

Joseph M. Lee, Mayor

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Shannon Zabelny

Shari Wilson-Pearce Village Manager/Clerk
Jeff Pearce Supt. of Public Works

VILLAGE OF HILTON

59 HENRY STREET
HILTON, NY 14468

(585) 392-4144
(585) 392-5620 Fax
voh@hiltonny.org



Hilton Zoning Board of Appeals
Meeting Minutes of July 13th, 2021
Approved

- ZBA Member's Present: Chairman Kim Fay, Pat Hollenbeck, Shelly Kordish, Harry Reiter Sean Myers (acting alternate for tonight's meeting), and Joe Ruta
- ZBA Member's Absent: Nicole Pennock
- Village Board Absent: Mayor Joe Lee and Village Board Liaison; Larry Speer
- Administration Present: Code Enforcement Officer; Mark Mazzucco, Recording Secretary; Debbie Jones and Office Clerk; Aimee Doser
- Guests: Salvatore Fantauzzo, Dave Montralloy, Gary Inzana, Mike Lee, Mark Hedberg, Ann Hedberg, Christine Brower, Larry Gursslin, Troy Sears, Cindy Sears, Dave Amo, Ann Steinmetz, John Steinmetz and Tom (?) Hinkley

Chairman Fay called the meeting to order at 6:30 p.m. with the Pledge of Allegiance to the flag and a moment of silence.

MINUTES:

Chairman Fay made the motion to accept the amended June 8th, 2021 Zoning Board of Appeals meeting minutes, seconded by **Member Kordish**, and approved 4-0-1 (Member Holenbeck abstained)

REPORTS:

- Village Board Liaison Larry Speer Not present
- Mayor Joe Lee Not present
- Code Enforcement Officer Mark Mazzucco Gave his report

Chairman Kim Fay opened the public hearing at 6:39 p.m.

ZONING SEGMENT – VARIANCE – 75 LAKE AVENUE

- Application of Michael D. Lee, property owner of 28 Henry Street, for a Variance to house a domesticated, housebroken Pig on the lot. Section 275-9 (A) states-Except as otherwise expressly provided in this chapter, no animals, fowl, or poultry shall be housed or kept on any lot other than customary household pets. This property is zoned Residential.

Mike Lee, property owner of 28 Henry St. stated he leases this property to Jeremy Williams. Mr. Williams has an emotional support animal which is a 60-pound mini pig., even at 60 pounds they are still considered a mini pig. Athena the pig is an indoor, housebroken pig and litter trained. Athena only goes outside for a brief walk in the yard, she is spayed and current on all her shots. Mr. Lee stated up to this point there have been no complaints and Mr. Williams has been a great tenant.

PUBLIC COMMENTS: Opened at 6:42 p.m.

Ann Hedberg, 134 West Avenue feels the Village would be opening a can of worms to other farm animals if this application is approved. Mrs. Hedberg stated she does feel for the need of emotional support.

Larry Gurslin, 165 West Avenue asked Mr. Lee if he had a written lease with this tenant. Mr. Lee stated that he does have a written lease and added with the Fair Housing Authority he cannot deny an emotional support animal. Mr. Gurslin stated he is personally against this application. David Amo, 34 Henry Street questioned if there was paperwork pertaining to all of this? Mr. Lee stated there is documentation. Mr. Amo exited the meeting.

Mark Hedberg, 134 West Avenue asked why this application was not going through a violation process. Code Enforcement Officer Mark Mazzucco explained the process of violation and court remedy. Secretary Debbie Jones stated by the time it made it into the courts, it could be the October timeframe.

Christine Brower, 184 South Avenue asked if there have ever been any other animals in violation and asked to leave the Village. Code Enforcement Officer Mark Mazzucco stated none since his time with the Village. Ms. Brower states she remembers a goat in the backyard of 148 South Ave.

Cindy Sears, 130 Gorton Avenue stated she is totally opposed to this application and feels it will open the door to other “farm” animals coming into residential neighborhoods.

Chairman Fay read 3 letters that were received in opposition of this application. The letters will be on file attached to these minutes.

