

REGULAR MEETING MINUTES
TOWN OF LLOYD PLANNING BOARD

Thursday, February 23, 2023

CALL TO ORDER TIME: 7:00pm

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS: GENERAL, NO SMOKING, LOCATION OF FIRE EXITS, ROOM CAPACITY IS 49, PURSUANT TO NYS FIRE SAFETY REGULATIONS. PLEASE TURN OFF ALL CELL PHONES.

OFFICIALLY OPEN THE MEETING

Attendance: Board Members: Scott McCarthy, Franco Zani, Gerry Marion, Sal Cuciti, Lambros Violaris, Bill Meltzer (via Zoom), Lenny Auchmoody (town board); Board Staff: Dave Barton, Paul Van Cott, Andy Learn, and Sarah Van Nostrand.

Absent: Board Members: Carl DiLorenzo and Charly Long.

Minutes to Approve at February 23, 2023 meeting

January 19, 2023 and January 26, 2023

Scott asked for a motion to approve the minutes.

Motion made by Franco, 2nd by Sal.

All ayes, 1 recusal Bill for the January 26th minutes. Motion passed to approve the minutes.

New Business

Cacciola, Angela: Special Use Permit: 6 Smith Ter.: SBL #88.1-17-7-36

Applicant is seeking a special use permit for an accessory apartment.

Review Status: Application and plans circulated to the board.

Potential Action: Board to set public hearing for March 23, 2023.

Scott asked for a motion to set a public hearing for March 23, 2023.

Motion made by Franco, 2nd by Sal.

All ayes, motion passed to set a public hearing.

Old Business

Dion Properties: Special Use Permit: 612 N. Elting Corners Rd.: SBL #87.1-1-24.200

Applicant is seeking to convert a single-family dwelling into a 2-family dwelling.

Review Status: Updated Plans circulated to the board.

Potential Action: Board to set public hearing for March 23, 2023.

Scott asked for motion to set a public hearing for March 23, 2023.

Motion made by Franco, 2nd by Sal.

Bill said wasn't there an issue with the septic system or was it resolved?

Dave replied that the health department doesn't care about an existing septic system. There is no way to determine it, unless you dig it up, his sense was that the board didn't want that to happen.

Scott said that it had already been a two family home for years, he thinks that was what the other case was.

Dave said any failures of that septic system will be the responsibility of the owner.

Franco said it would be beneficial for the owner to pump it more often then.

All ayes, motion passed to set a public hearing.

New Short-Term Rentals (Public Hearings)

New Paltz Road LLC: 9 New Paltz Rd.: SBL #88.13-10-6

Review Status: Application and documents circulated to the board; public hearing was opened on February 16, 2023.

Potential Actions: Close public hearing, approval resolution.

Scott asked for a motion to close the public hearing.

Motion made by Gerry, 2nd by Franco.

All ayes, motion passed to close the public hearing.

Paul read the resolution.

Scott asked for a motion to approve the resolution.

Motion made by Sal, 2nd by Franco.

All ayes, motion passed to approve the resolution.

Moses Gates: 20 New Paltz Rd.: SBL #88.13-9-34

Review Status: Application and documents circulated to the board; public hearing was opened on February 16, 2023.

Potential Actions: Close public hearing, approval resolution.

Scott asked for a motion to close the public hearing.

Motion made by Gerry, 2nd by Franco.

All ayes, motion passed to close the public hearing.

Paul read the resolution.

Scott asked for a motion to approve the resolution.

Motion made by Franco, 2nd by Bill.

All ayes, motion passed to approve the resolution.

Lindsay Allison: 148 Bellevue Rd: SBL #88.1-3-24.115

Review Status: Application and documents circulated to the board.

Potential Actions: TBD

David Peltz (Owner of 152 Bellevue Rd) said that his main concern is that the property should not be used as an event space, there should be no parking on Bellevue Road, and that the visitors should comply with the noise regulations.

