

**ON THE MOTION OF Craig Umbehauer
Paul Slowey**

RESOLUTION NO. 19-24

**GML#77.00-13-11.000
Town of Cortlandville
Conditional Permit
Leach**

WHEREAS, on December 4, 2019 the Zoning Officer, Town of Cortlandville, pursuant to General Municipal Law 239 M submitted an application for a Conditional Permit because the property is located within 500 feet of NYS Route 13, Loring Crossing (County Road #120A) and Lighthouse Hill Road (County Road #120) which has been received by the Cortland County Planning Department, AND

WHEREAS, the Cortland County Planning Department has reviewed this request and submitted a written report dated December 13, 2019, which is on file, AND

WHEREAS, the Cortland County Planning Board on December 18, 2019 held a regular meeting with a quorum and did consider this request, AND

WHEREAS, the Cortland County Planning Board did thoroughly consider the material submitted by the petitioner, Department comments and all other relevant reports on file, NOW THEREFORE BE IT

RESOLVED, that the Board recommends approval of this application for a conditional permit to use a 48 ft. by 27 ft. by 18 ft. high addition to a 5,000 sq. ft. building at an existing transfer station as covered storage for trash hauling trucks and equipment contingent upon the following:

- 1. The applicant proving that the structure and/or use meets the requirements for granting a condition permit as outlined in section 178-75 A and B of the Town's zoning law.**
- 2. Compliance with SEQR requirements, AND**

BE IT FURTHER RESOLVED, that the Board reminds the Town of the requirements of General Municipal Law Section 239 M that a supermajority vote is to be attained by the Town in order to approve this application unless every contingency documented in this resolution is followed, AND

BE IT FURTHER RESOLVED, that the Planning Department is hereby authorized to convey this action to the Zoning Officer, Town of Cortlandville.

**Wendy Miller, Secretary
Cortland County Planning Board
December 18, 2019**

Ayes: 8

Nays: 0

Abstain: 1 (Chuck Feiszli)

December 13, 2019

**GML# 77.00-13-11.000
Town of Cortlandville
Conditional Permit
Leach**

TO: Cortland County Planning Board

FROM: Cortland County Planning Department

This application for a conditional permit is being referred to the Cortland County Planning Board pursuant to General Municipal Law 239-M because the property is located within 500 ft. of NYS Route 13, Loring Crossing (County Road # 120A) and Lighthouse Hill Road (County Road # 120).

GENERAL INFORMATION

Date Received:	December 4, 2019
Applicant:	Gregory Leach 1834 State Route 13 Cortland, NY 13045
Status of Applicant:	owner
Requested Action:	conditional permit
Purpose:	to use a 48 ft. by 27 ft. by 18 ft. high addition to a 5,000 sq. ft. building at an existing transfer station as covered storage for trash hauling trucks and equipment
Location:	east side of NYS Route 13, approx. 400 ft. south of the intersection of Loring Crossing and NYS Route 13
Size:	3.11 ± acres
Existing Zoning:	B-2 (Highway Commercial Business)

Existing Land Use: Leach's Custom Trash Service

Surrounding Zoning: B-2 (Highway Commercial Business)

Surrounding Land Uses: N – J Tech Automotive, Inc.
S – Cortland Self Storage
E – Suit-Kote Corporation
W – Single Family Residential

Existing Regulations:

Code of the Town of Cortlandville

Chapter 178 Zoning

Article IA- Wellhead Protection Areas

Section 178-2.2. Provisions applicable to B-1, B-2, B-3, I-1 and I-2 Districts.

A. Lot coverage

(5)

Article VIII- Highway Commercial Business B-2 District

Section 178-36.2. Uses subject to conditional permit.

F. Commercial garages and automotive repair Shops.

Article XIV- Conditional Permit

Section 178-75. Structure/use requirements for permit approval.

Article XVI- Stormwater Management and Erosion and Sediment Control

Section 178-90. Jurisdiction and applicability.

A. Exemptions.

ANALYSIS:

The applicant is requesting a conditional permit to use a 48 ft. by 27 ft. by 18 ft. high addition to a 5,000 sq. ft. building at an existing transfer station as covered storage for trash hauling trucks and equipment. The property is located on the east side of NYS Route 13, approximately 400 ft. south of the intersection of Loring Crossing and NYS Route 13 and is zoned B-2 (Highway Commercial Business).

