

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, March 12, 2020**

MEMBERS PRESENT: CHAIRMAN MARTIN KIVELL
ARTHUR KATZ
LAURIE DIFRANCESCO
SCOTT MEIER
MATT RYAN, AD HOC

MEMBERS ABSENT: CHARLES PICARELLI
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 8:09 pm by Chairman Kivell which was followed by the pledge of allegiance and roll call. Laurie DiFrancesco made a motion to approve the minutes from 12/12/19 which was seconded by Scott Meier. All in favor. Chairman Kivell appointed ad hoc Matt Ryan a voting member for the evening. The Chairman read into the record the continued public hearing notice for the application for Stage Street 124 Route for the following variances:

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 Lot Width – 200 ft required; 80 ft proposed
- Minimum Front Setback – 75 ft required; 210-131 allows 50 ft; 23.1 ft proposed
- Minimum Side Setback -50 ft required; 210-131 allows 10ft; 0 ft proposed
- Minimum Side Yard – 20 ft required; 210-131 allows 10ft; 0 ft proposed
- Minimum Rear Setback – 50’ required; 25 ft proposed
- Minimum Street Frontage – 100 ft required; 80 ft proposed
- Buffer to Residential Zone – Minimum 50’ required; 25’ proposed

The lot is an existing non-confirming lot as it is less than 100’ in width. The variances are being sought pursuant to Article IV Sections 210-32(2) where a nonresidential lot has less than 100’ of lot width, the minimum requirements Section 210-132(2)(a)-(e) apply of the Village of Airmont Zoning Code to permit construction, maintenance and 5,616 sf of warehousing with 7 parking spaces (including 1 handicapped) and 3 loading bays. The rear building will be kept 50’ from the rear property line with a 25’ buffer and a 25’ setback. The lot is an 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.

Paul Baum, applicants attorney explained the changes that were made in the application based on the prior ZBA Meeting as the Building Inspector raised an issue with regard to the applicability of Section 210-132 (D) (2) and determined that the applicant would need a variance from minimum lot width in addition to the other variances requested by the applicant. Minimum street frontage also required a variance as well and both are existing conditions. The applicant took into account the public comments and reduced the size of warehouse C and increased the distance from the rear lot line to the rear of the building from 29.9' to 50' with a 25' buffer and a 25' setback to incorporate dense evergreen plantings and screening for visual screening for the building and parking from the residences; shielding impacts from lighting and buffer noise. The property will contain warehousing with 7 parking spaces and 3 loading bays. The lot is an existing non-conforming lot that is less than 100' in width. This project is a Type II action under SEQRA for variances. The LO district is a commercial zone not residential and the use is appropriate. The variances requested for the property are minimum lot area, minimum lot width, minimum front setback, minimum side setback, minimum side yard, minimum rear setback, minimum street frontage, buffer to residential zone. Existing conditions required the side setback and side yard to be reduced from 20' to 10'.

Paul Baum explained that the applicant is attempting to develop the property with existing conditions. The parcel is an undersized nonconforming lot and any permitted use in the LO Zone will require variances. Based on the zoning analysis provided by the applicant's attorney there are many non-conforming lots. The proposed project will be in conformity of the neighborhood with the other commercial uses. Other structures in the LO Zone are also deficient so this project is not out of character. The applicant's intent was to purchase 3 adjacent parcels 124, 126 and 130 Route 59 back in the 1990's in order to merge the lots for one project. At the time the property was to close the for the middle parcel (126 Route 59) the trustee in bankruptcy court advised that it would be unable to be purchased by the applicant. The applicant has made numerous attempts to purchase the property from the current owner of 126 Route 59. The applicant feels this is not a self-created hardship although some of the ZBA members disagree.

The site plan will require a special permit which needs to be obtained through the PB. Several public hearings were held on 9/12/19, 11/14/19; 12/12/19 and 3/12/2020 whereby there were a great number of people that attended and commented with their concerns which were primarily environmental issues for the Planning Board. Concerns were visual, noise, drainage, firematics and lighting. In 2018 the Village of Airmont's Comprehensive Plan conducted a new comprehensive plan review and the subject property was not recommended for any zone changes from the existing zone

The ZBA of the Village of Airmont's had approved variances in 2006 for a prior application for minimum lot area, lot width, front setback, side setback, total side setback, side yard rear yard, street frontage and parking in the rear year yard. Any adverse impact with traffic which will be determined by PB along with a referral to the Architectural Review Committee (ARC) to ensure that the overall aesthetics blend well within the Village. The PB will review all fire and emergency services and will coordinate and review all the environmental studies such as but not limited to landscaping, noise, traffic, lighting, drainage, stormwater.