Scott said that now that these laws are going into effect, in the past we recognize that those issues and that somethings need to be mitigated or somehow just deterred from happening again. Which is the purpose of the law, is to make sure that the public who are speaking against them on behalf of traffic, noise complaints, fire, anything of that nature that are against what the conditions are that are already in the law. This is why they are doing this, so they have some sort of starting point, so that if anything does come up the planning department or the police department or anyone involved in making sure they are compliant can do what they need to do. This is a fresh start for them even though they have been wrong in doing things, now they have a chance to see if the complaints continue. Within 2 years after having the application approved if they have too many of those issues or complaints against them and they are founded then they can do something different about them having that special use permit.

Bruce (Owner of 314 Bellevue Rd) he asked what the date of the application was?

Sarah replied that it was 11/6/22.

Bruce asked if Paul has made a determination like the previous two applications that this application does not require SEQRA review because it is a Type II determination?

Paul replied yes all of these under SEQRA are the reuse of an existing use for something that is allowed by the law is no considered to be something that would require SEQRA review.

Bruce asked is that because you have determined that this is a non-conforming existing use?

Paul said that his understanding is that this is a pre-existing STR and that determination has been made by the zoning office and so the applications in front of the board for that reason.

Bruce said that on December 10, 2009 the Town of Lloyd Zoning Board of Appeals had a public hearing on an application for a Bed & Breakfast special permit located at 7 Greatview Lane. The written findings of the Zoning Board of Appeals on January 14, 2010 held that the proposed use “is a quasi-residential use which falls within the grey area between residential and commercial uses.” “When the residential/commercial line is crossed by a quasi-residential use three practices are ordinarily present in some combination: transiency of the parties, regular and serial turnover of these parties, and the payment of rent or other compensation by these parties.” The Zoning Board of Appeals concluded that “to preserve the neighborhood tranquility and stability in keeping with section 100-1 of the zoning ordinance, non-transient is favored for all uses in residential zones in short both transiency and noise are zoning factors and these factors will trump the alleged class of guest which is neither definable nor enforceable for zoning purposes. Therefore the application for a special use permit by the zoning board of appeals was denied. Therefore this non-conforming use is a use that was no longer authorized under the zoning regime which existed before the zoning ordinance was enforced, this was reenforced on March 6, 2012 two years later when the town attorney notified the land owner at the same address that while the town has decided not to proceed in this matter it is the town’s intent to enforce its zoning ordinance based upon the interpretation of the Town of Lloyd Zoning Board of Appeals as contained in the resolution dated January 14, 2010. The 2009 decision of the Town of Lloyd Zoning Board of Appeals was a final quasi-judicial determination, quasi-judicial bodies are not in power to review their own decisions by vacating, rescinding or altering them after being made unless there is a clear showing of newly discovered evidence or a new application on new plans or different facts as one court put it there must be a point at which if it is to that is the Zoning Board of Appeals determination can be reviewed the next day it can be reviewed the next week the next month or the next year. This is true even when the personnel of the board or the composition of the board itself changes, there is one exception to this a motion for the Zoning Board of Appeals can hold a hearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board a unanimous vote of all members of the board then present is required for such reasons for a hearing to occur, such rehearing is subject to the same notice provisions as an original board hearing. Therefore if the Zoning Board of Appeals determines that it is ready to rescind its own decision by a unanimous vote this board then has the power to approve a special use permit for what was formally determined to be by its own determination and the determination of the then town attorney to be a Bed & Breakfast. This is not a non-conforming pre-existing use, it is an illegal use of a Bed & Breakfast. This board does not have the power to approve a Bed & Breakfast use as a short-term residential use without authorization of the Zoning Board of Appeals. It is possible that the Town Board in its authorization of the short-term rental agreement could be argued that it was necessary authorization, but in such a case as Paul has pointed out it would require a SEQRA Type I environmental impact study. At a minimum this board should table the matter pending a determination by the SEQRA board of the state of New York as whether a Type I determination under SEQRA is required.

Scott said that from his understanding he would think that if that was a court issued then Paul should explain what's going on. To him they just applied for an application on a STR.

Paul said that the board would have to have a lot more context for any review of this. He asked if Dave had any more background on the property?

