



**TOWN OF RIVERHEAD
ZONING BOARD OF APPEALS**

5782

200 HOWELL AVENUE, RIVERHEAD, NEW YORK 11901-2596
(631) 727-3200 ext. 240 FAX (631) 727-9101

F.J. McLaughlin *Otto Wittmeier* *Lisa Worthington* *Leroy E. Barnes, Jr.* *Frank Seabrook* *Kim E. Fuentes*
Chairman *Vice Chairman* *Member* *Member* *Member* *Secretary*

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO.: 14-59

APPLICANT: Gatofreddo, Ltd, Bayview Restaurant & Hotel

RELIEF SOUGHT: Area Variances(s)

For variances to and/or relief from the provisions of Chapter 108, Section 108-51B, requesting a special exception to change from a pre-existing non-conforming use (restaurant & hotel) to another non-conforming apartment use, and the pre-existing cottage proposed as two apartments.

LOCATION: 46 Front Street, South Jamesport, New York

SCTM No. 0600-92-3-41

ZONING DISTRICT: Residence B-80

DATE(S) OF HEARING: October 23, 2015, November 13, 2014, December 11, 2014, January 22, 2015 and February 26, 2015

FILED IN OFFICE OF
DIANE M. WILHELM
TOWN CLERK
2015 MAR - 31 P 2:22
FILED IN OFFICE OF
DIANE M. WILHELM
TOWN CLERK
2015 MAR - 3 P 2:22

PLEASE TAKE NOTICE that at a public hearing of the Town of Riverhead Zoning Board of Appeals on the above referenced date(s), the Board took the following action:

1. In accordance with the recommendation of the Planning Department that this action be classified as Type II under the criteria of Section 617 of the State Environmental Quality Review Act and the other provisions of the New York State Environmental Conservation Law, the Board declares themselves lead agency and further determines the action to be Type II pursuant to Section 617 of the State Environmental Quality Review Act and that an Environmental Impact Statement need not be prepared.

2. The above referenced appeal was duly considered and determined as follows:

**DENIED AS SOUGHT IN ACCORDANCE
WITH THE ATTACHED FINDINGS AND CONCLUSIONS**

3. Subject to the following conditions:

NONE

The motion was duly adopted by a roll call vote of all members present.

MR. MCLAUGHLIN: May I have your vote please?

MR. SEABROOK:	AYE
MR. BARNES:	AYE
MRS. WORTHINGTON:	AYE
MR. WITTMAYER:	ABSENT
MR. MCLAUGHLIN:	AYE

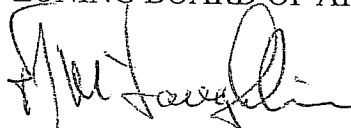
If this is an approval, it is necessary that you take this duplicate original letter with you to the building department when applying for a building permit. Pursuant to §108-76(D) of the Town Code, any determination made by the Board of Appeals shall not become effective unless a permit is obtained in accordance therewith within one year of the date of such determination, unless the Board of Appeals has stipulated a different period of time in its determination. The Board of Appeals shall have the power, by resolution, to extend its determination for a period of one year upon written notice from the applicant or his agent of the desire to do so. No more than three such extensions shall be allowed. The provisions of this subsection shall not apply in cases of interpretation of variances for the use of land unless the Board of Appeals stipulated a period of time in its determination. Failure to comply therewith will render this approval null and void. In the event this is an approval subject to conditions, the approval shall not be deemed effective until such time that the foregoing conditions are met.

Please feel free to contact the office of the Zoning Board of Appeals with any questions you may have.

Dated: Riverhead, New York
February 26, 2015

Very truly yours,

ZONING BOARD OF APPEALS



F. J. McLaughlin,
Chairman

FM:kf



**TOWN OF RIVERHEAD
ZONING BOARD**
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FINDINGS AND CONCLUSIONS OF THE ZONING BOARD OF APPEALS

APPEAL NO.: 14-59

APPLICANT: Gatofreddo, Ltd, Bayview Restaurant & Hotel

RELIEF SOUGHT: Area Variances(s)

For variances to and/or relief from the provisions of Chapter 108, Section 108-51B, requesting a special exception to change from a pre-existing non-conforming use (restaurant & hotel) to another non-conforming apartment use, and the pre-existing cottage proposed as two apartments.

