

**MINUTES OF THE JOINT TOWN & VILLAGE ZONING BOARD OF APPEALS
MEETING HELD ON WEDNESDAY, MAY 20, 2020 AT 6:00 P.M. VIA ZOOM**

The meeting was called to order at 6:00 p.m.

Pledge of Allegiance

PRESENT FOR TOWN ZBA: Ken LaFay
Dolores Cogan
Jim King
Jim Maskell
Rick Fisher

PRESENT FOR VILLAGE ZBA: Dan Durkee
Dan Boucher
Denise Mayer

OTHERS PRESENT: Leonard Gillis, Eric Balthrop, Kara Lais, Peter Ives, Max Fruchter, Mark Belden, Jim Houston, Michael Dahl, Dave Armando, Dave O'Brien, Kathleen Presti, Darlene Lundgren, Therese Gillis, Lauren Sherman, Jeanie Mullen, Tom Roche, Zack Middleton, Matt Huntington, Matt Steves, Lester Losaw, Neil Alexander, Matt Fuller, Valerie Ingersoll, Janelle Rose and Aimee Mahoney

APPROVAL OF MINUTES:

TOWN ZBA MINUTES: MOTION by Jim Maskell, Seconded by Jim King to approve the minutes of the meeting of November 19, 2019 **ALL AYES**

BUSINESS:

**Fort Edward Local Property Development Corp.
&
W.L. Plastics
Variance Applications**

Dan Durkee: If we follow the same format as the Planning Board's did last week then the Town can step up first because obviously they have the bigger part in this. Ken if you want to give us an overview.

Ken LaFay: The Town needs to find out if there is any unnecessary hardship for the Variance Applications. I also want to make sure that WL Plastics updated their information because I am pretty sure that with Mr. Houston's e-mail I received last week that there were some changes that needed to be made.

Neil Alexander: Good evening, my name is Neil Alexander and I am a partner with Cuddy & Feder and I am here tonight on behalf of WL Plastics, maybe I will jump in at this point if that is okay with you. Before I begin I just wanted to thank Janelle and Aimee actually, they have been great as far as fielding lots of calls and handling our confusion on making sure we are up to speed and ready for the Zoom meetings. I am joined tonight by Mike Dahl and Eric Balthrop from WL Plastics as well as Matt Huntington from Studio A and Matt Steves from VanDusen & Steves. Last week we met with the joint Planning Boards and went over the Subdivision Applications in the Village and the Town as well as the Site Plan Applications in the Village and the Town. Both of those applications actually require variances from your joint boards, we can share screens shortly to walk you through the drawings. In the subdivisions in the Village and Town we do not have the requisite frontage; under Town Law we need a 280A and under Village Law we need a 7-713A if memory serves me correctly. Relative to the actual Site Plan itself I believe we are in the M-1 Zone in the Town and the I Zone in the Village and there are setback variances needed from each board. Additionally we think there are elements of construction of the new building where a height variance is needed. We applied using the Site Plan Law which allows you to apply without getting initial first interpretation of the building inspector by State Law under the Village Law and the Town Law which is how we got to be before you already. I don't know if Mr. Houston has coordinated with your building inspector who is the initial interpreter of the code to confirm that we got it right as to the variances we believe that we need. We also need a special permit from the Town for our outdoor storage in the M-1 Zone. I think what I would probably do at this point is share either mine or Matt Huntington's screen and we can walk you through; maybe Matt Steves first to walk you through the subdivision of the 28.83 acres that WL Plastics is looking to purchase of the overall approximately 80 acres owned by the Fort Edward Local Property Development Corp. (FELPDC) and then we can also show you how access through Lock 8 Way will occur from Route 196 in the Town of Kingsbury all the way into the Town portion of this property and contemplate access if necessary at least from a compliance standpoint from East St.

Matt Steves: You are looking at a color rendering of the proposed subdivision and Lot 2 in the Village and Lot 2 in the Town is what would be comprised of the purchase by WL Plastics. To the South in the orange hatch, Lot 1 in the Village horseshoes around the purchase for WL and the Town side in the magenta color horseshoes around Lot 2 in the Town. As Neil has stated the proposed access road, part of the application is the subdivision for taking all those pieces of the road from the Village line, 133' of Lot 1 will be road frontage in the Village and Lot 2 will have 100' of frontage on that proposed road and the continues parallel to the Canal all the way out across the Town ditch and then turns to the east at the north end of Lock 8 and obviously all the way out to 196. I can open up other drawings and show you the entire road if that is what you need to look at. We really want to concentrate on the portion of WL Plastics that is here in the Town and the Village.