Dave said that he has more background on what was brought up. It is not a Bed & Breakfast as they have a definition for a Bed & Breakfast in the code, even if it was it would fall under this board's purview as a home occupation type II. The definition of a Bed & Breakfast is owner occupied, this is not. In his opinion regardless of the previous speakers belief that this is a non-conforming use, he disagrees. In his opinion the new STR law allows applications to come in on pre-existing short-term rentals which 3rd circuit seems to agree are a continuation of residential uses not commercial uses.

Paul asked if in the past it operated as a Bed & Breakfast? If it is essentially a residential use with multiple dwelling units then you are continuing a short-term rental use and the Type II classification would be appropriate, its an allowed use in this district and you are doing something that is allowed in this district you are changing the use of what is a residential property, you are considered to be a residential property by your zoning officer and that is decidedly a type II classification. Beyond that in terms of what the gentleman stated he is not sure how to respond to that based on the facts that they are aware of and the zoning officers position, this is properly positioned before the board for a decision.

Scott asked is he just making reference to just 7 Greatview or to all STRs throughout the town?

Franco said you were referring to all STRs right?

Bruce replied yes.

Paul said that it is a case-by-case basis. For this property are they talking about something that has been operated previously as a Bed & Breakfast, that's not the case as far as the board is aware.

Dave said even if the property was used in light of the ZBAs determination of a single rental every 2 months it would still be a short-term rental.

Paul said zoning is about drawing lines and he thinks that the lines are drawn clearly here that this is a short-term rental use that is properly in front of the board for a special use permit and would not be subject to SEQRA review.

Lindsay (Applicant) said that they are happy to answer any questions that the board may have.

Scott asked if they are in pursuit of any information on their septic system or not?

Lindsay replied yes they are, they are trying to understand what exactly what needs to be addressed. She would like to know what they need to have done, what do they need to come forward to the board with to resolve whatever issue remains.

Andy replied that every septic system in the county has to be approved by the county health department, generally they have records of everything. He suggests starting there with a FOIL request to see what they have on file, then they can take it from there to see what capacity the system has.

Franco asked if they have taken into consideration reducing the number of beds because last week you said 12?

Lindsay replied she thinks that's what they have in their application. Its not 12 beds its 12 people.

Franco said there would be 12 people staying there.

Scott said a way to rectify some of the issues on these because they don't know how many people will be there is to put a condition on the amount of people for a specific property not knowing what the septic system may with stand, so he thinks the board could actually on some of these cases if there is a septic issue they could condition the amount of people on that property.

Dave said his understanding the board last time was interested in figuring out the amount of capacity vs the number of people. If the applicant is willing to reduce the number to a number that will satisfy the board based on the number of bedrooms, he thinks that they were thinking 2 people per bedroom, so that would make them at 8 for this property. If they were willing to do that, that is one option. The other option would be to do this other work determining the size of the septic which may end up limiting them anyway, unless they somehow determine that the system could handle more effluent.

Scott said like the board did with Dion the septic system is already there, so it would fall on the homeowner to either maintain that property a little bit more diligently. They are not going to have 12 people there all the time, but you may have up to 12, so if the septic system fails its on you and then that would be a complaint from the neighbors possibly if that were the case. That is another way the board could condition the properties in some of these cases.

Dave said one of the possible conditions he suggested is should the property septic system need service, property owner shall initiate that service immediately and shall not allow the property to be occupied until that service is performed.

Scott said that would be a condition.

Sal said that the board is looking for a logical way to consider all the environmental aspects including the septic system and so they discussed trying to do the same thing for every application in a very consistent way. One logical way to look at this would be that the number of bedrooms that the house has and a maximum of 2 occupants possible per bedroom. This is a

suggestion that would be a reasonable assumption of what the septic system could handle and if the person wanted to go to more people they could hire an engineer to study their septic and certify it and then produce to the board a report and that would just get rid of that one aspect of it.

