

**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

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