This is the fifth time that an application for this property has been before the County Planning Board for review. In January 2003, the Board recommended returning an application for a use variance and aquifer protection district special permit to operate a transfer station for consolidation of commercial and household waste at this location for local determination with any positive consideration contingent upon the following:

1. The applicant providing more detailed information pertaining to odor impacts and truck traffic in order to adequately evaluate any potential impacts associated with the proposed use.
2. The applicant demonstrating that there are unnecessary hardships in the way of carrying out the strict letter of the "Town of Cortlandville Zoning Law" as is necessary before any use variance may be granted.
3. The Town's consideration that the proposed use is prohibited within Area I of the Aquifer Protection District.
4. The applicant obtaining the appropriate permits from the NYS Department of Environmental Conservation (DEC).
5. A negative declaration of environmental impact under SEQR.

The Town subsequently approved this application.

In March 2008, the Board reviewed an application for an aquifer protection district special permit to allow an existing transfer station to increase its permitted annual tonnage from 5,000 to 7,499 ton and to allow the collection of trash from outside Cortland County. The Board recommended approval of this application contingent upon the following:

1. The applicant providing the Town with the maximum service area of the proposed expansion.
2. The applicant applying for and receiving a use variance for expansion of a use not permitted in the Highway Commercial Business District or Area I of the Aquifer Protection District.
3. The applicant demonstrating that there are unnecessary hardships in the way of carrying out the strict letter of the "Town of Cortlandville Zoning Law" as is required before any use variance may be granted.
4. The applicant obtaining approval from the NYS Department of Environmental Conservation (DEC) for the modification of the existing permit for the facility.
5. Compliance with SEQR requirements.

The Town subsequently approved the application.

In July 2015, the applicant requested an aquifer protection district special permit to install a fueling facility and 2,000 gallon fuel storage tank to be used solely for the existing trash service business. The Board recommended approval of this application contingent upon the following:

1. The applicant obtaining a Petroleum Bulk Storage permit from the County Health Department including compliance with those standards described in Article XX, XXI and XXII of the Sanitary Code of the Cortland County Health Department including construction plan review with specifications for tanks, piping, and all equipment.
2. The applicant applying for and receiving a use variance for expansion of a use not permitted in the B-2 District or Area I of the Aquifer Protection District.
3. The applicant showing that applicable zoning regulations and restrictions have caused unnecessary hardship as is required before any use variance may be granted.
4. Compliance with SEQR requirements.

The Town subsequently approved the application.

In February 2017, the Board recommended returning for local determination a conditional permit application to construct a 48 ft. by 27 ft. by 18 ft. high addition to a building at the existing transfer station for use as a drive-thru covered storage for a tractor trailer with any positive consideration contingent upon the following:

1. That no vehicles are permitted to enter or exit through the proposed southern open end of the addition until/if access to this property is permitted via the adjoining property to allow a tractor trailer to drive through the proposed addition.
2. The applicant must submit a revised stormwater pollution prevention plan for the site to the Town and NYS Department of Environmental Conservation (DEC) if it is determined that this project, along with the adjoining properties, is considered a single proposal, due to the increase in impervious surface. This would ensure that the new volume of stormwater runoff is sent to the site's stormwater facility and that the stormwater facility is sized to treat the added flows. Before a stormwater permit can be applied for, the applicant must complete SHPO requirements since this site is an archaeological sensitive area.
3. The applicant submitting a revised Notice of Intent to the DEC for the revised stormwater pollution prevention plan for the site if it is determined that this project, along with the adjoining properties, is considered a single project.
4. The Town considering whether a use variance is required for expansion of a use which required a use variance when originally developed on the site.
5. Compliance with SEQR requirements.

~~The Town subsequently approved this application and the proposed 48 ft. by 27 ft. by 18 ft. high building addition has been constructed as a storage building/garage without the drive-thru component as the rear of the building is completely enclosed. In the meantime, an~~

Article 78 proceeding was filed against the Town and applicant to annul the Town's decision on this project as it was argued that the Town did not comply fully with SEQR and the Town's zoning law. The Town's granting of a conditional permit for this proposal was invalidated by the Court in October 2017 and the Town was required to reconsider this project by undertaking a thorough and complete review of this application in conformance with SEQR and the Town's zoning law. The Town was also required to start the application process over and not to simply just reconstruct the previously undertaken review of this application. The court was asked for clarification of this ruling and in June 2019 reiterated its October 2017 ruling.

