

**Meeting Minutes
Town of Wheatland
Zoning Board of Appeals
March 1, 2022**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday March 1, 2022, at 7:00 P.M. in the Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:35 P.M and roll was taken.

Board Members

Present: Mike Grasso, Joe Burns,
Laura Michaels, Tim Steves, Robert Hatch

Absent: Kane Gascon

Others Present:

Terry Rech, Building Inspector
Mr. Ray DiRaddo, Town Attorney

First order of Business:

Chairman Grasso asked for a motion to accept the Minutes from the November 3, 2021, meeting. The meeting minutes were approved as submitted. Laura Michaels made such a motion; Joe Burns seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Tim Steves -	Abstain
Robert Hatch -	Aye
Mike Grasso -	Aye

With the majority of the members voting in favor, the motion was carried.

Chairman Grasso asked for a motion to accept the Minutes from the February 1, 2022, meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Tim Steves seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Tim Steves -	Aye
Robert Hatch -	Abstain
Mike Grasso -	Aye

With the majority of the members voting in favor, the motion was carried.

Second Order of Business:

The application of Andrew DeHaas to seek an area variance of Article II, Sections 130-10., and 130-23 (B) of the Code of the Town of Wheatland, to build a 24' wide x 64' long accessory structure, encroaching the 20' required side setback in an AR-2 zoning district. The subject parcel is 136 Cedars Ave., Churchville, NY. Tax I.D. #185.03-1-13.

The applicant, Andrew DeHaas presented and discussed several reasons driving the need for this area variance application:

- Mr. DeHaas stated he would like to build a 24' garage/workshop on his property. To build this in a convenient and usable location he is requesting a 7' side setback.

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- Mr. DeHaas stated that this is the only feasible location for the building. The current driveway is on the property line. Due to the location of the house and the septic tank, he would have to go back 50-100' to comply. He feels that this would not be a good option as he would like to use the building as a day-to-day garage for vehicle storage. Also, additional costs for driveway installation and electrical materials would then need to be involved.
- There is also a shed that is located on the property line, which had no permit, from a previous owner and he will be taking that down.
- Mr. DeHaas believes there would not be any negative effect on the neighborhood. Adjacent to his property is the golf course and the land is not likely to ever be developed.
- Mr. DeHaas stated that the new garage would enhance the neighborhood.

Chairman Grasso asked Mr. DeHaas to verify the location of the septic tank and septic field. Mr. DeHaas also mentioned that the propane tank would be relocated. The total size of the proposed building is 24' x 64'. There would be a phase I, the one-story garage 24' x 24' and then eventually he would add onto the building to build the workshop.

Chairman Grasso stated that he has a concern with the amount of variance Mr. DeHaas is requesting. He has a 3-acre lot which is 200' wide, it seems a little extreme to get the garage within 7' of the property line. Chairman Grasso stated he would like to suggest another option that does not seem to get any closer to the septic tank and it is not an extreme change. He suggested moving the proposed building back 9' and then over to a 15' side set back.

Chairman Grasso explained that the Board gets a lot of requests for lots that do not comply with current zoning codes. This makes it difficult to get things far enough off the lot line. This is not the situation here, the lot is completely compliant, this is what the setbacks were made for. He explained that when a lot is 100' wide or less they have difficulty getting the setbacks they need, but that is not the case here. Chairman Grasso asked Mr. DeHaas if he is amenable to adjusting his request and he responded in the affirmative.

Chairman Grasso asked Building Inspector, Terry Rech his thoughts. Terry stated that Chairman Grasso's suggestion sounds like a reasonable option.

With no further questions from the Board the floor was opened for public comment at 7:45 P.M.

There being no public before the board, public comment was closed at 7:46 P.M.

The Board members considered and discussed the details and effects of the requested variance.

The Town of Wheatland Zoning Board of Appeals as authorized under Wheatland Town Code Section 130-66, after careful consideration and review of the evidence presented and having heard all the facts hereby, approves with conditions the application of Andrew DeHaas. This motion was based upon the following finding of facts:

- 1) The granting of this area variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, demonstrated by: 5' reduction in setback would hardly be noticeable from the road and the neighbor (golf course) property.
- 2) The benefit sought by the applicant can not be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by: moving further back to get clear of septic system would add considerable expense, and extra paving.
- 3) The requested area variance is not substantial as evidenced by: only 5' reduction in 20' minimum.

