

# Town of LeRay

## ZBA - Work Session Minutes

January 5, 2022

### Call to Order

The January 5, 2022, Work Session portion of the Town of LeRay Zoning Board of Appeals meeting took place in person in the Conference Room, and via teleconference. The meeting was called to order by Chairperson Oatman at 6:00 P.M.

### Roll Call

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

### Approval of Work Session Minutes – November 30, 2021

The Work Session minutes from November 30, 2021, were reviewed by the Board members. A motion to approve the minutes as drafted 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.

### Review of a Use Variance Application for Northern Optics, located on Route 3, tax parcel #83.08-2-13.1.

Chairperson Oatman said the applicant, Ms. Baker, had to complete the Use Variance Test and successfully meet each of the four variance tests. The Zoning Board of Appeals reviewed Northern Optics answers for the Use Variances and found that Ms. Baker could not meet three (3) of the four (4) tests.

Chairperson Oatman said for the first question Ms. Baker wrote there was no change of revenue and could not realize a reasonable return, and furthermore, she had informed Mr. Shimel that since moving locations their business had increased. Based on the first question alone, Ms. Baker did not pass the variance test. Chairperson Oatman said the second questions answer was unclear and they would need to ask Mr. Baker for clarification during the meeting. The last question asked if the alleged hardship had not been self-created, which it was as regardless that Ms. Baker had been unaware of the law, it was still up to her or her landlord to do their due diligence in finding out what was and was not permitted on their property. Even though the neighboring businesses in Ms. Bakers building had Freestanding Signs, they were grandfathered in as the Zoning Laws had changed in 2014. Mr. Shimel said the Zone they were in was previously a Business Residential Zone before the Town consolidated the districts in 2014 to what they had today, and freestanding signs were undoubtedly allowed at that time.

Chairperson Oatman stated that it was unfortunate that the Code did not allow it, but by New York State Statue, there was no flexibility based on the answers to the four (4) questions.

Chairperson Oatman referred to the Zoning Code, section 158-99 “Signage Standards in Residential Districts”, and went over what was and was not allowed. Chairperson Oatman pointed out that the

Table said, “Permitted nonresidential uses in residential districts (home occupations)”, which was confusing to her. Chairperson Oatman elaborated and said when something was put in parenthesis, it was typically describing what was being talked about, and the language did not include words such as “including” or “example” which made it sound like it was referring to only home occupations.

Chairperson Oatman said in an R-1 District, there were permitted uses, such as office buildings that were permitted with a Site Plan Review, in addition to churches, schools, and daycares, and none of them were permitted a sign. Chairperson Oatman said this topic was one of those things that should be looked at as they went through the Comprehensive Plan and identified things to hopefully update in the Zoning Laws.

The Board discussed a previous Area Variance in a R-1 District for Pain Solutions who were requesting to change the size of their existing freestanding sign. They had required an Area Variance as it was a non-conforming use, but the sign was grandfathered in. Chairperson Oatman elaborated that if he was to put in a new sign, it would have not been allowed but because it was existing, it was grandfathered in and allowed an Area Variance.

Mr. Shimel mentioned that during a past Use Variance Application that was granted, for the Meat Market, they had provided financial figures to prove the hardship. Mr. Shimel continued and said for the last question, the owner had purchased the property right before the code change with the intent of reopening, making the last question of the test true. These were examples of answers and situations that granted a Use Variance.

Member Tunstall asked how many signs were allowed on the building to which Chairperson Oatman replied that 1 sign per façade with a size of 5% of the façade. Mr. Shimel clarified that the 5% was for the entire façade facing the road.

Mr. Shimel said he had spoken to the owner of the building, Roger Abby, about consolidating the signs and sharing it with APTOW, saying they would have the option to apply for an Area Variance to increase the size of the sign that would be shared for the tenants of the property. The board discussed the possibility of an Area Variance for an existing sign and what that would look like.

Mr. Shimel said Ms. Baker had another option which was Article 78, which meant she could take the Town of LeRay to Supreme Court to try and get the Boards decision overruled.

Clerk Melancon said Ms. Baker would not know if not having a sign would affect her business unless she took the sign down. Additionally, Clerk Melancon made note that the type of business that they had was not retain and would not rely solely on walk-in traffic to which Chairperson Oatman agreed and said typically with a doctor’s office, people need to schedule an appointment and call ahead.

Chairperson Oatman concluded that ultimately the Board needed to fix the problem internally, but for now the Board did not feel Ms. Baker passed the Use Variance Test as it stood.

## Adjournment

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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 6:20 PM.