

VILLAGE OF WARWICK
ZONING BOARD OF APPEALS
APRIL 20, 2021

The monthly meeting of the Village of Warwick Zoning Board of Appeals was held on Tuesday, March 16, 2021. Present were: John Graney, John Prego, Scot Brown, Margaret Politoski, Dylan Gieber and Zoning Board attorney, Robert Fink. Other's present were: Jorge Ferreira, Andrea and Kyle Cosmillo.

The meeting was held in Town Hall.

A MOTION was made by John Prego, seconded by John Graney and carried to accept the minutes of the March 16, 2021 meeting. (5 Ayes)

72 SOUTH STREET

USE VARIANCE

SOUTH ST. PROPERTIES

Mr. Graney read the public hearing notice.

Mr. Ferreira – The perspective tenants would like to open a mini little donut shop there. This building was originally built for Larry's Deli back in 1954 and they were there for 40 something years and then Giant Copy bought the building, and they had a business there until I bought it. Giant Copy was on one-side of it, and they had the Warwick laundry drop-off and pick-up service, and they also had a retail space in there where they sold flowers, handbags, jewelry, etc. Due to Covid they were having a hard time and I worked with them and then it came to a point where Lisa said that the business was no longer viable to her, so she closed shop. We tried to rent out the store for offices and no one is looking for offices. I was approached by a realtor that a very small impact, mom & pop, local donut shop that wants to open a small business in the area. We negotiated a lease, we went forward, and he started renovating the space, spend a ton of money with new sheetrock, counter, etc. and it is already to go and we are here now. I know this is a local businessperson and I think this is the business that we should be looking for in this location. It is a perfect location for this type of business, it is low impact, small little donuts and they do a lot of on-line sales and deliver them themselves. They are mainly going to produce and then deliver out and then they also have the option to have walk-ins and pick-ups. This is very similar to what was there before. People dropped off clothes and then picked them up, it is not

much difference of business. The Health Dept. has given us the okay, they comply with everything. It is a very small fryer, about 30” in length and about 16” or 60” in depth and it has a hood, no Ansel system just a heavy-duty kitchen hood. I think this is what Warwick needs, more small mom & pop businesses, not large Dunkin Donuts or other large big giant chains. I think we should encourage that and not discourage it. This is a perfect location for something like this.

Mr. Fink – The Board has to go through the criteria. The 4th criteria regarding self-created hardship, this particular Village Code states that the viable premises subject to zoning does not self-create hardship. But we have to go through 1-3 and then the Board has to find favorably in the applicant’s favor because if the applicant misses any of them the variance can not be granted. It is not like an area variance. It has been addressed in the application, correct?

Mr. Ferreira – Yes, I believe so.

Mr. Fink – Please address it for the Board 1-3 first. What evidence are you presenting?

Mr. Ferreria – I believe we sent you the paperwork. For the last year we were collecting rent and I called the tax assessor, and the building is assessed as a commercial space so I am getting taxed as if that is commercial space and it is kind of hard paying tax on a commercial space and not being able to use it as a commercial space. This was a commercial space when I bought it, I understand with a variance and it was built as a commercial space initially I just want to continue that use. What was the question?

Mr. Fink – Substantial hardship.

Mr. Ferreria – The hardship is the amount of rent we were getting before and the rent we are getting now but the background is that it is over \$15,000.00 that I am out completely, that I will not be able to collect from the prior tenant and it was empty for 4 or 5 months.

Mr. Fink – What rent are you getting? What are the expenses? Carrying charges to show that you can’t make the return on the property?

Mr. Ferreria – So you want me to show you how much I am getting in total rent for the property and how much my expenses are?

Mr. Fink – Yes.

Mr. Ferreria – I have an existing tenant on the upper floor at \$950.00 per month, I have a chiropractor downstairs at \$1,300.00 per month, an apartment in the back at \$1,300.00 per month and the new tenant is \$1,600.00 per month. There is no mortgage on record, but we do have private loans from our parents, and we continue to invest money into the property. We are always renovating it and if I don’t have money coming in, I can’t make it look better. It has new siding, new windows in the last 1.5 years, it looks better now than when I bought it.

Mr. Fink – What are your taxes? What are your expenses?

Mr. Ferreria – Taxes I believe are \$13,000.00 or \$14,000.00 and then the insurance, utilities and a lot of the money is being poured back into the property. The insurance I guess is about \$1,500 or \$1,800 a year. My wife does all the paperwork.

Mr. Graney – Who told you it was okay to put the donut shop in there?

Mr. Ferreria – They didn’t say it was okay to put a donut shop in there, but we were told that what we planned on doing which was a small take-out donut shop...

Secretary – We were told it was a small take-out coffee shop but then it went from coffee to donuts and chocolate treats and milkshakes and making the donuts. This went before the Planning Board for a change in use application and it was the Planning Board as a change of use, and it was the Planning Board who sent them here because they felt that if the OCDH was involved it required a use variance.

