

ZONING BOARD OF APPEALS
Town of Lewiston 1375 Ridge Road
Lewiston, New York 14092
Thursday – November 10, 2022
ZB- 2022-11

Present: Conti, Heuck, Machelor, Warnick
Absent: Maggard, Roemer

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

A motion to approve the minutes of October 13, was made by Conti, seconded by Heuck and carried.

Machelor: all in favor say aye

Members: Aye

Machelor: opposed none 1 abstention (Dave)

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented. In this case we have been asked to interpretation of the Town Code and with that we will open the public hearing, and ask anyone that would like to speak on this issue to approach the microphone and give us your name and what you're doing.

Marble: My name is Brad Marble I represent Chris Danielewicz. Mr. Danielewicz has asked for an interpretation and for this board to overrule the discission of the town building inspector to not send his special use application to the planning board. By the way of background Mr. Danielewicz has filed an application with the Town of Lewiston planning board on May 10, 2022 for a special use permit in accordance with the Town of Lewiston Code section 360-132 sub division A. On the forms provided by the Town of Lewiston. Section 360-132 B requires in part that within 31 days after receiving the application. The planning board shall review the application site plan and supporting data and the board shall recommend approval, approval with modifications or conditions or disapproval of the special use permit. On June 29, 2022 my office received a letter from Tim Masters the building inspector rejecting Mr. Danielewicz special use permit application. Stating that the special use being requested is not allowed by special use permit in a rural residential district. On July 6, 2022 on behalf of Mr. Danielewicz my office used a foil request. For all special use permits granted and renewed by the Town of Lewiston on Ridge Road between Simmons and Townline Road. This foil request followed the information provided in the January 26, 2021 letter from Lewiston Supervisor Steve Broderick

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which sought input from residents on changing the zoning on Ridge Road to business. In this letter Supervisor Broderick noted that there are approximately 5 special use permits in that area. In response to our foil request, the Town building inspector advised that 2 such permits exist in his office and I was provided an opportunity to review both of those. Currently there are at least 2 special use permits granted by the Town and reviewed each year. The first is for a Flea Market out of a garage of a home along Ridge Road. The Second is equipment repair and sales business. According to Lewiston town code section 360-50 the following uses are permitted in the rural residential district. Those include for example: Kennels, animal hospitals, vet clinics, public riding stables, nursing homes, childcare, universities, colleges, clubs, lodges, non-for-profit institutions, farm markets, bed and breakfast and a cluster developments. The two previous special use permits sited do not comply with these uses yet they were given the special use permit which have been reviewed each year. I then refiled/ filed a new application with new information obtained from the foil request. On September 26, 2022 Mr. Masters again summarily decided to deny Mr. Danielewicz application for a special use permit. On September 28, 2022 on behalf of Mr. Danielewicz my office appealed that decision to this board. It is our position that the Town of Lewiston code section 360- 132 sub division B that the building inspector has no authority summarily to deny Mr. Danielewicz application for special use permit that the only entity that can deny the application would be the Town Planning board after a hearing on behalf of Mr. Danielewicz we are asking that you over turn the decision of the inspector denying the application or that the application be ...
The town planning board of consideration in accordance to 360-132. Thank you!

Machelor: Ok there's been a motion clarify things here for a moment. The literature that I got from the town starts are section 360-136 building materials, yard lumber and building supply companies and other facilities with outdoor storage and display. What is it that Mr. Danielewicz want to do?

Marble: So, Mr. Danielewicz rehabbed a barn which would be across the road from the residence that he lives in. He spent a substantial amount of money rehabbing it and it looks great he has a friend that stores two or three tree cutting trucks, stores them inside. Each day they go get them and brings them back and the building inspector said that he cannot do that, he not running a business he's just storing them overnight inside not even outside. So, we have been trying to get this special use permit in order to allow him to have that again with certain conditions obviously. But I can't get past Mr. Masters.

Machelor: Ok So, I will say this again. What does he want to do that he is not doing right now? Just trying to lay the ground work here. He allowing someone to use his building to store tree cutting equipment ok.

Marble: Sure

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Machelor: Is that what he is asking for? He's asking for permit to allow him to store tree cutting equipment in his barn. Is that it?

Marble: Essentially. Yeah

Machelor: Ok

Conti: Also, that was turned down by the Zoning board back in 2019, approximately if I am not mistaken. Of that use because besides the trucks, they were also dumping all of the tree cuttings, limbs and stuff. Grinding it had a huge pile of brush and clippings there.

