

ZBA Minutes – May 9, 2019
ZONING BOARD OF APPEALS
TOWN OF RIVERHEAD
SUFFOLK COUNTY
RIVERHEAD, NEW YORK
(631) 727-3200

These minutes are a summary of the May 9, 2019 Town of Riverhead Zoning Board of Appeals meeting held at the Town of Riverhead Town Hall, Riverhead, NY.

PRESENT:

Frank Seabrook
Leroy Barnes
Otto Wittmeier
Fred McLaughlin
Lisa Worthington
Dawn Thomas, Counsel

ABSENT:

PUBLIC HEARINGS

1. Appeal No. 2018-063 – Paul Wesnofske – 301 Scott Avenue, Calverton – SCTM No. 600-135.20-1-6 – PIP Zoning - for variances and/or relief from Chapter 301 Section 186 B(6) where control building is 31.91 feet from rear property line and required is 50 feet; where rear addition to main building is 43.1 feet from rear property line and required is 50 feet; Section 186 B(8) where proposed impervious surface is 62% of the lot area and maximum permitted is 57%; Section 186 B(10) where 62.9% of the required parking is located within the front yard and maximum permitted is 25%; where parking within the front yard is 2.5 feet from property line and minimum required is 25 feet; Section 259 D(1) where exterior lighting is mounted at 25 feet (building) and 35 feet (poles) and maximum permitted is 16 feet; and, Section 259 D(2) where proposed exterior lighting will trespass onto adjoining property which is not permitted.

John Zollo, Esq. was present for the applicant. Mr. Zollo stated, we'd been before this board on Dec 13, 2018, and since then a lot of new stuff has happened. I have a package for you which has the...an application was submitted to DEC for permits pursuant to Wild and Scenic Recreational River system permits and variances for the silos. I also have the Town Board adopted SEQRA determination/resolution. A negative declaration was issued through the SEQRA review. So, I'll give that to you so you have it. Mr. McLaughlin stated, I always get a kick out of a negative dec being positive. Sounds good to me. Mr. Zollo replied, see, it's like parking in a driveway. Mr. Zollo continued, I thank you again for having us here tonight, and in case you're curious, we had the DEC application and the request for variance filed, and Susan Ackerman who's the permit director for the DEC has everything there, and just basically an email I received in respect to our conversation, Sue Ackerman has everything she needs that was provided...and there's issues that they have, all in respect to natural screening of the silos, but we addressed that. I don't think there's going to be anything of concern. The height of the silos in consideration to the smoke stack and from the power plant, I think is 124 feet in height that is right behind the building there, and we suggested that the DEC representatives take a walk out to EPCAL to get a better sense of what we're dealing with here. As I've said before on December 13th, everything here...basically, we're trying to bring everything into compliance. We have the site plan; everything has been submitted to the Town Planning Department. We expect to get site plan approval. Hopefully, the board grants this variance, then we get the site plan approval and get the building permits. Co-generation building permit has been issued by the Town, so that's moving forward. The plan is to have the silos on site and installed by the middle of June, end of June. This is the lynch pin here is getting this board hopefully...if you want me to go through everything again, I can. Mr. McLaughlin shook his head. Mr. Zollo answered, I just wanted acknowledgement that you didn't want me to, so we're here if you have any questions. I appreciate the board's time. Mr. McLaughlin stated, you've covered all the bases. Mr. Zollo replied, yes, and we're in good shape, and again the DEC and the Planning Department and

the Town Board...we are on course. Hopefully, the board grants the application we've made variance for, and I thank you for your time and your courtesies. Mr. McLaughlin asked, anyone on the board have any questions?

Mr. Seabrook stated, Mr. Zollo, you're correct that EPCAL, last time we were here, you made a statement that EPCAL's a different animal; I do agree with you. This application is without precedent. We have granted the same thing in Calverton in regards to the lighting. So, I don't have a problem with this. Mr. Zollo responded, thank you so much. Mr. McLaughlin asked, is there anyone else out there to be heard on this issue? There was no one. Mr. McLaughlin stated, since there isn't, let's have a reading.

A motion was made by Ms. Worthington and seconded by Mr. Seabrook that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2018-063

APPLICANT/PROPERTY OWNER: Paul Wesnofske, 274 Middle Country Road, Medford, NY 11763

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 186 B(6) where control building is 31.91 feet from rear property line and required is 50 feet; where rear addition to main building is 43.1 feet from rear property line and required is 50 feet; Section 186 B(8) where proposed impervious surface is 62% of the lot area and maximum permitted is 57%; Section 186 B(10) where 62.9% of the required parking is located within the front yard and maximum permitted is 25%; where parking within the front yard is 2.5 feet from property line and minimum required is 25 feet; Section 259 D(1) where exterior lighting is mounted at 25 feet (building) and 35 feet (poles) and maximum permitted is 16 feet; and, Section 259 D(2) where proposed exterior lighting will trespass onto adjoining property which is not permitted.