LOCATION: 46 Front Street, South Jamesport, New York

SCTM No. 0600-92-3-41

ZONING DISTRICT: Residence B-80

DATE(S) OF HEARING: October 23, 2015, November 13, 2014, December 11, 2014, January 22, 2015 and February 26, 2015

The Zoning Board hereby finds as follows:

1. Chapter §108-51(B) of the zoning code of the Town of Riverhead ("the Code") provides that a nonconforming use on the same lot held in single and separate ownership may be changed to another nonconforming use when approved as a special exception by the Zoning Board of Appeals in accordance with the provisions of Chapter §108-76 therein.
2. Pursuant to Chapter §108-76(C)(2)(a) of the Code states that the Board of Appeals shall grant special exceptions and special permits only upon making the following determinations:
 - [1] That the use will not prevent the orderly and reasonable use of adjacent properties or of properties in the surrounding area, or impair the value thereof.
 - [2] That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located, or of permitted or legally established uses in adjacent districts.
 - [3] That the safety, the health, the welfare, the comfort, the convenience or the order of the Town will not be adversely affected by the proposed use and its location.
 - [4] That the use will be in harmony with and promote the general purposes and intent of this chapter.

It further states in subsection (b) that in making such determinations, the Board of Appeals shall give consideration, among other things, to:

- [1] The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any such proposed uses.
- [2] The conservation of property values and the encouragement of the most appropriate uses of land.
- [3] The effect that the location of the proposed use may have upon the creation or undue increase of traffic congestion on public streets, highways or waterways.
- [4] The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
- [5] Whether the use or materials incidental thereto or produced thereby may give off noxious gases, smoke or soot.
- [6] Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise.
- [7] Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing or if proposed by the Town or by other competent governmental agency.
- [8] The necessity for an asphaltic- or concrete-surfaced area for purposes of off-street parking and loading of vehicles incidental to the use, and whether such area is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had.
- [9] Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used therefor or by the inaccessibility of the plot or structure thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot.
- [10] Whether the use or the structures to be used therefor will cause an overcrowding of land or undue concentration of population.
- [11] Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
- [12] The physical characteristics and topography of the land.
- [13] Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or place of public assembly.

3. The subject property is located at 46 Front Street, Jamesport, New York and is improved with two structures, one most recently utilized as a non-conforming restaurant and a second structure in the nature of a single family dwelling being used for storage and residential purposes associated with the restaurant use. The subject property is known as SCTM No. 600-92-3-41. The subject property is located in a Residential B-80 zoning district. The property is not currently being utilized as a restaurant and is currently unoccupied. Residential B-80 zoning is a two acre zoning district which contemplates predominately single family uses but does permit the following uses as of right:

- (1) Agricultural production.
- (2) Dwelling, one-family.

- (3) Attached single-family dwelling units within a cluster subdivision.
- (4) Riding academy, corral or facilities for the training of horses, including but not limited to private polo chukkers.
- (5) Greenhouse, provided that the subject parcel is a minimum of five acres. A permanent greenhouse to be used for retail sales shall be subject to site plan review and approval.

It also permits, by special permit of the Town Board, the following specially permitted uses:

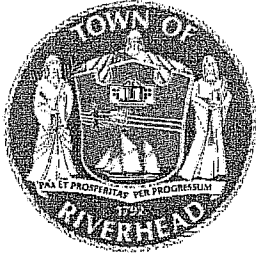
- (1) Bed-and-breakfast.
- (2) Overhead electrical power transmission and distribution lines in excess of 13 kilovolts.
- (3) Educational institution without boarding facilities or dormitories, private.
- (4) Day-care facility conducted in a residence.
- (5) Golf course (standard), with or without clubhouse.
- (6) An accessory dwelling unit with a maximum living area of 1,000 square feet on a lot of 10 acres or more, provided that the total number of dwelling units yielded by the original subdivision creating such lot is not exceeded.
- (7) Professional offices of attorneys, architects, medical doctors, or dentists, provided that the subject real property conforms to the following conditions:
 - (a) The property is improved with a single-family residence at the time of the adoption of this Subsection B(7).
 - (b) The professional office use shall be within the building footprint of the existing single-family residence.
 - (c) The property has frontage along New York State Route 25 between Route 105 and the Town boundary with the Town of Southold.
- (8) Home occupations or professions conducted within an accessory building by the residents thereof.

4. The applicants seeks to change from the nonconforming restaurant use to another nonconforming use consisting of a multi-family apartment use with seven (7) units.

