



**TOWN OF PEMBROKE  
ZONING BOARD OF APPEALS  
Minutes for the regular meeting held on November 18, 2015**

**ATTENDANCE:**

- Nathan Witkowski — Chairman
- Terrance Daniel
- John Kadziolka
- Donald Dylag
- Donald Showler
- Diane Denton — ZBA Secretary

**MEETING called to order at 7:30 pm.**

**A Motion to Approve** the Minutes from October 21, 2015 was made by Mr. Kadziolka; second to motion made by Mr. Showler.

Voice Vote—**ALL AYES—MOTION PASSED.**

**Public Hearing**  
**Area Variances/Dollar General/C&S Construction**  
9181 Allegheny Rd., Town of Pembroke  
Tax Map #23.-1-11.1; Zoning District: AG/RES with LC  
*Required referral to Genesee County*

**PUBLIC HEARING** was opened at 7:30pm. The Notice of Public Hearing ran in the Batavia Daily News November 11, 2015, was posted on the Town's Bulletin Board, and letters were sent to adjoining property owners within 500 feet.

- There was one mailed response from David and Aimee Cummings, who live directly across from the location of the proposed Dollar General, expressing concern over possible water contamination of oil and gas from the many vehicles that would use the parking lot. They also wondered how the drainage would be handled.
- County disapproved, determining that the proposed variance grossly exceeds the requirements of the Town of Pembroke Zoning Law. County felt that granting such a large variance may set a precedent for future commercial use in this corridor. In addition, the property is in active agricultural and enrolled in Genesee County Agricultural District #1 and as such is subject to lateral restrictions from NYS Dept. of Agricultural and Markets for hookups to public water and sewer connections.
- Representing Dollar General's application was Dave Pawlik from C & S Construction, Lowell Dewey, project civil engineer, and Sean Hopkins, attorney. Also present was Duane Schmigel, current owner of the property in question.

- Location of the proposed Dollar General would be 1½ acres taken out of surrounding farmland on the east side of Allegheny Rd.
- Mr. Dewey assured there would be no drainage on the Cummings' side of the road as site will be sloped and drainage will be held on site.
- 300 feet of store and parking lot will be in Limited Commercial districting, but part will be in Agricultural/Residential. As County stated in their determination, the property is enrolled in Genesee County Ag District #1, which means it can't connect to water and sewer for 13 years without penalty: basically, repayment of the taxes that were waived on the parcel. The Town attorney thought that if the fine was paid, the store could be connected to the main sewer and water.
- In Limited Commercial, the size of a commercial structure is limited to 5,000 sq. ft. The current plan has the entire building in the LC section of the property.
- At the Planning Board's October meeting, a motion was approved for a text change to LC building size limit, increasing it to 10,000 sq. ft. This would take some time to implement.
- Mr. Daniels stated that the ZBA can't move on any assumption that Zoning text would be changed sometime in the future. The proposed structure would be double the size of the current zoning limit, so variance needed would be substantial and would not meet the criteria for granting it.
- Chair Witkowski noted that the requested variance is a self-created hardship. Also, that people wish to preserve the rural nature of the community.
- Chairman Witkowski and Mr. Daniel suggested that the building be pushed back. Then part of it would be in the Agricultural/Residential District, which would put it under the zoning regulations for that district, allowing for a 10,000 sq. ft. building on arterial highway. Therefore, a variance wouldn't be needed.
- Mr. Hopkins agreed that if the property falls in two zoning districts, the owner could choose the least restrictive.
- The board agreed that parking is an issue to be dealt with by the Planning Board.
- The proposed sign, which conforms to the Dollar General's national signage, requires a sizeable variance. The board was told the height could be reduced and that there could be some landscaping around it.
- Mr. Showler wondered if the driveway was at the crest of the hill. He was told that it was quite a bit north of there, more than the 400 feet required.
- Mr. Pawlik stated that his construction company strives to develop and build structures with the view of companies being welcomed into the community. C & S doesn't take any tax breaks it might be entitled to. The proposed Dollar General would create 70 jobs. He also said that he needs the construction to be underway by the end of March; the store would open within eighteen weeks after that. He can't afford for it to be delayed. If he feels this time table can't be met, he will move on, very possibly out of the Town.
- Mr. Schmigel agreed to carve out more of his agricultural land so the store could be moved back to be partially in the AG/RES district. Mr. Pawlik said his company is very open to making this adjustment.
- The board and Dollar General representatives discussed how much the store should be moved back without jeopardizing the store's visibility: 75 ft. further back than shown on site plan—30% in AG/RES and 70% in LC, falling under Zoning Law Section 402 C #19, building size limit 10,000 sq. ft. The 9100 sq.ft. would be a split between the 5,000 limit of LC and 10,000 limit of AG/RES.

- Signage would fall under Section 506. Terry asked Mr. Pawlik if there were any Dollar Generals that have signs less than 50 sq. ft. Mr. Pawlik said he could only answer for NY State, and that he has never put up a smaller free standing sign. They have done lower/monument signs, but didn't think that would be appropriate in this case.
- Mr. Hopkins said they would agree to the sign being 19 ft. high, 1 ft. less than on current plan, 6 ft. less than Zoning limit.
- Because this proposal is for a business, SEQR needs to be considered by ZBA. There would be loss of some agricultural land, but disturbance of no wetlands. It is not archeological or historical site, and not on a flood plane. There is nothing that substantially impacts surrounding neighborhood.
- Mr. Dewey explained how they will manage water on the property, saying there won't be as much water and sewage usage as a house with only one bathroom for employee use. This is something the Planning Board will look at when they review the site plan.

