

*Livonia Joint Zoning Board of Appeals
December 21, 2015*

Present: Chair P. Nilsson, R. Bergin, G. Cole, M. Sharman, B. Weber, Code Enforcement Officer-A. Backus,
Recording Secretary-B. Miles

AGENDA: **(1) Accept and approve the meeting minutes of December 7, 2015**

(2) Dan and Abby DeBolt – 4489 East Lake Road, Livonia, NY.

 Requesting an area variance for exceeding the 40% of the area of the principal dwelling, also the possible reduction in the front setback requirement and requesting a conditional use permit for a proposed accessory dwelling to the existing garage.

(3) Mark Thielges – 3155 Rochester Rd., Lakeville, Livonia, NY

 Requesting a use variance for residential use in an accessory dwelling at 3155 Rochester Road,
Lakeville.

Chair P. Nilsson brought the meeting to order at 7:00 p.m..

(2) Dan and Abby DeBolt – 4489 East Lake Road, Livonia, NY.

Secretary B. Miles read the Public Notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday December 21, 2015 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Dan and Abby DeBolt for an area variance pursuant to Section 150-17C of the Zoning Code Of Livonia. An area variance is requested for a proposed accessory dwelling to an existing house which will violate the requirements according to Section 150-60D which states the area for an accessory dwelling unit shall not exceed 40% of the area of the principal dwelling unit. Section 150-31D (1) which states conditional use permit requirements for such use. This property is located at 4489 East Lake Road, Livonia, New York and is zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Chair Nilsson asked for a poll of the Board for site visit:

R. Bergin: Yes
M. Sharman: Yes
P. Nilsson: Yes
G. Cole: Yes
B. WeberYes

Chair P. Nilsson asked the person representing **Dan and Abby DeBolt – 4489 East Lake Road** to come forward and address the Board and explain what they are purposing to do. Mr. DeBolt explained that they are looking for the approval to have the second floor of the garage as an accessory dwelling unit. The garage is already finished, but there is no a kitchen and some other minor modifications are needed. He understood that he needed to come before the Board because he needs to get a conditional use permit to transform this area into living space and depending on how the square footage is measured it might exceed the 40% limitation of the principal dwelling. Chair P. Nilsson asked if future buyers would be living in the principal dwelling. Mr. DeBolt stated he is not planning to live in the principal dwelling. M. Sharman stated that the buyer is here and he is recusing himself from this case. M. Sharman is the selling agent of the above referenced property. R. Bergin asked when you will know what the square footage is. Mr. DeBolt explained that the roof angles all the way down to the floor line of the upstairs. He thought that the square footage is based on where the roof gets to a certain height from the floor, so if we measured that ceiling height of maybe 5 feet then we would not need the variance. R. Bergin asked CEO Backus for his input. CEO Backus stated that it depends on whether the square footage is based on the footprint

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of the structure or the actual usable living space and he asked for B. Weber's input. For the purpose of zoning and actual living space criteria, Adam has looked into the code and he believes that the square footage is based on the foot print rather than the living space in this particular structure. B. Weber stated that he believes that anything under 5 feet in regards to building code is considered as habitable living space. There was discussion regarding at what height and what percentage is the guideline considered as habitable space. B. Weber stated that nothing under a certain height can be counted in the square footage. CEO Backus stated that once you take the space that is livable, he believes that it is 50% of the space below 7 foot is actually livable space. Adam indicated the issue is if the code is on the footprint or living space. B. Weber stated that he believes there is a stipulation where there has to be a certain height for it to be considered living space. B. Weber asked if the dimensions are available for this structure and if we are to count the floor space with the ceiling coming right to the floor. CEO Backus stated the dimensions are 30' x 28' rough which makes it 840 square feet. DeBolt stated that the house has roughly 1800 square feet of living space. CEO Backus stated that puts the accessory structure at 120 square feet over the 40% limitation. There was discussion regarding storage space and the stairwell, which possibly if these were taken out of the equation, it is agreed that possibly Mr. DeBolt may not be over by the 120 square feet. CEO A. Backus stated that the worst case scenario is that Mr. DeBolt will be looking at a 120 square foot variance, if the Board wants to throw it out because of the usable space is under 40%, then it is up to the Board. G. Cole indicated that possibly the Board may not need to pursue the variance.

