

**Town of Wawayanda ZONING BOARD OF APPEALS**  
**September 14, 2017 / 7:00 P.M.**

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Members Present: **Richard Onorati, Chairman**  
Daniel Post  
Jeffrey Soons  
Raymond Spiak  
Russ LaSpina  
James Beuerman (Alternate)

Consultant Present:  
David Bavoso, Esq.

Recording Secretary:  
Patricia Battiato

The September 14, 2017 Town of Wawayanda Zoning Board of Appeals was called to order by Chairman Richard Onorati at 7:00 P.M.

**I. PUBLIC HEARING**

**A&B Caulking** / SBL# 1-1-64.1 / MC-1 Mixed Commercial Zone / USE  
Variance for a Church / Dolsontown Road

The Certified Return Receipts were collected and recorded from the applicants engineer Mr. Fuller (when he arrived).

The Public Hearing Notice was read by the Secretary as it appeared in the Times Herald Record.

Chairman Richard Onorati read into the record the following from the Orange County Planning Department.

“The Planning Department has reviewed the submitted materials regarding the appeal for a use variance and has found no evidence that inter-municipal or county wide impacts would result from its approval. County Planning recommends that the Board only consider approval if the applicant satisfies the unnecessary hardship standard, as define by New York State law.

The unnecessary hardship standard is satisfied by competent proof of each of the following:

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- The land in question cannot yield a reasonable return, in dollar and cents, if used for any use permitted in the zone.
- The use to be authorized by the variance will not alter the essential character of the locality.
- The hardship is unique to the parcel and not general throughout the zoning district, and
- The hardship is not self-created.

Mrs. Torelli explained that she was here tonight with her Engineer, John Fuller (late arrival) and her Real Estate Agent John Coladonato. Mrs. Torelli distributed to the board their last four years of tax returns. She explained that her husband suffered some medical problem in 2014 and due to that we are not able to continue with our business as we had always done it; and we did try to complete all of the open jobs that we had. A&B Caulking Co. supported the business owned by A&B Properties. The property is owned by A&B Properties of which they are both the same. I am the owner of both. That is the personal hardship. As far as the Character of the Neighborhood, I don't see it as changing it; I see it as enhancing it.

Chairman Onorati asked if they also owned the strip mall (on the parcel next to this one) Mrs. Torelli said yes. He then said that it does change the character of the neighborhood, we have been through this before. We had one that we have denied before. The concern about a church is, it is not conducive to attracting manufacturing in the area. I don't know if you are aware of this or not, you have a Pizzeria there; does he serve any alcoholic beverages like that? Mrs. Torelli said no. Any future tenants that would want to serve alcohol beverages could not get a license. You cannot serve alcohol within 500 feet of a church. These are things that have come up.

Mrs. Torelli said that she is very limited there because they don't have sewer and water. I can't have any food establishments that don't have takeout. Which brings another issue, it's not a personal hardship, but I have should have known that, I actually think the zoning has changed since I bought the building, but we don't have water and sewer in that area so some manufacturing and engineering companies that need such a thing, don't want my building. There are 15 residential homes on my stretch of road, so it is very mixed. I don't know what makes up the characteristics of MC 1 and MC 2, I'm not real familiar with all of that, but there is more residential properties on my road then in the areas where they do allow churches, one being on 17M, one being just over the crest of the Boutique there, is a Presbyterian Church, I'm not sure what that is zoned. From my standpoint I don't know if there are things that I don't know that would make it an issue, but I don't think it would be something bad for that area.

Chairman Onorati said self-creation, we know that these are fairly new buildings; we know that you have been before the Planning Board a number of times, correct, to build those buildings? Mrs. Torelli said yes. Chairman Onorati said, did anybody have an

inkling in coming to the town and asking the Town, can I rent this to a Church? Mrs. Torelli said no, she thought that it was an approved use in that building.

