

Minutes
Zoning Board of Appeals
August 12, 2021

Board Members Present: Matthew Oliver, Mark Morey, William Oehler

Board Member Absent: Theresa Coughlin

Others Present: Sandi Parisi, Doug & Louise Goettsche, Sarah Farrar, Rick & Kathy Galusha, Marty Merola, Paul Gilgrist, Kathy Ferullo, Linda Marcella, Bud York, Mac Hadden, John Gable, Jack Sweet, Thomas Randall, Liz Sebald, Theresa Whalen, Peggy Knowles, Patti Corlew and a few others.

Meeting Commenced at 7:05 p.m.

Mr. Morey - ...August 12, 2021 meeting of the Town of Warrensburg Zoning Board of Appeals. Let the record reflect members present are Mr. Oehler...

Mr. Oliver - Mr. Oliver.

Mr. Morey - Mr. Oliver. You could have said your first name. And myself. First business is approval of the previous meeting minutes which will be June 10th. I don't have any corrections. She did a great job on them. I make a motion that the minutes be approved by consensus.

Mr. Oliver - Second.

Mr. Morey - All those in favor, say aye.

RESOLUTION #2021-9

Motion by: Mark Morey

Second by: Matt Oliver

RESOLVED, to approve Zoning Board minutes of June 10, 2021 (without correction).

DULY ADOPTED ON THIS 12TH DAY OF AUGUST, 2021 BY THE FOLLOWING VOTE:

Ayes: Matthew Oliver, Mark Morey, William Oehler

Nays: None

Mr. Morey - The next order of business is ZBA 2021-3 and at this time, I'll open the public hearing. Let me start out by saying

that the question before us tonight is merely on a setback. It's not on whether or not we want to prevent the use of that property or allow it for... It's allowed in the zone. It differs from the previous application a couple of years ago, in that that was in the Hamlet Mixed Use. Is that correct, Patti?

Mrs. Corlew - That's correct.

Mr. Morey - And this one, it's permitted in this zone? The town... The (inaudible) when they redid the zoning as late as 2012 decided not to exclude that piece. Apparently they didn't go around it (inaudible) didn't see any exceptions made for that area. So any relief that you think you can get will be from the Planning Board because of the, they have the ability to approve as submitted, modify or deny. And we can only, we can only.. We're going to limit the meeting tonight rightfully to the business of whether or not it will be allowed to be that close to the property lines. I don't want to disappoint anybody.

Ms. Tyniec - When does the Planning Board meet on the issue?

Mr. Morey - Excuse me?

Ms. Tyniec - When does the Planning Board meet on the issue?

Mrs. Corlew - September 7th.

Mr. Morey - Okay. Alright. Patti, you want to tell us how this comes before us please?

Mrs. Corlew - Sure. Cleardevelopment would like to construct their 10,640 square foot retail store on the property which is in the Core Commercial zone. In that zone, the setbacks are 0 from the front property line and 0 from the side. There's a 10 foot setback requirement in the rear and their plans do meet the 10 foot setback on the one corner, but then as you go to right of the property line, it tapers down, so the closest would be 4 feet. So that's why they need a variance from you.

Mr. Morey - And who's representing? Are you...?

Mrs. Corlew - Martin Merola is the...

Mr. Morey - Please identify yourself for the board.

Mr. Merola - Good afternoon. I'm Marty Merola of Cleardevelopment. (Inaudible) concerns about the project. (Inaudible). We had a survey done, so it's exact. So the plan you might be looking at wasn't on a survey, but this is. This one shows you exact... Those are done from a tax map but we had the survey done so there's no confusion. It didn't really change much. It's pretty much the same. It's behind, this is all hill and brush and ya know, it goes way, way back. So we have to do another retaining wall there or a make a structural wall here.

Mr. Oehler - Okay. How far do you plan on going up with the retaining wall?

Mr. Merola - As far as the engineer tells me to do it, ya know.

Mr. Oehler - Right.

Mr. Merola - Right now, it's only about four feet.

Mr. Oehler - Okay.

Mr. Merola - (Inaudible).

Mr. Morey - With only four feet here, how do you intend on getting behind the building to maintain it or...