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- 4) The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district as shown by: 5' reduction in setback to an accessory structure allowed wouldn't change any impact on the environment.
- 5) And that the condition has not been self-created, as shown by: current owner did not site the house or the septic area.

Further that this variance is subject to the following condition: 1. Building(s) Phase I, garage and Phase II, potential workshop are constructed no closer than 15' from the side property line.

Motion to approve the variance was made by Robert Hatch and seconded by Tim Steves. The vote was as follows:

Tim Steves	-	Aye
Robert Hatch	-	Aye
Laura Michaels	-	Aye
Joe Burns	-	Aye
Mike Grasso	-	Aye

All were in favor and the motion was carried.

There being no further business, Robert Hatch entertained a motion to adjourn. Tim Steves seconded the motion. The vote was unanimous. The meeting was adjourned at 8:10 P.M.

Respectfully submitted,

Lisa J. Bates

Lisa J. Bates
Recording Secretary

**Meeting Minutes
Town of Wheatland
Zoning Board of Appeals
August 2, 2022**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday August 2, 2022, at 7:00 P.M. in the Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:25 P.M and roll was taken.

Board Members

Present: Mike Grasso, Joe Burns,
Laura Michaels, Tim Steves,

Absent: Kane Gascon, Robert Hatch

Others Present:

Terry Rech, Building Inspector
Mr. Ray DiRaddo, Town Attorney
Ed Shero, Town Board Member

First order of Business:

Chairman Grasso asked for a motion to accept the Minutes from the March 1, 2022, meeting. The meeting minutes were approved as submitted. Tim Steves made such a motion; Laura Michaels seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Tim Steves -	Aye
Mike Grasso -	Aye

With all the members voting in favor, the motion was carried.

Second Order of Business:

The application of Gladys and Stephen Luce to seek an amendment to a previous use variance of Section 130-9 and 130-10 to allow a business office / showroom / retail facility in addition to the existing approved bakery use. Property address is 9048 Union St, 14546.

Chairman Grasso stated that there was a variance in the past to operate this property as a bakery and asked Town Attorney, Ray DiRaddo if this application is a new variance or a modification of the variance. Mr. DiRaddo stated that there was no reason as to why the Board could not entertain treating this as a new application. They can view this as a new variance, entertain granting the variance and discuss how to frame it afterwards. The variance is allowed for a specific use. The Board can draw up an original or expand on the existing one. He is not a fan of modifying the existing variance.

Building Inspector, Terry Rech stated that the previous variance was granted to allow a bakery/retail shop. Long term there is a potential of a retail component in this proposed use as well, that is the common thread that drove the amendment, rather than a new application. His preference would be to frame this so that if there was a retail component then decide if retail is appropriate for that area, so they do not have to go back and apply for a variance each time the business changes.

Chairman Grasso made a statement to the board to take note that this is a USE variance. The 4 test points do differ from that of the 5 test points of an area variance. He then stated the 4 test points of a use variance, which are as follows:

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- 1.) The applicant (can, can not) realize a reasonable return. As demonstrated by:
- 2.) That the hardship relating to this property (is, is not) unique, and does not apply to a substantial portion of the district or neighborhood as shown by:
- 3.) That the requested use variance, if granted, (will, will not) alter the essential character of the neighborhood as shown by:
- 4.) That the alleged hardship (has, has not) been self-created as shown by:

Chairman Grasso discussed framing this variance request with a retail component so if another retail request comes the owner does not need to come back for another variance. He discussed being able to streamline retail to be appropriate for the use of the area.

Board members continued with the discussion of the details of the requested variance.

Mr. David Nasradinaj stated to the Board that he is planning to purchase the building to operate a Heating and Cooling business. He is looking for a location where he can have clients come in to look at the equipment they offer, pick up small parts, store inventory and have office space. He needs someplace that looks more professional, currently he is running his business out of his garage. Mr. Nasradinaj also stated that he would have 4-5 service vans at the location.

Chairman Grasso stated that the previous use variance for this property was granted in 1993.

