

## Town of Conklin Zoning Board of Appeals – May 8, 2018

**MEMBERS PRESENT:** William Northwood, Chairman; Harold Cole, Art Boyle, Elizabeth Einstein Norm Pritchard,

**ABSENT:** none

**ATTORNEY:** Keegan Coughlin

**ALSO PRESENT:** Nick Vascello, Code Officer  
Mary Plonski, Secretary  
Willie Platt, Town Board Liaison

**VISITORS:** Ronald Lake  
Ellen Osborne  
William Osborne Jr.  
Chris Kehoe  
Joe Tuzze Sr.  
Joe Tuzze Jr.  
Sue Lott  
Linda Romanczuk  
David Wagstaff  
Bill Osborne  
Dell Boyle

**7:05 P.M.** Chairman Northwood called the meeting to order

Chairman Northwood called the meeting to order and advised those present of emergency fire exits and that an official record of the meeting will be available within 30 days at the Town Clerks Office.

**Agenda Item #1 JVA De-Icing Inc. 132 Shaw Rd. Conklin, NY 13748  
Tax Map No: 178.15-1-1 Request for Area Variance**

**Increase maximum number of tractor trailers for (Industrial Development Zone) from 50 allowed by code to 60 tractor trailer truck trips per day.**

**Increase maximum number of tractor trailers for private drive to Progress Parkway (Limited Industrial Zone) from 30 to 60 tractor trailer truck trips per day.**

Chairman Northwood read into record the following correspondence:

1. Application/Letter of Intent from Applicant.
2. Broome County 239 review comments dated May 3, 2018
3. DPW Engineering Review Comments.

Alan Pope Attorney introduced his group present tonight. Joe Tuzze Jr., Joe Tuzze Sr., Ronald Lake P.E.

He asked if he could respond to the Broome County 239 comments. (Read into record attached letter)

Mr. Pope also commented that he felt the 239 comments were directed in part to the Zoning Board but also to the Planning Board and that the Zoning Boards jurisdiction was limited and therefore most of the comments were for the Planning Board if the variance was granted tonight.

The Zoning Board reviewed The 239 comments from Broome County. It was noted a majority of comments will be handled by the Planning Board during their Site Plan Review.

Ron Lake explained that there was a very small area of wetlands near the railroad at the current site that may be affected but that there would not be any fill put there. Ron commented that he is near completion of the SWPPP and is working jointly with the USACE and NYSDEC.

Alan Pope asked if the attorney would accept a copy of the Joint Permit Application to NYSDEC/USACE as a part of the application. Keegan Coughlin approved.

Mr. Pope commented that the applicant realized there have been complaints and issues with truck traffic on Hardie Rd. They did not have a way to ease the traffic on Hardie Rd. For the past few years they have been stumped by that dilemma. In order to alleviate the complaints, the Tuzzes have been trying to contact the parcel owner (Thomary Inc.) next to them whose property is land locked to work out a deal for an easement for a private roadway across that parcel. The Tuzze's had tried for many months to contact them to no avail. Mr. Pope received a call from Brady Begeal (Town attorney) telling him of a provision in the Highway law that allowed for private individuals to have property eminent domain. A private person can bring an application to the Town Court with a jury and obtain rights for a property to put a driveway through someone else property for a private entrance. We prepared that petition and filed it here in town court and served it to the owner of this land locked piece. The owner contacted the Tuzzes and came here for a meeting. They made an agreement and the petition was withdrawn from town court. With this easement and an agreement with property owner VanDeusen we are able to build a private road across the parcels and onto Progress Parkway. I think it is important to mention that JVA has been sensitive to the neighbors on Hardie Rd. That is why we are here today to try to mitigate the tractor trailer truck traffic on Hardie Rd.

Chairman Northwood opened the floor for Public Hearing comments.

**Chris Kehoe (109 Hardie Rd.)** I have several questions.

- 1) They haven't addressed the hours of operation. We have been dealing with trucks in and out of there from 3 am to 10 pm. on a regular basis. What people don't realize is every truck that goes in there with salt also comes out of there with salt. There is no peak time. It is constant year round.
- 2) They also have not addressed that there is always machines, excavators down there running all hours of the day and night. What they don't realize is there are residents there. I have lived there for 30 years. I come home after work and I can't sit on my front porch because I have to sit and listen to a loader loading salt until whenever they feel like leaving which are generally 8 or 9:00 at night.
- 3) They have already started building this road with no approval.
- 4) If the truck increase is allowed, who is going to enforce how many trucks go in and out. From the start no one has enforced it. It's not just the traffic on the road. It's the noise. It's the hours.
- 5) Wetlands are not supposed to be touched at all. Anything you do with the wetlands, minor or not, will affect someone else.

Ron Lake asked if he could respond to a couple of the comments made.

- 1) Under wetlands you will see that once we disturb an area DEC requires us to replace it. Which we have.
- 2) When he found out they were building the road, he asked them to stop. And he believes they have.

**Ellen Osbourne (Hardie Rd.)** If you are going to build another road to go out to Progress Parkway, why do you need to use Hardie Rd. Why can't you just shut that one down?

Alan Pope explained that you never know what may happen. Accidents, weather conditions, number of trucks going in and out of Progress Parkway. There are a number of reasons you cannot limit yourself to the one roadway. And as long as they (JVA De-icing) is willing to self-impose a limit of only 20 tractor trailers on Hardie, we feel that is sufficient mitigation.