Scott agrees with Sal, and thinks for ease of purpose if the house only has so many bedrooms for so many people and that is a condition that the board would make sure that if there was an issue with the septic system, there would be a certain amount of time to rectify it, one way to make sure you don't have an issue is to take care of the septic a little more often instead of waiting until there is an issue.

Tom (applicant) said that if there is a condition around insuring that they maintaining it or servicing it frequently they are open to accepting that or making sure that they can. In their case the building is often unoccupied, their occupancy is like 50% for example, they have only pumped their septic tank once since they have lived in the house, so it's a fairly under utilized system. He would rather not put additional limits on the occupancy because in some cases they will have a couple and a child, so there's 3 people. He is happy to work through whatever solution makes sense to everyone.

Scott said they may have to reduce the number of people at this property.

Dave said it would be 8.

Paul said that is something that could be applied consistently because the board can you have this number of bedrooms you get 2 people per room and this is will be the occupancy, unless you show the board that the septic system can accommodate more.

Lindsay said so in order to move forward and get everything approved they need to have some sort of proof from an engineer that the system can handle more people or they need to show the board that that have reduced the occupancy are those the two choices?

Paul said that Andy suggested that DOH may have the original permit that was issued for the property and the engineer plans and then from seeing those plans, you might be able to find out whether you have more capacity because if your system was oversized it may be able to support more than 8 people without any changes.

Dave said that he would check and see if the plans are in the building department files.

Scott said that there was one more issue and that is parking. The board is also going to limit that, which can be done by limited the amount of people.

Franco said that he would do no more than 6 cars in the driveway because you are backing up the hill to get out onto Bellevue Rd. and the line of sight is not good. He would also like to see no on-street parking temporary or overnight signs, so that would have to be posed by the town?

Dave said what was suggested in his email a condition that no parking vehicles on a public roadways is allowed for paying guests or visitors at anytime.

Scott said that he agrees.

Franco said that the reason is the road is too narrow when you need to get emergency vehicles through there.

Dave said the last thing is that renters and property owners may not know the noise ordinance, so a condition could be added that states guest will be notified prior to arrival of hours of when unreasonable noise is not allowed after 8pm and before 7pm weekdays and Saturday's and after 8pm and before 9am on Sunday's and holidays. That can put into the conditions of approval that way this way if there a violation he can point to the approval and said that they violated this condition.

Tom asked that parking on the street rule does that only apply to guests or does it apply to them as well?

Dave said that it is only for guests. In his opinion a single-family dwelling home owner occupied they are allowed to park in the street as you can in many town roads. The regulation for the STR is a super-use of a residential use and therefore the regulations could and should apply to that.

Tom said a lot of the time they are using it and don't have guests often but they have in the past had guests and had people parking on the street.

4 Picnic Woods LLC: 4 Picnic Woods Rd.: SBL #94.2-18.634

Review Status: Application and documents circulated to the board.

Potential Actions: TBD

Israel (Applicant) said that his engineer called the county and nowhere does it mention the amount of guest, but he can do a dye test, but wants to know if there is a certain flow rate that the board is looking for or any indication that will tell him what the board is looking to base it on?

Scott said they are going to base it on the number of bedrooms, 2 people per bedroom and if you can prove that your septic system can handle that amount of people then it should be fine.

Andy said that they are not interested in the number of guests it can handle, they are looking for a flow rate that the system was designed for or number of bedrooms that's how they are designed, so if the health department can provide that information and the board can see that, he thinks that is what they are looking for.

Israel asked when you say that are you referring to the 8 guests or the 12 guests?

Andy said for a residential home a septic system is designed for 110-gallons per day per bedroom, so a 4 bedroom house would be 440-gallons per day, that's the number that they are looking for in the design calculations.

Israel said that he has seen it online on the county's website, the septic plans are available. He will download it and send it to Sarah and he will have his engineer just write off it or look at it and approve it.

Sal asked if there is a number on the house? Two of the ones he drove past didn't have a number and his thinking that the board should require it.

Dave said that it should be a condition that all the properties should be numbered.

Scott said that it would help as a few of the properties didn't have numbers on them.

Sal said that if the guests get into trouble and they have to call for an ambulance.