Mr. Merola - Well, that'll be all retaining wall and rock (inaudible). There's nothing to maintain back there.

Mr. Morey - Nothing to maintain.

Mr. Merola - No.

Mr. Oehler - What about storm water management?

Mr. Merola - Pardon me?

Mr. Oehler - (Inaudible) storm water management.

Mr. Merola - We've got all the storm water management (inaudible). If you look at the (inaudible) we got all underground storm water here and here (inaudible) comes all the way around like that and then here (inaudible).

Mr. Oehler - Yep.

Mr. Merola - And then the other one issue is not really having parking in front, so we designed a planter across this section and to here just to make it nice (inaudible) the parking.

(Inaudible) parking in the front.

Mr. Oehler - Right.

Mr. Morey - Okay. (Inaudible) County Planning Board, when they sent their recommendation, they recommended moving the building up to the front of the property...

(Tape inaudible).

Mrs. Corlew - There's not much I can do. I'm sorry.

Mr. Morey - Do you want me to talk louder.

Unknown Speaker - No, it's... I don't know what it is.

(Tape inaudible; people speaking at once).

Mrs. Parisi - It comes and it goes.

Mr. Morey - Did you hear my question?

Mr. Merola - Yeah, I heard your question, but I mean, we didn't try that way out. Everybody else is set back. I don't know if it would work that way, to be honest with you.

Mr. Morey - Well, that was the question they posed in their recommendation.

Mr. Merola - It gives it a nicer feel. I mean, if it's all pushed up to the street, then, to me anyway.

Mr. Oehler - Six feet (inaudible)?

Mr. Merola - Pardon me?

Mr. Oehler - Move it six feet forward.

Mr. Morey - No.

Mr. Merola - No...

(Tape inaudible; people speaking at once).

Mr. Oehler - What would it be to move the building six feet this way to give the 10 foot setbacks?

Mr. Morey - If you did that, what would be your...

Mr. Oehler - What's the repercussions of moving, of just moving the building 6 feet forward?

Mr. Merola - You can't get the parking in, the parking in the front (inaudible) requirement for the parking and driveway and spacing.

Mr. Oehler - Or backing up for the other vehicles?

Mr. Merola - Yeah, we have 30 feet. I mean, that's what we need to get, and also there's a page in here that shows how the truck will...

(Name plate fell over).

Mr. Merola - Oh, I'm sorry.

Mrs. Corlew - It's alright. You can leave it.

(Tape inaudible).

Mr. Merola - This page shows how delivery will come in (inaudible) back up and get in and out.

Mr. Oehler - So it's more or less the deliveries. It's not as much of the car parking. It's just delivery trucks coming and going.

Mr. Merola - (Inaudible) decent amount of parking, ya know.

Mr. Morey - The 38 feet is to allow a car to back up...

(Tape inaudible).

Mr. Oehler - Did that, did that change from what you have on this one, this preliminary, it's 30 now? This was 32. In between the parking spaces.

Mr. Merola - Yeah, I guess by the time we got the survey done, we ended up with a little bit less.

Mr. Oehler - A little less, okay.

Mr. Merola - 'Cause we also want to (inaudible) planter on the sidewalk, ya know, to make it (inaudible).

Mr. Oehler - Okay.

Mr. Merola - 'Cause we grabbed a couple of feet here with the planter, ya know, to make it work.

Mr. Morey - Well, it would seem to me that it would be less intrusive back like that.

Mr. Oehler - Yeah.

Mr. Morey - And then you've got the church and as much as I'm sure they don't want to look at the backside of that building, (inaudible).

Mr. Oliver - Right.

Mr. Oehler - Right.

Mr. Oliver - (Inaudible).

Mr. Morey - Any other questions from the board members? Do we have any comments from...?

(Tape inaudible; people speaking at once).

Ms. Tyniec - I, we obviously can't see the layout of that (inaudible) people could see it, but there's a lot, there's a couple of really nice old (inaudible) trees along the edge of the property, are those coming out to make...

Mr. Merola - Yeah, we won't be able to keep the trees.

Ms. Tyniec - ...this parking lot. (Inaudible).

(Tape inaudible).

Ms. Tyniec - And this is the side closest to the museum is where the parking is going to be?

