

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, September 12, 2019**

MEMBERS PRESENT: MARTY KIVELL, CHAIRMAN
ARTHUR KATZ
CHARLES PICARELLI
LAURIE DIFRANCESCO
MATT RYAN, AD HOC

MEMBERS ABSENT: SCOTT MEIER
ROBIN LUCHINS, AD HOC

PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
LOUIS ZUMMO, BUILDING INSPECTOR
SUZANNE CARLEY, P&Z SECRETARY

The meeting was called to order at 8:02 pm by Chairman Kivell which was followed by the pledge of allegiance and roll call. Arthur Katz made a motion to approve the ZBA minutes from August 8, 2019 and Scott Meier seconded it. Laurie DiFrancesco pointed that there was a typo which the clerk advised she would change. All in favor with the typo change, motion carries. Chairman Kivell appointed Matt Ryan a voting member for the evening.

Chairman Kivell then read into the record a summary of the public hearing notice for the application of **Stage Street Associates, LLC – 124 Route 59** for the following variances:

- Minimum Lot Area – 60,000 sf required; 22,975 sf proposed
- Minimum Front Setback – 50’ required; 23.1 proposed
- Minimum Side Setback -20’ required; 0 proposed
- Minimum Total Side Setback – 85’ required; 45’ proposed
- Minimum Side Yard – 20’required; 0’ proposed
- Minimum Rear Setback – 50’ required; 29’ proposed
- Buffer to residential zone – Minimum 50’ required; 0’ proposed

The variances are being sought pursuant to Article IV Sections 210-32(2) and/or Sections 210-28 of the Village of Airmont Zoning Code to permit construction, maintenance and use with a special permit for 6,333 sf of warehousing with 8 parking spaces and 3 loading bays. The property is located on the north side of Route 59 approximately +/- 400 feet west of Stage Street. The lot is designated as Section 55.10, Block 3 and Lot 8 on the Town of Ramapo Tax Map. The property is located in the LO zoning district and is comprised of 22,975sf. The street address is 124 Route 59 Suffern, NY 10901.

Representing the applicant are the Attorney Paul Baum & Rachel Barese Engineer from Civil Tech engineering. The GML from Rockland County Planning (RCP) dated August 29, 2019 was read into the record. In summary, RCP overall Disapproved the application due to the number of variances. Dan

Kraushaar explained the importance of the GML and how the provisions it may state may require a supermajority override contained for anything they deem must or shall. #1, #2 require overrides; #12 Landscaping plan must be revised and renderings must be revised and monitored. Read into the record: Town of Ramapo had no comments in memo dated 8/14/19; RC Sewer letter 9/4/19.

Paul Baum letter dated 8/30/19 in response to a flyer that was sent around that 1) does not endorse, 2) was not permitted 3) use not officially approved. Dan Kraushaar asked the ZBA Board if any of them had any involvement with the logo and reference to meeting to the opinion of the approval? For the record roll call was taken as follows:

Member DiFrancesco - No
Member Picarelli -No
Chairman Kivell-No
Member Katz-No
Member Ryan-No

Dan Kraushaar also advised that he had no involvement or knowledge of approval of the flyer nor did he have anything to do with it or gave any permission. Dan also asked the same questions of the ZBA Secretary who replied she did not and the Building Inspector who also replied he did not. Email from Paul Baum to Dan Kraushaar not to use the Village's logo for anything for the public via in a PO box, or without permission from the BOT.

Various letters from interested property owners where also read into the record.

Paul Baum explained that the application for 124 Route 59 is on the north side of route 59, west side of stage street and is an undersized lot in a LO Zone. The other application for 130 Route 59 and 22, 24 Stage Street will be discussed later. He noted that 124 Route 59 can't be used by our code at all without a variance. The applicant has owned it a long time as a warehousing concept. LO Zone is to be utilized with a special use permit. He explained that you can't put a house, a single family residence on any property of the LO zone that is not already in existence. Any use permitted by the Village of Airmont Zoning Code will require that use to get relief and need many significant variances. The applicant has tried to design the least detrimental plan as possible to the community.

The residential lot in the middle at 126 Stage Street is currently being used as a residential lot. The house and as on to office/warehouse layout. Moved building farther west on the property line. If they put it in the middle there will be no circulation. Need to keep the building to one side. Kept far away from residential lot. The application has been before the Planning Board to ensure it is a safe development but before they can move forward they need to get past the ZBA.