Chairman Kivell read into the record the GML dated 2/18/2020 which advised a disapproval as per the prior applications. Dan Kraushaar advised that they will need to override the GML and go through each item. Also read into the record were the letters from RC Environmental Health dated 3/3/20, TOR DPW dated 1/31/20, RC Sewer #1 dated 3/4/2020 and the letter dated 1/9/2020 from Paul Baum to the ZBA on the changes in the application. Although an application was sent to the TOR, the DOT and the Village of Montebello with the changes the 30 days had passed and no comments were received by the P&Z Clerk.

Chairman Kivell opened the public hearing at 8:50 pm. Arthur Katz seconded it.

P. Hirsh 126 Route 59 – had questions on the fence the height, length and inquired if the lighting would be shielded.

Ruggiero – 16 Stage Street – agrees with the county that it is a tremendous over-development

Ghobriel 12 Stage Street – concerned with traffic, drainage and run-off.

S. Peattie – 21 Stage Street – many concerns, environmental, traffic, garbage enclosure, loading berth, noise, lighting, safety and how the Village of Montebello project will affect the area along with this project.

M. Henson – 25 Lackawana concerned with noise, lighting, chemical run-off requested an environmental study.

Laurie DiFrancesco made a motion to close the public hearing and Scott Meier seconded it. All in favor.

Laurie requested to hear from the Building Inspector who noted that all his comments are PB related.

Laurie noted that these are major variances and her prime concern was the buffer for the residents. She also has concerns on the drainage and run-off which are PB related items. She knows the 100 ft buffer isn't there and can't balance it but without variances the property can not be developed. Any business is entitled to have traffic and the applicant has tried to make this workable. Route 59 is part of the LO warehousing district and brings in less traffic than retail.

There was a discussion on the size of the trucks and that it appeared the RC Planning misunderstood the truck size restrictions.

The Zoning Board of Appeals classified the application as Type II pursuant to State Environmental Quality Review Act and is precluded from further environmental review.

Arthur Katz made a motion on behalf of the Zoning Board of Appeals (ZBA) of the Village of Airmont to override the Rockland County Department of Planning GML dated 2/18/20 which

disapproved the application for Stage Street 124 Route 59 for the above variances for the following:

For GML item #1 which indicated that the proposal is an excessive overdevelopment of a parcel that is not suitable for warehouse use and the ZBA pointed out that this was misinterpreted because a) warehouse use is an allowable use in the LO district, b) it is a use which is in fact a use that's already allowed under the Village of Airmont's Zoning Code; c) the ZBA also considered the fact that this lot was granted variances by the ZBA back in 2006. The main difference is that there was no buffer required in 2006. GML item #1 also indicated that the length and the back-up area width was inadequate for deliveries. The GML may not have taken into account that the size of the truck would not be larger than 40x64x10=70 ft so they would have 80 ft of space. The applicant is not looking at utilizing that large of a vehicle and the tenant leases will be managed to include the vehicle size restrictions. The ZBA noted that the PB will take this issue as part of the PB site plan approval.

For GML item #2 – Permitting development does not comply with the applicable bulk standards and can set an undesirable land use precedent. The ZBA pointed out that a) the use is allowed under the Zoning Code and is consistent with the Zoning Code. GML item #2 also noted that the evaluation must consider whether local roads will become more congested and the sewer system, stormwater management systems and the public water supply will be overburdened. The ZBA determined that a) these are issues to be dealt with by the PB and that the PB is the responsible party to determine these issues; b) the ZBA also noted that in 2018 the Village of Airmont conducted a new comprehensive plan review and the subject property was not recommended for any zone changes from the existing zone.

For GML item #11 that a landscaping plan must be provided - the ZBA overrides this as the landscaping plan will be required by the Village's PB & it is in their purview to determine the type, number, size and location of plantings on the subject site. ZBA will advise the PB to in particular review all property lines and ask they make certain the neighboring properties buffers will be appropriately addressed. Artur Katz made a motion on behalf of the Zoning Board of Appeals of the Village.