Marble: I know you probably have Mr. Masters said he was going to provide you with what we have submitted I don't know if you have it

Conti: We have it

Marble: So that has been remedied obviously I have told Mr. Danielewicz that if he wanted any chance of obtaining a special use permit, he has to make it as minimal as possible because there would have been conditions set by the planning board which would have been to not have piles of junk laying around outside. You have to make the property look nice that type of thing. He has stopped that, it is all cleaned up. There is no outdoor storage of trucks everything is indoors. They're there on the weekends and come get in it the morning and bring it back at night.

Machelor: I think if I am not mistaken when that petition was turned down, one of the reasons it was turned down was determined that was a business. A business that he is selling that use of that building. He was selling it for cash, for money.

Marble: So, it is a business run by another individual for which that individual pays him rent to store his equipment.

Machelor: But that business was determined that that business was not permitted there. I mean for a number of different reasons.

Marble: I guess we are looking at different things. I understand what you are saying. This special use permit is looking at it from a different way as almost like a storage building ok. Such as somebody running a repair shop out of their home so now, we are talking about the ability to store something inside the building not running a business because no business operations occur there. There's not a phone number, not an office its just trucks in and trucks out morning afternoon.

Machelor: Ok, I think you are missing my point

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Marble: I very well may. I know I was not the one who presented to you last time so and I read that.

Conti: And when we gave our decision and stuff now it's been three years. Pretty much nothing has changed even though we turned it down. He never pulled the stuff out he never stopped doing what he was supposed to be doing so he's been in violation of the zoning board but that's up to the town courts. That's out of our hands. So, he's never made an effort so yes, I got turned down I need to change.

Marble: Right, I agree that's in front of the town court.

Machelor: Well essentially though the finding was that you can't say something that something that isn't. Even though in the plain eyes that you can see it. If the neighbors were watching what's going on they would say it's a business. The people that are managing the business need that storage in order to continue doing what they're doing and what they're doing is not a business that's permitted there. Well, you can't do that there. You can't say I'm storing my truck here but I am doing my business somewhere else well of course. You couldn't have a tree cutting business if you were on one piece property and all the tree you cut were there it wouldn't be a business.

Conti: And to say he doesn't have phone nobody has a phone number in their business anymore they all have this (cell phone).

Marble: I guess what I am trying to say is that it's not in the since of I'm repairing something in my barn on behalf of clients. Those clients are coming in and out each day. I am billing them for that and ordering parts and the parts trucks are coming in. I am not going dispute. First of all, I am not going to dispute that the presentation to you guys 3 or so years ago was not a good presentation. Ok I read this stuff, alright I understand how things were presented didn't make a whole lot of sense. I can tell you there's this limited use with this friend of his that's renting the place, he's getting money. Yes. That's what we are trying to be able present to planning board. Because the planning board has granted similar business type uses to other members other tax payers of this community. That don't technically or with in the letter of what' written they have been given it for over 20 years some of them. I don't see the great harm and again I don't live in this town you do that's why you are on the board. I don't see the great harm in what Mr. Danielewicz is trying to do as long as he does it within confines of what the planning board says. It's not something that is going to cause a significant amount of traffic. Yes, there is going to be traffic but Ridge Road is already full of traffic. You drive along here there's a lot of different businesses but that's because its zoned differently as you know.

Machelor: Yes, that's right exactly that's the problem.

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Marble: I guess the position were taking is that it's not a stretch to let him do this. Again, I understand your previous encounter with it and I wish I could go back and change that but I can't. All I can do is advocate on behalf of Mr. Danielewicz who is trying to put forth what I think is a proposal that's going to cost very little effect at all.

Seaman: If may try to , to try and refocus certainly we have covered some of the background history of the prior case on this. But really what you have before you today is an interpretation and a decision that determination by Tim Masters who is not here today. By Tim Masters to not allow an application for this particular special use permit to precede to the planning board for review. That's the determination that Tim made he put it in a letter he said this special use permit application that you are applying for is not allowed within the rural residential district. That is the determination that the appeal was to you today. That's really the decision you're trying to make is that you are interpreting the code to decide whether or not the code would agree with Tim's decision that it should not go to the planning board because it's not allowed under the code or agree with the applicants' position that it because he made an application regardless it should go to the planning board.

Marble: We just want an opportunity to present to the planning board and that's what we are just trying to get it to there.

Machelor: Let's just say you went to the planning board, and the planning board read the code the same as we do and they said well your not permitted to have a special use permit in that code. So, we aren't going to send you to zoning because we already know that it's not permitted there.

