



CITY OF LACKAWANNA
Zoning Board of Appeals
COUNCIL CHAMBERS

MINUTES

Tuesday July 30, 2024

Opening:

The regular meeting of the City of Lackawanna Zoning Board of Appeals was called to order at 5:00pm.

Present: Beres, Mohamed, Stampone, Sobaszek

Excused: Turner

Agenda:

A. Approval of Board meeting minutes:

Motion to approve minutes for 6/26/24: Mohamed: Second: Stampone
All yeas carried 4-0

Item #1

Land Use Variance

Geraldine Paryz
49 Highview Cir
Requesting variance to place shed at rear of property line

Geraldine Paryz representing
Chairman Beres asked Ms Paryz you want to put a shed at the property line
Ms. Paryz yes
Member Mohamed has no problem with the shed

Motion to approve variance: Beres: Second: Sobaszek
All yeas carried 4-0

Item#2

Zoning law Appeal

Daniel Egan
90 Brinker Rd
Requesting variance to modify the setback requirements
to install a egress window at the side of the house

Daniel Egan Contractor representing

Mr. Egan stated the company wants to put in an egress window on the side of the house,
but the setback encroaches on where the well is and that is the only place to put the window
Mr. Balon said the setback is ten feet

Motion to approve: Beres: Second: Mohamed
All yeas carried 4-0

Item #3

Land Use Variance

Anthony Catuzza
56 Madison Ave
Requesting to install 6 ft privacy fence to enclose
swimming pool

Anthony Catuzza representing

Mr. Catuzza stated he want to install a fence for the pool

Chairman Beres ask if it is a corner lot

Mr. Hayes said it is a corner lot and needs to be fence in to meet code

Mr. Balon said it needs a variance due to going past the foundation

Chairman Beres ask any problems with the road

Mr. Balon asks if they can move back some

Mr. Catuzza said there is not much room sue to small lots

Member Stampone ask if the fence starts from the back of the house

Member Mohamed said based on the information submitted to allow Mr. Catuzza to put up
a fence

Motion to approve: Mohamed: Second: Stampone
All yeas carried 4-0

Item #4**Land Use Variance**

Mansoor Saleh
119 Wilkesbarre Ave
Requesting change of use from a store to restaurant
And a variance for parking

Mansoor Saleh representing

Mr. Saleh stated he wants to open a restaurant on Wilkesbarre, it was a deli and kitchen for over 15 years. I want to take out the deli and utilize the kitchen.

Chairman Beres said we are looking to approve a parking variance for this

Mr. Saleh yes

Chairman Beres ask how many spots you have now

Mr. Balon explained there are no spots on the property but also a use variance due to the building being closed for over a year and trying to turn it from a store to a restaurant.

Mr. Hayes said this is a change of use

Chairman Beres said it will be a small restaurant

Mr. Saleh said yes a fast food restaurant with subs, burgers, fries and sandwiches, also high top chairs inside for seating. In the future some tables and chairs outside on the side of the building.

Member Stampone said they will need more parking for the outside

Mr. Saleh said he has permission from the Mosque to utilize the parking lot due to I used to own the land and donated it to the Mosque, so I have access to the parking lot as long as it doesn't interfere with the worshipers. I will be closed on Fridays during prayer time

Motion for the use variance: Beres: Second: Mohamed

All yeas carried 4-0

Motion for parking variance: Beres: Second: Mohamed

All yeas carried 4-0

Item #5**Land Use Variance**

Karen Pepe
1385 Abbott Rd
Requesting tenant use side driveway for parking and
not be required to have 2.5 parking spots

Mr. Clark, Director of Development explained Item #5

Mr. Clark stated item #5 relates to 1385 Abbott Rd it is the location of Yetti Vape. The same owners are looking to transition. Yetti Vape has been in the City for 11 years and the same owners are looking to transfer the business from the vape to cannabis. A question was asked about State Laws requirements on how far away from schools, churches and community centers. The community center in question is at corner of Abbott & Fernald doesn't qualify as a community center in relation to the New York State Law. Public youth facility means a location or structure owned by a government sub division or agency that is accessible to the public for the primary purpose is to provide recreational opportunity and