Mr. Coladonato, I'm the Broker that handled the property, I'd like to give you a little bit of you know, did anybody come. One of the reasons is that the Zoning in that area did permit Churches, prior to the town changing the zoning. In my professional opinion in real estate for 28 years is that the zone change that was created is more of a hardship on the municipality. I understand that Wawayanda changed the zoning in that area, some of the changes that they made there is very difficult for property owners. I don't know if your familiar with this building but my opinion is it is the most gorgeous building on Dolsontown Road and in marketing that property we had a lot of interest in it but when we brought anything that was a permitted use down to this property, the major issue with marketing the property was water and sewer. Water and sewer is not available there. When they changed that zoning from what it used to be (Churches were permitted) and made that change now it created a hardship for the property owner, but not something they created. I'll give you an example, Lee Tire up the road; I showed it a few times that ended up being sold by the bank. It was marketed for a long time and they tried to bring in certain industry and industrial which Wawayanda wants to see along that road and it wasn't achievable because it didn't have water and sewer. The bank wound up selling it to an investor and they're going to be doing mini storage there. I don't want to see that happen to this building. Being that the Church fits the area, there are churches close by in the area, it doesn't affect the area at all and it used to be churches, they were a use that was permitted on that road.

Chairman Onorati said that the reason why that was changed to MC Zone is because of a natural progression on Dolsontown Road we had many, many requests to the ZBA for industrial and business, that was the reason for the change. But, the zoning does allow for churches in five out of the 8 zones. To answer your question from before all those churches were they are located is allowed.

Mrs. Torelli said they are MC1. Board Member Jeffrey Soons said that Denton Church is in the Hamlet – it's allowed in the Hamlet zone.

Mr. Coladonato said that we know it's not a secret that all municipalities frown down on places of workshop because the concern is that everybody wants ratables and they feel it comes off the tax rolls. Real Estate taxes are still going to be collected on this property. Non-profit have to pay taxes when they don't own it. They don't own it. They are just a tenant there. I really feel its fits the characteristic of the area. The hardship, when they changed that zoning, water and sewer is a big issue. You could get a lot of industrial use, but they need that heavy water and you don't have that on Dolsontown road.

Chairman Onorati said that this has to do with the criterion that was laid down by New York State to grant a use variance, you understand that.

Mr. Coladonato said I understand but that's a hardship, I believe the hardship is not a self-created hardship. Not the way the zoning had changed, churches were allowed there before the zoning changed to manufacturing.

Chairman Onorati said as you said every town wants ratables, nobody wants to be a bedroom community. The decision was made a long time ago, where we are going to have sectors, where businesses are allowed, residential and churches. It defeats the purpose.

Mr. Coladonato said I don't know what you mean by defeat the purpose, you went to industrial zoning. That is a major problem and not just in Wawayanda, it's in the whole County. Our County hasn't grown because the issue with water and sewer. Hope we get the thumbs up on Lego Land. We are trying to bring a lot of industry into this County. We got some nice vacant land along Dolsontown Road, but I don't see it ever going to be developed without water and sewer. That to me is more of a hardship that the municipality placed on the zoning in that area, not self-created by a property owner. If you look at the old zoning and you look at it now in the areas that you do permit Houses of Worship are overpriced sections where Houses of Worships wouldn't be able to be afforded to acquire the property. The only reason the House of Worship is in Al Scala old building, I was marketing that building and they had made an offer to Mr. Scala that was totally ridiculous and Mr. Scala wound up accepting it because he got tired of sitting on it and holding it. They stole that property and it was a freak thing. That is why they ended up there. That particular house of worship would not have been able to afford it along Rte. 17. A year and half later I sold the Johnston Toyota property across the street for a lot more money than Scala's.

Chairman Richard Onorati asked if we could hear from the applicant's engineer.

