent  
Chairperson Oatman:  Is  Is Not  Absent

Member Favret, Member Mushtare, and Chairperson Oatman agreed that the requested variance was substantial. The applicant had requested a front-yard setback of 215 feet on Waddingham Road, which represented an 115% increase over the required setback, more than doubling the standard requirement.

Member O'Brien stated that despite the significant percentage increases, he was of the opinion that the requested variances were not substantial. He stated that the setbacks' impact on the property's appearance and use would not be as pronounced or noticeable, considering the parcel's extensive size of 84-acres.

It was concluded that the variance was substantial, for the reasons stated above.

4. The proposed variance will or will not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.

Member Favret:  Will  Will Not  Absent  
Member Hallett:  Will  Will Not  Absent  
Member O'Brien:  Will  Will Not  Absent  
Member Mushtare:  Will  Will Not  Absent  
Chairperson Oatman:  Will  Will Not  Absent

All Board members stated that the stormwater features planned as a part of the development were expected to positively impact the environment. Chairperson Oatman stated that the variance would also improve the physical conditions on the environment by allowing the longer access driveway which would enhance safety and traffic flow for vehicles entering and exiting the site.

It was concluded that the proposed variance would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district, for the reasons stated above.

5. The alleged difficulty was or was not self-created.

Member Favret:  Was  Was Not  Absent  
Member Hallett:  Was  Was Not  Absent  
Member O'Brien:  Was  Was Not  Absent  
Member Mushtare:  Was  Was Not  Absent  
Chairperson Oatman:  Was  Was Not  Absent

All Board members stated that the zoning regulations were in existence when the applicant purchased the property. It was the buyer's responsibility to ensure that their proposed project conformed to the existing zoning regulations prior to purchasing the property.

It was concluded that the alleged difficulty was self-created, for the reasons stated above.

A motion was made by Member O'Brien and seconded by Member Mushtare that the benefit to the applicant outweighed the detriment to the neighborhood or community. The vote went as follows:

Member Favret:  Yes  No  Abstain  Absent  
Member Hallett:  Yes  No  Abstain  Absent  
Member O'Brien:  Yes  No  Abstain  Absent  
Member Mushtare:  Yes  No  Abstain  Absent  
Chairperson Oatman:  Yes  No  Abstain  Absent

The motion passed.

Chairperson Oatman asked if the Board wished to impose any conditions for the requested variance. Hearing none, a motion was made by Member Mushtare and seconded by Member Favret to grant the Area Variance, for the reasons stated above, of section 158-21, subsection A(2) of the Zoning Law of the Town of LeRay, to allow a front-yard setback of 115 feet on Waddingham Road and to allow a front-yard setback of 49-feet 9 inches on US Route 11, located on the corner of the corner of Waddingham Road and US Route 11, tax parcel #65.09-1-15.21.

Member Favret:            Yes  No  Abstain  Absent  
Member Hallett:        Yes  No  Abstain  Absent  
Member O'Brien:        Yes  No  Abstain  Absent  
Member Mushtare:       Yes  No  Abstain  Absent  
Chairperson Oatman:    Yes  No  Abstain  Absent

The motion passed.

Chairperson Oatman informed Mr. Bamann that the secretary would send him an approval letter and a copy of the Findings and Decisions in the mail.

### **Adjournment**

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A motion was made by Member Favret and seconded by Member O'Brien to adjourn the meeting at 6:59 PM. The vote went as follows:

Member Favret:            Yes  No  Abstain  Absent  
Member Hallett:        Yes  No  Abstain  Absent  
Member O'Brien:        Yes  No  Abstain  Absent  
Member Mushtare:       Yes  No  Abstain  Absent  
Chairperson Oatman:    Yes  No  Abstain  Absent

The motion passed.