

PRESENT Mike Swanson, Ken Bedore, Bart Klettke, Abigail Stein, Shannon Fundis, Law Counsel Joseph Leone, \*Al Soluri arrived at 4:13pm.

PUBLIC HEARING Mike Swanson opened the public hearing at 4:08pm to determine if the proposed use for a storage facility at 845 Cayuga Street, Lewiston NY is a permitted use in B-1 Zoning, pursuant to Section 9 District Regulations D.1.b.g of the Village Code.

Amy Miller of South 1<sup>st</sup> Street stated that she does not know why anybody wants to convert the bowling alley into a storage facility; why build one across the street from another? Why have more storage when every other house in the village is an Airbnb?

Peter Coppins of 350 N. 3<sup>rd</sup> Street stated that the village has a code. All of you, I am sure, have read our codebook at this point. It pretty much is in black and white that says you can't do it. I am not sure why it has taken two months; this should have been addressed by our attorney. We follow the code – as the Zoning Board of Appeals you have a code to follow, it is up to you to follow it.

Tony Poletti of 825 Onondaga Street stated that he is speaking against the proposed plan; not the plan itself, I do not want to set a precedence to have storage facilities built all over the village. There is a delinquent apartment complex across from me; why wouldn't that owner consider doing the same thing? Once you open that door, you are setting the standard for the village.

Ann Cuppings of 250 S. 7<sup>th</sup> Street stated that she understands why the current owners want to sell, but I do not understand why the village would allow another inert, not-lively building. The bowling alley is one of the few places for people to go. There is nothing left for families in the village; I would hate to see it go.

Rich Donaldson of Onondaga Street stated that he thinks there could be a better location for this storage facility. A lot of people have invested into moving here; don't turn the village into Military Road.

Doreen Albee of 320 S. 7<sup>th</sup> Street stated that there was some controversy between the Planning Commission and Historic Preservation Commission on terms of what is allowed. In our code, in terms of personal service establishments, they are listed; but it also has a clause, 'such as, but not limited to.' In that issue, there is some judgement required. That is what we came to your body for, for further discernment.

David Giusiana of 625 Center Street stated that this is not black and white; there are many loopholes. Our code is horrible, it was done in a very abstract way, and not cognizant of the special qualities that is the Village of Lewiston. It is a generic code. I know alterations have been made over the years, but it still does not serve us the way it should. The code was created as a by-product of the master plan; is this a part of our master plan? There is no language in the master plan stating that we need warehouses, factories and storage. Our code has no verbiage for this, where other municipalities do have verbiage where permitted. Our predecessors saw some rationale in not including this type of use in the master plan, nor subsequently included it in our current version of the zoning and planning code; I think that is for a reason. It is not retail, this still is warehousing. And parking requirements under retail would require hundreds of spaces.

Legal representative of Vick Singh Ghotra, Corey Auerbach, stated that the applicant is entitled to bring forward a development pursuant to the village's Historic Preservation Commission and, somewhere in the middle, it was determined that there was a question regarding the permissibility of the use. It was not a question when he first approached the code enforcement officer with his development. It was not a question when he made his first or second appearance before the Planning Board. The only person that can interpret the code is the Zoning Officer. I am here to present that the proposed self-storage facility is, in

fact, a retail business establishment. There is no definition of retail business establishment in the zoning code. If it is not a retail business establishment, it is a personal service establishment, a term also not defined in the village code. If it is not a retail service establishment or a personal service establishment, it is clearly another business use, which is similar in nature and scale to those permitted uses. If it is none of those things, the code is ambiguous. It is not clear whether it is permitted or not permitted. The courts of the state of New York, including the highest court, the Court of Appeals, routinely determine that the ambiguity must be resolved against the municipality who drafted the code, and in favor of the interpretation of the applicant.

Auerbach mentioned other Niagara County communities that allow storage facilities, and stated he spoke with Tim Masters, the Code Enforcement Officer of the Town of Lewiston, who informed Auerbach that storage facilities are permitted in the business district in the town. Auerbach also stated that the Lewiston Mini Storage was approved in the same B-1 zoning district.

Auerbach requested that the Historic Preservation Commission and Planning Commission minutes from the meetings held on October 11, 2022 be interpreted in the minutes, as well as the minutes from the meeting held on March 13, 1995:

\*Attachment A: Historic Preservation Commission Minutes – October 11, 2022

\*Attachment B: Planning Commission Minutes – October 11, 2022

Attachment C: Minutes – March 13, 1995

\*Minutes have yet to be approved by the respective board members.

Auerbach stated he feels it is a credible argument that a self-storage facility is a retail establishment. It is a place where people store their personal belongings. It is similar to a personal service establishment. This is a personal service to people who need extra storage for their personal goods. Both retail and personal service establishments are not defined by an explicit definition, but by a non-exhaustive list of uses. Personal service establishments allow banks; I would argue a self-storage facility is similar to a bank, a place where you bring your money that you do not want to keep in your house until you need it. It is also very difficult to argue that the proposed facility is not similar in nature and scale to those permitted. The proposal is to renovate the existing building. It is also next to a pool service/supply store, a village highway or public works storage barn, and directly across the street from an existing self-storage facility. It is very difficult to argue that self-storage is any different from the mini-storage directly across the street and in the same zoning district. Auerbach closed his statements asking the panel to please, uphold your duty as the Zoning Board of Appeals. Whether it says it is allowed or if it doesn't, you have to side with the applicant.

Jim Fittante of 450 East Lane recited a provision in Section 6. A of the village code: 'The provisions of this ordinance shall be deemed to be specific. Those matters for which there are no specific provisions in this ordinance shall be deemed to be prohibited.' The only place in our code that mentions storage is an accessory use, and has to be with a business. It is only for the storage of vehicles in our code at this time. I agree with Tony (Poletti) that this could open the door for more storage facilities to open in this one square mile.