Dan Durkee: I am okay with not seeing the rest of it I have the large drawings so I'm all set, I don't know about anybody else.

Denise Mayer: I think its fine in so far that it isn't applicable to the variances that we are considering tonight.

Matt Steves: You can see on the screen in the green now there is the access road and where my cursor is where it comes down and into the Village and there is actual road frontage in the Village on Lot 1 and then it comes up north along the entire length of Lot 2 of the proposed purchase by WL Plastics all the way to this point to the end of this subdivision and the rest of the lands of the FELPDC.

Denise Mayer: This is Denise, I am on the Village ZBA. First of all I don't see your cursor when you are talking. This image does not have the road frontage, it goes to East St. correct?

Matt Steves: As far as East St. I will need to go back to that other drawing. The green area here is the utility access easement out East St. but because of the way that the subdivision and the conveyance from the EPA of the road is moving, I do not believe we will need that for ingress and egress but only for utilities but it is in place as an easement for both if we need it. It's definitively going to be for utilities.

Therese Gillis: By utilities, do you mean emergency service only?

Matt Steves: No, by utilities I mean sewer, water & gas. Emergency access was discussed I believe at the Planning Board meeting. Obviously it's a long road out to 196, there is an existing road that comes down into the Canal Corp. property and comes out to the bridge on East St.

Therese Gillis: Is that included in this purchase of new lands?

Matt Steves: No, that is the road that someone on the Planning Board and also the Fire Department had mentioned that the Fire Department was currently using for the dewatering facility. I believe we are investigating that to make sure that the Canal Corp. will allow emergency access through there.

Dave O'Brien: We have had some initial discussions with Canal Corp. about that and they seem positive about using that as emergency access so we are beginning to work on that and get a license for that.

Neil Alexander: Thank you for that Dave. To pull it back a little bit, the magenta hashed area is the remainder of the lands, a little over 35 acres that will wind up as contemplated with the Fort Edward Local Property Development Corp. transferring that to the WWIDA; those lands will wind up in those hands in the Town. The blue color which is noted as Lot 2 is going in the Town to WL Plastics, the green to the left of that is in the Village and we are calling that Lot 2 in the Village and that will go to WL Plastics as well and the orange that wraps around it is going to the WWIDA in the Village. The green area is a contemplated easement which is how WL intends to meet its requirement for access seeking the variance under 7-713 from the Village Law for its access and that would be access that it does not have the intention of actually improving but having available in order to meet the subdivision standards for a filed map and that is also how we anticipate water, sewer and gas getting to the site. Matt maybe we should run it from 196 down into the site as well.

Matt Steves: Yes and Neil I think you were mentioning the variance for the building setback as it crosses the municipal line with the addition, but the existing building is the one that is over the height requirement and the proposed addition I believe is under the height requirement.

Neil Alexander: Thank you for that clarification, you are correct. Just for the Board's benefit some of the situation out there because of the nature of EPA and GE it's our understanding from looking at records it did not go through the same permitting process a private entity would go through so some of the existing conditions are non-compliant and those are variances that we are seeking because we don't have an exemption from State and Local Law in comparison to others who used the property previously. We are trying to deal with those elements that have become our legacy to address. One other thing I would like to highlight which is less on the variance side but just for awareness is that there is a railroad spur extension that's coming into the property and that is in green over the pink and comes into our site so why don't we walk through quickly the access issue and then I think I would like to ask Matt Huntington after that to walk through the site plan and that will lead us to discuss the variances that we believe we need and to be corrected as to the extent that we misinterpreted your code.

Matt Steves: Ok so access to the site again starts quite a ways away about 2 miles away from 196 coming in toward the access for the dewatering facility, down what is now called Lock 8 Way comes down through the lands.

Neil Alexander: Matt Steves you need to refresh your screen.