Paul then goes through the variances:

- 1) Minimum lot area – this is an existing undersized lot. Applicant tried to get the land from the neighbor, had a contract on the property which at the time was in bankruptcy however the bank trustee decided not to sell after the contract was in place. The client lost out and would have had a nicer layout but it was the process of the Bankruptcy Court. The applicant didn't initially try to put it on a small undersized lot.
- 2) Minimum front set back -50' required proposing 20 which is 23.1 from the road to the building. House was 23.1' and they are trying to respect prior front set back
- 3) Minimum side setback - need to have cars circulate and trying to keep in line with?? FD
- 4) Total side setback-impossible to comply with the Village of Airmont Code

- 5) Minimum side yard-also zero and impossible to stay away from the property line
- 6) Minimum rear set back – proposing (Tape)
- 7) Buffer to residential zone – trying to conform to the LO Zoning Code however the requirements are impossible to meet.

Paul Baum stated for the record that every single use needs a variance and that you can not get relief without many variances. He explained that the ZBA has to weigh the detriment to the community vs. the benefit to the applicant using five factors.

1)Undesirable change or detriment being created by granting the area. Will not create undesirable change.

More information forth coming in an analysis. This project is 50 ft. from Route 59 and previous house was 23 ft. Not coming closer than Route 59 not much change in character. The front set back is existing and the properties to the east 120 Route 59 and 114 Route 59 as well as 126, 134, 140 and 144 all have similar commonalities as they are deficient in front set back. Dan Kraushaar asked that research review make certain list the size of the structure of the previously non-conforming if requested legal non-conforming and if requested and/or obtained variances.

Paul explained that they not creating a parking lot to get to the property. Need to have at least 24 feet right way with no parking and needs to be placed strategically for ingress and egress. A required variance is needed for no buffer. Indian Rock – don't think it will be visible to the housing units and Indian Rock with the landscaping plan. Applicant preserving as much as possible with no detriment to adjoining lot. There is a medium number of units of Indian Rock in line with Route 59 of project Use of property is opposed vs. the variances. They property is zoned LO and they are proposing a use permitted in the LO Zone.

2) Can the benefit sought by the applicant be achieved by any other method -

Paul noted that the applicant has no alternative without variances. Nothing can be built without variances. Laurie DiFrancesco asked if they can build smaller with less variances, size and scope? Paul responded they may be able to make it smaller but it will still require variances. He again stated that no use in this zone, the LO zone can be done compliant without a variance.

3) Is the requested area variance substantial? Paul replied yes but are they really building too much? They are not looking to cram a lot in, just want a project.

4) Will the project have an adverse affect and comply with SEQRA? Paul Baum note that these are Type II Actions under SEQRA and that the granting of setbacks will have no impact. No SEQRA Determination.

5) Is this self- created? Paul Baum explained that the applicant bought knowing. Didn't buy it by itself wet to buy both lots, had a contract but the bankruptcy trustee put into litigation. Not self-created as the applicant intended to have one big project and situation.

Dan Kraushaar asked if the applicant could have backed out once the offer on the second property contract was removed? Paul Baum explained that it goes back to 2002 when he didn't represent his client.

Matt Ryan asked if it was the same owner of the two lots and did the trustee sold to someone else. Paul explained that they were 2 separate contracts not self-created and had no control. Not fatal to the application.

Chairman Kivell asked if the Board had any questions. Paul explained that two lots were purchased in 2003 and in the last 17 years they went over uses permitted. All the uses require a special permit and are uses by right except for lavatory and office buildings.

Laurie DiFrancesco noted that understanding the negative lot the client went through and closed but the size of the variances are largest the ZBA have ever seen with the buffer requests. Lot was purchased, there is an economic need to develop three warehousing on undersized lots isn't anyway of doing things differently especially with the buffer and set-backs. Have you considered a smaller project understanding the side yard issues and then requesting less variances? Paul responded that his is the minimum construction they can do to finance the clients investment. As for his economic position he prefers that his client respond.

Dan Kraushaar noted that it used to be that self-created hardships could be a basis of denial for variances. No longer the case. Have to be more elements of the five elements in spite of the question. Board needs to take more into account.

Arthur Katz made a motion at 9:19pm to open the public hearing. Laurie DiFrancesco seconded it. All in favor none opposed. Public Hearing opened.

Barbara Ruggiero - #11 Stage Street asked if they are going to discuss 130 Route 59 and 22 & 24 Stage Street. Dan Kraushaar advised that they are separate applications and 124 will be heard first.

C. Koul 53 Lackawana Trail -represent the HOA and am Board President. She noted that the plans don't show everything. There are houses in the back property about 10 ft. from the project and are right there. They do not want the variances granted as it directly affects 10 town houses in the back of the property. The tops of the homes will be affected as the bedroom are on the second floor and will be 29ft or less. Also concerned about the drainage as they are already getting water. Have had flooding and down trees and during heavy rains more rain is affecting the drainage.

