

Town of LeRay

ZBA - Minutes

January 5, 2021

Call to Order

On January 5, 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 6:30 P.M. by Chairperson Oatman, who lead the room in the Pledge of Allegiance.

Open Regular Meeting

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

Approval of Minutes

The minutes from the meeting on 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 Favret	Yes	Chairperson Oatman:	Yes
Member Tunstall	Yes		

The motion passed.

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 and gave a brief presentation. Mrs. Baker said that her husband, the eye doctor, and her had just moved their practice, Northern Optics, from Pearl Street to Route 3. Upon moving to the new location, there was no street sign but there were two posts that the tenant before them had installed for a sign which had to be taken down, and it was only after moving in that she was made aware of the zoning regulations regarding signs. Mrs. Baker said they applied for the Use Variance for that reason, in an attempt to be allowed a street sign just like the neighboring businesses and try to make sure their patients knew their new location.

Chairperson Oatman said the Board was sympathetic to their cause and understood the need for businesses to have signs. However, the existing signs were there prior to the zoning changes made in 2014, and when the Town of LeRay updated their Zoning Districts, the area that Mrs. Baker was in

became a Residential Single-Family District (R-1) and in that Zone, freestanding signs were not allowed for permitted nonresidential uses. Chairperson Oatman said in order for the Board to consider a freestanding sign, Mrs. Baker would require a Use Variance and the New York Statue was very specific in the criteria that needed to be met in order for the Board to grant the Variance, there was no flexibility. Chairperson Oatman informed Mrs. Baker that she would have to meet all four (4) of the Variance Tests, which she did not. Chairperson Oatman told Mrs. Baker that the first question, being able to realize a reasonable return, she would have had to document that there was a significant loss of revenue. Mrs. Baker said the reason she could not realize lost revenue was because she had put up a sign without knowing she was not supposed to, and still had the sign up, and they only way to prove the first test was to take her sign down.

Mrs. Baker said she did not understand why the code changed in 2014 to which Chairperson Oatman replied that, before her time on the Board, the Town went through a large process and rezoned the Town, as over the years the area had changed significantly with Fort Drum. Chairperson Oatman said that it was her understanding that Route 3 used to be a Business-Residential Zone which no longer existed.

Mrs. Baker asked if all three of the businesses in her building could have one large sign as opposed to separate ones to which Chairperson Oatman explained that they would have to use an existing sign that was grandfathered in and apply for an Area Variance to increase the face of the sign, as the existing signs were considered nonconforming and were not allowed to be changed unless they were granted an Area Variance. Mrs. Baker said Mr. Rogers was more than willing to do whatever needed to be done, which included funding.

Mr. Shimel gave an example of an Area Variance and how the process went. Chairperson Oatman said there were still guidelines on how large the sign could be. Mr. Shimel said the Board had already set a precedent for 50%, which meant the sign could be increased in size 50% of the existing square footage.

Mrs. Baker asked if Mr. Rogers would need to ask for the Area Variance to which Chairperson Oatman said yes and stated that an Area Variance had a much better chance of passing as Use Variance's were very specific per New York State, and the Use Variance Tests had to be met.

Mrs. Baker asked to Board to clarify and explain the test questions. Chairperson Oatman said for the first question, a reasonable return meant that any type of use that was permitted in a R-1 District would not be able to realize a reasonable return at that location. Furthermore, profits did not need to be maximized, only a reasonable return. Mrs. Baker asked if she was indicating that they would have lost patients because they would not have known where they were located. Mr. Shimel said that would have been a consideration.

Chairperson Oatman explained the second question, that it meant the property was unique and the uniqueness did not apply to most of the other parcels in the district. Chairperson Oatman said the Variance was for a sign, not a business to which Mrs. Baker said there were no other eye care or physical therapy businesses for miles, and said the question was asking if a business was substantial enough to warrant a sign. Mrs. Baker said she felt having patients over having a tattoo parlor would be a different situation. Chairperson Oatman explained that the question had nothing to do with the type of business but was referring to the property itself, that there was something so unique about the property that it applied to that property and no one else's. Mr. Shimel verbally illustrated a scenario of a unique property; the building was not visible from Route 3 as you had to go down a hill to see it. Mrs. Baker said she thought the property was unique because someone would only be able to see the large Aptow sign and the House of Good Shepard's sign, but nothing about eye care. Mrs. Baker said they only had a small sign on the building but because of the way the building was they could not put a larger sign and she felt that unless they had a road sign people wouldn't know they were there. Chairperson

Oatman said one could argue that they were not a retail outlet and did not rely on walk-in traffic to which Mrs. Baker replied that they sold glasses.