Chair P. Nilsson asked CEO A. Backus if he is comfortable with not pursuing the variance. Adam asked if there was any risk of granting the variance anyway, in the case that the criteria is the space under the roof structure that determines the footage of usable space. B. Weber stated that he would make a motion to approve the variance with 120 square feet over the 40 % of the area of the principal dwelling. Chair P. Nilsson asked the prospective owner what his plans are with the accessory dwelling. The prospective owner stated that they will be living in the accessory dwelling over the garage. B. Weber asked who will be living in the principal dwelling. The prospective owner stated that the main house will be the rental property.

Chair P. Nilsson asked the Board if there was any further questions, being none the Chair opened the questions up to anyone in the audience, just state your name, address and state your question. Mr. Tom Rutherford stood up and stated that his address is 4491 East Lake Road. He stated that his concern is whether the main house and accessory dwelling will both become rental units. Mr. Rutherford indicated that he does not have a problem with one of the units being a rental, but he would not like both the units on this property being rentals. Both CEO A. Backus and B. Weber stated that the zoning code does not allow that. The property owner has to reside in one of the units on 4489 East Lake Road and the Board agreed.

Chair P. Nilsson closed the public hearing part of the meeting.

Chair P. Nilsson asked the Board to go through the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? No
2. Can the benefit be sought by the applicant be achieved by some feasible method other than a variance? No
3. Is the variance substantial? No
4. Will the proposed variance have an adverse effect of impact on the physical or environmental conditions in the neighborhood? No
5. Is the alleged difficulty self-created? Yes

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Chair P. Nilsson asked the Board to go through the criteria for the Conditional Use Permit.

1. Will the establishment, maintenance or operation of the conditional use be detrimental to or endanger the public health, safety, comfort, morals or general welfare? No
2. Will conditional use be substantially injurious to the use and enjoyment of other property in the immediate vicinity which are permitted by right in the zoning district of concern? Will the conditional use diminish or impair property values in the immediate vicinity? No
3. Will the establishment of the conditional use impede normal and orderly development and improvement of other property in the immediate vicinity for uses permitted by right in the district of concern? No
4. Will adequate measures be taken to provide ingress and egress in manner which minimizes pedestrian and vehicular traffic congestion in the public ways? No
5. Do adequate utilities, access roads, drainage and other facilities necessary to the operation of the conditional use exist, or are they to be provided? No
6. Does the conditional use permit in all other respects conform to the applicable regulations of the chapter and other town/village laws, ordinances and regulations? Yes

CEO A. Backus stated that this property is already setup for this type of situation and there should be very few issues.

Chair P. Nilsson asked if there is any further discussion from the Board.

Chair P. Nilsson asked the Board for a motion. M/2/C (B. Weber/G. Cole) to approve the Conditional Use Permit and variance as submitted.

Motion carried: 4 Yes 1 Abstain

(3) Mark Thielges – 3155 Rochester Rd., Lakeville, Livonia, NY

Secretary B. Miles read the Public Notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday December 21, 2015 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Mark Thielges for a use variance pursuant to Section 150-17C of the Zoning Code of Livonia. The use variance is requested for residential use in an accessory dwelling. This proposed use will violate the requirements according to Section 150-40E (10) which states that any residential use, including mixed use structures, are prohibited. This property is located at 3155 Rochester Road, Lakeville, New York and is zoned Commercial/Limited Industrial. The application for this project is on file at the Building and Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Polled the Board for site visit:

R. Bergin: Yes
M. Sharman: Yes
P. Nilsson: Yes
G. Cole: Yes

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B. WeberYes

Chair Nilsson asked Mark Thielges to come forward and state what he wants from this Board. Mr. Thielges stated that he is looking for a Use Variance for 3155 Rochester Road, as he wishes to create an accessory dwelling unit. A unit had previously been leased by the Democrat and Chronicle for several years. This unit is the first unit as you enter into his facility on the left