Paul Brenna 43 Lackawana Trail- stated that drainage is a concern and that every aspect of the project adversely affects them. There is a huge retention pond for a shopping center and after 15-20 minutes it becomes a lake with the amount of water from Route 59. Very concerned with the short distance 15-20 ft. high rick wall and the integrity of the wall will become an issue. Also concerned with the buffer. He noted that his is a huge risk for all the properties.

Jeff Peattie 21 Stage Street – NYC police officer. Concerned in particular for the 130 Stage Street project for the 12 children and impact the warehousing with crime, fire, truck access, maneuverability analysis as there is no place to turn around or cul de sac. Snow removal has been an ongoing issue as there is no place to put the snow and his driveway has been greatly affected. He noted that there are no fire hydrants in the are only at the top. Concerned if sprinklers malfunction how this will affect the other homes on the street fi there were a fire. Also concerned with a fire truck coming in and being able to turn around. Stage street can't handle the additional traffic and weight. This entire project impacts the entire road. Trucks, snow removal are an issue and he has gone before the Village BOT about it in the past. There is no drainage on the street and the building will make it even worse. There

is a little stream, that floods almost every rain directly into their yard. Has safety and security concerns and will there be 24 hour security cameras? They did a water test and left an empty hole.

Laurie DiFrancesco recommended that the public hearing be continued as there have been people who spoke on 124 but need to allow the applicant to present the 130 Stage Street application so that the others can be heard. Laurie asked if the applicant has considered using the current unoccupied Grand Union. Applicants attorney advise that these are properties that his applicant does not own. His client's proposal is on properties that they do own.

Kevin L.- 80 Lackawana Trail- His is issue is the noise which they already get a lot of. There is Raymour and Flanigan one site and they have been fighting with them for years. They are losing the setback if this project is approved and already now with a 10-200 ft buffer it already sounds like its in their backyard. This project will make it worse.

Ms. Cuccihiano 31 Lackawana Trail – RC didn't applicant warehousing only.

Shania Peattie 21 Stage Street – Concerns are wetlands and environmental impact, soil erosion as the Manhattan Beer Distributors and the Norfolk line are changing all the basic drainage and increasing the flooding making all the trees fall down. With the trees down where will all the water go. There is a bat colony, painted turtle largest in the county, air pollution, noise, light disturbance.

Laurie DiFancesco made a motion to continue the public hearing for 124 Stage Street to 10/10/19 at 8:00pm. Chairman Kivell seconded it and for the record the audience was advised that it will bot be re-noticed.

Chairman Kivell Read into the record the public hearing notice for the application of **Stage Street Associates, LLC – 130 Route 59, 22 & 24** Stage Street for the following variances:

- Minimum Lot Width – 200' required; 131' proposed
- Minimum Front Setback – 75' required; 7' proposed (existing non-conforming condition)
- Minimum Front Yard -15' required; 7' proposed (existing non-conforming condition)
- Minimum Side Setback - 50' required; 5' proposed
- Minimum Total Side Setback – 100' required; 42' proposed
- Minimum Side Yard – 20' required; 5' proposed
- Buffer to residential zone – minimum 50' required; 0' proposed
- Parking in side yard – parking is not permitted in side yard. The parking spaces on the west side of the property will be 5.6' from the property line.

Variances are being sought pursuant to Article IV Section 210-28 of the Village of Airmont Zoning Code to permit construction, maintenance and use with a special permit for 25,213 sf of warehousing and 11,250 sf office space with 83 parking spaces, 24 of the spaces to be located on Stage Street and 9 loading bays. The properties are located on the north side of Route 59 approximately +/- 200 feet west of Stage Street. The lots are designated as Section 55.10, Block 3 and Lot 10; and Section 55.07, Block 2, Lots 1 & 2 on the Town of Ramapo Tax Map. The properties are located in the LO zoning district and are comprised of 148,489 sf. The street addresses are 130 Route 59, 22 & 24 Stage Street Suffern, NY 10901.

Also read into the record were the GML dated August 30, 2019 from RC Planning which had modifications recommended; Letter from the Town of Ramapo dated 8/29/19 with no comments. Letter from Nelson Pope and Voorheis on behalf of the Village of Montebello dated 6/24/19; the memo dated 7/16/19 listing the variances for warehousing and office use, letter from RC Sewer dated 9/4/19.

Paul Baum explained that the project is three lots with 2 lots going down the frontage on Stage Street for a parking area for 24 employees. The total building will be 148,000 sf which includes the old and converted structure to add buildings for warehousing and the parking. There will be one small office of 11,000 sf for administration and another 100-200sf office for business. Lou Zummo requested a map note for the height and that it also states that it is not to turn into office space. No office space is intended, No office space is to be rented, office is an accessory to the warehouse use and limited by special permit and site plan. Laurie DiFrancesco asked if the height is within normal limits and waned the Building Inspector to clarify.