John Fuller, Engineer for the applicant approached the board and apologized for being a few minutes late. Mr. Fuller introduced himself and gave a brief overview. The certified mailings were presented to the secretary. Mr. Fuller explained that the AB Properties ran a Caulking business, due to the declining economy the owners of the property shared information to the financial impact that the economy had in their business and ultimately forced them to close down and sell off portions of their business. They marketed their property over the course of a couple of years, which has been discussed already by representatives. There was difficulty trying to transact the sale and also a lease at that time until the church came about. Unfortunately the Church is not a permitted use in the zone and this necessitates the applicant and owner to seek out a use variance through proper protocol in order to continue to operate the place of worship out of the facility that's been there for a period of time. We are here to hear testimony with regards to the need for that variance and feedback from the public as well.

Chairman Onorati asked Mr. Fuller if he could address all the criteria.

Mr. Fuller started with the first point; No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable regulations and restriction of this chapter have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that;

- He or she cannot realize a reasonable return, provided lack of return is substantial as demonstrated by competent financial evidence.

Mrs. Torelli said that she provided the last four years of tax returns and Mr. Fuller said that that the reason she wound up renting to a Church is that the Church was the only potential lease that came along in the course of a couple of years. She had difficulty in trying to transact the property including selling it also. Mrs. Torelli said that she is not making a return on my lease and my properties. I don't have any other information to share. Mr. Fuller said that the point that the applicant is, they shared whatever information that they had. In prior meetings they stipulated for the public record that the difficulty is that they tried to sell the property and also thru their Real Estate Agency attempted to lease it to the parties and have been unable to, so all during the course of that time they have continued to pay taxes on their property which as an end result has been a net loss for them.

- The alleged hardship relating to he property in question is unique and does not apply to a substantial portion of the district or neighborhood:

Mr. Fuller said the use variance is unique, a place of worship specifically to this property. It's consistent with a couple of other areas that we have indicated there are other commercial stretches where the commercial zones have places of worship and that is unique in that regard. We feel that we are consistent with the neighborhood consistent with other areas and with the town. We hope that makes sense as we try to argue that.

- The requested use variance, if granted, will not alter the essential character or the neighborhood;

Mr. Fuller said that we think the property is unique, the place of worship is unique, they meet on Sunday which is not an impact on the rest of the community, also limited to one night a week which typically is a Wednesday or a Thursday and does not impact other aspects of the zone. If granted we feel that the impact to the zone is limited.

- The alleged hardship has not been self –created;

Mr. Fuller said that typically of self-created is when property is bought and zoning is already in place, in essence if someone is looking to create a use then it is a self-created hardship. So, in effect it is a self-created hardship. In this case because they bought the property and there is a list of uses that are permitted in the zone. The use that is proposed is one that is not permitted and unfortunately in this case it is a self-created hardship.

Chairman Onorati asked if they understood that they have to satisfy every criteria and Mr. Fuller said yes.

Board Member Jeffrey Soons said that their real estate person, Mr. Coladonato, indicated that it was not a hardship that was not self-created.

Mrs. Torelli said, no.

Mr. Coladonato said that the reason I say that is when you have zoning after your there and the zoning was changed.

Chairman Onorati said that the Town of Wawayanda re-vamped the zoning about 7-8 years ago. When was it changed?

Mr. Coladonato said that he thought it was after they purchased the property.

Chairman Onorati asked how long?

Mrs. Torelli said that they purchased in 2008.

Chairman Onorati said but you knew what the zoning was when you purchased it. In essence the zoning allowed you to do your business.

Mrs. Torelli said yes, when we purchased it, yes when we put up our building.

Mr. Coladonato said that what he meant by that was an example – vehicles of a certain weight. We had a Volvo business wanting to go there and he couldn't haul his bulldozers down the road without the police stopping them. These I feel are hardships on the property owner because the local municipalities put them in effect there and that caused it, in my opinion. Not to be self-created but created by the zoning.