(Tape inaudible).

Mr. Merola - The church is on this side.

Ms. Tyniec - Okay.

Mr. Merola - (Inaudible).

Unknown Speaker - How many parking spaces.

Unknown Speaker - 30.

Unknown Speaker - 30?

(Tape inaudible; people speaking at once).

(Mr. Merola and Ms. Tyniec talking amongst themselves and another conversation going at the same time).

Mr. Morey - Okay. Thank you for showing her that, but this is all really, that's concerns of the Planning Board.

(Tape inaudible; people speaking at once).

Mr. York - I don't know if this is for the Planning Board or not, but I just have... I'm just curious because when I subdivided my property, I had to send letters out to everybody on the street to see if they minded, and I had to pay for it. How, do people on the north, south and west feel about this?

Mr. Morey - You notified... You sent out notification?

Mrs. Corlew - I did send out the notifications for the variance and I'm going to send out notifications for the site plan review.

Mr. Morey - Site plan review.

Mr. York - But we haven't had any response as to how they feel?

Mrs. Corlew - No, I haven't had any...

Mr. York - Thank you.

Mr. Morey - Okay. Let me explain how the area variance works. It's, there's five conditions that, questions really that have to be asked or answered by the board, or investigated. And it's a balancing type of equation where you get three of them. You've got to... You've got to have three to get the variance and so any one of these questions, ya know, may not, they may not apply, they may not answer to the satisfaction of one of the board members, but it takes two, three really to deny. So as we go down through the application, which we will do as soon as... We'll end the public hearing before that. I'll ask if anyone else has any pertinent...

Ms. Marcella - I've been involved in a number of them in, in my business as a real estate agent, is it not standard that you can't be issued a variance if you have created the hardship?

Mr. Morey - No, not necessarily. And especially with the area variance. The fact that it's, it's not a hardship to... Everybody in here that comes in to, for a variance from us will be, have created their own hardship by asking. And so an area variance is mostly, and setbacks is mostly to protect fire protection, sight, line of sight, or to prevent building, denying the neighbor the opportunity for their variance. In this case, obviously (inaudible) bank there, I don't think the neighbors plan on putting anything there, but, so those are the things that apply to that.

Ms. Marcella - But they (inaudible) make the building four foot shorter.

Mr. Morey - They could. They could. If it's denied tonight (inaudible). But they just stated they have the difficulty that if they did that, then the parking lot (inaudible) wouldn't have an adequate distance to back their car (inaudible) if there was a car parked in the opposite.

Ms. Marcella - No, I'm just talking about not building it as big, (inaudible) four foot shorter, then you wouldn't need a variance.

Mr. Morey - They, that's one of the things that, one of the questions. Can it be alleviated by any other method feasible to the applicant? So that may be one of the ones that (inaudible). (Inaudible) three out of five.

Unknown Speaker - (Inaudible).

Mr. Randall - Turn it off.

Mrs. Corlew - I can't do that. I have to record the meeting.

Unknown Speaker - Oh.

Mr. Gilchrist - I'm at a disadvantage 'cause I can't hear anything that's being said, but I think now I understand. You just want to address the setback, the four foot and the 10 foot?

Mr. Morey - That's all we can, that's all we can...

(Tape inaudible).

Mr. Gilchrist - Now I gave you each a copy of my... The pertinent paragraphs on that would be the first two paragraphs on the second page, on the back page.

Mr. Morey - Hm hm.

Mr. Gilchrist - If you could... That addresses the self-created difficulty, which it appears to me that this is a self-created difficulty and it's, the lot is only .73 acres and they're proposing a, over 10,000 foot, square foot building.

Mr. Morey - Hm hm, .

Mr. Gilchrist - And as I recall, the previous application a couple of years ago, for the lot uptown, was exactly the same size lot.

Mr. Morey - Hm hm.

Mr. Gilchrist - And one of the reasons that was rejected was because the building was too large for that lot and yet this one's even bigger for the...

Mrs. Corlew - Excuse me, but the density requirements are less in the Core Commercial zone.

Mr. Morey - Hm hm.

Mrs. Corlew - So you can't compare... It's a different zone, so you just can't...

Mr. Gilchrist - Okay.