Matt Steves: Ok sorry about that. So it starts on 196 and comes through this piece of property and moves to the south parallel to the Canal all the way down the existing asphalt road that was used for the purposes of the dewatering facility, comes down turns at the north end of Lock 8 and turns back to the south and comes in along the town ditch line. It's a long road obviously that comes out along Lock 8 into our property.

Denise Mayer: It seems like maybe the slide isn't advancing.

Neil Alexander: Thank you and then I think if we could jump to Matt Huntington and he can walk us quickly through the site plan.

Matt Huntington: We are looking at a color rendering of the Town & Village portion of the site. Over to the right of your screen is where that roadway comes in, I am finishing off where Matt Steves left off. You will see we show some truck traffic, a raceway around the site, some pipe storage outdoors. On the road to the south the employee entrance; this is the main site improvements that we'll be having. This is an existing employee entrance road that we will be using to access the parking lot over here on the left hand side of your screen. This is the only new impervious surface we are really adding. Here you can see the Town & Village line goes through the building addition area, this is the existing building, the one that is exceeding the height limits. I believe it is 32' currently, the new building to the north and northwest will be below the Town & Village Height requirements. Regarding the access for sewer, water and gas to the southwest of the lot our intention is to run the water and sewer coming out of the building here and the water line is going to head directly southeast and tie into an existing water line that

was put in for the dredge operation. The new sewer line will exit the building in a similar location, probably about 10' away or so. We are currently in the process with Washington County Sewer District on being able to tie in there. We were informed that we would be able to tie the line in, there will be a forced main that will be owned by WL Plastics that heads out to East St. and ties in at their location. Our conversations with Joe Brilling and Washington County are advancing and we may need a sewer district extension for the Town lot portion of it however we are in talks with him right now on the extent of what he needs. We are currently working with WL on the exact location of some of the process equipment that will be in this area. That's all outdoors and since this drawing was done the rail spur will actually stop about 50' away from the building and there will be a loader building there for the plastic pellets. The site portion honestly is probably the simplest portion of this job compared to all of the conveyances for the property. I will leave this up if anybody has any questions on the site feel free to ask and I will field them.

Neil Alexander: We were going through the site plan and the site plan discussion with the Planning Board last week, Matt have we identified the full areas since then of where we anticipate the outdoor storage will be?

Matt Huntington: You can kind of see and I will zoom in a little bit, see these gray rectangular pieces, these are the HDPE pipe in 40'-50' lengths that WL stores outdoors. If I zoom back out a little bit you can kind of see the extent of it. It's all existing paving out here and there are some existing concrete bin walls that were utilized as part of the dewatering plant where they were storing sediment material closed off so we are going to reutilize those as storage bays for HDPE pipe outside. The area to the north and northwest of the building following the truck raceway is the intended area for the pipe storage.

Neil Alexander: We believe and this was in our cover letter, that from our study of the Town Zoning Code that as noted in addition to the 280A variance that we need for the subdivision and the special permit for the outdoor storage, we believe we need Area Variances to legalize that 32' of height for the existing structure and then we thought we would need a side yard setback variance because the building spans the municipal line. Those are the approvals we believe that we need from the ZBA in the Town. Relative to the ZBA in the Village we believe that we need similarly a variance for access as referenced in 7-725 (a) (3) and that similarly and we weren't 100% sure how side yard is calculated in the Industrial Zone in the Village. We weren't sure from looking at the table whether that variance is or is not needed.

Dan Durkee: I believe when I was listening to the Planning Board Dave Armando said that setbacks don't exist for the Industrial Zone in the Village. Are you on Dave?

Dave Armando: I am on and that is correct, there are no setbacks for the industrial sites. Anything relating to setbacks and as far as fire protection lines and what not, it will be dealt with when it comes time to review the plans for the building construction. In lieu of a side line setback we may need a sprinkler system. If the sprinkler system is not required we may require it in lieu of the setback. That will all be hashed out when it comes time to do an actual code review with the State law.

Neil Alexander: Excellent, thank you for clarifying that. I am recognizing that this is the ZBA's jurisdiction but also that this is a big project of regional importance and Mike Dahl did do a presentation of what the WL Plastics facility is like and how a plastic pellet becomes a plastic HDPE pipe. We would be more than willing to do that if you would like at this time or take direction and questions from the board.

