



**Town of New Lebanon**

Planning Board Regular Meeting Minutes – unapproved  
July 18, 2018

**Present:** Michael Blatt, Planning Board Member  
Elizabeth Brutsch, Planning Board Member  
Greg Hanna, Planning Board Member [Acting Chairman]  
Bob Smith, Planning Board Member

**Absent:** Ray Herrmann, Chairman  
Wes Powell, Planning Board Member  
Josh Schuster, Planning Board Member

**Others Present:** Cissy Hernandez, CEO; Cynthia Creech, Court Clerk and CRC Member;  
Michael Darcy; Tammie Darcy;

**I. Call to Order**

Acting Chairman Greg Hanna called the Regular Meeting of the Planning Board to order at 7:38 p.m.

**II. Minutes Review/Approval**

Upon review, Member Elizabeth Brutsch made a motion to approve the minutes of June 27, 2018, as submitted, which motion was seconded by Member Michael Blatt. The motion carried as follows:

Michael Blatt	Aye
Elizabeth Brutsch	Aye
Greg Hanna	Aye
Wes Powell	Absent
Josh Schuster	Absent
Bob Smith	Aye
Ray Herrmann, Chairman	Absent

**III. Regular Meeting**

Upon tabling the Public Hearing on Case No. PB-2018-004, Acting Chairman Hanna called the resumption of the Regular Meeting of the Town of New Lebanon Planning Board at 7:40 p.m.

**Case No.: PB-2018-004: Jeremiah 2911 Properties (8-1-32.1)**  
**(Public Hearing) The Applicant is requesting Site Plan Review to install a certified document storage building.**

No one appeared on behalf of the Applicant which is proposing to redevelop the existing Mini Mart. The matter is tabled for the August 15, 2018, meeting.

**Case No. PB-2018-005 - Michael Darcy (19.2-1-85)**

**(Preliminary) The Applicant is requesting a Special Permit with Site Plan Review for the purpose of conducting a Home Occupation 3 (HO3) on his residential property located at 45 Lover's Lane.**

The Applicant, Michael Darcy said he believes the matter was postponed at the last meeting pending receipt of comments from the Town Engineer, Paul McCreary. Mr. McCreary has now submitted a report to the Planning Board, a copy of which was provided to Mr. Darcy.

Mr. Darcy said he is still waiting for Theresa Swenson of the DEC to revisit the property. He previously met with her onsite, and she verbally approved the trucks and said everything could remain where located at the front of the property. They discussed taking down some additional trees, moving more toward the backyard in exchange for planting some new trees, and narrowing the area where the trucks are currently parked, should she approve parking in the back. They have been in contact via email; he has sent her pictures showing the growth had come in as she requested, but as yet he has received no response. He will reach out to her again.

Going back two meetings, Mr. Darcy believes the Planning Board was going to look at approving where the trucks and equipment were temporarily being parked at the front of his property and leave the back area (which is under DEC review) out of their decision until the DEC matter is resolved. Greg Hanna asked if Darcy's long-term plan is to move everything to the back of his property. Mr. Darcy said yes, he would like it out from the road where it would be better screened from all neighbors and would be nicer for everyone.

Member Hanna said the main stipulation of an HO3 is that it meets the condition that the business be carried on primarily within the confines of a building, but Darcy can't fulfill that requirement. Member Smith said the Board should be a little lenient because this is an outdoor business and Darcy can't build a big building there, no matter what he does. Member Hanna said he understands that but doesn't think that's the job of the Planning Board; it's the job of the Zoning Board to grant the exceptions. Member Hanna continued to review the list of HO3 requirements. Darcy said he has one non-resident employee.

The Board was reminded that they need to complete an Agricultural Data Statement as the property is located within 500' of a working farm within a Columbia County defined Agricultural District. Member Smith disagrees that it is within that 500' of a working farm. However, the nearest working farm is about 300' feet from a corner of the Applicant's property.

