

Town of LeRay
Zoning Board of Appeals
February 28, 2019

Call to Order

On February 28, 2019, the LeRay Zoning Board of Appeals, located in the Town of LeRay Conference Room at 8650 LeRay Street in Evans Mills, NY, was called to order at 6:30 p.m. by the Zoning Board of Appeals Chairperson Jan Oatman.

Open Regular Meeting

Board members in attendance: Chairperson Jan Oatman, James Blankman, Patrick Pearson, Jackie Tunstall, Zoning Enforcement Officer - Lee Shimel, Town Board Member – Jennifer Dindl-Neff, and Secretary – Diane Fuller. Others in attendance were Mr. Burnham, Mr. Gracey, Mr. Eisenhauer, Mr. and Mrs. Gushlaw, Mr. Olney, and Mr. Hathaway.

Pledge of Allegiance

Approval of Minutes

The minutes from January 16, 2019 were reviewed by the Board members. A motion to approve the minutes was made by Mr. Pearson and seconded by Mrs. Tunstall. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

Old Business

Public Hearing Use Variance for Burnman LLC, - to establish a grocery/gas station in the R-1 District, located at 27117 NYS Route 3, Tax Parcel #75.17-1-18.2. The Application consists of the Use Variance and other supporting paperwork.

Chairperson Oatman accepted a motion made by Mr. Pearson and seconded by Mrs. Tunstall to open the Public Hearing at 6:32 pm on the request for a Use Variance for Burnman, LLC. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

Chairperson Oatman asked if Mr. Burnham would like to speak. Mr. Burnham provided information to the Board to support his request for a Use Variance. Chairperson Oatman then asked if anyone from the audience would like to speak. Mr. Eisenhauer presented written information to the Board, which has been attached to these minutes. Mr. and Mrs. Gushlaw, who live next door to the property, stressed their concern about the lights, traffic, and garbage from a convenience store/gas station should the Use Variance be granted. Mr. Burnham answered that they were working on the Gushlaw's concerns and had already installed a fence along the property between the two properties. Mr. Olney, who had sold advertisement to the former operator of the BBQ takeout at the applicant's site, expressed his opinion that the Town of LeRay was making it difficult for businesses in the Town to operate. He stated that he felt Mr. Burnham had been treated unfairly.

Chairperson Oatman explained that BBQ was shut down because Mr. Burnham had not submitted a Site Plan to the Planning Board for approval, which is required per Zoning Code Law even though Mr. Burnham had been informed on several occasions that he must do that before proceeding. The job of the ZBA Board is to review use or area variance applications submitted to them from property owners that wish to do something other than what is allowed by the zoning on that property. The ZBA Board must follow the laws and guidelines established by New York State and the Town in granting variances. The onus is on the property owner to provide the documentation to support his/her request. Use Variances can only be

approved if the applicant can provide sufficient evidence that supports the established criteria that must be met. The zoning for the property in question was changed in 2014 by the Town Board. A committee was formed to review the entire Town Zoning Code with a hired outside company that specializes in writing and updating Zoning Codes. Many of Mr. Olney and attendees comments were complaints about the change in the Code. Chairperson Oatman explained that it was not the function of the ZBA Board to change zoning and that any questions, concerns, or requests for change to zoning would have to go before the Town Board. The ZBA Board can only entertain requests for variances and grant such variances based on existing laws.

Board Member Blankman brought the following information from research he had done on the zoning change. The Town Comprehensive Plan was installed in the Town in 2009. The Town Code Book was updated by the Town in 2014. In 2018, the ZBA Board did grant a Use Variance to Mr. Burnham for the BBQ takeout with the condition that an approved Site Plan must be applied for and received from the Planning Board. Member Blankman stated that during an educational conference that he was able to talk to the Department of State representative about the rezoning of the entire Route 3 corridor. The representative stated that this property was not required to be changed to residential and that it would not have been considered to be spot zoning; that the Town's Comp Plan provides for such property in Section 113 to 114, which is also in the information from Mr. Eisenhower; and that the length of the time of abandonment needs to be looked at. Member Blankman then stated that he was asked, as an appointed board member, to try to get some answers for the Route 3 residents' questions when the issue had been changed to R-1, and such uses were no longer allowed. He stated that he never received any return calls to the messages he left for town personnel.