All other remaining items of the RCP GML dated 2/8/20 shall be complied with by the applicant.

The motion was moved by Arthur Katz with the overrides of the Rockland County Planning GML dated 2/8/20 for #1, #2 and #11 for the reasons previously noted and seconded by Laurie DiFrancesco. The roll call was as follows:

DiFrancesco – Aye for the reasons previously stated

Katz – Aye agree with override for reasons previously stated

Ryan – Naye, as he votes to deny the variances

Meier – Aye, agrees with the reasons stated

Kivell – Aye agree for the reasons previously stated

Motion carries 4 to 1 on the GML overrides for items #1, #2, #11.

Arthur Katz made a motion approving the application of Stage Street Associates, LLC – 124 Route 59 for the following variances from the Village of Airmont’s Zoning Code Article IV Sections 210-32(2) and Section 210-132(2)(a)-(e) for the following variances with the overrides of the Rockland County Planning GML dated 2/18/20 for #1, #2 and #11 for the reasons previously noted and seconded by Laurie DiFrancesco.

- Minimum Lot Area – 60,000 sf required; 22,975 sf proposed (existing conditions)
- Minimum Lot Width – 200 ft required; 80 ft proposed (existing conditions)
- Minimum Front Setback – 75 ft required; 210-131 allows 50 ft; 23.1 ft proposed
- Minimum Side Setback -50 ft required; 210-131 allows 10ft; 0 ft proposed
- Minimum Side Yard – 20 ft required; 210-131 allows 10ft; 0 ft proposed
- Minimum Rear Setback – 50’ required; 25 ft proposed
- Minimum Street Frontage – 100 ft required; 80 ft proposed (existing condition)
- Buffer to Residential Zone – Minimum 50’ required; 25’ proposed

The roll call was as follows:

Member Katz-applicant is entitled to develop and make this a usable property. Efforts were made to try to ameliorate any ill effects of this development with surrounding areas. Variances deserve to be approved and with all referrals to the PB for the items they need to approve.

Member DiFrancesco- Voting to approve the application after much deliberation based on the fact that the development being presented reflects one of 21st Century development on Route 59. The existing developments have been from the 1980’s, 1990’s and construction and uses have changed for commercial properties. Believes the applicant did try to work within the guidelines to minimize the effect and believe most of the of the variances run with the land and any other development would be almost impossible. Her vote is also based the buffer recommendations and that it fully be addressed by the PB.

Member Meier- noted to the public that he listened and heard them, that the property owner also listened to the public and came back with changes. He took everything into account and went out to visit the property. He indicated that it was a tough decision but it is a commercial piece of property and he votes to approve. He feels the applicant proved his case, is sure he will be a good neighbor and hopes it all comes out as shown of the plans.

Member Ryan – Voted to deny the application for variances. He appreciated the changes that were made in response to the publics concerns but he still thinks this is overdevelopment of an undersized lot and is uncomfortable with side setbacks and there needs to be respect to the residents in the Village of Montebello. He noted that he does think this is self-imposed as it has been owned for over 20 years and the applicant still chose to maintain and keep it. Also feels by granting the variances would be setting a precedent.

Member Kivell – agreed with Laurie DiFrancesco and other statements that were made. He agrees with respect to the back of property and the owner’s changes for a buffer for the property owners and the Village of Montebello and concurs with statements being made to approve the variances.

Members Voting Aye:

Chairman Kivell
Laurie DiFrancesco
Arthur Katz
Scott Meier

Members Voting Nay:

Matt Ryan – Ad Hoc

The variances are hereby **granted** subject to the following conditions:

1. The Zoning Board of Appeals has a strong reference to the Planning Board for **all** environmental concerns by various agencies and in particular with regard to landscaping, screening, firematics, concerns of maneuverability of fire & emergency trucks and the balance of the items noted in the GML review by the County of Rockland Planning Department dated 2/8/20.
2. In overriding the GML for a landscaping plan the ZBA noted that it is the Village’s PB, in their purview is to determine the type, number, size and location of plantings on the subject site. The ZBA is requesting that the PB in particular review all property lines and ask they make certain the neighboring properties will be appropriately addressed.
3. Payment of all professional fees.

Variances approved 4 yes to 1 no.