Mark explained that this unit was pretty much constructed for the Democrat & Chronicle (D & C) to their specifications which consisted of approximately 1,100 square foot office space and approximately 2,500 square foot warehouse. This area was manned basically 24 hours a day. They signed a five year lease with an option of another five years. About two years ago the manager stated the D & C will not sign another five year lease and they would only rent for one more year. Mark had offered to lower the rent to the D & C, but they were just not interested. Mark explained that he has contacted a realtor and the realtor took a look at this particular unit and commented on the layout and also stated that when renting out office space it is a dead commodity. Mark stated that the D & C wanted the unit set up this way. Mark has contacted other contractors and his present commercial tenants to see if any of them would be interested in renting this space and there has been no interest. He asked Dan Gaul to do a sign indicating that this particular site is available for rent and he has not received any responses. Mark informed the Board that Dan Gaul has expressed interest in moving from his present location and also the possibility of renting this unit. With a few minor renovations Dan wants to move his business (Sign Blazer) to this location (3155 Rochester Road). Dan Gaul will work out of this location and wants to also live at this location. He would have use of the warehouse for his business. Mark stated that he was unaware that the Livonia Code states that this space cannot be used as living space (residence).

Mark told the Board that when CEO A. Backus stopped in and told him that he could not have Dan Gaul living there, Mark asked why not. Mark stated that the Church has someone living in the building across the road and the storage facility to the north has someone living there and the Lakeville Lockup has someone living there. Mark was told by CEO A. Backus he needed to go before the Planning Board and the ZBA to request a Use Permit. Mark has been to the Planning Board and according to Mark they have no problem, but it is up to the ZBA to make that decision.

CEO A. Backus asked Mark if he is going to tell the Board that his tenants have expressed concern regarding the lack of security at this facility. With Dan Gaul being there and living there, Mark's other tenants will feel better knowing that someone is around and will feel more secure. Mark stated that Dan Gaul will get a reduced rental fee for being there. Mark also stated that he does not expect that Dan will not get himself involved if there happens to be a security breach, but Dan will be there to make the call to the Sheriff's Department and most times if potential violators know that there is someone on the premises that is possibly enough.

Mark stated that if he is unable to get this Use Variance, he will have to notify his tenants that there is no security and he is sure he will lose some tenants. He has already communicated to his tenants that there will be someone at the storage facility at night. When the D & C was there, they were the security because there was someone there all the time. Many of his present tenants have thousands of dollars' worth of property stored in this facility. In the past, new perspective tenants always asked if there is any security and Mark was able to tell them no, but the D & C is in and out of the facility all night, which keeps the unsavory elements out of there. Mark stated that the economic hardship is that if he does not have security, he will lose some of the tenants he already has.

R. Bergin stated that this area is zoned commercial/ limited industrial, but as you pointed out the neighbor to the south storage facility (SanFilipo) lives there and also the neighbor across the road, to the north (the church) also has the pastor living there, even though the church is closed. M. Sharman stated that the church came to this Board and it was granted use as a parsonage. R. Bergin wanted to know what Mark would do if Dan Gaul decided to leave after five years or whatever time. You will be faced with the same problem. How would you

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handle the circumstance then? Mark stated that he received a letter from the County stating that conditions cannot be placed on a use variance, specifically for Dan Gaul. This variance would not be specifically for this office that Dan Gaul will be occupying and if he were to leave this space, a residential use variance would remain in effect. Mark indicated that he anticipates that Dan or Sign Blazer will be there for a long time. CEO A. Backus stated that the issue here is whether the Board grants you this Use Variance with possible restrictions and whether or not the restrictions can be applied to this use variance. Adam stated that the County Planning Board is advising the ZBA to be cautious about granting the variance with the conditions Mark has submitted. Mark stated that he would be willing to come back to the Board if Dan/Sign Blazer were to move out and the residential use can be removed. B. Weber stated that the use variance goes with the property, not with the applicant, so the use variance is there forever. Mark stated that he sees Sign Blazer being there for a long time. Mark does not want the whole facility to be residential and that if Dan were to move out, Mark would be willing come back to the Board to have this unit revert back to commercial limited industrial. The Board indicated no that it does not happen that way. M. Sharman stated that Mark may have a good point, maybe by limiting residential use with conditions if Sign Blazer moves out, then Mark comes back to the Board. CEO A. Backus stated that if the variance was granted for Sign Blazer/small apartment and in the future this unit was remodeled to be a more extensive living space this could trigger a review. B. Weber stated that he has never seen a use variance revert back to the original status or be eliminated. Chair P. Nilsson stated he would not want to see it go away, but a condition be placed on the variance that at least one of the tenants on the property be working in a watchman type status. R. Bergin stated that maybe the condition should be put on the use variance that Dan would be the only resident and if he was to move that Mark has to come back to the Board. CEO A. Backus stated that he believes that the County is advising against that type of condition.