The applicant, Gladys Luce presented and discussed several reasons driving the need for this use variance application:

- Ms. Luce is seeking an amendment to a previous use variance to allow an HVAC business to include office space, a showroom and retail facility in addition to the existing approved bakery use. In 2018 she and her husband put the property (an existing bakery) up for sale. They could not sell it. They worked out an arrangement with a couple to lease the property for 3 years with the option of purchasing the property at the end of the lease. That did not happen. The past tenants took all the equipment, the building is now empty, it can not operate as a bakery at this point. Mrs. Luce stated that Mr. Nasradinaj's proposal to operate the building as a HVAC retail operation was the best offer they received.
- Ms. Luce stated she does not foresee any changing effects to the property except for less traffic on and off Union Street.
- Ms. Luce does not believe she could sell the building for residential use.

There was additional discussion regarding the details of the requested variance.

Building Inspector, Mr. Rech stated that he would like to reiterate that this area has more of a commercial feel than a residential feel. The building was built as a commercial building, and it would be difficult and costly to make it residential.

With no further questions from the Board the floor was opened for public comment at 8:04 P.M.

There being no public before the board, public comment was closed at 8:05 P.M.

Chairman Grasso asked if they could modify the variance and not approve anything and allow a second commercial/retail to occupy the building? Attorney, Mr. DiRaddo stated the Board can extend or enlarge the non-conforming use, referring to section 130-66D2A of the code. He stated that the Board would also be able to put limits on the type of retail. He suggested the Board consider what is being done there now vs. what is going to change.

Chairman Grasso asked the Board if they thought they should table the variance application and take some time to make sure they design this right, so they do not end up with something undesirable in that location and to show they have taken time to consider the current and proposed use.

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Board Member, Tim Steves made a motion to table the application of the use variance of 9048 Union Street to the next meeting. Laura Michaels seconded the motion. The vote was unanimous. The meeting was adjourned at 8:35 P.M.

Respectfully submitted,

Lisa J. Bates

Lisa J. Bates
Recording Secretary

**Meeting Minutes
Town of Wheatland
Zoning Board of Appeals
September 6, 2022**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday September 6, 2022, at 7:00 P.M. in the Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:05 P.M and roll was taken.

Board Members

Present: Mike Grasso, Joe Burns,
Laura Michaels, Tim Steves, Kane Gascon, Robert Hatch

Absent:

Others Present:

Gladys Luce, Property Owner
David Nasradinaj, HVAC Owner
Terry Rech, Building Inspector
Mr. Ray DiRaddo, Town Attorney
Ed Shero, Town Board Member

First order of Business:

Chairman Grasso asked for a motion to accept the Minutes from the August 2, 2022, meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Tim Steves seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Robert Hatch -	Abstain
Joe Burns -	Aye
Tim Steves -	Aye
Kane Gascon -	Aye
Mike Grasso -	Aye

With all the members voting in favor, the motion was carried.

Second Order of Business:

The application of Gladys and Stephen Luce to seek an amendment to a previous use variance of Section 130-9 and 130-10 to allow a business office / showroom / retail facility in addition to the existing approved bakery use. Property address is 9048 Union St, 14546.

Chairman Grasso stated that there was a Public Hearing held on August 2, 2022, regarding this application and tonight the board needs to decide if they are going to grant a new variance or grant an interpretation of the old variance to allow or not allow the new use that is being proposed. He stated that he sent out a draft Resolution and is leaning towards the modification or extension of the previous use. He did not see the necessary evidence to grant the use variance in this case. Chairman Grasso stated that if everyone is in agreement then this would allow the use with evidence as presented.

For the Resolution, Chairman Grasso discussed the history of the property.

History and background

This is a request by the property owner for an interpretation regarding the use variance on their property at 9048 Union Street, Town of Wheatland, Monroe County, New

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York, subject property.

Applicant was granted a use variance on the subject property for a bakery and retail shop. The retail use was for the sale of bakery items, which were produced on site, and other miscellaneous retail items. The variance implicitly allowed consumption of the bakery items on site. The variance was granted for the subject property 29 years ago. The Town's records show no complaints regarding this use variance.

The subject property fronts on a major state highway in the Town bordered on three sides by vacant land. The subject property (9048 Union) has a single-story frame structure with front and rear entrances. The subject property is accessed by a circular driveway with two curb cuts onto the major state highway. The drive area is stoned and allows front, rear, and side parking. Lot 2 of the subdivided parcel (9048 Union Street) is encumbered by a driveway easement for ingress and egress to the residential parcel in the rear. (9052 Union).

