

**Lenox Zoning Board of Appeals  
Minutes  
February 13, 2019  
Land Use Meeting Room**

**Members present:** Acting Chair Shawn Leary Considine, (SLC); Cliff Snyder, (CS); Clayton Hambrick, (CH); Ned Douglas, (ND)

**Absent with notification:** Robert Fuster, (RF)

**Staff present:** Gwen Miller, Land Use Director/Town Planner, (GM) and Land Use Clerk Peggy Ammendola, (PA)

**Ashley Paduano-Informal request regarding a waiver from Section 3.5.3 of the Lenox Zoning Bylaw to place a temporary food concession truck at the property identified as 515 Pittsfield Road (Map 33, Parcel 5).** Originally scheduled for Feb. 6<sup>th</sup> but postponed until February 13, 2019 due to a winter weather advisory.

This informal request was presented by Ashley Paduano. There was no file. Also present was Patricia Paduano.

GM explained that Ms. Paduano had approached her and Building Inspector Jeff Clemons to inquire as to what she would need to put a food truck in the C1A district on Route 7.

GM stated that a dining establishment is allowed by right in the C1A district, but every change of use is subject to a Site Plan Approval, and referred to these sections of the zoning bylaw:

- *Table 5.2 - Schedule of Uses under Retail Business & Consumer Service Establishments Eating place serving food and beverages to be consumed within the building or in a designated and permitted outdoor area of the dining establishment.*
- *SITE PLAN APPROVAL IN THE C-1A AND C-3A ZONES, Section 3.5.3 which reads: Waiver If the ZBA determines upon review at a regularly posted meeting that there is no substantive change in use and the proposed use is not more detrimental than its present or immediate prior use and that the external enlargement, if applicable, is less than 2,000 square feet, the Board may waive any or all of the requirements of site plan review.*
- *Definitions-Eating Establishment: An establishment with kitchen facilities where food is prepared for consumption, including the serving of alcoholic beverages.*

SLC told Ms. Paduano that the Board has almost never dealt with Site Plan Review that was not filed in conjunction with a request for a special permit or a variance and therefore was not familiar with an approach. Additionally this use is not addressed in the zoning bylaw.

In answer to the Board's questions, Ms. Paduano said that the property is North's, and that verbal permission has been for her to rent space from Mr. North and locate the food trailer on the unpaved part of his property at the edge of his parking lot. He had sheds in this location previously. The size of the trailer is approximately 11' by 7' and she expressed that it would be easier for her to leave it in place rather than to connect and disconnect daily, but she hasn't completely decided. The trailer would be

used to sell specialty coffees, smoothies and acai bowls. She will not be cooking and will use a propane generator for power. There would not be any outdoor dining. She would operate this seasonally, with the thought of from May through November (weather permitting) and hours from 6:00 AM to 2 PM or 3 PM.

In effort to try to understand how this use could be permitted, the Board discussed what uses might be similar. Examples were the two existing seasonal farm stands and the vendors who participate in the Apple Squeeze, events at Lilac Park, etc. It was questioned if this use would be a change of use of the North's property or if it would be considered an additional use.

Should this be considered a special permit, this would assure that abutters were aware of the proposal and could weigh in on any issues they might have. The Board encouraged Ms. Paduano to look at the zoning bylaw and to work out details of what she wanted. It is important that she knows about setbacks and compliance with the sign bylaw. It was suggested that she use a plot plan and to denote the location of the trailer on the lot, photographs and dimensions of the trailer and that she provide detail on the signage. If it is determined that she has to file with the Board, she would need to provide much more information. It was also requested that she research the propane generator that she would select and provide information on the noise level. The concern was that it might be disturbing to nearby motel guests. Parking for patrons was a concern.

SLC said that it seemed that a seasonal year to year license might be more appropriate for this use and thought that this might fall under the Selectmen's jurisdiction.

GM said that she will check with the Selectmen and Town Counsel to see how Ms. Paduano should proceed. She will advise Ms. Paduano and also send to her the section of the bylaw with regards to signage.

Respectfully submitted,  
Peggy Ammendola