Paul Baum noted the project is in the LO zone where warehousing requires a special permit use. He stated that anything developed needs a variance and has the same issues with a negative building development. They need a 50 ft. buffer and setback and all any uses will require variances.

Laurie DiFrancesco asked if it was occupied for the last 2 years? She noted that a nonconforming uninhabited use has a certain time period or it no longer can be used. Paul Baum explained that the structure was there the use was not.

Lou Zummo noted that Building H and E parking are both within the wetland buffer and will require a permit from the PB. You need a permit to disturb whatever encroaches on the buffer which is something the PB will deal with at the appropriate time.

Paul Baum wanted to quickly go through the 5 points that the ZBA needs to weigh. He stated that this project 1) does not pose an undesirable change. This is in the LO zone and the use is permitted. 2) The variances do not change or create a detriment as the use for keeping up with a residential zone is mute as this is a commercial zone and the use is permitted as determined by the Village. 4)The variances themselves are not creating an impact. The applicant can't benefit by pursuing any other means other than a variance as they can't make it smaller as it may not be an economically viable project otherwise. 3) Yes they are requiring a 91% area variance. 4)It is not an adverse impact on the environment as it is a type II action under SEQRA. 5) It is not necessarily all self-created as they did acquire the property but he they were unable to purchase the house in the middle to make it a better streamed project.

Laurie DiFrancesco made a motion to open the public hearing for Stage Street 130 Route 59, 22 & 24 Stage Street Suffern, NY. Chairman Kivell seconded it, all in favor, motion carries, and public hearing opened at 10:35pm.

Pavle Lecei 13 Stage Street – stated that they are asking for a lot of variances and he can't be convinced that there will not be any issues. He suggests that they make this smaller and move the parking lot elsewhere. There are issues with snow removal and there needs to be consideration for the residents. There needs to be a traffic study done on Stage street itself not just route 59. It needs an environmental impact study, wetlands review and a water study. Very against the project.

Lorenzo DeRocco - 7 South Amundsen asked if a variance is granted to build this project how does it affect the wetlands. Resident was advised that the NY State DEC has a 100 ft buffer and this will be reviewed by the Dept of Environmental Conservation.

Shana Peattie – advised that there is well water and runoff that goes right there and there is already a huge issue with mosquitos that will only get worse. Her other concerns are maneuverability, animals in jeopardy as previously kids at the top block catch basin, traffic study is not complete nothing on Stage Street as the meter was not places where they get all the traffic and there have been numerous accidents, no sidewalks and they can't get 2 cars by, snow plows are already an issue, if there was a fire cars and emergency vehicles could never get through, putting a dozen families and children at risk and 93 units at Lackawana and Senior Housing in an awful position, concerned if she would ever be able to sell her house if the project comes to fruition.

Margaret LaVigne –has concerns with the entire project and is not in favor of it.

Barbara Ruggerio – 16 Stage Street asked the applicant to clarify that the parking is only for 24 workers and where will there be room for the additional traffic. Has concerns about the well water and contamination.

Shania Peattie also asked if there would be security cameras and who would monitor the parking garage and those who park there as the children play outside and walk to/from the corner for the school bus. Concerned with the increase in crime.

Henry Frezner – 3 Stage Street state that the width of the street is 15 ft curb to curb. In the cold months other parents have to walk on the side to get to the school bus. No one gets in or out so how will this work with the parking for 24 spaces comes in. No one will be able to get in or out.

Steven Klein – 73 Regina. Any existing truck couldn't get down the street nor turnaround. Due to the zoning of this area the homes couldn't rebuild. How did it get built in the first place and what was the TOR Zoning thinking back then. It was pointed out that the current use is a preexisting non-conforming use.

Hendra Ghobriel – 12 Stage Street noted that they asked for speed bumps on the street at one point and was advised that the street was too small and the kids would have no where to play.

Shani Peattie – 21 Stage Street also pointed out the section of the code §210-23 part 4 that a buffer must be 300 feet of a residential district.

Marty Kivell made a motion to continue the public hearing on the application for Stage Street LLC 130 Route 59, 22 & 24 Stage Street to Thursday October 10, 2019 at 8:00pm at Airmont Village Hall. Laurie DiFrancesco seconded it. All in favor motion carries.

The P&Z Secretary noted that see will flip the agenda so that the application for 130 Route 59, 22 & 24 Stage Street could go first in order to spend more time on it as many people had to leave prior to the public hearing being opened.

Laurie DiFrancesco made a motion to adjourn the meeting at 11:10 pm which was seconded by Arthur Katz. Meeting adjourned.