Application of Stage Street Properties LLC – 130 Route 59 Street, 22 & 24 Stage Street

The applicant’s attorney Paul Baum objected to another public hearing. The public hearing was posted in November, it was continued but the Board never got to it until December and then the public hearing was closed. Paul Baum wanted to go on record that he objected to the reposting, re-mailing and re-advertising the public hearing when it was previously closed. The Village requested another public hearing on the same application. He advised the Village of his concerns at the time of the request and was still advised to do so which they did.

Dan Kraushaar noted that changes were made on the application so it isn’t the same so it needed to be re-advertised. Paul Baum disagreed. Dan advised that you cannot take in new evidence after you close a public hearing. Paul Baum noted that they are requesting less relief not more and objected to another public hearing. He stated that he was perfectly fine if he could recap the changes, close the public hearing this evening and make a decision at a later date due to the late hour.

At 10:25pm Member Katz read into the record the public hearing notice:

Application of Stage Street Associates, LLC – 130 Route 59, 22 & 24 Stage Street for the following variances some which have been modified:

Minimum Lot Width – 200’ required; 131’ proposed

Minimum Front Setback – 75’ required; 17’ proposed

Minimum Side Setback - 50’ required; 5’ proposed

Minimum Total Side Setback – 100’ required; 45.3’ proposed

Minimum Side Yard – 20’ required; 5’ proposed

Buffer to residential zone – minimum 50’ required; 0’ proposed

Parking inside yard – parking is not permitted in a 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 23,794 sf of warehousing and 11,250 sf office space. The plans have been adjusted to include a special use permit, a waiver for the size of the loading berths and a waiver for parking. The project will include 65 parking spaces (including 5 handicapped) and 9 loading bays. Parking on Stage Street is no longer being requested and 10 additional spaces are alongside the westside of the building. The building will be also be reduced by 20 feet to further the distance from residential lots. The front setback and front yard have increased to 17’. 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.

Paul Baum provided a summary detailing the changes. Applicant listened to the comments from the public and the board and adjusted the plan. The parking lot of 24-26 spaces off 22 & 24 Stage Street is no longer going to occur due to so many concerns, the undersized road and the safety issues. The applicant felt it was best to make changes due to the comments from the public. To address the concerns on the parking there will be no parking or access off Stage Street. There were also concerns about the impact of the rear building on the encroachment of the Lackawana Trail development so the applicant reduced the building by 20 feet so that it is further from the residential lots. The parking from Stage street that was removed would be offset by 10 additional spaces along the side of the building. Landscaping and fencing will be proposed along the property to protect the neighbors as much as possible. The concerns about building in front of the property have been now addressed by proposing that the building has an additional 10’ for the front setback. The applicant will be seeking a special permit for a waiver for the size of the loading berths and a waiver for parking. Since there are no specific parking requirements in the Village’s code for warehouse space the Village used 1 space per 1,000 sf. This calculation will provide 80% compliance which is within the PB’s authority to grant a waiver.

Similar to what they're doing to 124 Stage Street, they reduced the size of warehouse by 20 ft. to assist with the Lackawanna Trail encroachment of the buffers. There were concerns about the structure being too close to the road seeking variance for 7 ft but decided to back it up to 17 ft and reconfigure it to be the same as the other building and be 5 ft from property line. The building next to it also has a 5 ft. property line. Proposing a nice fence for a residential buffer for Lackawanna Trail and brought in landscaping plan to show the fencing and the plantings to screen it. They think it's a better plan. This will eliminate all access, no parking and no disturbing Stage Street. They took 20 ft off the warehouse for landscaping and fencing for screening from Lackawanna Trail concerns about encroaching on the buffer. There were concerns that it was too close and need a 7 ft variance and backed up 17 ft so they are 5 ft from the property as other proposed street so there is not as much impact. It was noted that the landscaping plans and other plantings to go in between residential areas. Not disturbing anything but they will need a retaining wall.

Laurie DiFrancesco stated she had a natural concern of the wetlands. Concerned with run off. Applicants Engineer explained that they have to ensure that there is zero net run-off and you can't make a wetland go away. The Engineer explained that this will be controlled by quality and quantity in the storm water measures.

Chairman Kivell asked them to review the changes again. Paul Baum advised that there are three major changes - they reduced the building by 20 feet; moved the building 10 ft back and closer to the side lot lines 5 ft. set back as proposed and eliminated the parking lot at 22 & 24 Stage Street. Matt Ryan noted that the applicant did a good job by changing this. His concern is that he thinks they need make a condition of no parking lot on Stage Street for any future development should the lot be sold. Paul Baum explained that anyone would have to go to PB for approval for that. There original request did not require variances for the parking lot it was part of the original site plan. Mr. Turco stated he was ok with that.