Mrs. Corlew - ...compare it.

Mr. Gilchrist - Alright. This is... My point is that this is a self-created difficulty and that's one of the points on those five conditions you were talking about. The next paragraph down, can the relief be achieved by some other feasible method that the applicant can pursue, and one of the obvious answers to that is a smaller building. Another obvious answer to that is buy a bigger lot.

(Laughter).

Mr. Gilchrist - Those were the, those were the two points... For those other three conditions that you're talking about, the, the next paragraph after that and the last two paragraphs from the previous (inaudible) just talking about, the setbacks.

Mr. Morey - Right. And when you're talking about the size of the building and the, it, that's more, if you were talking maybe a 60 unit building and they wanted, ya know, maybe they'd reduce it to a 40, but you're talking 6 feet compared to 10 feet, it's

not really and on the back, it's not, it's not apples to oranges... It, it really... ..in my opinion. It may not be the opinion of the Board, but there again those questions are in one of the five we have to answer, and as regards to the application two years ago, that zone is a transitional zone and that was decided because it really was beyond the intent as we saw it of the ordinance to have something that size in there. And at the time, we talked about yes, it would've have been allowed across the street where Tops is, and that zone there is the exact same one as down by, down there. So it's, like I said, ya know, zoning, sometimes zoning cuts both ways. So we'll at this time, if there's no more questions, I will close the public hearing.

Unknown Speaker - Does Dollar General usually, ya know, is it always like a 10,000 square foot space in order to do the operations (inaudible)?

Mr. Merola - Well, they've come to the conclusion that they needed the more space versus the smaller building to get the products that are needed in the community. It's not a dollar store by any means. They have maybe one aisle of stuff for a dollar, but everything else is consumables for very low prices, some (inaudible), gifts, cards... You name it. I'm sure you must have been in one, I would hope.

Unknown Speaker - But I mean, in general, are dollar stores, ya know, on average, are they 10,000 or are they..?

Mr. Merola - All of the new ones are 10,640.
(Tape inaudible).

Mr. Merola - They're all this size now. That's what they prefer.

Ms. Marcella - I don't think so. The one in Chestertown is just a little over 9,000 on that's on two and a half acres and the one is Queensbury is...

Mr. Merola - But that, that was years ago. Right?

Ms. Marcella - Oh.

Mr. Merola - No, this is the new program.

Ms. Marcella - Oh, I see, okay.

Mr. Merola - Okay. Yeah, the ones before and I did one in Union Springs, it was 9,100 feet, but when they did this one, they wanted to... All the new stores are this 10,640. And they put (inaudible) coolers and freezers. There's some fresh, ya know, like eggs and milk is (inaudible) and cold cuts and that kind of thing and they've got a lot of frozen. They've really made their stores way nicer than the old days. And there's a lot of stuff in them. And they're 25, 30% less than Tops (inaudible) to be honest with you.

Mr. Morey - Theresa, you had a question?

Ms. Whalen - Yes, I'm Theresa Whalen. I Chair Warrensburg Beautification, and I just wanted to give you guys this.

Mr. Morey - We have it.

Ms. Whalen - Oh, do you have it? I'm sorry.

Mr. Morey - Thank you.

Mrs. Corlew - You emailed it to me to give to them.

Ms. Whalen - Okay, so this is just an f... This is just an fyi. I know that you guys are just looking at setbacks for tonight, but this is just a little bit of background information that I think we can appreciate about out town. So anyway, I wrote this letter regarding the proposed application of Dollar General, 3760 Main Street. (Ms. Whalen went on to read her letter, which is in the file). So I know you guys love our community and I really thought you'd be interested in learning about that and hopefully down the road, our, our planning and zoning regulations will reflect that. I know right now they don't, but I just wanted to share that with you all.

Mr. Morey - Well, thank you and I wish that you had brought that to the Board in 2012. They might have done something at that time.

Ms. Whalen - Well, this...

(Tape inaudible; people speaking at once).

Ms. Whalen - ...comprehensive plan, Mark, so, which the Board approved.

Mr. Morey - Okay. At this I'm going to close the public hearing.

Mrs. Parisi - I do have... I actually had two quick little questions (inaudible).