**Bill Osbourne Jr. (Hardie Rd)** The original 239 plan that was put in front of the Planning Board was 8-10 trucks per day. They said you would see more school buses than trucks. Then it got to 20-30 trucks. I don't know how it got to 50 trucks. Now they want 60 or above. Conklin can't enforce the 8-10 they supposedly have now, how are they going to enforce the 60.

Hal Cole asked to comment. He explained that the zoning code allows 30 tractor trailers in a Limited Industrial zone and 50 tractor trailers in an Industrial Development zone. That is tractor trailers, not trucks. The zoning law does not do anything with single axle trucks. Our code does not define tractor trailers, but New York State does. If you are a single frame, you are not considered a tractor trailer.

**Chris Kehoe** asked who can enforce the number of tractor trailers going in and out of the site. Chairman Northwood asked the attorney (Keegan Coughlin) who in the town should be enforcing it. Mr. Coughlin said the Code Enforcement Officer would be the authorized person with direction from the Town Board.

Keegan Coughlin explained that the Zoning Board only has jurisdiction on a variance for the number of tractor trailers and any other issues should be addressed to the Town Board who has the authority to make any types of changes you may be looking for.

**Chris Kehoe** responded that once directed to one board, they will direct you to another board and it's a viscous circle that never gets answered. No one takes responsibility.

Art Boyle commented that he has heard the noise at night and agrees it needs to be enforced. Mr. Boyle checked with New York State Police concerning the dumps with a pull along trailer. They do not view these as tractor trailers.

Hal Cole is concerned with moving forward with any approvals without contingencies in place. He feels that this should go before the Planning Board before they make a motion.

Keegan explained that the Planning Board needed the variance first.

Chairman Northwood explained that the purpose of tonight's meeting was to look at the increase of tractor trailers by 10. And that is all we are looking at. We have strict limitations on why we are here. The Planning Board has asked us for a determination on a variance tonight.

**Linda Romanczuk (Hardie Rd)** Asked for clarification on what was before the board tonight. Keegan Coughlin explained that it was a variance for an increase of 10 tractor trailers for the site that is Industrial Development Zoned.

Chairman Northwood closed the Public Hearing at 8:20 pm.

Nick Vascello stated that as Code Enforcement Officer he is responsible for enforcing the number of tractor trailers and that once the Planning Board determines what is allowed, he will enforce that to the best of his ability.

Attorney Coughlin stated that this is an Uncoordinated SEQR review of an unlisted action.

EAF was then reviewed by the board. The only changes that were made were the following:

Part 1: E.1 d. was changed from “no” to “yes”.

E.2 j. was changed from “no” to “yes”.

k. was changed from “no” to “yes” (minor area)

Motion by Liz Einstein: “I move that we GRANT the application of JVA De-icing, Inc, for an area variance for property located at 132 Shaw Road, Conklin, NY, tax map # 178.15-1-1 to allow a total of 60 tractor trailer truck trips in the Industrial Development Zone where only 50 are allowed by the Town of Conklin Code Law and also a total of 60 tractor trailer trips in the Limited Industrial Zone where only 30 are allowed with conditions\* because the benefit to the applicant, when considered against the detriment to the health, safety, and welfare of the community, weighs in favor of the applicant based on the following findings of fact:

The variance will allow for a reduction in the traffic on Hardie Road, favored by Broome County, and the applicant has gone to great lengths and expense to reduce the problems on Hardie Road.

1. An undesirable change will not be produced in the character of the neighborhood because the purpose of the variance is to lessen the problems.
2. The benefit sought by the applicant can only be achieved with the new road and an increase in the tractor trailer use on the proposed new road.
3. The requested variance is not substantial because heavy truck traffic already exists.
4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood because this is an already existing business where tractor trailer/truck use already allowed.

This motion includes the following conditions:

- The motion is contingent on both site plan approval and the proposed road being built off Progress Parkway.
- Traffic on Hardie Road must be limited to a maximum of 20 tractor trailer truck trips per day.
- Traffic on Progress Parkway must be limited to a maximum number of 60 tractor trailer truck trips per day.

The applicant complies with Chapters 72, 76, 94 and 111 of the Conklin Code law.

• Contingent on the Conklin Planning Board addressing all the County concerns listed in the 239 review such as: Applicant’s awareness that a small portion of the property is in the FEMA Special Flood Hazard Zone; the concern with the DEC wetlands and NWI wetlands are addressed; and it is noted that concerns with matters like salt barns, hours of operation, a new SWPPP are outside the scope of our authority.

This Board did a review of the SEQRA FULL EAF and made a negative declaration with the knowledge that the Planning Board will also conduct this review. “

Board member Hal Cole asked that the motion include with conditions, the third paragraph of the JVA De-Icing, Inc. Proposed Modified Site Plan where the applicant pledges to self-restrict the maximum number of tractor

trailer traffic on Hardie Road to no more than 20 per day and possibly less. Einstein had no problem with the addition to her motion and the Board voted its unanimous approval of this addition to the motion.

Chairman Northwood thanked the Applicants.

**William Northwood motioned to adjourn the meeting.** All present board members approved.

**Next Zoning Board Meeting will be held on Tuesday, June 5, 2018.**

Northwood closed the meeting at 9:53 p.m.

*Respectfully Submitted,*

*Mary Plonski – Zoning Board Secretary*