Dave said that the board could probably suggest a 1x1 or something or a 2x2 with the number because in some of the complaints that they have heard its about guests going to the wrong address.

Israel said that he has a pet rule, he does specify that they have to be leashed, but he thinks they are talking about one time only.

Scott said maybe having the perimeter marked, so people don't stray into other peoples property, if they were going into your backyard where all of them line up.

Israel said that in his house rules he mentions that the grass cut is the boundary line of the property. Is a grass line sufficient enough or does he need something more than that?

Scott said if it is your conditions of renting just put it in there, so it marked and known.

Jessica Perrizo: 189 Pancake Hollow Rd.: SBL #88.4-1-34

Review Status: Application and documents circulated to the board.

Potential Actions: TBD

Scott said that the board was concerned with the septic, border clearly defined and then there was a discussion about the shared driveway.

Jessica mentioned that she turned in quite a few documents that she had that the board requested, one was a picture of the parking area in front of the house so the board can see that there can be at least four cars parked in the driveway, but most likely with only 4 occupants there would only be 2 cars. She submitted a copy of the survey that came with the title report and the full title report. There are stakes in the corners where the property boundaries are, but she could make them a little more visible.

Edward Maj (191 Pancake Hollow) said that he sent a letter to the board about a month ago. He has no problem with a Bed & Breakfast behind his house as Jessica has rented to good people. He wants to know why this is being brought up at this time since this property has been a Bed & Breakfast for over 3 years now with this owner and the previous owner? This property has been rented out to commercial business for several months, can a commercial business a film studio be run out of a residential area? For two months there were trucks and buses coming up and going down all day long and they were filming until about 9:30 at night with big spotlights in the back of the yard, there were porta potties brought in that he could see from his kitchen, the equipment was stored outside in between our properties even when filming was done for 3 months. He mentioned that according to 100-33 (4) “automobile and truck traffic generated by the home occupation should not exceed the volume of traffic that would normally be generated by residential use and the home occupation shall not receive deliveries by other than letter or parcel carriers.” She had a lot of trucks going up there as well as buses.

Adam Kane (185 Pancake Hollow) said that he is the driveway owner. He asked the board how many of these short-term rentals are not on their own driveway and how many are not on the road themselves? If there is an issue with one on the street it ends up on the street, when there is an issue with this one it winds up in his driveway.

Franco said that is why the board would put a condition on how many cars she can have in the driveway.

Adam said what she said about the parking for 4 cars, if you put 4 cars in there, no one would be able to turn around, no body could move, its not a 4 car parking area. This is a unique situation and should be addressed as a unique situation because its not a house that has road frontage on the street and its not her driveway.

Franco said it does have a legal right-of-way.

Adam said that he disagrees with that and when he talked to his lawyer about it, he said that it could be, its nothing that is written in stone. As a matter of fact what is attempting to happen is that there were only 2 houses on the right-of-way which is what the town strives for, this is a third house on the right-of-way which is creating an unnecessary burden on him as the property owner. What’s happening is this third house that came in, this property used to be a trailer, its not set up for this kind of situation, for parking, for septic, again with no road frontage, being on a shared driveway situation it puts a hardship on him. This affects him directly on his property, if this was her own driveway they wouldn’t be having this discussion, he would be fine with it. It’s a financial hardship as he is the one who maintains this driveway. It’s also an absentee owner where there is nobody on site to regulate these things when a problem does arise, he understands that with the new law there has to be an agent within 15-minutes or half an hour, but that agent is not living there on site and guests act differently when there is an owner on site as to when an owner is not on site. For example, its regulated for 4 cars and 4 people, those people can invite people over and there is nobody there to police it, to see that there is only 4 cars there, it winds up going back on to him. It’s going to create extra traffic without proper parking, without a turnaround area on her property, it winds up being on his property and then the boundaries of his

property are being violated by her guests. Its not up to the neighbors to direct people where to go to get to that property, or to tell them not to come up to his house to turn around. This also proposes safety issues, he invites the board to come up and see the property as it is hard enough to get a fire truck or ambulance to get up there to begin with, let alone to add more to it.