Chairman Onorati said that he disagreed

Board Member Jeffrey Soons said that he had a follow up question; you're making the point that the change of zoning made it generally difficult to use those properties for the uses, is that your contention

Mr. Coladonato said yes.

Mr. Soons continued, at the same time the engineer is contending that the hardship on this property is unique. It sounds to me that it applies to a number of parcels if you're making the contention that the hardship is created by the change of zoning. But the zoning affects many parcels, not just one –right?

Mr. Coladonato said well it does affect others.

Mr. Fuller said I think his point is it does affect that stretch of Dolsontown Road. He's talking as someone that deals in a Real Estate industry, as an engineer I can tell you that properties that don't have municipal water and sewer don't have the value as those that do. Most certainly large businesses, large industries are looking for municipal water and sewer. The fact that these don't have water and sewer, not just this one but the whole strip of roadway definitely hurts this property from a zoning prospective because a lot of industries are looking for that value.

Mr. Coladonato said like, Lees Tire, it was lost to the bank because he couldn't sell. He tried to sell, the bank gave him over two years to sell and he couldn't.

Chairman Onorati said this family came and built a business without water and sewer. It was advantageous for a long period of time.

Mrs. Torelli said it was perfect for what we did, and I thought when they asked about hardship I didn't realize that the hardship wasn't only based on zoning. I thought it meant a personal hardship, that's why I was explaining earlier.

Both the boards Attorney Mr. Bavoso and Chairman Onorati said, it can include that.

Mrs. Torelli said it made it hard for me because the zoning did make it hard to get the building sold or rented. Buy my real personal hardship is it can't be helped, in being able to unload the building. I have a mortgage with a local bank, I don't want to do that to them. I don't want to lose it. I don't want it to be an empty building. We are trying to do everything we can to try to hold that. As far as the Church being there with the variance I

don't know that it's what everyone feels it would be detrimental to the community. That is my personal hardship.

Chairman Onorati said that at the informal, I'm one who believes that every time a church closes it's in direct correlation with the decline of this country. I believe in churches. I go to church. But, what you have to understand is that the Zoning Board of Appeals doesn't approve or disapprove any project. It only acts upon the request within the law. I want everyone to understand that.

Before I open the Public Hearing, is there any more questions from the board?

Board member Jeffrey Soons said that I just have a follow up questions to the engineer. I don't follow how the alleged hardship here is unique to this parcel, which it has to be.

John Fuller said he understood; it's unique in this case they have had this property. We have indicated that without water and sewer there is a smaller pool of potential occupants that can come there for a commercial prospective. Food establishments for instance, they need a lot of water and sewer. This particular property doesn't have that so the pool of potential occupants that they can lease to are limited, and so in that nature it makes it unique. They attempted to lease it for a number of years and with no avail which lead them to the current occupant that's in there as we currently speak.

Mr. Soons said is this the only parcel that's developed to that extent? Conceivably all those parcels along that zone are similarly affected, but the hardship here as you are contending is only applicable here only because it's built?

Mr. Fuller said I think it's unique to this point and time and this situation with the applicant. Yes, because they've made attempts within both the zoning as well as the conditions of the property to unload it or to transact some sort of sale or lease and were unable to do that until the Church came along.

Mr. Soons said are there other buildings on that stretch that are similar to this?

Mr. Fuller said there are other businesses, yes.

Mr. Soons said can you distinguish them from the building that we are talking about, the development that's an issue here. How are they different, they need to be different right, in order to satisfy hardship?

Mr. Fuller said there are all types of businesses. Originally this building was developed and built out for a specific business, without major financial investments to alter the property, which again is a financial hardship. There is a limited pool as to what can come in and basically on what's physically built.

Mr. Soons said I know Caulking was involved, but what was it built for originally.

Mrs. Torelli said I think John might have some warehouse use, but I don't know the exact reasons....

