

TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS
DRAFT Public Hearing/Meeting Minutes - Tuesday, 3 December 2019 – 5:30 PM
Town Hall Court Room – 3577 Terrace Road – Cortland, NY

Board Members (*absent)

John Finn, Chairman
Thomas Bilodeau
Joanne Aloï
Bernice Potter-Masler
Vacancy

Others Present

Bruce Weber, Planning/Zoning Officer
Joan E. Fitch, Board Secretary
John DelVecchio, Town Attorney

Applicants & Public Present

Brian Bouchard & Dan King for UCK Three, Applicant; Frank Santelli for Squeaky Clean Car Wash, Applicant; Pamela Jenkins, Appellant; Greg & Barb Leach, Town Councilman Doug Withey, Bob Martin, Pat Leach, Sarah Leach.

The Public Hearing was opened at 5:30 p.m. by Chairman John Finn, who read aloud the Legal Notice as published in the *Cortland Standard* on 22 November 2019, as follows:

NOTICE IS HEREBY GIVEN that a public hearing before the Zoning Board of Appeals of the Town of Cortlandville will be held Tuesday, December 3, 2019 at 5:30 p.m. at the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, in the Town of Cortlandville, New York, to consider the following applications pursuant to the 1986 Zoning Law:

1. *In the matter of the application of Squeaky Clean Car Wash for property located at 1081 Route 222., Tax Map No.86.13-01-30.000, for a variance in the terms and conditions of Section 178-111 B, K & Section 112, Table 2, Note 2a, to allow for an animated sign closer to the property line than allowed and with a height greater than allowed.*
2. *Pamela Jenkins to appeal the determination of Cortlandville's Zoning Officer*
3. *In the matter of the application of UCK Three (Sun Auto) for property located at 3845 & 3861 NYS Route 281, Tax Map Nos. 86.17-02-03.000 & 86.17-01-11.100, for a variance in the terms and conditions of Section 178-2.2, 111B & 113 & 90 C (1), to allow for less than 50% green space, signs closer to property line than allowed, a greater number of signs with a height greater than allowed & exemption from Stormwater regulations.*

The above applications are on our website at www.cortlandville.org or at the office of Bruce A. Weber, Planning & Zoning Officer, Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, call (607) 756-7052 or (607) 423-7490. Persons wishing to appear at such hearing may do so in person, by Attorney, or other representative. Communications in writing in relation thereto may be filed with the Board or at such hearings.

John Finn, Chairman
Zoning Board of Appeals

(Note: Proof of Publication has been placed on file for the record.)

PUBLIC HEARING #1**Squeaky Clean Car Wash, Applicant/Washing Technologies, LLC, Reputed Owner – 1087 MYS Route 222 – TM #86.13-01-29.000 – Area Variance – Animated Sign**

Chairman Finn recognized Frank Santelli, representing the applicant who was seeking an area variance to allow for an animated sign closer to the property line than allowed, and with a height greater than allowed, as shown on the materials accompanying the application. Mr. Santelli explained that the applicant had approval for a “pedestal-mounted” sign which they would now like to swap with another sign as indicated. PZO Bruce Weber commented that the size of the proposed sign is the same.

Chairman Finn asked if there was anyone present from the public who wished to comment on the appeal; there was no one.

**With everyone being heard who wished to be heard,
Chairman Finn closed the Public Hearing at 5:43 p.m.**

At the conclusion of their discussion, **a motion was made by Member Bernice Potter-Masler to grant the area variance, as requested, for an animated sign closer to the property line and at a height greater than allowed, with the message change time to e not less than ten 910) seconds, based on the Findings for Action #18-2019 of 9 July 2019. The motion was seconded by Member Tom Bilodeau, with the vote recorded as follows:**

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		

Motion passed.

This becomes Action #34 of 2019.

PUBLIC HEARING #2**Pamela Jenkins, Appellant – Appeal the Determination of Zoning Officer Regarding Use Variance Not Required - Leach Properties, LLC – 1834 NYS Route 13 – TM #77.00-13-11.000**

Town Attorney John DelVecchio advised the Board that he had drafted a proposed Resolution, a copy of which was provided to the Board and Ms. Jenkins.

Chairman Finn recognized Ms. Jenkins who read aloud her prepared remarks which, as she requested, be attached to these Minutes (see Attachment A). She also stated that she had just received the proposed Resolution so was unable to comment on it.