Kenneth LaFay: I have a question, the existing building is the one that is 32' and my question is would there be a grandfather clause where you wouldn't have to have a variance?

Neil Alexander: I think we would be willing if your Board were to entertain just legalizing it by variance.

Matt Fuller: The interesting predicament that we are in is as a federal Project or Superfund Site for the Hudson River the project wasn't really subject to our zoning of the Town or the Village, they can essentially do what they want. Now, it's turning to private hands and the conundrum that you find yourself in is something that was exempt no longer is so it is almost an after the fact approval and I think to Neil's point they are trying to make sure that they have a zoning compliant site and this is the process we need to go through to get that done.

Kenneth LaFay: I understand that completely and thank you for clarifying that.

Matt Huntington: If there aren't any more site questions I can stop sharing the screen.

Dan Durkee: Does my ZBA have anything? I have seen all of this at the Planning Board meeting last week so I am aware of what is happening.

Denise Mayer: Typically and I don't know how much we are going to change of our typical protocols of how we go about a variance application and considering it. The applicant goes through a list of criteria explaining to us the hardships and the list of things and I didn't see any applications for those variances. I haven't been clear on exactly what variances we are to consider.

Neil Alexander: Did you see our 9 page cover letter that we wrote back on April 27th?

Denise Mayer: No

Neil Alexander: That was submitted jointly to all 4 Boards, we can run through the statutory authority right now but I think so everyone knows we are not looking for any action tonight relative to the actual variances sought. As some of you are aware, last week the Planning Board for the Town declared itself Lead Agency in the coordinated review from the SEQR standpoint so unless some other board is going to object they will become the Lead Agency and until they are finished with SEQR obviously the other involved and interested agencies can't take action. Really all we wanted to do tonight was help you all understand the project, the variance we believe that we need and then we can work with staff to make sure we haven't misapprehended that and then I think we were hoping that each board would pass a resolution tonight consenting to the Town Planning Board serving as Lead Agency. That is where we are looking to go and I

think to hit the criteria a little bit we can put something in writing on the criteria in the coming days. For the Area Variance obviously this property is the donut hole in the donut and therefore both access variances are not self-created. These properties are in the Industrial Zone and they are uniquely situated in that putting a building with a 0 yard setback across it that is utilization of the property as a whole and to make use of that existing structure. We can give you more detailed principal points of the 4 criteria by State Statute if that's something you all would like. I think we hit on them quite a bit in the initial letter which I am sorry that I did not send on to you.

Denise Mayer: The letter would certainly help, it did seem there were pieces missing in what I was seeing.

Dan Durkee: Is that letter the one that's included in the packet that you gave to myself and Dan? I don't know if Denise got one.

Janelle Rose: From the IDA?

Dan Durkee: It's dated April 28th.

Denise Mayer: Dan, there is a letter from April 28th but it is a 1 page memo.

Neil Alexander: That's not ours that is from the WWIDA, ours is from April 27th.

Janelle Rose: I can get that electronically and send it to you guys.

Dan Durkee: That would be helpful because I don't have it either.

Dan Boucher: I think what Denise was asking too was that for our typical ZBA applications we have some questions that are addressed and answered by the applicant that are pretty detailed. I know you guys gave a pretty detailed explanation already. I think it was just out of normal format for us so it throws us off a little when reviewing and what you are asking for and how we address it. We like to go point by point so we don't miss anything and we don't have any oversights. Janelle is that the typical application form or are we doing something different with this?

Janelle Rose: Which form?

Dan Boucher: The typical application we usually have.

Janelle Rose: The Area Variance? Yes

Dan Boucher: We do have a copy of that?

Janelle Rose: Yes

Denise Mayer: The LPDC has an application in the packet. That has very little detail too and it doesn't match what this discussion was about.

Neil Alexander: I can see why there is quite a bit of confusion if you didn't see that 9 page letter that sort of explained the history of the property, what we were looking to do and how our facility operates, how we were going to address utilities as well as OPRHP and DEC. I can actually report that we did receive a sign off from SHPO recently for our project and we are in the process of confirming that we only need to register for an air permit and no individual permits necessary.

Dan Durkee: Matt Fuller are you there?