PUBLIC COMMENT - CLOSED AT 6:52 p.m.

Code Enforcement Officer, Mark Mazzucco stated the following:

- Letters to homeowners were mailed/notifications in order
- Matter is a Local determination per Exemption(s) in Schedule ‘A’ of the Monroe County DRC
- This is a Type II action under SEQR and no further review is required.
- There are no complaint letters or code enforcement actions in the property file.

BOARD COMMENTS:

Member Myers agrees with the opposition, he does not feel a pig should be in a residential area.

Chairman Fay stated his first real concern is about diseases. There are diseases that can be passed on from pig to human. **Chairman Fay** also did some research on Villages near the Village of Hilton and there were zero allowances made for pigs.

Member Kordish stated all her questions have been addressed.

Member Holenbeck noted that some of our laws are antiquated but this particular one is not.

Member Holenbeck is sensitive for the need of emotional support, but she does not feel a pig should be residing in a residential community.

Member Reiter stated his questions have been addressed except, if this is an emotional support animal, who makes that decision? A doctor makes that decision.

Mr. Lee states with the moratorium on evictions, he is not sure if he will run into issues with the Fair Housing Authority. Does Village Law trump this moratorium? **Member Holenbeck** explained we are not evicting the tenant; the Board is following Village Law regarding the pig.

After much discussion on a reasonable time frame for the tenant to find another home for the pig,

Member Holenbeck made the motion to deny the application of Michael D. Lee, property owner of 28 Henry Street, for a Variance to house a domesticated, housebroken Pig on the lot.

Section 275-9 (A) states-Except as otherwise expressly provided in this chapter, no animals, fowl, or poultry shall be housed or kept on any lot other than customary household pets. There was multiple public opposition to this application. The following condition was placed:

- The pig shall be removed from the property no later than October 31, 2021.

Seconded by **Member Myers** and approved 5-0

PLANNING SEGMENT – CONDITIONAL USE PERMIT – 75 LAKE AVENUE

- Application of Gary Inzana, property owner of 75 Lake Avenue for a Conditional Use Permit to allow an outdoor dining area. Per Section 275-15C (1), a Conditional Use Permit is required for any eating or drinking establishment not conducted entirely in a completely enclosed building. This property is zoned Commercial.

Salvatore Fantauzzo, owner of Salvatore's Pizza was present as was Gary Inzana, owner of the property. Mr. Fantauzzo explained he would like to put 8 (eight) tables on the east side of the building for a small outside dining area, the height of the tables would be 33". Mr. Fantauzzo stated there would not be a bar outside, it would be drinks that are being served with lunch/dinner (e.g., beer, wine). Also, having the outside dining area will help them if we go into another lockdown.

Code Enforcement Officer, Mark Mazzucco stated the following:

-Letters to homeowners were mailed/notifications in order

-Matter is a Local determination per Exemption(s) in Schedule 'A' of the Monroe County DRC

-This is a Type II action under SEQR and no further review is required.

-There are no complaint letters or code enforcement actions in the property file.

PUBLIC COMMENT: Opened at 7:14 p.m.

Chairman Fay read a letter from a resident, Denise O'Toole 212 Lake Avenue in opposition to the outside dining due to safety of the patrons. The patio is extremely close to a very busy, sometimes congested intersection, an intersect for emergency vehicles, and questioned if the sidewalk plows have been taken into consideration. This letter will be on file attached to these minutes.

ZONING SEGMENT – AREA VARIANCE – 75 LAKE AVENUE

- Application of Gary Inzana, property owner of 75 Lake Avenue, for a 2-foot Area Variance to construct a fence 1-foot from the Village sidewalk. Per Section 275-38(D), fences must be three (3) feet from Village sidewalks. This property is zoned Commercial.

Larry Gursplin 165 West Avenue suggested that Salvatore's sign off any liability from the Village to damages that may occur to the fence during snow removal. Mr. Fantuzzo stated he would be willing to sign off on any liability releasing the Village from damage that may incur to the fence during snow removal.