CALL TO  
ORDER

Mike Swanson called the meeting to order at 4:30pm

MINUTES

A motion was made by Bart Klettke seconded by Al Soluri and passed unanimously to approve the October 25, 2022 meeting minutes.

NEW  
BUSINESS

**845 Cayuga**

Bart Klettke asked Law Counsel Leone about Auerbach's statements about having to rule in favor of the applicant. Leone said it is correct in New York State Law, Court of Appeals, that if there is ambiguity, that you have to decide in favor of the applicant. However, what Mr. Fittante just cited from the code is absolutely accurate. There is a provision in our zoning that says, 'The provisions of this

ordinance shall be deemed to be specific. Those matters for which there are no specific provision in this ordinance shall be deemed to be prohibited.’ So we do have something in our code that attempts to resolve the ambiguity by way of prohibition. This board will have to decide whether or not there is ambiguity, and if so, should that be resolved in favor of the applicant; or whether or not the provision in the code cited above, which of those is applicable in this particular set of circumstances. It is the decision of the Zoning Board of Appeals as to whether or not this is ‘retail of a community service nature’. Retail is not a word described in our code. If there is no stated definition, you can look to the ordinary definition in the dictionary. Leone asked the board to come up with findings for their decisions and to recite these findings for the records; to determine if or if not storage is a retail business establishment, a personal service establishment, and/or similar in nature and scale to what is permitted in the B-1 district list.

Leone pointed out that the existing storage facility approved in 1997 predates the Village’s current master plan, which was established in 2004. The current master plan states that each zoning district contains non-conforming uses.

Bart Klettke stated that the phrase in the code, ‘but not limited to’ is a wide open statement. Leone said it is a wide-open statement, but the board has to decide if it is, as worded in the code ‘other businesses, which in the opinion of the Board of Appeals, are similar in nature and scale to those permitted above’.

Auerbach pointed out under Section G of the Village Code, that the list of permitted uses has completely different uses.

Vick Singh Ghotra said that even though the storage facility across the street was approved in 1997 before the current master plan, the same Zoning Officer, Ken Candella, approved it.

Clerk Fundis clarified Ghotra’s statement; stating that Candella was only the Building Inspector during that time, not the Zoning Officer. Candella currently shares both titles.

Ghotra added that Candella guided him from the start, verbally and in writing stating that it was a permitted use. Ghotra presented copies of email correspondence to verify. Ghotra also said Candella said the Village would appreciate a mailbox service and parking for RV’s. I am not sure what happened in the middle.

Auerbach referenced Section 6 of the village code, regarding that if there is no specific provision, it is prohibited; noting the incredible ambiguity it creates. Mr. Leone pointed this statement out, yet the code itself defines and describes these uses with non-exhaustive lists of what is a retail service establishment and a personal service establishment. There is no clarity regarding how the applicant should interpret the village code.

Ghotra stated that from day one, I was welcomed and encouraged with this project. There were no zoning issues brought up. I spent more money, and 30 days later at the second meeting it was accepted, then towards the end confusion was brought up. My personal understanding of the code is that it should be allowed. What I offer is a climate controlled facility; I want to put life into this building.

Chairman Swanson stated that he agreed that storage is similar in nature to banks with storing money, and close to being similar in nature. To be a permitted use, it has to meet both criteria. Referencing Section 6 of the Village Code, Swanson added that because storage facility as a permitted use is not mentioned specifically, it is not ambiguous at all. The master plan wants to make the village more lively, to bring people in; a storage facility does not do that. Swanson said the authors of the code left out storage on purpose because the village is only one square mile.

Auerbach said that if is not retail or personal service establishment, than go to the use being similar in scale and nature.

Klettke mentioned Giusiana's point about the code being written improperly, stating that 'but not limited to' makes this wide open. I am afraid the code is too vague; they probably have a case. This is my interpretation.

Auerbach stated that this is an interpretation appeal, not whether or not you like the storage facility or not.

A brief discussion ensued on the boards interpretations of the code and storage as a permitted use or not.

Law Counsel Leone asked the board to vote on their findings and do a role call.

A motion was made by Bart Klettke and seconded by Al Soluri to approve storage as a permitted use in the B-1 Zoning District.

Clerk Fundis polled the board. The motion did not pass, with a result of one yes vote and four no votes:

Bart Klettke – YES	Al Soluri – NO
Mike Swanson – NO	Ken Bedore – NO
Abigail Stein – NO	

A discussion proceeded on the board's findings. Bedore stated that the provision in Section 6A of the Village Code covers the fact that storage is not specific, where it can be prohibited.

Swanson added that, Section G – other businesses, of the B District (business district) are similar in nature and scale to the ones permitted above. Since the businesses listed above do not specifically list a storage facility, or a warehouse facility, I do not feel it is allowed in that district. Section 6 says that if it is not specifically listed, then it should be prohibited.

Leone asked the board if they felt a storage facility was a retail establishment.

Swanson replied stating I do not think storage is a retail establishment; there are no objects for sale. The things that are for sale are really for rent.

Leone asked the board if they felt a storage facility was a personal service establishment.

Swanson replied stating no I do not think it is. It is close, which is where a little bit of ambiguity comes in; but storage is not listed specifically in the code.

Leone asked the Zoning Board of Appeals if they all agreed with these findings. Swanson, Bedore, Soluri and Stein, all who originally voted that a storage facility is not a permissible use in the B-1 District agreed.

ADJOURN A motion was made by Ken Bedore seconded by Abigail Stein and passed unanimously to adjourn the meeting at 5:00pm.

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Shannon Fundis, Clerk