LOCATION: 301 Scott Avenue, Calverton

SCTM#: 600-135.20-1-6

ZONING DISTRICT: Planned Industrial Park (PIP)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 410,542 sq. ft. or 9.42 acres. Minimum park area is 100 acres in contiguous parcels. Minimum park width is 1,000 feet. Minimum frontage on an arterial road is 400 feet. Maximum floor area ratio is 0.15 in total for all buildings within the park. Maximum clearance is 65% of the park area. Minimum perimeter buffer shall be provided at the perimeter of the park of 100 feet in width. For uses within industrial parks, except offices, minimum lot area is 5 acres. Minimum lot width is 250 feet. Minimum street frontage is 200 feet. Minimum front yard depth is 75 feet. Minimum side yard depth is 50 feet. Minimum rear yard depth is 50 feet. Maximum floor area ratio for one-story building is 0.22. For multistoried buildings floor area ratio is 0.30. Maximum impervious surface coverage is 50% of the lot. Not more than 25% of all required parking shall be located in the front yard. No parking shall be located nearer than 25 feet to any property line or street right-of-way line. All service and unloading areas shall be screened from view of streets by one or more of a combination of walls, fencing, vegetation or berms.

DATE OF HEARING: 12/13/18 & 5/9/19

INSPECTION DATES: 12/8/18, 12/11/18, & 12/12/18

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 this matter was referred to the Suffolk County Planning Commission, and by letter dated March 12, 2019 was considered to be a matter for local determination.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application. By Town Board Resolution #2019-267, the Town Board assumed Lead Agency of the action classified as an Unlisted Action pursuant to SEQRA and issued a Negative Declaration.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. A denial letter was sent from the Building Department on November 15, 2018 and an application was made to the Zoning Board of Appeals on November 27, 2018.
2. Town Board Resolution #2019-268, dated April 11, 2019, approved a site plan application for a co-generation system on the subject parcel.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. Concrete and metal building (321.5' x 102.3') with:
 1. 41' x 19.9' addition
 2. Roof structure (9' x 12')
 3. Two (2) conveyor belts
 - ii. Two (2) refrigeration units
 - iii. Three (3) silos
 - iv. Eleven (11) portable containers (five to be removed)
 - v. Gate booth
 - vi. Dumpster enclosure (10' x 35')
 - vii. Metal building (54.8' x 30.2')

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would produce an impact on adjacent properties; however, the impact would not be a significant issue as the rear setbacks and lighting over-spill project towards the adjacent railroad spur. Beyond that, the light levels drop off. The neighborhood would not be greatly affected as the parcel is located toward the western end of the industrial park. Parking can be adequately screened from the adjacent parcel with an evergreen synthetic covering on the 6' chain-link fence.
2. The requested variances are not substantial based on the nature of the proposed use. The location is an industrial park where outdoor storage is common, and light is necessary to conduct business. The rear yard setback is near a rail spur and/or a water/storage tower. Parking can be adequately screened, and impervious surface is less than 10% beyond the permissible percentage.
3. The benefit sought by the applicant cannot be achieved by some alternative means because due to the nature of the use for the control building and its required proximity to the rail spur, it is impractical to

move the building beyond the proposed setbacks. The addition to the existing building is the minimum required space to house the needed equipment. Lighting height utilizes existing building mounts, and the outdoor poles are higher than the required outdoor storage. A 16' height limitation is not practical for site lighting in an industrial core. The proposed parking is listed in a front yard based on the layout of the existing road and right of way, but the perception of the surrounding use makes it more in-line with a side yard.

4. The requested variance will not have an adverse impact on the physical or environmental conditions in the district because though the mounting height is higher than allowed, dark sky compliant fixtures are proposed to limit the waste light into the sky. The rear yard setbacks and parking locations do not affect the environment. The impervious surface requested would not alter the existing storm water retention system in place or allow runoff to adjacent parcels.
5. The alleged difficulties that the property owner is experiencing were not self-created as the existing building light fixtures are above the maximum height allowed. The rear yard setbacks limit the required development and success of the operation. The location of the rail spur requires the control building to encroach on the rear yard setback. The nature of the existing development hinders the allowable placement of the required parking and the efficiency of moving product. The maximum impervious surface areas were not created by the client and hinder the efficacy of moving and shipping product. The competitive nature of the fence industry requires large amounts of product to move around the site and ship. The product is produced on a 24-hour period, and the efficiency is made by constant flow of product.

The motion was made by Ms. Worthington and seconded by Mr. Seabrook, that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE
MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: AYE
This determination X was ___ was not
therefore duly adopted

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

2. Appeal No. 2019-014 – Conrad Hoenig – 105 15th Street, Wading River – SCTM No. 600-34-1-26 – RB80 Zoning - for variances and/or relief from Chapter 301 Section 29 where proposed pool setback is 10 feet and minimum required is 20 feet; Section 31 where proposed building area is 24.6% of the lot area and maximum permitted is 20%; where proposed rear yard setback is 33.7 feet and minimum required is 50 feet; and Section 222 E where proposed addition increases gross floor area within a required rear yard, increasing degree of nonconformity of a preexisting nonconforming dwelling which is not permitted.