Code Enforcement Officer, Mark Mazzucco stated the following:

- Letters to homeowners were mailed/notifications in order
- Matter is a Local determination per Exemption(s) in Schedule 'A' of the Monroe County DRC
- This is a Type II action under SEQR and no further review is required.
- There are no complaint letters or code enforcement actions in the property file.

ZONING SEGMENT – AREA VARIANCE – 75 LAKE AVENUE

- Application of Gary Inzana, property owner of 75 Lake Avenue, for an Area Variance to construct a fence four (4) feet high in the side yard. Per Section 275-38(C) On a corner lot, no fence, wall hedge or screen planting over three (3) feet above road grade in height shall be constructed within the yards required adjacent to the streets. This property is zoned Commercial.

Code Enforcement Officer, Mark Mazzucco stated the following:

- Letters to homeowners were mailed/notifications in order
- Matter is a Local determination per Exemption(s) in Schedule 'A' of the Monroe County DRC
- This is a Type II action under SEQR and no further review is required.
- There are no complaint letters or code enforcement actions in the property file.

BOARD COMMENT:

Member Holenbeck would like to see the railing come in from the sidewalk a little bit more. Since it is a busy intersection both with vehicles and pedestrians, **Member Holenbeck** is concerned about the height of the tables, especially if adding umbrellas to the tables along with

the railing obstructing the view for pedestrians and vehicles at that intersection. **Member Holenbeck** asked what type of material would be used for the railing. Mr. Fantuozza stated they would be able to adjust the height of the umbrellas on the tables if that is an issue and he is looking at wrought iron for the railing/fencing.

Member Reiter asked why the patio area couldn't be at the west end of the building. It was explained the west end of the building is used for the dumpsters. There is no other location for the dumpsters that won't take up parking. **Member Reiter** stated he personally wouldn't want to eat so close to the street.

Member Kordish thoughts were in line with **Member Holenbeck's** thinking there was going to be a fence. **Member Kordish** asked what the hours were going to be. Mr. Fantuozza stated he is going to start off with 11:00 a.m. – 8:00 p.m due to staffing issues.

Chairman Fay suggested looking into the railings with the movable feet on them. Mr. Fantuozza explained as nice as they are, people can easily remove them off the property.

Member Myers has no issues with this application, if Salvatore's take responsibility for any damage to the fence should any incur from the Village of Hilton from snow plowing. **Member Myers** added he likes Salvatore's.

The following motions were set in place:

Member Holenbeck made the motion to accept the application of Gary Inzana, property owner of 75 Lake Avenue for a Conditional Use Permit to allow an outdoor dining area. Per Section 275-15C (1), a Conditional Use Permit is required for any eating or drinking establishment not conducted entirely in a completely enclosed building, seconded by **Member Myers** and approved 5-0

Member Reiter made the motion to accept the Application of Gary Inzana, property owner of 75 Lake Avenue, for a 2-foot Area Variance to construct a fence 1-foot from the Village sidewalk. Per Section 275-38(D), fences must be three (3) feet from Village sidewalks, with the following condition:

1. The Village of Hilton shall not be responsible for expenses from damages that may incur to the fence during snow removal.

Seconded by **Member Holenbeck** and approved 5-0

Member Kordish made the motion to accept the application of Gary Inzana, property owner of 75 Lake Avenue, for an Area Variance to construct a fence 36-48 inches high in the side yard, as per a cell phone photo shown by the applicant to Board members, a printed photo was not provided; Per Section 275-38(C) On a corner lot, no fence, wall hedge or screen planting over three (3) feet above road grade in height shall be constructed within the yards required adjacent to the streets, seconded by **Member Reiter** and approved 5-0.

Larry Gurrslin complimented Code Enforcement Officer, Mark Mazzucco on the job he is doing. Mr. Gurrslin mentioned the season will soon be upon us when "Burch's" and "Zarpentine's" farm stands signs will be set up at their usual locations in the Village. Burch's is set up on the corner of Lake Ave. and West Ave. and Zarpentine's placed on South Avenue near East Ave. If we can just remember they both serve the community well in what they do.