An appeal was also filed with the Town zoning board of appeals in March 2017 regarding the zoning enforcement officer's interpretation that this proposed use did not require a use variance but only a conditional permit. An appeal was filed as a use variance was required in 2003 to operate a transfer station for consolidation of commercial and household waste at this location as it is not a permitted use in the B-2 zoning district and the requested use of the 48 ft. by 27 ft. by 18 ft. high addition to a building at this site is an expansion of a use that originally required a use variance. The zoning board of appeals determined that the effect of granting a use variance is that the use in question becomes a conforming use and therefore no additional use variances are required for changes to the property related to the use for which the variance was attained. A second appeal was filed with the Town zoning board of appeals and in December 2019, the zoning board of appeals reiterated that no further use variances are required for this application. The applicant has therefore resubmitted this application as a conditional permit request to use the 48 ft. by 27 ft. by 18 ft. high addition to a building at an existing transfer station as covered storage for trash hauling trucks and equipment.

The Coordinated Review Committee (CRC) reviewed this proposal and addressed the following issues. The applicant is proposing to use a 48 ft. by 27 ft. by 18 ft. high addition to a 5,000 sq. ft. building at an existing transfer station for use as covered storage for trash hauling trucks and equipment. The Town has determined that the proposed use is an accessory commercial garage to existing transfer station which is a conforming use through the granting of a use variance in 2003. A conditional permit however is required for commercial garages in the B-2 District. In order for a conditional permit to be granted, the applicant must prove that the structure and/or use meets the following requirements as outlined in section 178-75 A of the Town zoning law:

- (1) Is appropriate for the particular lot and area, and will not conflict with allowed uses.
- (2) Is in compliance with all other applicable sections of this chapter.
- (3) Is physically and visually compatible with general neighborhood or planned neighborhood development.
- (4) Provides a suitable transition when located between differing uses or districts where none is provided or provides a visual buffer by

landscaped green areas or fencing.

- (5) Has adequate space and plans for off-street parking.
- (6) Has future expansion or revision capabilities without need for variances.
- (7) Provides for safe handling of vehicular traffic to and from the site without causing congestion. No new vehicular entrances shall be permitted within 50 feet of an existing intersection.
- (8) Provides for safe passage of pedestrians.
- (9) Enhances neighboring property and does not lead to depreciation of properties (by reason of noise, traffic, dust, fumes, smoke, odor, fire, glare, flashing lights or sewage disposal).

Additionally, section 178-75 B of the Town's zoning law indicates that the applicant must also prove that the location, structure and/or use:

- (1) Is consistent with the general intent of the Town of Cortlandville's Land Use and Aquifer Protection Plan.
- (2) Is in conformity with all applicable requirements of this chapter and all Town ordinances.
- (3) Will not pose a significant threat to the quality and/or quantity of Cortlandville's sole source aquifer or its delineated wellhead protection zones.
- (4) Is in the best interests of the Town, the community, and the public welfare, and shall not be a detriment to the properties in the immediate vicinity.
- (5) Is suitable for the property in question and designed to be constructed, operated, and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
- (6) Does not cause unsuitable effects on highway traffic and safety with adequate access to protect streets from undue congestion and hazard.

The location of the building addition resulted in a minimal increase in the impervious surface on the site (approximately 600 sq. ft.). Therefore, the building addition would not require any modifications to the stormwater management plan for the site.

Finally, this proposal is considered an Unlisted Action under SEQR. The applicant has completed Part I of the Short Environmental Assessment Form. Part II and III should be completed by the Town to determine if there may be any significant adverse environmental impacts as a result of the proposed use.

RECOMMENDATION

The staff recommends approval of this application for a conditional permit to use a 48 ft. by 27 ft. by 18 ft. high addition to a 5,000 sq. ft. building at an existing transfer station as covered storage for trash hauling trucks and equipment contingent upon the following:

1. The applicant proving that the structure and/or use meets the requirements for granting a condition permit as outlined in section 178-75 A and B of the Town's zoning law.
2. Compliance with SEQR requirements.

Prepared by:

Daniel S. Dineen
Director of Planning