

# Town of LeRay

## Zoning Board of Appeals – Work Session Minutes

November 9, 2022

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### Call to Order

On November 9, 2022, the LeRay Zoning Board of Appeals held their meeting in the Town of LeRay Conference Room. The meeting was called to order by Chairperson Oatman at 6:30 P.M. who lead the room in the Pledge of Allegiance.

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### Open Regular Meeting

Board members in attendance: Jan Oatman – Chairperson, Jacalyn Tunstall - Member, Christian Favret - Member, David Mushtare - Member, Lee Shimel – Zoning Enforcement Officer, and Morgan Melancon – Secretary to Planning and Zoning. Additionally, Roger Abbey, Fran Abbey, and Lane Netto were in attendance. Member John Hallett was absent from the meeting.

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### Acceptance of Minutes

The Work Session minutes from October 3, 2022 were reviewed by the Board members. A motion to accept the minutes as drafted was made by Member Mushtare and seconded by Member Tunstall.

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

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### Report from Secretary to Planning & Zoning

Ms. Melancon shared information obtained by Mrs. Jenack, the Community Development Coordinator, with the Board. In addition to the conventional 'yes,' 'no,' and 'abstain' votes, a Board member also had the option to recuse themselves. Recusal meant that the Board member would refrain from participating in any discussions related to the project. It was advised that the recused member physically remove themselves from the table to join the audience. This precautionary step was particularly important in cases involving conflicts of interest, such as potential financial gains. Importantly, a recusal should not be misconstrued as a 'no' vote; however, a majority vote from the remaining members was required. A recused member retained the right to make public comments on the project, expressing personal views rather than representing the Board.

Additionally, Ms. Melancon said the Board was only required to 'accept' the minutes and a motion for approval was unnecessary. Nonetheless, the Board could choose to continue approving the minutes through a motion and vote if they wished to do so.

**Public Hearing @ 6:30 PM for an Area Variance Application for Lane Netto – located on Cottontail Drive, tax parcel #74.16-2-3.8.**

Chairperson Oatman inquired whether the desired benefits by the applicant could be attained through an alternative feasible method. The Board collectively acknowledged that the applicant had ample space to

position the shed ten (10) feet away from the side lot line, eliminating the need for an Area Variance. Chairperson Oatman emphasized that these considerations were for contemplation and did not impede the Board from potentially granting an Area Variance.

Chairperson Oatman discussed the substantiality of the variance with the Board and explained that there was no definition for 'substantial' in the code which therefore left the term up for discussion. Chairperson Oatman said she typically considered anything over 50% as substantial but also considered the question on a case-by-case basis. The requested two-foot variance represented a 20% reduction from the mandated ten-foot setback, a percentage the Board deemed non-substantial. Additionally, the Board took into account that the land adjacent to the side of the property where the variance was sought, was a 50-foot strip of land that was used for an access road to allow that property owner to access acreage he owned behind the applicant's property. A 50-foot strip was not of sufficient size to allow a future dwelling to be placed there.

**Public Hearing at 6:30 PM for an Area Variance Application for Good Morning Rentals – located on State Route 3, tax parcel #83.08-2-13.3.**

Chairperson Oatman asked Mr. Shimel to reiterate the reasoning for the request having been made for the greatest relief of 28.5 feet. Mr. Shimel explained that the greatest relief was requested due to the changing width of the right-of-way closer to the Black River side of the property. One side of the garage only required a 15-foot area variance and the other required a 28.5 area variance. Mr. Shimel explained exactly what a right-of-way encompassed and verified that the setback was measured from the edge of the right-of-way. Chairperson Oatman inquired about the Board's responsibility in knowing the right-of-way details, and Mr. Shimel explained that it was the applicant's responsibility. He mentioned that Mr. Abbey had contacted the New York State Department of Transportation (NYSDOT) for the right-of-way information on his property.

Chairperson Oatman asked the Board if the benefits sought by the applicant could be achieved by some other feasible method. The Board collectively acknowledged that the applicant could meet the required setback by removing a row of mature evergreen trees. However, the Board expressed concerns about the adverse environmental impact of removing these mature trees, deeming it less favorable than granting the Area Variance. Moreover, considering the presence of an existing circular driveway and a sidewalk leading to the current house, the Board found it advantageous for the applicant to construct the garage at the proposed location.

### **Report from Chairperson**

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Chairperson Oatman informed the Board about Mr. Braun's inquiry regarding a Use Variance for his property on Route 3 in a Residential District (R-1), which was located in a Residential District (R-1). Initially considering a daycare and office space, Mr. Braun had changed his plans and now sought approval for a multi-tenant dwelling, which was not allowed use in an R-1 district. Although Mr. Braun had yet to submit an application, Chairperson Oatman wanted to address the matter before her upcoming three-month absence.

Chairperson Oatman outlined the four statutory test questions that must be met for a Use Variance, as per New York State Statute. The first test involved demonstrating that the applicant couldn't achieve a reasonable return for every permitted use in the zoning regulations for the specific district, supported by substantial financial evidence. This meant proving that, for all allowed uses in an R-1 district, including the initially proposed daycare and office space, a reasonable return couldn't be realized. Chairperson Oatman emphasized that a reasonable return didn't imply maximum return and clarified that the reduction in property value due to zoning regulations or the potential for better profit in another permitted use didn't justify a variance.

The final test question focused on proving that the hardship was not self-created. Chairperson Oatman expressed concerns about this aspect, stating that if the property was purchased after the 2014 zoning change, it might be challenging to establish that the hardship wasn't self-created.

## Adjournment

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A motion to adjourn the Work Session was made by Member Mushtare and seconded by Member Favret at 6:26 PM.

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