Next Meeting: Tuesday August 10th, 2021

There being no further business, **Chairman Fay** made the motion to adjourn the meeting at 7:58 p.m.

Respectfully Submitted,
Debbie Jones, Recording Secretary

July 13th, 2021

Meet Athena!

Athena is a mini pig that resides at 28 Henry Street. She is 2 years old, and fully grown at 60 pounds - about the size of an English Bulldog.



60 LBS

Athena has lived at 28 Henry Street for nearly 2 years. She is an indoor, housebroken pig. She has been litter trained since 6 weeks old. The only time you'll see her outside is for a brief walk in the yard with her owner, Jeremy.

She is spayed, and current on all her shots.

She has the temperament and personality of a cat, with the build of a dog. She's a perfect fit for the home, and Jeremy promises that she'll be an only child. 🐷

Debbie Jones

From: John E. Steinmetz <jsteinmetz@bartonandloguidice.com>
Sent: Tuesday, July 13, 2021 10:49 AM
To: Debbie Jones
Subject: 28 Henry Street Hearing

Good morning Debbie, I hope to attend tonight's meeting. In case I cannot, please provide the following thoughts to the ZBA for their consideration. Thank you.

My name is John Steinmetz and I live at 81 West Avenue in the Village. I am writing to express my concern, with the request to house a domesticated pig at 28 Henry Street. I also offer that I have had the privilege of drafting municipal codes for over 25 years for over 40 communities. Some of these include the Villages of Bergen, Churchville, Honeoye Falls, Pittsford, Scottsville, and Avon. In addition, I have drafted regulatory amendments for rural communities such as Geneseo, York, as well as Ogden's Right-To-Farm Law.

Although unclear from the agenda, this would appear to be a use variance request. Section 275-55 of the Village Code refers to NYS Village Law for the consideration for granting a variance. According to NYS Village Law Section 7-712-B.2(b):

"No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created."

In other words the applicant has to meet **all** of the following standards:

- Standard #1: The applicant needs to prove that this property cannot realize a reasonable return for a single family dwelling that either has no pets or houses any type of permitted animal (e.g. dogs, cat, etc). I cannot see any means to meet this standard.
- Standard #2: There is nothing unique about this hardship that would only apply to this property and not every other property in the district. As a result, it will be impossible to legally deny future requests for pigs, goats, horses, etc throughout the Village.
- Standard #3: The only way to not alter the character of the neighborhood would be to require the farm animal to kept indoors. This is unrealistic and potentially inhumane.
- Standard #4: This application is a clear example of a self-created hardship. The owner of the property did not have to rent to a household with a pet not currently permitted under Village Law.

"If any one or more of the above factors is not proven, State law requires that the ZBA must deny the variance."
(Guidelines for Applicants to the Zoning Board of Appeals, James A. Coon Local Government Technical Series).

The granting of any type of variance for this application creates a de facto code amendment allowing pigs and potentially other farm animals within the Village without exception. As a result, I feel it should be denied. If the Village supports broadening the definition of domestic animals to include pigs or other farm animals, it should initiate a formal code amendment process. This would include a formal public hearing that all residents would be notified of rather than only those living close to 28 Henry Street. It would also require a vote by those we have elected to represent our interests, preserve our property values, and keep our community a great place to live.

Thank you for your time in this matter and for your service to our community.

John E. Steinmetz, FAICP
Senior Managing Community Planner
Sustainable Planning & Design

Barton&Loguidice

Office: 585.325.7190

Mobile: 585.797.7634

Email: jsteinmetz@bartonandloguidice.com

[Website](#) | [LinkedIn](#) | [Twitter](#) | [Facebook](#) | [Vimeo](#)

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Debbie Jones

From: Mark Mazzucco
Sent: Tuesday, July 6, 2021 7:54 AM
To: Debbie Jones
Subject: FW: 28 Henry Street request for variance

Importance: High

Debbie,

Please forward this email from William Moore to all the ZBA members for their review and consideration regarding the Variance request for 28 Henry Street.