Conrad Hoenig, applicant was sworn in along with his wife, Mary Hoenig. Mr. Hoenig stated, we want to add a little bit of an extension to our kitchen, bump it out a few feet. We want to add a rear deck to the back of the house, and we'd like to add a swimming pool. Mrs. Hoenig stated, namely, we have to have staff for our son. Secondly, for therapy...he's doing aqua-therapy. We were bringing him to lessons, and we'd like to have those

at home. The covered porch is more so we can have an area outside. He also has autism, so we'd like to have him outside acclimated to that, as well, but he needs to have a covered area, so some type of porch for that. The pool for aqua-therapy, which is huge because he was not able to do so last year. Obviously the kitchen area because we have a lot of staff coming in, and we'd like to eat as a family, regardless. So, those are the main reasons. Obviously, the PT therapy of it is to strengthen him for his quality of life, and this is going to be his forever home. Our intention is to have someone move in when we leave, to care for him. Mr. McLaughlin stated, well, I would ask your son, and I'm sure he would just agree with you 100%, but I'm saying...okay, he's good with it. Mr. Hoenig stated, he's also a "Conrad." Mrs. Hoenig added, he's just learning to speak, so. Mr. McLaughlin smiled, and stated, terrific. There's nobody else to be heard on this matter?

Mr. Wittmeier asked, you're going to remove the two plastic sheds on the plan? Mrs. Hoenig answered, yes, sir. Mr. Wittmeier continued, and then something about concrete? Mr. and Mrs. Hoenig both responded, it's already gone. Mr. Wittmeier responded, wonderful. Thank you.

A motion was made by Mr. Seabrook and seconded by Ms. Worthington that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-014

APPLICANT/PROPERTY OWNER: Conrad Hoenig, 105 15th Street, Wading River, NY 11792

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 29 where proposed pool setback is 10 feet and minimum required is 20 feet; Section 31 where proposed building area is 24.6% of the lot area and maximum permitted is 20%; where proposed rear yard setback is 33.7 feet and minimum required is 50 feet; and Section 222 E where proposed addition increases gross floor area within a required rear yard, increasing degree of nonconformity of a preexisting nonconforming dwelling which is not permitted.

LOCATION: 105 15th Street, Wading River

SCTM#: 600-34-1-26

ZONING DISTRICT: Residence B-80 (RB80)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 12,780 sq. ft. or 0.29 acres. Minimum lot area is 80,000 square feet; minimum lot width is 175 square feet; maximum impervious coverage is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 60 feet; minimum either side yard width is 30 feet; minimum both side yards, total width is 65 feet; minimum side yard abutting side street is 60 feet; minimum rear yard depth is 75 feet.

DATE OF HEARING: 5/09/19

INSPECTION DATES: 5/05/19, 5/06/19, & 5/08/19

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. A denial letter was sent from the Building Department on March 28, 2019 and an application was made to the Zoning Board of Appeals on April 10, 2019.
2. Property received a Letter of PreExisting Use on July 20, 1992, vesting zoning as Residence A, which may conform to the dimensional requirements of Residence B per TB Resolution #243 dated March 21, 1989.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. Two-story frame dwelling with attached garage (24.2' x 27.2')
 - ii. Covered wood porch (27.2' x 7.3')
 - iii. Frame shed (11.9' x 8.5')
 - iv. Two plastic sheds (both 8' x 6') – TO BE REMOVED

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the subject parcel is larger than most parcels in the immediate neighborhood and additions are in keeping with the character of the surrounding area.
2. The requested variance is not substantial setbacks are more conforming than many neighboring properties.
3. The benefit sought by the applicant cannot be achieved by some alternative means because the lots are undersized for the current zoning use district; as such, any additions or alterations will require relief from this board.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district because the neighboring properties are developed in a similar manner and the proposed expansion is in keeping with the character of the community.
5. The alleged difficulty that the property owner is experiencing was not self-created the lots in the area are undersized based on current zoning, thereby requiring property owners seeking additions/modifications to seek relief from this board.

The motion was made by Mr. Seabrook and seconded by Ms. Worthington that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE

**MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: AYE**

**This determination X was was not
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

Minutes of April 25, 2019 – A motion was made by Mr. Wittmeier and seconded by Mr. Seabrook that the minutes be adopted. The motion was approved by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

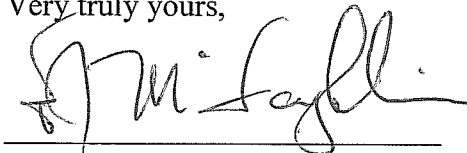
NEXT MEETING DATE – May 23, 2019 at 6:30 PM

A motion to close the meeting was made by Mr. Wittmeier and seconded by Mr. Barnes. The meeting was closed by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Approved and Dated: May 23, 2019

Very truly yours,



Fred McLaughlin, Chairman
ZONING BOARD OF APPEALS