Chairperson Oatman said it was unfortunate that the other businesses had signs, as they were preexisting, but not having a sign was not unique, and if another medical facility opened up down the road, they too would not be allowed to have a sign. Chairperson Oatman went over the definition of what it meant to have a unique property, and read:

“...The plight is due to unique circumstances and not to general neighborhood conditions. You must demonstrate to the board that the alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood. Difficulties or hardships shared with others go to the reasonableness of the ordinance and generally not support a variance relating to one parcel upon the ground of a hardship...”

Chairperson Oatman said the finding of uniqueness had been referred to as a singular disadvantage. Mrs. Baker stated that to her, that meant if someone had a one (1) year lease they would want a sign in that timeframe, and that she had signed a ten (10) year lease. Chairperson Oatman explained that any other business that would open along the Route 3 corridor that wanted to establish an allowed business would not be allowed a freestanding sign and told Mrs. Baker that her situation was not unique. Mrs. Baker was confused as to how her situation was not unique when there were two other businesses in the same complex with signs and she did not have one, to which Chairperson Oatman reexplained that post 2014, any business that wished to establish itself along route 3 would not be permitted a freestanding sign and the existing signs were there prior to the zone change.

Mrs. Baker asked who made the rules, stating that she wanted to go before them as there had to be an exception to the rule. Chairperson Oatman said it was a long process done by the whole Town to which Mrs. Baker said she would go before the whole Town then and would not stop with just this as she wanted to get to the bottom of it. Chairperson Oatman said the Town was in the process of rewriting a Comprehensive Plan for the Town, and as part of that process they understood that things changed over the years, and they would be identifying problematic areas that might have needed to be rezoned but changing zoning for one property was not allowed and was called Spot Zoning. Mrs. Baker said she did not want to change it for just one property and that she did not feel that it was right for any of the properties. Chairperson Oatman said that she was zoned residential and would have to change the zoning for that parcel to allow it. Mrs. Baker said that was interesting and it was an easy fight to say she was zoned residential when there were plenty of other medical practices on that road and there were not many residential homes.

Mr. Shimel said she could ask the Town of LeRay for a change in the Zoning Law to permit freestanding signs in an R-1 District and explained the process. Additionally, Mr. Shimel said there was also a situation where an owner could request a Zone Change, which did not pertain to signs. Mr. Shimel said the timeframe for a Law change would be about three (3) to four (4) months at the earliest. Mr. Shimel elaborated on what Chairperson Oatman said about the Comprehensive Planning process, and that it would take roughly twelve (12) months before there was even considerations of changes to the law. Mr. Shimel said the quickest option would be for a Law change which had a fee of \$500.00.

Mrs. Baker asked who the Town Planning Board was to which Mr. Shimel said it was a different group of seven (7) people. Mrs. Baker asked if Mr. Shimel wanted her to take her sign down to which he replied no, since she had shown a concerted effort to comply by applying for a Use Variance. Chairperson Oatman said as far as being zoned as a R-1 District, there were other permitted uses outside of residential homes, such as office buildings, day cares, and churches, and when the Town had come up with the criteria for signs in an R-1 District it was on the premise that the majority of places were homes and if you took the whole corridor, the majority of properties were indeed homes.

Mrs. Baker asked Chairperson Oatman if she had been in that area because that was not accurate to which Chairperson Oatman replied that she had been and in the entirety of Route 3 that went from the edge of Watertown to Black River, the majority of properties were either apartment complexes or residential homes. Mrs. Baker said she would like to see the zoning and listed some businesses on Route 3 to which Chairperson Oatman replied that the area Mrs. Baker was talking about was in the City of Watertown, not the Town of LeRay. Mrs. Baker said she would like to see exactly where the Zones were so she could understand because about a mile from her office she saw a lot of places that were not apartment complexes and houses. Chairperson Oatman explained that when going down the road there was a sign that said "Entering Town of LeRay" which was where the Town line started and reiterated that the properties Mrs. Baker was referring to were in the City of Watertown.

Mr. Shimel discussed the different zones in the Town and said the map would break the zones down so she could see where her business was within that zone. Mrs. Baker asked if it would be beneficial to have a petition showing the support for her being allowed a sign. Chairperson Oatman replied that it would be beneficial but stressed to Mrs. Baker that the zoning for one parcel could not be changed.

Chairperson Oatman advised Mrs. Baker to use wording from the municipal code section 158-99 "Signage Standards in Nonresidential District," "Table 6: Signs in Residential Districts." Chairperson Oatman said it read as "permitted nonresidential uses in residential districts," and told Mrs. Baker that if she worded it as only allowing freestanding in a residential district it would permit any homeowner to have a freestanding sign in their yard. Mrs. Baker said she would think people would be smart enough to know not to put a sign in their yards to which Chairperson Oatman disagreed, which was why Zoning Laws existed. Mrs. Baker said they should also incorporate HOA's then because if they wanted properties to look a certain way there were a lot of other nicer looking places that had HOA's.