Mr. Blankman moved to close the Public Hearing at 7:30 pm and was seconded by Mr. Pearson. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

Chairperson Oatman read the letter from Jefferson County Planning Board. The advisory comments from the staff to assist the local board were:

- The County Planning Board adopted a motion that the project does not have any significant County-wide or intermunicipal issues and is of local concern only.
- The County Planning Board determined that in order for a Use Variance to be granted, all of the tests for a use variance must be satisfied prior to approval (NYS Town Law 267).

Chairperson Oatman asked if there were any questions or comments from the Board. There being none, Mrs. Tunstall made a motion to review the tests for the requested Use Variance and seconded by Mr. Blankman. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

Chairperson Oatman asked the Board to vote on the four tests:

1. The applicants **Can Not** realize a reasonable return from the property in question, as has been shown by the financial evidence that the cost of bringing the property into compliance with DEC regulations because of fuel tanks on the property, coupled with the costs already incurred by Mr. Burnham for the purchase and improvements to the property would make it unlikely that Mr. Burnham could recoup his investment or realize enough revenue to offset those expenses from the uses currently allowed for the property.

Mr. Blankman **Can Not**

Mr. Pearson **Can Not**

Mrs. Tunstall **Can Not**

Chairperson Oatman **Can Not**

2. The hardship alleged **Is** unique to the property in question and does not affect substantial portions of the district or neighborhood because the property was formerly a convenience store and gas station for many years and a zoning change in 2014 no longer allows that use. The structure remains on the property and is not suitable as a residential property.

Mr. Blankman **Is**
Mr. Pearson **Is**
Mrs. Tunstall **Is**
Chairperson Oatman **Is**

3. The requested variance **Will Not** alter the essential character of the neighborhood because the building and its former use as a convenience store and gas station has been part of the neighborhood for many years. If the structure remains vacant, it will continue to deteriorate.

Mr. Blankman **Will Not**
Mr. Pearson **Will Not**
Mrs. Tunstall **Will Not**
Chairperson Oatman **Will Not**

4. The alleged difficulty **Was Not** self-created because it was determined that the Auction for the sale of the property took place on August 6, 2014 and the Zone change in the Town became effective on October 1, 2014, therefore the original zoning for the property was in effect at the time the property was purchased at the auction. Mr. Burnham purchased the property with the intention of re-establishing the convenience store and gas station as it previously was, which would not have required a Use Variance should the zoning not have changed.

Mr. Blankman **Was Not**
Mr. Pearson **Was Not**
Mrs. Tunstall **Was Not**
Chairperson Oatman **Was Not**

A motion to grant the application of Burnman, LLC, for a Use Variance of Section 158-16 of the Zoning Law of the Town of LeRay for the use of opening a mixed use abandoned building, in a R-1 district at the Tax Parcel Number of 75.17-1-18.2; location address of 27119 NYS Route 3, Watertown, NY is granted for the reasons stated above, and the condition that a licensed engineered Site Plan must be obtained for the Town of LeRay Planning Department before any construction or opening may happen at the plaza was made by Mr. Blankman and seconded by Mr. Pearson. The vote was as follows:

Mr. Blankman **Yes**
Mr. Pearson **Yes**
Mrs. Tunstall **Yes**
Chairperson Oatman **Yes**

Chairperson Oatman informed Mr. Burnham that a letter would be sent by Ms. Fuller with his resolution. The next step was to set up a meeting with the Planning Board Chairperson and Zoning Officer to apply for a Site Plan for the entire property.

Public Hearing Area Variance for Tontarski, Inc. – proposal is to subdivide parcels in the MED District less than 5 acres, located along Fabco Road and NYS Route 3, Tax Parcel #83.08-1-71.21. The Application consists of Area Variance, the Denial from ZEO, SEQR, and Plat Map.