Mr. Morey - Are they related to what we're considering tonight?

Mrs. Parisi - That's what I want to ask, if they are. Okay. In the Core Commercial, there are two CC's; one is retail and service, the other is retail and service, neighborhood. There was no designation as to which one that was. If it is neighborhood, then the buildings in that area cannot be any greater than 1,500 square feet.

Mr. Morey - I think we went over that in the other... Well, mixed, whatever...

Mrs. Corlew - It depends on the size of the structure, so they're both allowed in that zone. One requires site plan review; the other does not. That's the only difference between the two. The one requires site plan review if it's a new use and the other one doesn't.

Mr. Morey - In the...

Mrs. Corlew - Under 1,500 square feet does not require site plan review.

Mr. Morey - I don't believe it did in the other one either because we wouldn't have been considering it all if it was going to...

Mrs. Corlew - The other one? Yeah. It was required. Site plan review was required.

Mr. Morey - Right. But it wasn't limited to...

Mrs. Parisi - Okay. That was the first question. Second question is, in the Core Commercial, I believe all buildings be built up front, parking side and rear.

Mrs. Corlew - Unless the Planning Board approves otherwise.

Mrs. Parisi - Okay.

Mrs. Corlew - That's for the Planning Board.

Mrs. Parisi - Oh, okay. So but it's not a variance.

Mrs. Corlew - No, nope.

Mrs. Parisi - Alright. That's my question.

Mr. Morey - That's because the Planning Board can approve as submitted. They can condition or they can deny. So they have, they have the power to do that. And this is, tonight is merely asking for (inaudible) and it's our, the custom of this board to make a motion in the affirmative for the applicant and I'll make a motion that ZBA 2021-3 is approved. Is there a second.

Mr. Oehler - I second it.

Mr. Morey - Okay. Now we'll proceed to discussion and then we'll vote. I got to make this SEQRA motion. I guess now is as a good time as any, right, Patti?

Mrs. Corlew - Yes.

Mr. Morey - Okay. I make a motion that the Board find that this is a Type II listed action under the State Environmental Quality Review Act and there are no significant environmental impacts. Is there a second?

Mr. Oliver - I'll second.

Mr. Morey - All those in favor.

Mr. Oehler - Aye.

Mr. Oliver - Aye.

Mr. Morey - Aye.

RESOLUTION #2021-10

Motion by: Mark Morey

Second by: Matthew Oliver

RESOLVED, to deem application ZBA #2021-3 by Cleardevelopment, LLC, for tax map #211.13-3-41, located at 3760 Main Street, for an area variance, as a Type II listed action under the State Environmental Quality Review Act and there are no significant environmental impacts.

DULY ADOPTED ON THIS 12TH DAY OF AUGUST 2021 BY THE FOLLOWING VOTE:

Ayes: Matthew Oliver, Mark Morey, William Oehler

Nays: None

Mr. Morey - These are the five questions that we've got to, we've got to balance out. First one is, is there a change that will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. You answer, "no, the request is a small request based on the setback is only marginally..

Mrs. Corlew - Impacted.

Mr. Morey - ..impacted", yeah. "There's nothing behind the site but a hill and brush". We talked about that and as far as the change in the neighborhood, in my opinion, it may not be the other board members, I don't believe 6 feet's going to, moving the building forward or back 6 feet's going to make any significance change or any change at all, really. It's partially, mostly screened by the little garage that goes with the Episcopal Church.

(Tape inaudible)

Mr. Morey - Mr. Oliver, any thoughts?

Mr. Oliver - (Inaudible).

Mr. Morey - Number 2, whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. You answer, "the rear setback can only be partially met and will not disturb the character of the neighborhood". They're talking a feasible, some method feasible to the applicant and, I think we covered that, that your buildings are, (inaudible) size and the 30 feet between the parking spaces to allow for ingress and egress of the cars. One of the, one of the things that they bring up in the New York Zoning Law and Practice is to ask if you also could maybe buy a strip of land from the adjoiner or something like that.

(Tape inaudible).

Mr. Merola - (Inaudible) talk to him. I didn't want to like stir up a pot that I didn't need to stir.

Mr. Morey - But you don't need that.