From: willym41@rochester.rr.com <willym41@rochester.rr.com>
Sent: Tuesday, July 6, 2021 7:31 AM
To: Mark Mazzucco <mark@hiltonny.org>
Subject: 28 Henry Street request for variance

I would not like to see this happen. I see that the pig is domesticated and housebroken, but it is still a pig. If you haven't seen it, it's quite large.

We had a similar situation a few years ago with another neighbor that wanted to raise chickens. We are zoned Residential for a reason, and I do not want to open a can of worms by allowing this to pass.

Thank you for considering this request.

William Moore
141 Gorton Ave
Hilton, NY 14468

Debbie Jones

From: Ann Steinmetz <asteinmetz@faraci.com>
Sent: Tuesday, July 13, 2021 11:01 AM
To: Mark Mazzucco
Cc: Debbie Jones; Hilton133@aol.com; sherryafarrell@gmail.com; trusteespeer14468@gmail.com; John E. Steinmetz
Subject: 28 Henry Street- requested variance for domesticated pig

Good Morning All,

I am writing to express my concerns regarding a requested variance to house a domesticated pig at 28 Henry Street. I have resided at 81 West Avenue for the past 17 years and have never voiced a concern of this type before.

At the outset, I would like to express my support for the pig itself. I am an animal lover, a lifelong pet owner and a practicing vegan. I take the welfare of animals extremely seriously. But clearly the purpose of the hearing scheduled for tonight is not focused on animal welfare.

I feel it would be a huge mistake to grant a variance for this purpose at the home on Henry Street or anywhere else in the Village for that matter. It sets a precedent that will most certainly be utilized by others to justify bringing other purported domesticated, traditionally farm animals or exotic animals to reside in the village. Our village is a compact community. We live very close together as a community. Quite frankly, such an environment does not lend itself to accommodating these uses. The benefits of living together in our compact, intimate community are many. However, one of the drawbacks is that it simply is not feasible or wise to accommodate such requests. Should it catch hold there will be issues of animal crowding, noise, sanitation, safety, etc.

Lastly, such uses, in such a compact community, will impact housing values and community character.

Plain and simple- a person wishing to rent a home, who has a domesticated pig, should seek housing in a more rural environment where this type of residential use may be allowed already, is less impactful the lower density and lower negative impacts overall. I am sure this is a very sweet pig, but the long term consequences of granting the variance are clearly foreseeable.

Thank you for your service and your consideration.

Respectfully,

Ann Steinmetz

Faraci Lange
ATTORNEYS

Ann Steinmetz, RN, BSN
Legal Nurse Consultant

28 East Main Street, Ste 1100
Rochester, NY 14614

P (585)325-5150
F (585)325-3285
asteinmetz@faraci.com
www.faraci.com

Debbie Jones

From: Mark Mazzucco
Sent: Tuesday, July 6, 2021 7:51 AM
To: Debbie Jones
Subject: FW: Outdoor Dining at 75 Lake Ave

Importance: High

Debbie,

Please forward this email from Denise O'Toole to all the ZBA members for their review and consideration regarding 75 Lake Avenue.

From: Denise O'Toole <Denise.O'Toole@dor.org>
Sent: Friday, July 2, 2021 10:41 AM
To: Mark Mazzucco <mark@hiltonny.org>
Subject: Outdoor Dining at 75 Lake Ave

Hi Mark,

I am writing on behalf of myself as a 33 yr resident of Hilton residing at 212 Lake Ave. I have a concern for the safety of the patrons at the outdoor dining. The patio is extremely close to a very busy and sometimes congested intersection. Especially being an intersect for Emergency Vehicles. I am sure the 3 feet variance is in place for a reason. Has the sidewalk snowplows been taken into account? I know they dig up our frontage during the winter, would the fence be an obstruction ? It is my hope that a traffic study was done.

I think it is wonderful that an established business is coming to Hilton.

Best Regards,

Denise O'Toole, 212 Lake Ave., Hilton, NY 14468