Matt Fuller: I am

Dan Durkee: Was any of that stuff included in the large e-mail packets that you sent out a couple weeks ago.

Matt Fuller: Yes all of that information should have been on there.

Dan Durkee: I thought I had seen it somewhere in 1 of those e-mails.

Matt Fuller: Janelle we have got to work to make sure that all of this stuff is on the website otherwise the public will not be able to see it.

Janelle Rose: Okay, this was in the 6 e-mails that Matt sent so we will get it up on the website right now.

Dan Boucher: Matt just to clarify what the applicant was asking for, to have the Town Planning Board be the Lead Agency on this are we at that point where we are stepping back and not voting to grant the requested variances ourselves?

Matt Fuller: No, so a lot of the times you guys don't see a lot of the SEQR work because a lot of our stuff is residential variances that are all type II. With a project of this magnitude what we are doing is coordinating the SEQR review under SEQR regulations and the Town Planning Board has stepped up to be the Lead Agency so all they are doing in that regard is answering the coordinated review and making a determination of significance. So to answer you, no they are not going to take over the variance part, the ZBA can't take final action until the Planning Board renders a determination of significance and then it would free up the ZBA. Really tonight as Neil spoke earlier is to kind of acknowledge that process and that the Planning Board is Lead Agency meaning that the Town ZBA and Village ZBA don't themselves want to be Lead Agency for SEQR. It makes sense with the Planning Board, they've got the Site Plan and all that to go through. Their review is a little bit broader I would say than the ZBA.

Dan Durkee: The Town has a larger entity to be worked through and the 2 Planning Board's came to that decision due to the amount of work that is being done in the Town. It was agreed upon mutually pretty easily just based on project size of what was in the Town vs. what was in the Village.

Denise Mayer: Yes I think that makes sense, the majority of the property is in the Town but much of the impact could be on the Village directly.

Dan Durkee: What would be the impacts you are talking about Denise?

Denise Mayer: The concentration of residents in the Village are much closer in proximity than the residents of the Town.

Neil Alexander: Just to help with that a little bit because it is hard and I feel badly that the letter didn't get fully circulated and I didn't e-mail it around to enough people. The plastic pellets are going to come into the site by rail and then when they are fabricated and processed and manufactured into pipe the pipe is going to go out Lock 8 Way to the north and we anticipate about 20 semi-trailer trips between 8 in the morning and 7:00pm. Fortunately that is all going to stay in the Town. We are not contemplating as we have noted the connection on East St. to the extent that employees or emergency access occurs through the Village over the existing Canal property. The extent of the activity would be car traffic or emergency access traffic. That is something we hadn't said before and I apologize. I think that this is good, it is why we wanted to come as soon as possible to get information flowing and so that the Zoning Board is aware. I also understand that we need to make another submission that clarifies and goes with your usual protocol of receiving principal points and says here are the variances we need. I heard from Dave tonight and it sounds like Dave is pretty clear that the only variance we will need is for access which is an existing condition in the Village. I should also task myself to off-line work with Jim and Matt to get confirmation as to the variances we need in the Town and we will draft the principal points for the next meeting.

Denise Mayer: I would appreciate that, not only is it simpler for us but there is a lot of details. You know more than we do how many details are in this project that we don't want to get caught up in some of the unnecessary things to really direct us to these are the variances, what needs to be considered so we can directly help you get through this.

Matt Fuller: Procedurally, leave the Public Hearings open for the additional information that is going to be submitted. I don't know if you have dates on yet for your next meetings or how you want to do that but you would at some point tonight need resolutions to accept the designation of the Town Planning Board as Lead Agency and if you do have environmental related comments that you think the Planning Board should take a look at in determining significance feel free to offer those up tonight. As an involved agency you are certainly open to make any of those comments that you want back to the Planning Board so that when they go through the Environmental Assessment Form they can take into account your comments and suggestions. If there is any other information that you need from the applicants that you were just talking about you can do that tonight too.

Denise Mayer: One concern that I know I have and I have heard some other people have is the potential traffic on East St. as an access. I have heard a few different things in this meeting from the utility easement will only be for utility vehicles meaning gas and electric to that it will be an access for employees to use.