Paul Baum reiterated that the applicant wants to develop his property and took into account the issues from the public. Laurie DiFrancesco wanted to review the variances – the maximum height is less than what is required, the minimum street frontage is above, minimum rear yard is better than what required. Total side set back is from building to one lot line. The minimum rear yard increased and is better. Total side setback is the side from the building to one lot line. The code requests 100 ft which is impossible with the narrow lot. The lot width would be 130 ft. So the requirement is a worst case scenario on either side by a foot and a half as they don't meet the side setback standards. Shortest on one side and shortest on the other is the combined. It's 40.3 one corner from the front building to westerly and 5 ft from office warehouse to easterly lot line for a 45.3 ft total which has increased. Paul continued to explain that they meet the front yard standard but not the front set back standard.

In 1995 the applicant received a variance to use the existing building whereby variances were granted for a side setback of 5ft; total side set back of 61 sf and side yard of 5ft. This is now very similar. With the new residential zoning need 50 ft providing as much setback. Parking right against property fence so there is no buffer for parking. Building itself is 70 ft. from the lot line; setback is 50 ft and 25 feet of buffer. Requesting full waiver of buffer all for setbacks doing grading landscaping and along the property line. All variances are for setbacks, landscaping and

grading along the property line. The residential building is 70 ft from the corner building to the property line.

At 10:40 pm Arthur Katz opened the public hearing. Laurie DiFrancesco seconded it. All in favor.

Kevin Whalen 8 Lackawana Trail sworn in – biggest concern is the buffer to the neighborhood saying it s 70 ft. Did a great job on the first piece of property noted that the applicant should do the same here and should work on something to fix the buffer better.

Shania Peattie 21 Stage Street sworn in – Thanked the applicant for the consideration with changing the parking lot. Still has concern with 7-10 ft. buffer, screening of the buffer and the trees and excess water. Concerned with the traffic, trees, fire hydrants, sprinklers and concerns that if a fire spreads they can't rebuild if their property burns down. Confused on where the layout of the warehouse would be.

Joe & Barbara Ruggerio 16 Stage Street sworn in– concerned with buffer. He indicated that he already provided photos at a prior meeting.

Paul Baum explained that they are not asking for variances in this area and noted that this is a PB issue.

Shania Peattie attempted to show the Board photos from her phone as she did not have time to print them out. Paul Baum objected if not printed and provided to everyone.

Chairman Kivell made a motion to continue the public hearing to Tuesday April 28th at Village Hall to review the GML and the agency referrals to be read into the record.

Paul Baum reiterated that they shortened the building and eliminated the parking lot and had an issue with continue the public hearing. They have listened to the public and made changes based on their concerns.

21 Stage Street sworn in and spoke that her house was built in 1919 house over 100 years ago and that they already have serious water issues why would they be permitted to add to them with this project. Not in favor of the project.

Shania Peattie asked for clarity on what is currently existing on the property and have items staked out. Confused where the last building would be located. Dan asked if this is the area that the applicants attorney isn't seeking a variance for that portion. The answer is yes. Resident is unclear about the area of where it would be. Dan noted that this Board has no control over this and it would be the PB that would address this in regards to site plan approval. This ZBA only deals with Zoning Board related issues.

P. Hirsch – concern with catch basin, drainage onto 126 Stage Street, the house at 130 that is currently there and wetlands and water going into his basement and property.

Laurie asked Dan to clarify that the drainage is a PB issue and that the applicant will need to ensure that there is a storm water agreement with the Village. Dan confirmed that the applicant is required to ensure that there is zero net run off from the property. Currently there is run off but the proposed project can't provide any more than what exists. This is an engineering item.

Laurie DiFrancesco made a motion to close the public hearing. Scott Meier seconded it. All in favor motion carries.

Due to the late hour Chairman Kivell made a motion to continue the application for 130 Stage Street, 22 & 24 Stage Street to Tuesday April 28, 2020 at Village Hall. Laurie DiFrancesco seconded the motion all in favor motion carries.

Chairman Kivell made a motion to adjourn the meeting at 11:07pm. Laurie DiFrancesco seconded it. All favor meeting adjourns.