A motion was made to open the public hearing at 7:51 pm by Mr. Pearson and seconded by Mrs. Tunstall. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

With no public comments being made, a motion was made to close the public hearing at 7:58 pm by Mr. Pearson and seconded by Mrs. Tunstall. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

Chairperson Oatman read the letter from Jefferson County Planning Board. The advisory comments from the staff to assist the local board were:

- The County Planning Board adopted a motion that the project does not have any significant County-wide or intermunicipal issues and is of local concern only.
- The County Planning Board determined that in order for an Area Variance to be granted, all of the tests for a use variance must be satisfied prior to approval (NYS Town Law 267).

Chairperson Oatman asked if there were any questions or comments from the Board members. There being none, Mrs. Tunstall made a motion to review the tests for the requested Use Variance and seconded by Mr. Blankman. The vote went as follows: Mr. Blankman – Yes, Mr. Pearson – Yes, Mrs. Tunstall – Yes, and Chairperson Oatman - Yes. The motion passed.

Chairperson Oatman asked the Board to vote on the five tests:

1. The requested variance **Will Not** create an undesirable change in the character of the neighborhood or detriment to nearby properties in that the lots in question are within the Mixed Economic Development Zone and that for any proposed construction/use, site plan approval must be obtained from the Planning Board, where it will be determined if the lot(s) are of sufficient size for the proposed plans.

Mr. Blankman	Will Not
Mr. Pearson	Will Not
Mrs. Tunstall	Will Not
Chairman Oatman	Will Not

2. The benefits sought by the applicant **Can Not** be achieved by some other feasible method.

Mr. Blankman	Can Not
Mr. Pearson	Can Not
Mrs. Tunstall	Can Not
Chairman Oatman	Can – by increasing the lot sizes to conform with requirements.

3. The requested variance **Is** substantial in that: the reduction from the required lot size of 5 acres to 1.28 acres, 1.42 acres, 1.47 acres, and 1.48 acres for t4 of the 7 lots is approximately 25-28% of the size required by zoning law.

Mr. Blankman	Is
Mr. Pearson	Is
Mrs. Tunstall	Is
Chairman Oatman	Is

4. The proposed variance **Will Not** have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district: the lots are in a Mixed Economic Development Zone and any development on those lots are subject to the uses allowed under the zoning designation.

Mr. Blankman	Will Not
Mr. Pearson	Will Not
Mrs. Tunstall	Will Not
Chairman Oatman	Will Not

5. The alleged difficulty **Was Not** self-created because: the lots have not changed ownership and less than 5 acre lots were allowed under the previous Industrial Zoning designation. The 5 acre minimum was implemented as a result of the zoning change to Mixed Economic Development.

Mr. Blankman	Was Not
Mr. Pearson	Was Not
Mrs. Tunstall	Was Not
Chairman Oatman	Was Not

A motion to grant the application of Tontarski, Inc., for an Area Variance of Section 158-29 B-2 of the Zoning Law of the Town of LeRay to allow lot sizes per the survey map provided to the ZBA Board, which is attached to these minutes. in the Mixed Economic Development for Non-residual uses, the Tax Parcel Number of 83.08-1-71.21; location address along Fabco Road, Watertown, NY is granted for the reasons stated above, and the condition that full disclosure of the available uses in the MED District be made to any purchasers of the property, was made by Mr. Blankman and seconded by Mr. Pearson. The vote was as follows:

Mr. Blankman	<u>Yes</u>
Mr. Pearson	<u>Yes</u>
Mrs. Tunstall	<u>Yes</u>
Chairperson Oatman	<u>Yes</u>

Chairperson Oatman informed Mr. Gracey that a letter would be sent by Ms. Fuller with The resolution. The next step was to set up a meeting with the Planning Board Chairperson and Zoning Officer to apply for a Subdivision for the entire property.

Adjournment

Chairperson Oatman asked if there was any other business to come before the Board. Being none, a motion to adjourn was made at 8:20 pm by Mr. Pearson and seconded by Mrs. Tunstall. The motion passed.