The bakery operation presumably started in the early morning hours, was open to the public during normal business hours, and closed in the early evening.

Discussion

In general, a zoning board of appeals, once presented with a decision of a prior or similar application, the board can choose to follow its prior precedent, or it must set forth reasons to justify a different result. If the board fails to do so, its decision will be viewed as arbitrary and capricious, and will be subject to invalidation by the courts.

A zoning board based upon Town Law §267 (a), may impose reasonable conditions to mitigate anticipated impacts of this variance in its interpretation of the current use variance. These reasonable conditions and restrictions as are related to and incidental to the proposed use of the property and aimed at minimizing the adverse impact to an area that might result from the grant of a variance.

A zoning board of appeals performs a "quasi-judicial" function when it renders an interpretation of a zoning provision, and, as such, should act according to its own precedent. Thus, where a board of appeals has interpreted a particular provision of the zoning law in a prior case, it should follow that precedent.

The board should also consider the facts and circumstances which gave rise to the grant of the original use variance and the historical impact the use variance has had on the surrounding properties.

The Board members considered & discussed the details and effects of the requested variance and created the following Resolution.

Resolution

WHEREAS on May 27, 1993, the Zoning Board of Appeals of the Town of Wheatland did grant a variance to allow the operation of a commercial bakery with a retail bakery business on the property located at 9048 Union Street, which is in the AR-2, agriculture, and residential zone, and

WHEREAS in granting the variance it was determined among other things that the operation of said commercial and retail bakery business would not have a negative impact on the neighborhood, and

WHEREAS the Zoning Board in 1993 would also have granted this use variance to operate a different kind of a commercial business that would not have had a negative impact on the neighborhood, and this board, pursuant to its authority under Town Law §267(a) may interpret the extend of a use variance and establish conditions to its use, and

WHEREAS based upon the history and background of this property, which is incorporated by reference in this decision, including but not limited to the fact that the

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Town's records show no complaints regarding this use variance, nor adverse impact on any surrounding property., and

WHEREAS the applicant now desires to seek an interpretation of this Town of Wheatland Zoning Board of Appeals as to whether a Mechanical Contracting Company (HVAC), with business office, training facilities, meeting rooms, showroom, retail facility for parts and material to be sold wholesale and retail, and on-site storage of product and inventory, are allowed in the use variance of 1993. This operation currently has only one service van, used for servicing and installing the mechanical contractor products. The prospective purchaser desires should his business improve, to increase his fleet to 6 to 8 vans. The operation of this HVAC business will be operated in the manner proposed would likely have an equal or lower impact on the surrounding area than a commercial bakery with a retail outlet.

NOW THEREFORE, be it resolved that this Zoning Board of Appeals of the Town of Wheatland determines that based upon the operation of a retail bakery on the premises for the last 29 years, which can continue based upon the 1993 use variance, the operation of a HVAC retail business is permitted at 9048 Union Street pursuant to the original use variance granted on May 27, 1993, and due to the proposed HVAC use the following conditions of use as is demonstrated by the history of the use as a bakery are imposed upon the use variance of this property,

As shown on the subdivision map and inherent in the access easement, the Owner of the subject property (9048 Union) will not block or allow users of the subject property or customers to block the access to the property to the rear (9052 Union). Nothing contained herein shall prevent the owners of the properties to modify the easement regarding the properties at 9048 and 9052 Union St should they deem fit.

Signage – The property owner will install appropriate signage delineating the parking area of the subject property from that of the access road to the rear property. All signs will be permitted as per the sign code in commercial districts.

Lighting. Any lighting on the property shall consider the residential property in the rear and protect that property from intrusive light spillage. Light placement and spillage shall have no negative impact on any neighboring residential use.

Hours of Operation: The customary and proposed use of the property i.e., retail/wholesale sales, product delivery, training portion of business would be limited to 7am to 9pm. Worker's office time, etc. allowed at any time necessary.

Outdoor Storage: Outdoor storage is allowed provided its location on the site is behind the frontline of existing building with appropriate fencing or shielding so there is minimal visual impact to the general public and neighboring properties.