services to children for whom the primary population is 17 years or younger. So why the building in question is a community center, it is privately owned community center of multi ages it does not qualify as a restriction in the NYS cannabis law. What's before you is not a decision if the City is in the cannabis or not in the cannabis business, the City made that decision in December of 2021 which was the deadline for opting out of the cannabis legislation. We did not opt out meaning we were in so the City created its enforcement to allow cannabis dispensary that are licensed by NYS within the provision of being away from schools, churches and community centers. The economic benefit to the City and County of cannabis dispensaries is substantial. There is a 4% sales tax on all cannabis sales made out of the retail dispensary. The Town or City gets 3% out of the 4%, so 75% of that comes to the City. The authorization of a special use permit to allow them to operate cannabis in the City. He has a State license to operate a cannabis facility pending approval by the City. Also a parking variance is needed for approximately three vehicles based on the design of his foot print he looking at about a 650 square foot retail floor space. There are two apartments above the store and one is storage (not rented). The one that is rented the parking will be rounded to 3 spaces, which is a total of 6 spaces required. There is room for three spaces in the back of the building so the variance he is asking for is three.

Jeff Marion City Attorney- stated we will open public hearing after the matter is called and the Board members have an opportunity to ask their questions regarding what is on the agenda.

Member Mohamed asked Mr. Clark he read the definition of community service based on NYS cannabis laws, however I am not referring that I am referring to the City ordinance that supersedes the State laws and the definition of community center is just that. If we adopt the guy on an ordinance instead what the State recommended the City did do that. This happens to be within 500 feet of a community center

Jeff Marion City Attorney stated the regulatory zoning is a State law preamps the local law. The local cannot supersede the State Law just like the State law cannot supersede the Federal law. That is the definition we are working on and if you vote it down on that bases we will be subject to an article 78 challenge by the owner which would be litigation, base on the definition it is a risk and cost for the City

Member Mohamed the parameter in their rules that was put in place can we turn a blind eye to it. So the State set the rules and the City of Lackawanna never modified them

Jeff Marion City Attorney said it's not the City place the State rules preamp

Member Mohamed stated in 2023 we did make our own ordinance for this and the City did adopt their ordinance to supersede the State.

Jeff Marion City Attorney said the State law preamps and anything the City has done is in conflict with the State law

Chairman Beres said we are looking to give a variance for 2 ½ spots

Member Mohamed said Karen is not the owner of the property

Karen said Kevin is the owner

Karen said I am the owner of the dispensary

Member Mohamed ask you are employees
Karen Pepe and Mark Pepe said yes

Member Mohamed said there are questions that need to be answered such as the DBA is not on the license for the certificate

Mr. Pepe said Briar Hill LLC and we don't have a DBA yet

Board discuss parking

Member Stampone ask why need a parking variance now and didn't need it then

Mr. Balon said no one went to zoning back then

Mr. Clark said special use permit should have been on the agenda and they would not be in front of the Zoning Board, so they are here on our request.

Motion to approve 2 1/2 parking spots: Beres: Second: Sobaszek
Yeas- 3 Nays-1
Carried 3-1

Motion to suspend the rules: Beres: Second: Sobaszek
Yeas-3 Nays-1
Carried 3-1

Mr. Clark stated the issue of a special use permit if it is approved it has to be ratified at the special meeting due to we have to public notify to allow people to comment

Member Mohamed ask about the approval today

Mr. Balon said it has to be put in the paper for the public

Chairman Beres said, what is a special use permit if they already have a license to operate

Mr. Balon said they have a State license the special use permit if for the City

Boarding Neighbor

John Gilliland stated he owns the business next door 1389 Abbott Rd and concern about the parking. When Bill Kaney was there with the pharmacy he rented the parking lot where the funeral home was and that is where all his parking came from and had very few people pout front on the street. Also it's a driveway between myself and the vape shop, so that driveway if you park three cars in there's no way unless you go on private property to get to the four that is in the back. They only have a couple spaces on the street which maybe they could get three or take our one away in front of our store. How do you put a business in that service one hundred thousand people and they have no parking? The tenant has to park on the street so that takes two out.

Laura Ieradi- 1393 Abbott Rd stated she is concern about the neighbor changing and it is old fashion but a concern. Doesn't think it is safe to have it there, but that's how I feel.

Motion to amend until August 13, 2024: Beres: Second: Sobaszek
Yeas 3 Nays 1
Carried 3-1

Motion for the special use permit: Beres: Second: Sobaszek
Yeas 3 Nays 1
Carried 3-1

Motion to return to the agenda: Beres: Second: Sobaszek
All yeas carried 4-0

Motion to adjourn: Beres: Second: Sobaszek