There was discussion regarding approving the use variance. B. Weber indicated that if the Board went through the criteria for a Use Variance, the question regarding financial hardship, that Mark has not proved financial hardship. There was discussion regarding the fact that the Use Variance would be for the entire property not just the one unit. Mark stated that it is not his intent to make the storage units into apartments. B. Weber indicated the Board's purpose is to make sure that the code is followed and he feels that Mark has not proved financial hardship.

There was discussion regarding security for the storage facility and whether his tenants will stay if there is no security. G. Cole stated that the Board does not get into the security issues. She indicated that the Board does not decide the use variance based on security. She also stated that she understood that it is a real issue for Mark and for his tenants but it is not really part of the Boards criteria for granting the variance. G. Cole stated that Mark has to show financial hardship for the whole facility/property. Mark stated he has not broken the figures down for the whole property. G. Cole stated that the Boards decision will be based on the whole property. There was additional discussion regarding the area that the D & C leased, the loss of revenue now that it is not being leased, and the fact that this unit was very costly for Mark to build. Mark stated that if this unit sits unused, he feels it is the bulk of the property, it is an economic hardship and tenants will leave due to no security. G. Cole indicated that these tenants did sign leases without any security at the time. Mark stated that is true but there was a presence there that served as a deterrent. Mark also indicated that Dan will not be an employee but possibly at some later date Dan may keep things trimmed up around the storage units and perform the duties of the night watchman and maybe Mark could put him on his payroll. Mark is not sure how this arrangement will work, he does not see this as a short term arrangement. CEO A. Backus stated that if this use variance, to allow residential use is permitted, there is the mechanism to review through site plan approval. B. Weber indicated that when the area was reviewed to set up zoning districts there was a reason the Town did not want this area residential. The other areas that have people living in them, those areas are pre-existing. CEO A. Backus asked if the Use Variance will negate site plan approval. B. Weber asked if CEO A. Backus has talked to the Town Board about this particular situation. The response was no.

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B. Weber suggested that Mark go to the Town Board to ask for an amendment to the zoning code for this area to allow residential use. The Town Board can change the law, but Mark will have to tell them what he has told this Board. If the Town Board makes the change, you would not have to come back to this Board for this use variance. Chair P. Nilsson stated that Mark could request a zoning change and this change will affect all the areas in the town in the commercial limited industrial district. Chair P. Nilsson also stated that the other possibility is that this Board has not heard anything on the possibility of hiring a night watchperson.

M. Sharman asked if Mark went to the Town Board, what the timeframe would be for the Town to act. CEO A. Backus stated that the Town would probably refer Mark to the Planning Board, but first Mark needs to talk with Supervisor Gott to get on the agenda of the next Town Board Meeting and the next meeting is January 7th, 2016. B. Weber and M. Sharman stated they would write a letter to the Town Board. R. Bergin asked if the ZBA Board should write a letter collectively to the Town Board. M. Sharman stated that Mark should come up with an estimated cost of hiring a night watchperson, a projected loss of income due to the D & C not leasing the office space and warehouse, and what rents were initially. Have figures available to hand to the Town Board so they can review them. Mark stated he wants to limit the residential to just this one unit. The comment was the Town will probably not make a decision at the first Town Board Meeting. CEO A. Backus stated again that this is a difficult use to prove, relative to a variance but Mark ought to take this to the Town Board. M. Sharman suggested that CEO A. Backus talk to Supervisor Gott prior to Mark talking to him.

Chair P. Nilsson asked for a motion. M/2/C (R. Bergin / M. Sharman) motion to table the use variance for 3155 Rochester Road until after this is reviewed with the Town Board.

Motion carried: 5 to 0

Chair P. Nilsson asked for a motion to approve the meeting minutes for December 7, 2015. M/2/C (M. Sharman / B. Weber)

Motion carried: 5 to 0

Chair Nilsson asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 8:40 pm.

M/2/C (R. Bergin/M. Sharman)

Motion carried: 5 to 0

Respectfully submitted,

Betty Miles
Recording Secretary