

## **Joint Town/Village of Lima Zoning Board of Appeals**

Minutes of Meeting - January 22, 2018

### **MEMBERS PRESENT:**

John Bailey; Chairman, Dennis Neenan, Duane Fuller, Andy Matthews, Duane Thompson, Cindy DePuy (alternate member).

### **MEMBERS EXCUSED:**

Jim Van Dick, Steve Werner.

### **GUESTS**

Mike Falk; Town Supervisor, Charlie Johnson; Code Enforcement Officer (CEO), John Correll; Village Liaison, Cathy Gardner; Town Liaison, Edward Faro, Tom Harrington.

Chairman Bailey brought the January 22, 2018, meeting of the Joint Town/Village Lima Zoning Board of Appeals to order at 7:00pm and opened with the Pledge of Allegiance.

Chairman Bailey introduced and welcomed the guests in attendance. He welcomed Cindy DePuy as the new alternate member for the ZBA and said she would be voting for Jim Van Dick. He noted that there was a quorum of members present.

### **Approval of Minutes**

A motion to approve the minutes of November 17, 2017, was made by Mr. Neenan and was seconded by Mr. Fuller. The motion carried, with abstentions from Mr. Thompson and Ms. DePuy.

### **New Business**

#### **Zoning Referral #2018-01, Village of Lima, Use Variance for a commercial site located at 2019 Lake Avenue (Applicant: Tom Harrington) requesting a conversion of a first floor commercial space into residential thereby making structure a two family residence.**

Secretary read legal notice as well as a letter from the Livingston County Planning Board which states that they had reviewed the application and determined that it has no significant Countywide or inter-municipal impact in regard to existing County plans, programs and activities. Therefore, approval or disapproval of this application is a matter of local option.

Chairman Bailey invited applicant, Tom Harrington, to present his case.

Tom Harrington presented his application for a use variance with relief from Village zoning ordinance 250-26 permitted uses; conversion of ground floor commercial space into an apartment thereby making structure a two family use. Mr. Harrington stated that he has had very few requests to rent the space as a commercial property. He has put "for rent" signs facing south and west on his property and has not advertised anywhere else. He stated he plans on updating the property with siding and would be amenable to any color siding that the board would recommend. The large front crank out window would be removed and replaced as well and that he would like to grass in the front of the business to make it look more residential but would have to look at drainage first and that the business is on a concrete pad. He stated there is a brick structure that holds a sign currently in front of the business but would be willing to move it.

### **Short Environmental Assessment Form (SEAF 617.20 Appendix B)**

A motion to assume the leadership role of lead agent for the SEQR review was made by Mr. Neenan and was seconded by Mr. Thompson. The motion carried unanimously.

Part 1 - Project Information: The board reviewed Part 1 of the SEAF and the following changes were made:

- Question #3a – 3.34 acres, #3b – 23x30 feet
- Question #5b – board changed answer from yes to no, it is not consistent with the adopted comprehensive plan.
- Question #8c – board changed answer to yes as there is a sidewalk in front of property that runs north to the village.
- No date accompanied the signature. The date was determined to be 12/27/17.

Part 2 – Impact Assessment: The board reviewed Part 2 of the SEAF and the following questions were answered as follows:

- Question #1 – Moderate to large impact may occur
- Question # 2 thru #11 – No, or small impact may occur.

Chairman Bailey read through the Part 2 – Impact Assessment of the SEAF. There was discussion of Part 2 - Question #1.

- Mr. Neenan stated that a change of use by definition is a substantial change.
- Mr. Fuller stated that the intent was to keep apartment dwellings out of business districts.
- Ms. DePuy stated that the Comprehensive Plan called for additional business zoning at this location, based on their survey which had 89% in favor of village business.
- Mr. Fuller stated that this could set precedence with unknown consequences.
- Mr. Neenan stated that after reviewing the submitted information there does not appear to be a significant impact.
- Mr. Matthews said that if a use variance was granted that the property could revert back to commercial use.
- Chairman Bailey noted that the Agricultural Data Statement was complete.

Chairman Bailey asked if the board had any additional questions for Mr. Harrington, the applicant, and there were none.

Chairman Bailey asked if there were any audience comments.

- Ed Faro, guest, said that he had done some extensive clean up on the property and believed a variance should be granted
- Mr. Harrington said that he would be willing to keep the commercial look of the property and compromise on the aesthetics of the building but wanted to put new siding on the building, clean up the property and reseed it. He added that the property had been run as a flower shop for many years before he purchased it. After he purchased it he ran it as a pizza shop. He said he had a full time job in addition to running the pizza shop and that the pizza shop was losing money. He said that the pizza shop had closed 4 years ago.

Part 3 – Determination of Significance.

The Board believes it is a moderate to large impact because by definition a use variance is a substantial change and in conflict of Village Code #185-26 and the Comprehensive Plan. It is not consistent with the adopted land use plan and the zoning regulations of the Village of Lima.

### **Appeal To The Zoning Board For An Use Variance Application**

Section 1: Applicant Information was reviewed with no changes.

Section 2: Property Information was reviewed with no changes.

Section 3: Use Variance Questions

1. Consensus of the Board was that the current use does not deny him a reasonable return on initial investment for the current permitted use.
2. Consensus of the Board was that the current use does not create a financial hardship; the property is not unique and does not apply to a substantial portion of the neighborhood.
3. Consensus of the Board was that it would not alter the essential character of the neighborhood.
4. Consensus of the Board was that the alleged hardship was self-created. Mr. Harrington acknowledged he was aware of the permitted use when he purchased the property.

Section 4: Application Checklist - No changes were noted.

Section 5: Disclosure and Applicant Certificate – No changes were noted.

A motion to close the public hearing at 8:12 pm was made by Mr. Fuller and seconded by Mr. Neenan. The motion unanimously carried.

Discussion regarding the Section 3 was held.

- Mr. Fuller stated the property is assessed within the median of other homes in the area and does not impose a hardship.
- Ms. DePuy stated that the brick structure hides the street appeal and she wants to see a rental ad placed in other venues.
- Mr. Neenan stated the house holds the value of the property and the use of the residence does provide reasonable return.
- Mr. Thompson stated that just because one business was unsuccessful does not mean another business couldn't be.
- Mr. Fuller stated that residential use is permitted in the General Business District on the second floor or on the first floor only if the front wall of the apartment is 50 feet behind the front facade of the building.
- Mr. Bailey stated that maintaining commercial space in our general business district is a community priority.

A motion to deny the use variance because it did not meet all four criteria was made by Mr. Fuller and seconded by Ms. Depuy. The motion carried with one nay vote.

#### **Secretary Report**

John Bailey reported .75 hours. No other training was reported. Supervisor Falk stated that he does not believe there will be a change in the town paying for training programs.

A motion to close the meeting was made by Mr. Neenan and seconded by Mr. Thompson. The motion unanimously carried.

GiGi Correll, Secretary