Town Attorney DelVecchio then responded to some of the comments given by Ms. Jenkins: does she have legal ability to come before this Board; she’s not the property owner? Only issue before the Board is whether or not the Zoning Officer was correct in his determination. Is additional use variance necessary in this situation? Zoning Officer affirmed his determination made back in 2017. Town Attorney provided all relevant documents (complete record) to the Board members to aid in this determination. The proposed Resolution reflects this. He then set forth the Board’s options with regard to this appeal.

Chairman Finn asked if there was anyone present from the public who wished to comment on the matter; there was no one.

**With everyone being heard who wished to be heard,
Chairman Finn closed the Public Hearing at 5:58 p.m.**

DISCUSSION/DECISION

After a review of the Resolution prepared by the Town Attorney, a motion was made by Member Bilodeau, seconded by Member Aloï, to adopt said Resolution affirming the determination of the Town Planning/Zoning Officer. The vote was recorded as follows:

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		

Motion passed.

This becomes Action #35 of 2019.

The Resolution was then officially completed by the Board Secretary and given to the Town Attorney for its proper filing with the Town Clerk for the record.

PUBLIC HEARING #3

UCK Three LLC, Applicant/Reputed Owner – 3845 NYS Route 281 – TM #86.17-02-03.000 and 3861 NYS Route 281 – TM #86.17-01-11.100 – Multiple Variances

(Reference is made to the 29 October 2019 Minutes for additional details regarding these variances. At that meeting, it was determined that the requested variances would be postponed until after the Town Board had, as Lead Agency, completed their SEQRA review.)

Chairman Finn recognized Brian Bouchard, PE, of CHA, Syracuse, NY, representing the applicant who was seeking variances for allowing less than 50% green space, signs closer to property line than allowed, a greater number of signs with a height greater than allowed, and exemption from the Stormwater Regulations.

Mr. Bouchard explained to everyone that UCK Three, LLC, (Sun Auto) had purchased the adjacent former Nissan property and although separate parcels, their intent is to “blend these two properties together so they appear to function and look as one site.”

Mr. Bouchard stated that, overall, there will be one less curb cut and the balancing of the green space from 15% to 18%. He made reference to his 15 November 2019 letter to PZO Weber which explained the request to waive the requirement to prepare a SWPPP; the existing drainage pattern will still be maintained.

Mr. Bouchard reviewed the proposed signage; two pylon signs will be removed, but there will be one sign, as shown in materials provided, near the adjacent Auto Zone property. The setback is conforming. He described the proposed banners to be affixed to the light poles. PZO Weber advised that he considered them as one four-by-four sign. He also affirmed that the Town Board had completed the SEQRA review, resulting in a Negative Declaration.

Chairman Finn asked if there was anyone present from the public who wished to comment on the matter; there was no one.

**With everyone being heard who wished to be heard,
Chairman Finn closed the Public Hearing at 6:25 p.m.**

DISCUSSION/DECISION

As requested by Chairman Finn, Member Joanne Aloï proceeded with the required questions (balancing test) for an area variance; the responses given by the ZBA members, were as follows:

Exemption from Stormwater Regulations & Allow for Less Than 50% Green Space

1. Would there be an undesirable change in neighborhood character or to nearby property?

Finding: No. All Board members present agreed.

2. Can the benefit be achieved by other means feasible to the applicant?

Finding: Yes – Aloï and Potter-Masler. No – Bilodeau and Finn.

3. Is the requested variance substantial?

Finding: No. All Board members present agreed.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?

Finding: No. All Board members present agreed.

5. Has the alleged difficulty been self-created?

Finding: Yes – Finn, Potter-Masler and Aloï. No – Bilodeau.

At the conclusion of the test and with no further discussion, **a motion was made by Member Bilodeau to grant the area variance for exemption from the SWPPP regulations and to allow for less than 50% green space, as requested. The motion was seconded by Member Potter-Masler, with the vote recorded as follows:**

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		

Motion passed.

This becomes Action #36 of 2019.

Free-Standing Sign

1. Would there be an undesirable change in neighborhood character or to nearby property?

Finding: No. All Board members present agreed.

2. Can the benefit be achieved by other means feasible to the applicant?

Finding: Yes. All Board members present agreed.

3. Is the requested variance substantial?

Finding: Yes. All Board members present agreed.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?

Finding: No. All Board members present agreed.

5. Has the alleged difficulty been self-created?

Finding: Yes. All Board members present agreed.

At the conclusion of the test and with no further discussion, **a motion was made by Member Potter-Masler to grant the area variance for a free-standing sign, as requested. The motion was seconded by Member Aloï, with the vote recorded as follows:**

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		

Motion passed.

This becomes Action #37 of 2019.