Member Hanna said another contentious point they have is where they may store their specialized vehicles which must be screened or under cover. Darcy said that's the reason to try to move it to the back where it would be better screened. Hanna said the Code doesn't specify how many vehicles are allowed. Also, an HO3 cannot have an offensive appearance, or produce more noise, smoke, dust, odors, glare, etc., than that which is produced by a normal residence – which is also an issue. The way it seems to read is you can have it [an HO3] as long as nobody knows it's there.

Certain conditions aren't applicable, such as is there is sufficient off-street parking. One condition they really do have problems with is with the business being carried out primarily within the confines of the building. Tammie Darcy asked how does that work for an electrician or a mechanical contractor who doesn't carry out their business strictly within the confines of

their house. Greg Hanna said those businesses would typically have 1-2 trucks. Mr. Darcy said not necessarily – an electrician could have a pole truck and an excavator where they could dig their own ditching. A plumber is the same thing. Member Hanna said then they should move their business to a commercial area. Darcy asked for location suggestions, and Member Hanna said he has no idea, that's not his problem; he's just trying to figure out the rules.

Member Smith said he disagrees with Member Hanna, and they need to have some leniency because that's what the Planning Board is here for, to make decisions that the Applicant has to abide with. Member Hanna said he thinks the Planning Board's job is to follow the directions in the Code and to add further stipulations. The Planning Board can't change the Code. For instance, when the Planning Board has to apply State law – they can be more specific and more harsh and more onerous, but they can't be less.

Member Smith said he believes this should have been decided a while ago when Mr. Darcy first came here, not three or four months later. Darcy has been trying to comply with everything, but if this was what the Board intended in the beginning, they should have advised Darcy so he could have done something else. When the Applicant first appeared before the Board, the sketch he submitted provided for the vehicles to be at the rear of the property. He's now changed the location to the front of the property. Member Smith said the Board is quibbling over a home occupation designation, and in his mind, a home occupation is the same as a farm. It doesn't make any difference if you have a business in your yard - that's your business. It doesn't make any difference if it's in a building. Member Hanna believes the size of the business would have any impact on it. Darcy has two big trucks, a little dump truck, an excavator. Mr. Darcy asked if the Board was disputing the number of vehicles? Member Smith said no, they're saying that you don't fall into an HO3 because you're not contained within a building. Member Hanna read the code which he feels is pretty straightforward and says under an HO3, the business has to take place within the confines of the building and the vehicles cannot be visible from the road or by the neighbors. Being behind the house would be fine. Tammie Darcy said since that was taken off the table and they're focused on leaving things where there are for now, at one meeting it was discussed that if that were approved, then they would create screening and plant trees or install fencing or do whatever was required to achieve that. Member Elizabeth Brutsch said if the Applicant's future intention is to go into the back so everything can be further off the road, they would be investing everything in a plan that may not be approved. She asked if the Applicant would prefer to come back once he has DEC approval? Mr. Darcy asked if the Board was saying everything has to be taken out of there until that time – the DEC is a slow process. He has met all the criteria that the DEC requested. He sent her pictures and will email her again to see at what point in time she can come out and approve the property. He will ask her to provide a written decision.

CEO Hernandez thinks if the Board were to move forward on this temporary idea that the Applicant is parking in the front until the DEC approves the back, and he screens that area, then he'll have to spend more money to screen the back. Member Smith said let's just let it ride pending receipt of the DEC decision.

Member Brutsch said the Board has had three months to think about this, and she feels it should be considered a small commercial business. They have three trucks, a log truck has been involved, there's washing of vehicles. Mr. Darcy asked what's the difference if he washes his pickup or his dump truck? Member Brutsch said the dump truck is a commercial diesel vehicle. If this was a larger commercial business, they'd be required to install some kind of commercial wash system and something to reclaim the water and not just let it flow out. The property is

located near DEC and is only 1.3 acres. If this were a 15-acre parcel, she'd have no problem with this. In her opinion, there would be one dump truck and one excavator on the site as it stands now. That's her feeling after reading through the special permit requirements, site plan review, and looking at everything provided to the Board over the past few months, including what's been provided by concerned citizens.