Mr. Shimel said in 2016 when he had just started working for the Town of LeRay, the Town tried to enact some changes along Route 3 to allow new businesses. Mr. Shimel said there was a large turnout at the Public Hearing and not many people spoke in favor of the proposed changes, so much so that the outpour of negativity on the subject led to the Town Board withdrawing the law.

Mr. Shimel said he gave a monthly report to the Town Board at their meetings, and he had mentioned Mrs. Baker's Use Variance. Mr. Shimel said one of the Town Board Members said Mrs. Baker should have applied for a Zoning Law Change. Mrs. Baker said she would have rather asked for a temporary Sign Permit for the sign to remain there for ten (10) years rather than try to change the laws as she did not think people would want to have the laws changed. Chairperson Oatman replied that they could not allow a temporary permit, only a Use Variance would grant her what she was looking for. Mrs. Baker said she knew that and was willing to apply for a Law Change if that was what she had to do. Mr. Shimel said the previous tenant had the same position and her request was not unique, to which Mrs. Baker said the laws did not make sense to her and it all seemed like small town stuff.

Chairperson Oatman explained that changing the zoning for an entire town was a large undertaking and not perfect, which was where Mrs. Baker's recourse was, changing the law if it did not make sense.

Mrs. Baker said she did not think anyone should have been grandfathered in and all of the signs should have been taken down, as she did not think someone "being there first" made sense. Mrs. Baker asked Chairperson Oatman to imagine if she was a business owner who had two established tenants but needed two more and had to tell them they were not allowed a sign because they were not there first. Chairperson Oatman said if it had been her and she had known about the Zoning Change, she would have made sure to have put signs up prior to the change to which Mrs. Baker replied that businesses were not notified, and Mr. Rogers said he was not notified of the impending change and that everything had suddenly changed in 2014. Chairperson Oatman replied that there were several Public Hearings and Meetings on the subject and by Law all of the property owners in the Town of LeRay were notified

and sent letters. Comparable to the Comprehensive Planning Committee now, who had sent letters to the entire Town looking for input. Mrs. Baker asked when that had happened to which Chairperson Oatman replied that it had been recently. Mrs. Baker said she had not received a letter to which Mr. Shimel replied that it would not have been sent to her as a tenant but to the property owner, Mr. Rogers.

Chairperson Oatman said, referring to the 2014 changes, people just did not respond but by law were given the opportunity to voice their opinion and see what changes were being presented and bring forth any objections, but absent that it was passed and became a law. Mrs. Baker said she knew how the processes worked and was not debating that, she was debating that everyone had been made aware of it to which Chairperson Oatman replied that they were and by law had to be notified. Mrs. Baker said Rogers may have owned the building, but the tenants should have also received notifications as well to which Mr. Shimel responded that Mr. Rogers could have notified his tenants, but by law the Town only had to notify the property owners. Mr. Shimel said the Town also posted all Public Hearings in the Watertown Daily Times and posted them on their website calendar as well.

Mr. Shimel said Mr. Rogers had attended the Public Hearing in 2016 when the Town was considering allowing more businesses in the district and was aware of that, and came up to Mr. Shimel after to ask how he could have sat there with no issue to the subject matter. Mr. Shimel said he had told Mr. Rogers it was the taxpayers time to voice their opinion and the Town was there to listen. Mrs. Baker reiterated that she was not made aware of the sign situation until after they had moved and signed a lease.

Mr. Shimel said that was why there was the phrase “buyer beware” to which Mrs. Baker said they did not have all the rules and regulations for a small town where she was from in Oswego, you would just pay a fee and put up your sign and it was not big deal, and they did not have specific rules for residential or commercial. Chairperson Oatman said she could guarantee Oswego had Zoning Laws and different parts of the Town were Zoned differently, and considering that Mrs. Baker had to pay a fee and then was able to put up her sign, she would say it was allowed in the district she was in.

Mr. Shimel said every Town and Village had their own set of Zoning Laws and regulations and no two (2) were alike, so what may have applied in Oswego would not apply to any other Town. Mrs. Baker said she was not indicating that it did and that she was not an idiot, that each Village of course had their own regulations, what she was trying to say was where did they go from where they were to fix the situation to which she said she had her answer, to write the Town Board a letter asking for a Zoning Law change and go from there.