After a brief discussion regarding the proposed banner signs to be affixed to the poles, Board members felt they would like to visit the site to get a better understanding of what, where, and how these requested banners would look.

With no further discussion, **a motion was made by Member Aloï to postpone their decision for the banner signs until the next meeting of this Board to allow Board members time to visit the site. The motion was seconded by Member Potter-Masler, with the vote recorded as follows:**

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		

Motion passed.

This becomes Action #38 of 2019.

APPROVAL OF MINUTES – 27 AUGUST & 29 OCTOBER 2019

With no further discussion, **a motion was then made by Member Bilodeau to approve the Minutes of the 27 August and 29 October 2019 meetings. The motion was seconded by Member Aloï, with the vote recorded as follows:**


Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		

Motion passed.

This becomes Action #39 of 2019.

ADJOURNMENT

At 7:05 p.m., on a motion by Member Aloï, seconded by Member Potter-Masler, with everyone present voting in the affirmative, the meeting was adjourned.


Joan E. Fitch, Board Secretary

Draft emailed to KRP, PR, Bd. Members, JD,
BW, DD, DC, KM on 1/15/20.

ATTACHMENT A (pg. 1 of 4)

Leach 2019 Pamela Jenkins testimony to the ZBA Dec 3 2019

Thank you, Board members, for this opportunity to further explain my appeal.

Our attorney Douglas Zamelis is unable to be here tonight due to illness, but he sends his regrets and regards to you, and to Mr. Fucillo.

Cheri Sheridan is unable to be here tonight because she is still mourning the death of her husband.

As you know I am seeking annulment of the Cortlandville ZEO Weber's determination that Gregory Leach's September 12 2019 application does not require a use variance from the ZBA; and for an interpretation of 'commercial garage' to exclude a truck bay for equipment storage including garbage hauling trucks and equipment for operation of Leach's trash business as conceded in Leach's September 12, 2019 application materials.

First, I wanted to address the issue of standing which Mr. DeVechio raised.

The state supreme court's decision of March 18, 2016 confirmed that we each have standing, and that decision was not appealed so that is now "law of the case". So any argument that we lack

Second, the court orders of October 2, 2017, and June 11, 2019 continue to stand.

The court ordered Cortlandville to comply with Town Zoning Law and the State Environmental Conservation Law.

Neither the town nor Mr. Leach has appealed those court decisions. He cannot simply submit a new application and attempt to do an end run around them by now trying to characterize his expansion as a "Commercial garage".

You can't let him do that.

It's your job to read and interpret the town zoning law, and there is no rational way you can construe Mr. Leach's junkyard to be a commercial garage, as Mr. Leach and Officer Webber are asking you to, because that would be in direct contradiction of a plain English reading of Cortlandville's definition of "Garage, commercial" which says in no uncertain terms that "A junkyard . . . shall not be construed to be a garage". It's right there in black and white.

Since 2003, Leach has been permitted and characterized as a junkyard, and you have a list of the documented references to Leach's facility as a junkyard in your Exhibits.

Please listen as I read the definition of junkyard from Cortlandville Zoning Law:

A lot or building or part thereof used for collecting storage, sale, recycling, salvage or dismantling of discarded or unlicensed machinery, vehicles, appliances, paper, scrap, rags, and similar discarded material or for the sale or storage of parts thereof.

That's exactly what Leach's facility is!

Now please listen as I read the Cortlandville Zoning Law's definition of Garage, Commercial:

An enclosed building used as a business for the indoor storage or repair of motor vehicles, including painting and the sale of parts and accessories. **A junkyard or auto salvage yard is not to be construed as a garage.**

End of definition.

Leach's business is a junkyard which according to the Cortlandville zoning law can't be construed as a Commercial Garage...and he has never gotten a permit to be allowed to operate a commercial garage at that 3.11 acre site. The zoning law specifically prohibits that!

To summarize:

Mr Leach applied on September 12, 2019 for a permit for a Commercial Garage.

Reading again from Cortlandville zoning law: A junkyard is not to be construed as a garage.

You cannot attempt to resolve this issue by ignoring the above or by doing what Cortlandville zoning expressly does not allow.

So, I am asking for annulment of the Cortlandville ZEO Weber's determination that Gregory Leach's September 12 2019 application does not require a use variance from the ZBA; and for an interpretation of 'commercial garage' to exclude a truck bay for equipment storage including garbage hauling trucks and equipment for operation of Leach's trash business as conceded in Leach's September 12, 2019 application materials.

The precedent has been set by this ZBA...each and every other time Leach built or added to his operations at the 3.11 acre site, he required a use variance.

Thank you,

Pam Jenkins