Member Michael Blatt is in agreement. He thinks that there are so many factors involved that he believes the Board needs to wait until the DEC makes a decision before they make their decision because the Board won't know what constraints to put on a decision for the front area.

Member Smith said let it sit right now until the DEC decides, even if that's several months from now. Mr. Darcy will email Ms. Swenson and explain where he is with that, and let her know that the matter basically hinges on her coming out and making a final determination as to what she will and will not allow.

Member Hanna asked if for some reason Mr. Darcy is denied the use of the back part of his property, was he planning on keeping everything in the front of his property? Mr. Darcy said yes, and he'd then install the necessary screening. He asked what screening the Board would require, and Member Brutsch said that didn't need to be discussed at this point. Member Smith suggested he wait and see what the DEC does.

Member Hanna told Mr. Darcy that he may have to be prepared to move the whole operation if he's denied the use of the back. Mr. Darcy said he'll have to cross that bridge when he arrives there. Mr. Darcy asked where he would go where he wouldn't have to begin the whole approval process again and Member Hanna suggested a commercial property. CEO Hernandez said she doesn't believe it would be permitted in a commercial zone; in fact, she has been unable to determine which category to put it in. Member Hanna asked if it could be in an industrial zone? CEO Hernandez suggested perhaps it would be light industrial which includes contractors. Member Smith said the zoning needs to be changed. Tammie Darcy said there's only so much land in New Lebanon. Member Smith said get someone to sell you a piece of property. Tammie Darcy said if you know of any available land, let them know. Mr. Darcy said if I move to a piece of commercial property and there's a disgruntled neighbor next door, will the Board then say he doesn't fit into a commercial district? Member Hanna said they would have very little leeway to say anything. Member Hanna said you might still have to jump through hoops, but a whole lot less than this. Member Hanna said he has no problem with it being located in the back, but he does have a problem with it in the front.

CEO Hernandez said if they're going to let this ride until the DEC makes a decision, she recommends that Mr. Darcy report back monthly (via letter of email) so we're not left wondering what the status is, to which Mr. Darcy agreed. Mr. Darcy then said should the DEC said yes, make the provisions and say he can move it in the back, at that point does it become an HO3? Member Smith said that decision should have been made months ago. CEO Hernandez said the Board has to go through the process and review an application before they can decide whether it's going to be allowed or not. The Board would consider his application for an HO3 which requires a review, then they would set a public hearing, and then they would deliberate to decide whether to approve or deny it. You can't know that before going through the whole process. Mr. Darcy asked if the DEC factors into whether it is an HO3, and Member Hanna said no, the DEC doesn't factor into the conditions for an HO3. CEO Hernandez said the ZBA made that determination. What this Board is looking at is site plan review, which means where is the parking to be located, and which areas are going to be screened, what is

the lighting, where is the customer parking located (he does see his customers inside the house), etc. Member Blatt said Mr. Darcy said he does do paperwork inside the house. CEO Hernandez said it also requires special permit which can be denied. You don't know that in advance. Also, the original application was much different as it involved one or two trucks being located at the rear of the property; now it's three or four trucks and pickup trucks which are being located at the front of the property. Member Smith said the pickup trucks are the Applicant's own private vehicles. However, CEO Hernandez said they do factor into the decision on where they're going to be parked.

Member Smith said the Planning Board should have told the Applicant that HO3 didn't fit. CEO Hernandez said the Zoning Board has already decided that HO3 does fit and their interpretation was that it should go before this Board to see whether it's approved or not - not for interpretation, but to review the application and decide whether or not they were going to approve it (with conditions) or deny it.

CEO Hernandez said in her opinion, from an enforcement standpoint, once the Zoning Board deliberated, that lifted the stay of enforcement, and a cease and desist order should have been issued then. The Town showed leniency in allowing the Applicant to get through the board process; however, nobody anticipated it would take six months for the DEC to make a decision.