Mr. Coladonato said most of the warehouse use wasn't like you say warehouse and store. Similar to what they do, more of it was going to be light manufacturing or, ones that needed the water and sewer like across the street. That nice track of land, it could be developed with a nice ratable if we had water and sewer. Water and sewer is critical issue as to what can be done on that road.

Mr. Soons said to your knowledge are there any other buildings along that road along that zone that are used for warehousing.

Mr. Coladonato said Lees Tire would be, he was retail, plus he stored tires but most of the other is a fruit stand, a chiropractor 2 two family houses.

Mr. Fuller said the only other businesses are Serve Pro and the Kawasaki (Cyclemotion) dealership.

Chairman Richard Onorati opened the Public Hearing to the public by asking for any questions, comments or concerns.

The following people spoke at the Public Hearing:

**Pastor Albert Feliciano Sr.**

- Pastor of the Church, currently leasing and has been a home to us since November 2016

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- We were under the assumption that zoning was allowable for public assembly. That was because we previously tried to rent a property across the street on Dolson Avenue at the Playtogs Center which fell apart.
- Does not think it impeded or harms the community
- We have a lot to lose if we don't get the user variance.
- We regret we did not do our due diligence
- Look how we are currently, we can help as a neighbor
- Look into your hearts, it would hurt the owners

Board Member Daniel Post explained that had they come in as their first step we would not be here tonight. Pastor Feliciano said the he totally agreed with Mr. Post. Mr. Post continued that was where the problem occurred. You were going on the assumption, had your first step been to come to the town you would have been told it was not allowed and we would not be here tonight.

Chairman Onorati asked how much time is left on the lease, and Pastor Feliciano said 14 months.

### **Debbie Freidman:**

- Talked about how the church opened up their hearts and the things that they have done

### **VFW Post 4662 Veterans of Foreign Wars**

- Submitted a letter from Daniel T. Burger and talked about one of the fallen heroes, suffering from Post-Traumatic Stress Syndrome (PTSS) and took his own life.
- The Soul Purpose Evangelical Church stepped forward and assisted and consoled the family in their time of need
- The Church is to assist and help people
- Please be a positive consideration.

### **Pastor Steve Offrirga (Howells Church)**

- Attesting to the credibility of the Church
- The Church would definitely be an asset, helps trouble youths, helps veterans and will help with local scholarships.
- Benefit to a population of our area that's diversity.

### **Anthony LaForge:**

- 26 year resident and part of Howells Church
- Can attest to how they have been a blessing to his family.

**Andrea Loevetti (Mercy Works Ministries, Narrowsburg NY):**

- Deal with addicts, they partnered with our church for four years
- This Church, it goes way beyond the community
- I cannot see a greater love of the community. God can only work where man cannot
- They invested everything they had; they should have checked yes, you assume the real estate would know the zoning.
- They are law abiding citizens; they would never break the law.
- This will greatly affect your community in a positive way.

**Miguel Hernandez's Sister - Rene**

- Spoke from the Book of Matthew
- Zoned for commercial
- With all respect, look into your hearts, these are two people that have love and transfers and regenerates life.
- This is my question; she talks about a situation where the pastor came in and reached my child when no one else could. The pastor changes him around.
- Look into your hearts before making a decision.

**Madeline Flan:**

- Talked about how she came to the church and that they try to help people, clothing, food, etc. Look into your hearts

**Arlenis Lopez (Someone was a Translator)**

- Known my Pastor for a very short period of time.
- Great impact on my daughter, since I've been here my daughter; she is now at university. The moment I met my Pastor, without asking; they filled up my refrigerator, not ever asking for a dollar. Today I have a home, I rejoice – I see my daughter every day and she no longer talks about suicide. I ask you to search your hearts.

**Angel Cirillo (Vietnam Vet)**

- I am here to tell you there is a god.
- God saved my life, he brought me home with all my limbs and my senses
- You were appointed to make a decision
- Your blessing will come in many different ways

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- You make that decision and we will take care of tomorrow. Those blessings are waiting for you. I know you will make the right decision. It's today, tonight that is important.