Conti: Or send it to the town board you mean special use permit

Marble: I guess my answer is pretty simple with respect to that is that you have determined that two uses aren't listed there have been granted and renewed on a yearly basis. If your interpreting it differently now on behalf of my client I don't think there is anything more arbitrary than allowing one person to one thing and another person not to be able to do something similar. That's my point to them is the same thing as if you decided tonight that my clients use doesn't fall with in that then you have two people operating illegal businesses that have been allowed to do it some of them for more than 20 years. That's my point to the contrary is that you have at least take a hard look at it if you're going to allow other people do that. You have to take a hard look at it and say is this really going to have an impact, because other wise if you're arbitrarily applying the code this unfortunately is against one citizen over another.

Machelor: I just would like to say that for me sitting here today with all this information in front of me from the past and so on. That I am not prepared to accept your word that some of these things were permitted by special use permit in this district.

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Marble: I asked Mr. Maters for that area he responded to my foil request with two special use permits. I provided you with copies of what those applications were and what was granted that was in the paperwork that I gave to Mr. Masters that he told me he was going to give to you.

Machelor: Gary, questions any further question?

Heuck: No, because your starting to sometimes get distracted as to what happened in the past as to what we are applying today the codes for this particular case.

It is actually the interpretation that we have to take a look at now whatever happened in the past from the previous Board/administration is not what we are here for. We are here for the interpretation that's in front of us that's what we have to present.

Marble: Simply my position is that the town code does not give the building inspector authority to deny an application the only entity that can do that is the planning board. So it at least has to get there and we at least have to have a hearing and consider it and make a decision whatever that decision is. That's all we are asking.

Machelor: Dave questions. Alright, Thank you! This is a public hearing is there anyone else here that would like speak to this issue? I will close the public hearing. May I ask the board for a motion.

Conti: I would like to make a motion.

I would like to make a motion as follows:

1) This board makes the following procedural findings:

- **Applicant, Danielewicz, has submitted an application for interpretation of Town of Lewiston Town Code Section 360-48 through 360-53 and 360-136.**
- **In sum and substance, Applicant, Danielewicz seeks an interpretation which would allow a special use permit application for the use outlined in Town Code section 360-136 "*Building material yards, lumber and building supply companies, or other facilities with outdoor storage/display*" to be considered by the Town of Lewiston Planning Board.**
- **Building Inspector Masters has denied the application indicating that such a use would not be allowed in the Rural Residential district because such a use is not permitted, even with a special use permit.**

2) This board makes the following factual findings relative the Town Zoning Code:

- Although a number of different types of Special Use Permits are set forth in *Chapter 360. Zoning, Article XXI. Special Use Permits*, those Special Use Permits are only allowed if the specific applicable zoning district specifies that such Special Use Permit is allowed in that District

- Town of Lewiston Zoning Code Sections 360-48 through 360-53 set forth the permitted uses (by right and by special use permit) related to Rural Residential Districts, the property at issue herein. Section 360-50 specifically sets forth the uses allowed by Special Use Permit; 360-136 “*Building material yards, lumber and building supply companies, or other facilities with outdoor storage/display*” is not included.

- The Town Code Sections at issue herein are plain on their face and a deep analysis of the historic development of Ridge Road, or the historic changes to the Town zoning code are unnecessary to render an accurate interpretation of the code. Notwithstanding, the Special Use permits cited by the applicant in his argument are from the early 90’s and are nearly 30 years old. As such they are given little weight in that the Town Code has changed on this topic since then.

3) This board makes the following final determination and interpretation:

- That the Special Use set forth in Town Code section 360-136 “*Building material yards, lumber and building supply companies, or other facilities with outdoor storage/display.*” is not a permitted use with a special use permit in the Rural Residential district. Accordingly, the Building Inspector’s interpretation is affirmed and upheld and the application for a special use permit should not be referred to the Town Planning Board.

Heuck: Second

Machelor: A motion made in the second. Any further discussion from the board? If not, I will call the question: All those in favor say aye

Members: AYE

Machelor: All those opposed say NYE Lisa will call the board

Lisa:

Joseph Conti AYE

Gary Heuck AYE

Norman Machelor AYE

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David Warnick AYE

Machelor: Thank you!

The motion/application is Denied. Thank you! A motion to adjourn

Heuck: Second

Machelor: All those in favor say AYE

Members: AYE



Lisa Wisnieski
Building Dept Clerk



Norman Machelor
Chairman