Mr. Merola - I really don't, no. I would like his blessing, obviously, ya know. He's the Supervisor of the Town, I believe.

Mr. Oehler - Yes.

Mr. Morey - Do you have anything to add to that?

Mr. Oehler - Nope. We're good.

Mr. Morey - Number 3, whether the requested area variance is substantial. "We are asking for a partial modification. The majority of the setback is not impacted". Well, it's 30 feet out of.. What's the width of the building?

Mr. Merola - 76.

Mr. Morey - 76? It's... There's a... The test for substantial used to be just a simple math thing. If it was over 50%, it was substantial. But with this new method, that's not the way it is anyway and especially with something small like that, it, that can be, it could be substantial if you were going to add a third more apartments or a third more space on the building, but not... It's a rule that wouldn't apply, it wouldn't be considered substantial and as a side note, the County Planning Board said it was a minimal departure from the standards.

Mr. Merola - Yeah, that's a good point.

Mr. Oehler - It's a minimal amount, yeah.

Mr. Morey - Number 4, whether the proposed variance will have an adverse effect or impact on the physical and environmental conditions in the neighborhood. You answer, "no. This will not have an impact or adverse effect.

Mr. Oehler - It's a bank. It's not going to hurt anything.

Mr. Morey - No, I don't think moving it forward 6 feet would..

Mr. Oehler - It's not going to make a difference.

Mr. Morey - Any impact.

Mr. Oehler - No.

Mr. Morey - Number 5, whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance. You answer, "no. I believe that the setback was a town requirement so it's not self-created". That's the first time I've heard that.

(Laughter).

Mr. Oehler - That's a good one.

(Tape inaudible).

Mr. Morey - Well, I've got to tell you, we do, we do struggle with that question about whether it's self-created or not and..

Mr. Oehler - That is self-created, more or less.

Mr. Morey - They are all self-created..

(Tape inaudible).

Mr. Morey - There's some discussion in here on that and it's, it's not really definitive here, so I guess we'll each make up our own mind about whether, what that is. Do you have anything more to say?

Mr. Merola - That's it.

Mr. Morey - At this time, we'll proceed to a vote. A yes vote will grant the variance. Mr. Oehler?

Mr. Oehler - Yes.

Mr. Morey - Mr. Oliver?

Mr. Oliver - Yes.

Mr. Morey - And I vote yes as well. I, so you have your variance. Time will tell how what, how (inaudible) Planning Board. I wish you luck.

RESOLUTION #2021-11

Motion by: Mark Morey

Second by: Matthew Oliver

RESOLVED, to approve application ZBA #2021-3 by Cleardevelopment, LLC, for tax map #211.13-3-41, located at 3760 Main Street, for an area variance, to allow construction of 10,640 sq. ft. retail store 4' from a portion of the rear property line.

DULY ADOPTED ON THIS 12TH DAY OF AUGUST 2021 BY THE FOLLOWING VOTE:

Ayes: Matthew Oliver, Mark Morey, William Oehler

Nays: None

Mr. Oehler - This was the easy part.

Mr. Morey - Yeah. (Inaudible) local people, and myself included, those big old houses are... I know that they're just not viable anymore but boy, you sure hate to see them go. (Tape inaudible).

Mr. Morey - Patti, is there any new business?

Mrs. Corlew - No, no there's no other business tonight.

Mr. Morey - Well, then can I get a motion to adjourn the meeting?

Mr. Oehler - Motion.

Mr. Morey - I'll second.

Mr. Oliver - Second.

Mr. Morey - All those in favor, say aye.

Motion by William Oehler, second by Mark Morey and carried to adjourn the Planning Board meeting at 7:41 p.m.

Respectfully submitted,

Patti Corlew
Recording Secretary

Zb08122021

RESOLUTION #2021-9

Motion by: Mark Morey
 Second by: Matt Oliver

RESOLVED, to approve Zoning Board minutes of June 10, 2021 (without correction).

DULY ADOPTED ON THIS 12TH DAY OF AUGUST, 2021 BY THE FOLLOWING VOTE:

Ayes: Matthew Oliver, Mark Morey, William Oehler
 Nays: None

RESOLUTION #2021-10

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