Mr. Fink – It had been a deli and then business offices...

Mr. Ferreria – Yes and then the tenant that was using the space now was laundry-mat with drop off and pick up service with retail sales of Avon and personal handbags, but she was an existing tenant there.

Mr. Fink – And that is who is gone.

Secretary – Yes, but it was a dry cleaner.

Mr. Brown – What are the permitted uses under the existing...

Mr. Fink – Under the code it is just residential, but they did obtain a variance and that variance stays with the property so the use of the property would be the original one, a neighborhood convenience grocery store and then some of the property became professional business offices. I looked and wondered how close is a neighborhood convenient grocery store to what you want to do because if it is close enough the Board could interpret that it is close enough and that would all we need to do.

Mr. Ferreria – I would say it is close enough because a neighborhood convenient store would sell donuts and coffee and chocolates and all the other things which he is not doing, it will be a much smaller scale and then some.

Mr. Fink – How big is this?

Mr. Ferreria – It is about 1,100 sq. ft. I believe. This is about 20% of the entire downstairs space which used to be Larry's Deli.

Mr. Graney – It says on the application that it would occupy under 1,000 sq. ft.

Mr. Brown – I have a hard time seeing how this is very different than the type of business that you would find if you walked into Larry's.

Mr. Graney – I would say it is similar but when I think convenient store and then Larry's Deli, those are two completely different things from what a grocery store used to be versus what a deli used to be. Was it always Larry's Deli? Was it originally Larry's Deli?

Secretary – Yes.

Mr. Graney – And they have always prepared food in a deli and have always had a stoves and refrigerators and coffee pots, so they cooked.

Mr. Ferreria – Where I grew up deli's always prepared food and again this is much scaled back from Larry's Deli.

Mr. Graney – This is 1,000 sq. ft. verses 3,000 sq. ft.

Mr. Ferreria – And not only that, the scope of the work they are doing is they are not making sandwiches, salads and hero's, they are making little tiny donuts and a little coffee to go along with it and in the summer maybe some ice cream. They are planning on using all local stuff.

Mr. Fink – Scaling down does not create a problem but scaling up might.

Mr. Ferreria – I agree.

Mr. Graney opened the public hearing.

Mr. Kelly – 11 Third St. – I live not quite 50 yards from this building. Larry's Deli has not been there since I owned the house since 1983. Sometime in the last 30 years Bill Gurda wanted to put his TV repair shop there and the Board rejected it because it would have changed the building and a TV repair shop was zoned as Industrial. I would like to read and then submit a letter which states my position: "We are opposed to any change in zoning if any business or operation which will be cooking, frying, baking, preparing, mixing, fabricating, or taking any other action which omit any type of smell, odor, aroma, scent, or other emission which can be all olfactorily

detected. It is bad enough that when a west wind blows, we must smell Burger King. We are not opposed to the use of the premises as specifically a donut shop provided that the donuts and other goods are not made manufactured on premises.” You are more than welcome to have a shop there as long as you are not cooking it and I am not smelling a fryer.

Mr. Ferreria You will not be able to smell this fryer.

Mr. Kelly – Then the Board needs to make a stipulation to that and then I am okay.

Mr. Fink – Who signed the letter?

Mr. Kelly – My wife and I.

Mr. Ferreria – I understand his concerns but this is so small and so low impact you will not smell it at all. It is literally like your kitchen exhaust fan blowing out. If you were cooking curry you would probably have more odors than you do with this and they are cooked in soybean shortening.

Mr. Fink – Are you in operation anywhere?

Mr. Ferreria – He cooks out of his house. As this Board is pointing out we are really not looking for a zone change because it is pre-existing and if you find that it is similar to Larry’s Deli than this is pointless.

Mr. Prego – My position is that I do not consider this a change in use. If it was a change in use I would be totally opposed to it because I have not approved a change in use in the 18 years that I have been on the Board and because Larry’s Deli was here and in my opinion it is a similar business I don’t consider it a change in use. But I don’t know why you went ahead and spent money on this building without getting the approvals and that is beside the point, you are lucky, but I don’t consider it a change in use.

A MOTION was made by Scot Brown, seconded by John Prego and carried to close the public hearing. (5 Ayes)

Mr. Fink – I believe the consensus of the Board is that this is not really a change in use from the variance that was granted previously which runs with the land and with any application there can be an interpretation even if it does not call for it. So that is what the Board is doing now, an interpretation that does not take a negative declaration in consideration of environmental circumstances. This is a Type 2 action by definition.

A MOTION was made by John Prego, seconded by Scot Brown and carried that the Board finds the previous use of a neighborhood grocery store is similar to the proposed use of a donut shop. (5 Ayes)

Mr. Fink - The applicant should proceed back to the Planning Board for approval on their application.

A MOTION was made by John Prego, seconded by John Graney and carried to adjourn the meeting. (5 Ayes)

Respectfully submitted,

Maureen J. Evans,
ZBA secretary