Mr. Darcy said if the DEC said yes and he does the necessary work required to be allowed to use the back part of his property, will it then be designated an HO3? The Board has indicated that they would be ok with it being an HO3 if the vehicles were parked in the back, which he's fine with, but it doesn't make any sense to say it's not an HO3 because they're parked out front but it is an HO3 if they're parked out back. Mr. Darcy doesn't believe the fact that he puts up fencing and whatever is necessary to block the view should change whether this is or isn't an HO3. Member Brutsch said from her perspective, it's more than just screening. It's the noise from the trucks. If the DEC says no, he can't use the back, she would look at items such as how early the trucks are allowed to start, how long can they idle for, how late can they be out, how many times can they come in and out, how many trucks will there be. In all honesty, if she was to make a decision right now, she would say one dump truck is allowed and the rest have to go. She'd look at how many people can park there during the day and things like that. If it does take place in the back, she would be more lenient and allow more trucks because it is tucked back from the road and it's not visible and right in the neighbors' faces. She also believes it would be prudent before the Board makes a decision on this to hold a public hearing and get input from other neighbors who might have a different perspective. Member Brutsch asked if the public hearing could be scheduled for the next meeting. Tammie Darcy said wouldn't you want to wait on that until they find out about the DEC because then they'll know what the picture really looks like. They first need to get the DEC to come out and finalize things.

Member Smith said they have to make a decision on whether they want him to go through all this, so in the end, with certain requirements, he will be allowed to go ahead. Member Hanna said he feels if Darcy doesn't get DEC approval, as it sits right now, he won't receive Board approval.

Member Smith believes Darcy has been held up for four months and if they voted tonight, the Board would not approve the Application. Member Hanna said they would have to vote no because the Applicant has not met the requirements. It would be easier to approve if the Applicant moved the vehicles to the back of his property.

Mr. Darcy said based on the DEC decision, if they say they're not willing to allow him to use the back, does that mean the Board is not going to go any further with the public hearing? CEO Hernandez said they can't answer that without first holding a public hearing. Mr. Darcy then asked if regardless of what the DEC says, would they then go forward with the public hearing? CEO Hernandez said, yes, if you want an answer. Member Blatt said the whole question is whether it's located in the smaller area up front versus the larger area in the back. The back gives you more leeway and more access, and the Board will set conditions to allow him to have more vehicles, things like that, if it ends up being the back. If it's the front, he will get crunched in and their conditions are going to be a lot smaller and he'll be limited with what he's allowed to do. Member Blatt said he's certainly all for Darcy being able to do this. His personal opinion is the conditions are what's going to change based on the DEC. He's not saying that the Applicant won't be able to do it.

Mr. Darcy said he needs to get a final decision from the DEC asap in order to be better prepared for this. Member Hanna said if it is in the front, Mr. Darcy is going to have a pretty big fight on his hands, especially from the neighbors. If you want to do it in the back, that obstacle would be lessened. Tammie Darcy said she's not sure which neighbors would have any issues as there are a lot of neighbors in support of this plan, but they haven't come out because they don't have an issue with it. They can certainly bring people that are all for it and don't have any issues at all with what they're doing to the Public Hearing once they get to that point.

Member Hanna said the Board will postpone this again and made a motion to put it on the agenda for next month, pending an email or something with more information, which motion was seconded by Robert Smith. The vote carried as follows:

Michael Blatt	Aye
Elizabeth Brutsch	Aye
Greg Hanna	Aye
Wes Powell	Absent
Josh Schuster	Absent
Bob Smith	Aye
Ray Herrmann, Chairman	Absent

Member Hanna asked for a motion to close the meeting at 8:17 p.m., which motion was made by Robert Smith and seconded by Michael Blatt. The motion carried as follows:

Michael Blatt	Aye
Elizabeth Brutsch	Aye
Greg Hanna	Aye
Wes Powell	Absent
Josh Schuster	Absent
Bob Smith	Aye
Ray Herrmann, Chairman	Absent

Respectfully submitted,

*Donna M. Gedeon*

Donna M. Gedeon  
 Planning/Zoning Clerk