A motion to accept the Resolution for 9048 Union St. was made by Joe Burns, Laura Michaels seconded the motion.

The vote was as follows:

Laura Michaels -	Aye
Robert Hatch -	Aye
Joe Burns -	Aye
Tim Steves -	Aye
Kane Gascon -	Aye
Mike Grasso -	Aye

All were in favor and the motion was carried.

There being no further business, Mike Grasso entertained a motion to adjourn. Laura Michaels made such motion; Joe Burns seconded the motion. The vote was unanimous. The meeting was adjourned at 7:45 P.M.

Respectfully submitted,

Lisa J. Bates

Lisa J. Bates
Recording Secretary

**Meeting Minutes
Town of Wheatland
Zoning Board of Appeals
October 4, 2022**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday October 4, 2022, at 7:00 P.M. in the Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:05 P.M and roll was taken.

Board Members

Present: Mike Grasso, Joe Burns,
Laura Michaels, Tim Steves, Kane Gascon, Robert Hatch

Absent:

Others Present:

Curtis W. Fitts, Property Owner
Terry Rech, Building Inspector
Ed Shero, Town Board Member

First order of Business:

Chairman Grasso asked for a motion to accept the Minutes from the September 6, 2022, meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Tim Steves seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Robert Hatch -	Aye
Joe Burns -	Aye
Tim Steves -	Aye
Kane Gascon -	Aye
Mike Grasso -	Aye

With all the members voting in favor, the motion was carried.

Second Order of Business:

The application of Curtis W. Fitts to seek an area variance of Sections 130-9., and 130-12 of the Code of the Town of Wheatland, to construct a covered entryway encroaching the required front setback in a Highway Commercial Zoning District. The subject parcel is 1792 Scottsville Mumford Road, Scottsville, NY. Tax I.D. #198.04-1-5.

Mr. Fitts is seeking an area variance to allow construction of an enclosed entryway encroaching the required front set back in a Highway Commercial Zoning District. The condition is the porch cannot meet the 70' front set back requirement. The entry way is unsafe, the steps are crumbling, and they are extremely slick when iced or snowed over. He would like to construct a 6' x 8' covered / enclosed side entryway. Mr. Fitts explained that the steps are in various stages of delamination and have already caused personal injury. This is the best option that he has come up with. Due to the Highway Commercial Zoning setbacks this is the only option for him to improve his home. He does not see any effect on the neighborhood, this space is already used as an entrance.

Terry Rech, Building Inspector, stated he would like to make a note that the character of the neighborhood will not be changed, all the structures in that area are set close to the road and with the entrance on the side, he would guess that no one would notice any change.

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With no further questions from the Board the floor was opened for public comment at 7:18 P.M.

There being no public before the board, public comment was closed at 7:20 P.M.

The Board members considered and discussed the details and effects of the requested variance.

The Town of Wheatland Zoning Board of Appeals as authorized under Wheatland Town Code Section 130-66, after careful consideration and review of the evidence presented and having heard all the facts hereby, approves with conditions the application of Curtis W. Fitts. This motion was based upon the following finding of facts:

- 1) The granting of this area variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, demonstrated by: a small structure attached to the side of a house, which is substantially the same as the immediate neighborhood.
- 2) The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by: any other means to improve and make the entrance safer would be prohibitively expensive.
- 3) The requested area variance is substantial as evidenced by: the requested relief is at least 50% of minimum required set back.
- 4) The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district as shown by: small structure added to existing house, almost in same footprint as existing porch/steps.
- 5) And that the condition has not been self-created, as shown by: location of the house has remained the same through (2) changes in the zoning code – each more restrictive than the last.

Further that this variance is subject to the following condition: the enclosure be built as nearly as possible to the footprint of the existing porch.

Motion to approve the variance was made by Joe Burns and seconded by Laura Michaels. The vote was as follows:

Tim Steves	-	Aye
Robert Hatch	-	Aye
Laura Michaels	-	Aye
Joe Burns	-	Aye
Mike Grasso	-	Aye

All were in favor and the motion was carried.

There being no further business, Laura Michaels entertained a motion to adjourn. Robert Hatch seconded the motion. The vote was unanimous. The meeting was adjourned at 7:37 P.M.

Respectfully submitted,

Lisa J. Bates

Lisa J. Bates
Recording Secretary