Scott said that the law has been brought into effect because in the past there were no regulations to any of these STRs, so at least now, what the town has done is brought some regulation to the way they are to ease the pain and suffering if there were any to the community. They are not allowed to rent a commercial business to, that is in the law. Each parking is an issue they have already conditioned some properties for parking. He is thinking in this particular case the septic was an issue also, so the board was concerned with that, she should prove to the board that it can withstand the amount of people she is going to have on the property. This is something new for board and each one of these are different. He said that the time for review is coming up and there have been valid complaints it can be used against the applicant for the renewal. He hopes that the board can rectify some of the issues that have brought up from the public.

Adam said that this is a unique situation and that he owns a bed and breakfast, and this would use his driveway as competition against himself.

Paul said that there is a land owner on the call who says she has a right of access and have received some documentation of that. The board is not in a position of judging a private property dispute, but he would say if that house wasn't an STR, if it was just used as a residential use, there would be the same issues related to maintenance. If you have a shared driveway, having some sort of driveway maintenance agreement maybe something that is worth talking about with your neighbors.

Adam said that he would appreciate if she approached him about that.

Paul said one of the things he has noticed about the board reviewing the existing STRs that he sees is the opportunity for the STR owners and the neighbors who are effected to actually begin to have some conversations that may not have been had and perhaps to resolve issues before they even come to the board, especially when they are things that the board may not have the power to.

Adam said that he is not trying to make it an issue about her access to the property he is concerned with extra problems that will arise from it.

Franco said that the board could put conditions on, like she says she can have 4 cars parked in the driveway, he says no she cannot. The board will take a look at that and they will make a decision on that and condition it.

Adam suggests that 4 of them go out there and park in her driveway and try to turn around and get out.

Franco asked Jessica if she would have a problem with working out a maintenance agreement with her neighbor?

Jessica said that she put some of those emails and texts to the board explaining and its documented that there have been discussions. There was a maintenance agreement sent to her, her lawyer told her that the wording of it was something she should not sign because it was giving away her rights to the driveway. Adam did write back she sent it to her lawyer and never did see another draft. The only thing she heard after that was text form, from Adam that wanted to make sure that she paid for the maintenance of the driveway and she agreed. She thinks it the right thing to do and has always agreed to that. She also agreed that if he thought there is undue stress on it that she could help re-gravel the whole section down to the street. That is what was in their communications in writing, but she wasn't presented with anything formal.

Adam said that he will talk to his lawyer and redraft something.

Scott said try to work this issue out amongst themselves, let the board know what the agreement is and the board can go from there.

Sal said that he thinks there wasn't a number on this house either.

Scott said that the board is concerned about her septic as it went from a mobile home to a house. The parking is an issue work that issue out with your neighbor.

Jessica said that it was a mobile home and in 2016, some people bought it and they developed a home there and at that point she has been told that a new septic system put in. She was told that everything was brand new, there was a new septic system, new everything.

Franco said 2016 the building department should have the plans that show the septic that was approved by the health department?

Dave said that he didn't see anything, but he'll check again.

Scott asked if it was one bedroom or 2?

Jessica said that she is only renting out 2.

Scott said that the flow capacity for the 4 people is what the board is concerned with.

Adam said that 2 cars would probably work.

Scott said that the other was the border property markings and a number on your home or at the edge of the driveway, so that people know what your number is if they are renting from her.

Dave said that he would put this in writing and get it to her. One of the issues that the board brought up tonight about property numbering, they would need a better number at the road on Pancake Hollow and then when your driveway splits off from Adam's driveway there would have to be an arrow indicating the STR.

Scott asked Dave what the deadline was for registering the STRs?

Dave replied that its rolling and they are about to start chasing some people who haven't responded.

Scott asked if he could have a copy of the STR list?

Dave replied he could do that.

Scott said that the reason he asked is that he has looked some up and there are many that he found and they haven't gotten any applications for. Also so that the board can go out and look at these properties.

Motion to Adjourn.