5. It is well established in the law and zoning treatises that the perpetuation of nonconforming uses is to be discouraged. Thus, the Code in providing for a change from one nonconforming use to another, imposes a heavy burden upon the applicant. The Board, in making it's determination, must first consider, amongst other things, the thirteen (13) factors set forth Chapter §108-76(C)(2)(b), and then shall grant a special exception only upon making each and every one of the four (4) determinations set forth in subsection (a).

6. Unfortunately, the applicant has failed to make the required evidentiary showing and therefore the record is devoid of any substantive evidence which would support the Board in making each and every one of the four required determinations. Mere conclusory assertions, statements and remarks without any substantive support therefore do not rise to an evidentiary showing sufficient to support a favorable determination in this matter.

As such, based upon the foregoing, it is the determination of the Board that application is denied.



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Secretary

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO.: 15-05

APPLICANT: Riverhead Building Supply

RELIEF SOUGHT: Area/Sign Variances(s)

For variances to and/or relief from the provisions of Chapter 108, Sections 108-56 C (3) (b), requesting permission to replace an existing freestanding sign having 40 sq. ft. in area instead of the maximum allowed of 32 sq. ft. in area.

LOCATION: 1093 Pulaski Street, Riverhead

SCTM No. 0600-125-2-3.4

ZONING DISTRICT: Peconic River Community

DATE(S) OF HEARING: February 26, 2015

PLEASE TAKE NOTICE that at a public hearing of the Town of Riverhead Zoning Board of Appeals on the above referenced date(s), the Board took the following action:

1. In accordance with the recommendation of the Planning Department that this action be classified as Type II under the criteria of Section 617 of the State Environmental Quality Review Act and the other provisions of the New York State Environmental Conservation Law, the Board declares themselves lead agency and further determines the action to be Type II pursuant to Section 617 of the State Environmental Quality Review Act and that an Environmental Impact Statement need not be prepared.

2. The above referenced appeal was duly considered and determined as follows:

RELIEF GRANTED AS SOUGHT

3. Subject to the following conditions:

NONE

The motion was duly adopted by a roll call vote of all members present.

MR. MCLAUGHLIN: May I have your vote please?

MR. WITTMEIER:	ABSENT
MR. SEABROOK:	AYE
MR. BARNES:	AYE
MRS. WORTHINGTON:	RECUSED
MR. MCLAUGHLIN:	AYE

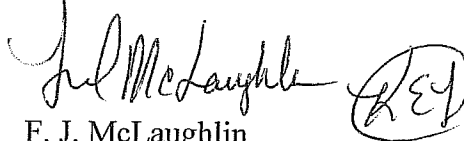
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Dated: Riverhead, New York
February 26, 2015

Very truly yours,

ZONING BOARD OF APPEALS



F. J. McLaughlin,
Chairman

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DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO.: 15-07

APPLICANT: Jamesport Bay Suites

RELIEF SOUGHT: Area/Sign Variances(s)

For variances to and/or relief from the provisions of Chapter 108, Sections 108-19, requesting permission to maintain an accessory structure having a distance of 2.5 feet from the side yard instead of the required 30 feet, having 42.67 feet from the side yard abutting the side street instead of the required 60 feet, and to provide for impervious surface of 32.64% instead of the permitted 15%, and Sections 108-56C (3)(a) and (d) and 108-56 H (3)(c) requesting permission to erect a non-permitted freestanding sign having a distance of 6 feet from a building, having a distance of 16.5 feet from the side yard property line instead of the required 25 feet and having a distance of 6 feet from the front yard property line instead of the required 15 feet.

LOCATION: 67 Front Street, So. Jamesport

SCTM No. 0600-092-4-7

ZONING DISTRICT: Residence B-80

DATE(S) OF HEARING: February 26, 2015

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2. The above referenced appeal was duly considered and determined as follows:

RELIEF GRANTED AS SOUGHT

3. Subject to the following conditions:

NONE

The motion was duly adopted by a roll call vote of all members present.

MR. MCLAUGHLIN: May I have your vote please?

MR. WITTMEIER:	ABSENT
MR. SEABROOK:	AYE
MR. BARNES:	AYE
MRS. WORTHINGTON:	AYE
MR. MCLAUGHLIN:	AYE

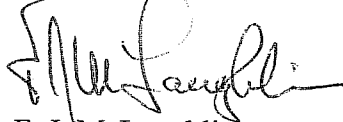
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