**PUBLIC PARTICIPATION**—Yes: Dollar General representatives and current owner of land.

**Motion to Close the Public Hearing** made by Mr. Kadziolka and seconded by Mr. Daniel.

**Voice Vote:** All Ayes—motion passed.

**The Public Hearing Closed at 8:25pm**

On **MOTION** made by Chairman Witkowski and seconded by Mr. Daniel to make a **negative Declaration** based on the SEQR information and that there will not be a substantial impact.

**ROLL CALL VOTE:** Mr. Kadziolka-Aye; Mr. Daniel-Aye; Mr. Dylag - Aye; Mr. Showler -Aye; Chairman Witkowski-Aye.

**ALL AYES—MOTION PASSED.**

On **MOTION** made by Mr. Daniel, and seconded by Mr. Dylag to **approve a variance of 1370 sq. ft. for the portion of the building located on Limited Commercial spanning both Limited Commercial and Agricultural/Residential 70/30%; and, in regards to Section 506 E #2, to approve a 25 sq. ft. variance for sign due to no impact on public safety, with a height not to exceed 19 ft.**

**In the board's opinion the number and size of parking spaces fall under Section 503 to be considered by Planning Board. The size of the building would be potentially covered under Section 402 C #9 AG/RES 10,000 sq. ft., along with 405 #8 #1 LC 5,000 sq. ft.**

**ROLL CALL VOTE:** Mr. Kadziolka-Aye; Mr. Daniel-Aye; Mr. Dylag - Aye; Mr. Showler -Aye; Chairman Witkowski-Aye.

**ALL AYES—MOTION PASSED (with a super majority to override County's determination)**

**Public Hearing**  
**Area Variance/Laurie Snyder**  
 1711 Genesee St., Town of Pembroke

Tax Map #24.-1-9.2; Zoning District: AG/RES  
*Required referral to Genesee County*

**PUBLIC HEARING** was opened at 8:37pm. The Notice of Public Hearing ran in the Batavia Daily News November 11, 2015, was posted on the Town's Bulletin Board, and letters were sent to adjoining property owners within 500 feet.

- County approved, stating that the proposed setback should pose no significant county-wide or inter-community impact.
- One letter was sent back from Dolores Jellison stating that as long as the variance did not affect her property directly she could not comment one way or the other. Kathy Meyers, a neighbor, was present at the meeting and just wanted to know more details about what Ms. Snyder was requesting. She was satisfied with Chairman Witkowski's explanation.
- Ms. Snyder was present. She is requesting a 2ft. side yard variance due to a proposed Land Separation in order to sell piece of the parcel with house, because of farm structures on the remainder of the original parcel. The separation would create a horseshoe shape of what remains of the original parcel, with enough road frontage on either side of the house portion.
- Felipe and County considered it an application for a side yard variance. Chairman Witkowski and Mr. Daniel couldn't see how it was. Looking at the Zoning Law, they concluded the property line created behind the house by the Land Separation did not fit the side yard lot definition and, instead, would be a front yard, substantially increasing the variance needed.
- Mr. Daniel had a problem with the lack of measurements on the plan Ms. Snyder provided. He felt the board could not grant any variance without correct measurements.
- Ms. Snyder said she didn't want to spend the money on a survey until she was sure she would get the Land Separation. Chairman Witkowski said she didn't necessarily need a survey to present to them, just a better drawing with accurate measurements.
- The board waited while Ms. Snyder and her father went to measure distance perpendicular to milk house, but, in the meantime, after examining the aerial photograph of the property further, the board thought the barn was the main building and that the milk house and other small building were accessory structures. The proposed Land Separation would put them in the front yard. Zoning law states that accessory buildings must be in side yard.
- Because of lack of accurate measurement information, the board decided to table Ms. Snyder's variance request, also delaying her Land Separation request through the Planning Board.

**PUBLIC PARTICIPATION**—Yes

**Motion to Close the Public Hearing** made by Mr. Kadziolka and seconded by Mr. Showler.  
**Voice Vote:** All Ayes—motion passed.

**The Public Hearing Closed at 9:31pm**

**MOTION to table Land Separation** made by Mr. Daniel, and seconded by Mr. Shower

**ROLL CALL VOTE:** Mr. Kadziolka-Aye; Mr. Daniel-Aye; Mr. Dylag - Aye; Mr. Showler -Aye; Chairman Witkowski-Aye.

**ALL AYES—MOTION PASSED.**

**Old Business:**

**New Business:**

A **MOTION** to close the meeting was made by Mr. Daniel, seconded by Mr. Dylag.

Voice Vote—ALL AYES

**MOTION PASSED**

Meeting adjourned at 9:37pm.

Respectfully Submitted,  
Diane Denton-ZBA Secretary  
Nathan Witkowski-ZBA Chairman

*These minutes were approved by the Zoning Board of Appeals December 16, 2015*