### **Moses Roma:**

- I counsel so many kids, gang members etc.
- These little changes that we make –this is our future
- We want a good leader for the community. If they are roaming around they can get the knowledge and bring peace.
- The Church helped me when I needed advice
- I wouldn't worry too much about the future
- Many great leaders take chances; take that chance, God Bless America and God Bless you guys.

Board Member Daniel Post said that everybody that came here has a story to tell. You have all been through a lot. I respect you for that, I respect that you all have a strong bond with your Pastor. We have all listened to everybody and I think it would be nice if we could say that book that we have that was passed down from NYS, to put it away and say let's go with this. But, you have to understand, you are asking us as board members to vote on our feelings – not what the book says. It would be nice if we could do that but we can't do that. If we do that there will be problems down the road. You have to understand that we work for the Town, not just our feelings. Look at the Power Plant, they came in here because they were able too, they did it because the zoning allowed it. The book says they can do it. We are not up here against you, but we have a book that we have to go by. I have to look at the legalities of things. When people ask why you vote this way, we have something behind us to support us. You are all asking us to make decision on our feelings. We are asking you, to understand our position here.

### **Jose Flores**

- Talked about laws and seeing his share of plea bargains
- Positive foundation for Wawayanda and Orange County and all over the world
- Positive Attribute
- Hope the Gospel reaches your heart
- I was a sinner until I met Pastor.
- I understand that you are guided by code, but asked for an extension or leeway for Ministry in Wawayanda

Daisy Cosh

- I am an administrator in Ossining N.Y. I have the utmost respect for all of you. I also sit on a board.
- We account to God first – you will never have a problem with us, no issues with us
- We do have the power and authority to make changes

Chairman Onorati said that we can't change the zoning; we absolutely cannot change the zoning or cannot change the criteria.

- Ms. Cosh continued, if you can't change the zoning, would you consider giving us a variance, if you're able to do that. Does everyone have to vote or can it be a majority?
- I couldn't be quiet and not speak up, I was one of the recipients of food years ago, and now I am packing food.
- We are a poor church but we give our heart.

Pastor Albert Feliciano submitted to the board a petition from the community. Pastor Feliciano asked, in the ten months we have been here, has there been any issues that has come before this board pertaining to our church?

Chairman Onorati said the I applaud your organization and I am a practicing Christian. You have to understand there is certain criterion that we have to go by. That's it. I'm sure the officer from New York City will tell you that he has had to enforce the law when he didn't want to. This document that we have has been done by the people. It's a tedious process. People sit month after month asking for input from the people for what they want from the community. People come, they give their comments, and they talk about what is good for all of the community. What do you have to support the criteria? The Engineer, he's trying to make his case. I understand you're doing good work, God Bless you. But, how does this affect the criteria?

Mr. Fuller wanted to acknowledge the board and said as a design professional I think the Town of Wawayanda has been very gracious and have shown a tremendous amount of good will to allow them to be there as long as they have without taking a more aggressive action to this point. We are ten months into a two year lease.

Mr. Fuller asked about the procedure as to closing the public hearing and having 62 days to render a decision.

After discussion Chairman Onorati said that the public hearing will be closed and that we will allow two weeks for written comments.

Chairman Onorati closed the Public Hearing.

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**Motion by Raymond Spiak, seconded by Daniel Post to defer decision and to accept written material within fourteen days (September 28, 2017)**

**All in Favor**

**MOTION CARRIED**

Mr. Fuller said that clearly he knows the burden falls upon us to prove those points. Mr. Fuller talked further about the uses in the MC and IORB Zones, and that he would submit to the board for consideration within the two weeks' time frame.

The Town of Wawayanda Zoning Board of Appeals meeting was adjourned at 9:02 P.M.

Respectfully Submitted,

Patricia Battiato  
Secretary to Planning