Dan Durkee: No, Denise the employee road would actually be coming from 196 in the south bound lane and nothing would be coming down East St. except for emergency vehicles and utility. If you look at that plan toward the bottom you will see where the truck traffic is coming in and the railroad spur comes in the middle of the screen that road to the bottom part of the screen is the access road and would be coming from 196. East St. wouldn't be an employee entrance at least from what I was shown and how it was explained in the Planning Board meeting.

Denise Mayer: Neil just said that employees might be using East St.

Matt Huntington: No, the intention is for employees to use 196 and I don't know if you can see my cursor at all but they will branch off from the truck traffic and follow the road down to the newly created entrance into the parking lot. The parking lot is designed to have 1 way flow where you circle around the parking lot, exit here and then come back up the road and exit out to 196. There is no intention to have traffic going out to East St. The East St. access easement was at one time when there were some questions about obtaining a durable access easement from 196 but those wrinkles have since been ironed out so the intention of the easement is not for vehicles at all it's simply for water and gas which will all be underground from East St. to the site.

Denise Mayer: The water and sewer use, the lines that will be joining in on East St. I know we have a problem with water lines on East St. often we get discolored and especially when GE was using that facility there were times when we really had issues with brown water. We went to the Village many times with turbid tap water. Is that something that has been discussed at all in the water plans and how much water will this facility be using?

Matt Huntington: The water turbidity has not been discussed at this point but my understanding of WL's manufacturing process is and feel free to chime in Mike Dahl, they use very little water. It is all contained within a closed system on the site so once it's there it is recirculated within the site as part of the cooling valves for the HDPE process. Their water usage is similar to a single family residence as opposed to an industrial processing site. Comparatively what they were doing for the dewatering operations for the dredging, the use of water now will be significantly less.

Mike Dahl: That is correct, we use water in a closed loop system with our own chiller to spray the pipe as it's extruded out of the machinery. That water is recirculated, filtered and then comes right back in to cool pipe again. This facility should have approximately 50 employees and the water use will really be for typical domestic uses for drinking water, toilet service, etc. within the office.

Dan Boucher: What kind of turnaround time are you looking for on this?

Neil Alexander: This was laid out a little bit in the letter. Essentially there is a little bit of ping pong that needs to occur here because of the coordinated review for the SEQR, the variances we need are required before we can get final subdivision approval and final site plan. What I kind of for see is that we are back in front of the Planning Board next week and we will be working through the SEQR issues and then we would like to come back in June with you all and

hopefully we can finish up the SEQR process and we will come back and get the variances from you and then back to Planning Board to get the site plan and special permit approval.

Dan Durkee: Matt Fuller do you have a time that is reasonable and realistic for them to come back before us?

Matt Fuller: I don't have an opinion on the times it's really what the Boards can accommodate in terms of their schedules. As of right now the open meetings extensions are through June 6th so what meetings are going to look like after that we don't really know yet. I suspect it will be extended yet again but it also might be some sort of modified procedure with social distancing and things like that in place.

Neil Alexander: I am thinking we would like to have the meeting before the Planning Board on May 27th and then meet again the following week again with the Planning Board and then if we could meet with you the week of June 15th that would be good and then hopefully the week of June 29th again with the Planning Board. I know WWIDA is moving toward a June 30th deadline.

Dolores Cogan: I just want to piggyback a little bit on what Denise was talking about. How are we going to ensure that we get that paperwork so that we are a little more informed? Neil is that going to come from you?

Aimee Mahoney: Are you talking about the letter Dolores? I just put it on the Town's website.

Janelle Rose: I put it on the Village website as well.

Dolores Cogan: Okay perfect thank you.

MOTION by Jim King, Seconded by James Maskell to accept the Town Planning Board as Lead Agency for the SEQR process **ALL AYES**

MOTION by Dan Boucher, Seconded by Denise Mayer to accept the Town Planning Board as Lead Agency for the SEQR process **ALL AYES**

MOTION by Denise Mayer, Seconded by Dan Boucher to table the application and leave the public hearing open until June 17, 2020 at 6:00 p.m. **ALL AYES**

MOTION by James Maskell, Seconded by Dolores Cogan to table the application and leave the public hearing open until June 17, 2020 at 6:00 p.m. **ALL AYES**

Dated: June 4, 2020

Aimee Mahoney, ZBA Clerk