Chairperson Oatman said since she had an application it required them to have a Public Hearing the next month to approve or deny the Variance. Chairperson Oatman said if Mrs. Baker could not justify the four (4) questions that were required and prove to the Board that the property was unique and that she could not make a reasonable return then it would be denied. Chairperson Oatman reminded Mrs. Baker that a reasonable return did not mean maximizing profit to which Mrs. Baker asked what it meant. Chairperson Oatman read from the municipal code and the state defined a reasonable return as:

“Whether the use allowed by the zoning law is yielding a reasonable return, an applicant must prove that he she cannot realize a reasonable return from each of the uses permitted in a zoning district. The mere fact that a property owner may suffer a reduction in the value of the property because of the zoning regulations or the fact that another permitted use may allow the sale of the property at a better price or permit a larger profit does not justify the granting of a variance on the grounds of unnecessary hardship.”

Chairperson Oatman said if the use allowed by the Zoning Law was yielding a reasonable return the applicant had to prove that they could not realize a reasonable return from each of the uses permitted in a Zoning District. The mere fact that a property owner may have suffered a reduction in the value of the property because of the Zoning Regulations, or the fact that another permitted use may have allowed the sale of the property at a better price or permitted a larger profit, did not justify the granting of a Use Variance on the grounds of unnecessary hardship.

Mrs. Baker asked what that meant in layman's terms to which Chairperson Oatman replied that it meant that any permitted use for that property, not just the Eye Practice, would suffer and any permitted use for that parcel would not be able to make a return on their money, no matter what the investment was, that it was so inherent that the business would take a significant loss. Chairperson Oatman told Mrs. Baker that she would have had to have proven that to the Board.

Mrs. Baker asked the Board how her business was not unique enough even though it was both medical and retail, and asked if they could give her definitions of unique commercial businesses or properties. Chairperson Oatman referred to Mr. Shimeles earlier statement, that it was not the business that was unique but the property itself, such as if the property sat down in a valley and could not be seen from the road. Mrs. Baker asked if having two signs, that had nothing to do with her business, was not unique to which Chairperson Oatman said no, it did not make the property itself unique. Mrs. Baker asked if what Chairperson Oatman was saying was that she would have to be thirty (30) yards from the road, and no one could see her business because it was surrounded by trees? Chairperson Oatman said her property had to be unique from any other property in that area, not just the two businesses next to her, but every property along that corridor. Mrs. Baker said she wanted real situational examples, such as the one Mr. Shimel gave.

Mrs. Baker asked to go over question number three (3). Chairperson Oatman said if the Variance was granted it would not alter the essential character of the neighborhood and that Mrs. Baker had no problem meeting that requirement. Mrs. Baker said they could check off questions number three (3) and four (4) then to which Chairperson Oatman replied that she could not check off question number four (4), as she had leased a property that was in an R-1 District that did not allow freestanding signs, and just because she did not do her due diligence to know that did not mean that the alleged hardship was not self-created. Mrs. Baker said just because she was not informed, or because she didn't do her research and homework, meant too bad for her? Mrs. Baker apologized and said it was all just very frustrating and thanked the Board for their time and consideration with the process. Chairperson Oatman asked if Mrs. Baker wanted to continue with the application and have the Public Hearing for it to which Mrs. Baker replied yes. Chairperson Oatman said the next meeting would be February 2, 2022, at 6:30 pm.

A motion was made by Member Favret and seconded by Member Tunstall to act as Lead Agency to conduct the environmental review for the Unlisted Action.

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

The Board reviewed and completed Part 2 of the Short Environmental Assessment Form and based on a review of the information and analysis, the Board determined that the proposed action would not result in any significant adverse environmental impacts. A motion to declare a negative declaration was made by Member Tunstall and seconded by Member Favret.

The vote went as follows:			
---------------------------	--	--	--

Member Favret	Yes	Chairperson Oatman:	Yes
Member Tunstall	Yes		

The motion passed.

Chairperson Oatman asked the Board if they had any further questions or comments to which the Board had none. The Board determined that the Use Variance application was complete. A motion to deem the application complete was made by Member Favret and Seconded by Member Tunstall.

The vote went as follows:

Member Favret	Yes	Chairperson Oatman:	Yes
Member Tunstall	Yes		

The motion passed.

A motion was made by Member Tunstall and seconded by Member Favret to send the project to the County Planning Board for their review at their January 25, 2022 meeting.

The vote went as follows:

Member Favret	Yes	Chairperson Oatman:	Yes
Member Tunstall	Yes		

The motion passed.

Member Favret then made a motion to set a Public Hearing for the February 2, 2022 meeting at 6:30 pm, seconded Member Tunstall.

The vote went as follows:

Member Favret	Yes	Chairperson Oatman:	Yes
Member Tunstall	Yes		

The motion passed.

Chairperson Oatman said the Clerk would send her a letter in the mail with the Public Hearing information.

Adjournment

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

The vote went as follows:

Member Favret	Yes	Chairperson Oatman:	Yes
Member Tunstall	Yes		

The motion passed. The meeting adjourned at 7:33 PM.