

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: January 18, 2018

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Phil Muck
Curtis Neureuter
Joseph Winiecki
Drew Reidel
Doug Scheu
Candice Pineau

APPLICANT PRESENT: Ms. Renee Allen

OTHERS PRESENT: Wende Porter

Appeal No. 2018-1 (Allen)
8593 Depot Street

Ms. Kent called the hearing to order at 7:00 p.m.

Mr. Winiecki made a motion to approve the minutes from the August 17, 2017 meeting for Mr. Daniel Schunk's hearing; second by Ms. Kent. All members voted "Aye." The minutes were approved.

Ms. Kent and read the following Legal Notice published in the "The Sun":

Allen: Application for a variance at 8593 Depot Street, to construct an accessory building in violation of the 25% maximum lot coverage permitted under Code section 225-15 A (5). The proposed structure would be used as a catering preparation kitchen.

Ms. Kent noted that our secretary Ms. Diane Herzog reviewed the Certified Mailings and they are in compliance with Code requirements. Ms. Kent then explained the order of hearing and appeal process. If the applicant does not like the decision of this board she can appeal to New York State Supreme Court; the decision of this board will be filed with the Town Clerk.

Ms. Kent then asked the applicant to give the background for her variance application, and Ms. Allen explained that she started a business seven years ago with a food truck and had that for two years. She then opened a restaurant (also running the food truck) for four years. A fire at her restaurant last August destroyed everything. The fire led to the

idea of building a prep kitchen for catering only. She looked into different options and concluded that catering is the business she likes the most; it can provide steady income long term. A building on her property makes it even easier; it alleviates paying rent every month and having to deal with landlord repair issues. Ms. Kent then asked why the building is large - - 16' x 24'. Ms. Allen replied that all commercial equipment is bigger than residential appliances. She explained her need for various large spaces for food preparation.

The board also asked Ms. Allen the following: *(her responses in italics)*

Do you have any employees? *No. I can do catering myself.*

Are your requirements for utilities any more than a residential building? *No, the oven is gas and refrigeration is electric.*

Since the structure fire where are you currently operating? *I'm not. I need a commercial kitchen for catering and a temporary location wouldn't work for me.*

Have you looked at sites for your kitchen in Eden? *I saw that the Chinese restaurant was for sale and I looked into it and it had many issues with the foundation and Code violations. A friend in East Aurora offered me space but he had a large sink hole so that fell through. There's a spot in Hamburg but they did not call me back.*

In your application it states drop-off catering. Would you also have customers coming to your location? *It would be delivery only, no take out.*

Tell us about your business plan - are you anticipating working 3 days a week at first, 7 days a week gearing up to two shifts? *The first year I would see it as mid to full time, I currently have a client base so as soon as I know I can open I will be getting orders. I don't think it would be full time at first.*

In your prior restaurant locations did you ever have any complaints about odors since its BBQ? *No, never had a complaint.*

Is it an outside smoker? *No, it's a small electric smoker inside.*

Do you see a time that you would like to use an outdoor smoker? *No, I've looked into that, but with that kind of BBQ you have to watch it all the time. That's not something that I want to do.*

What's is your catering capacity, serving wise? *The most I've done was a company picnic for 1400 people. Typically, parties are 60-100 people, but I can do more it just takes more prep ahead of time. I do office parties that are 30-50 people, birthday parties and graduations for 80-100 people and weddings for up to 200 people.*

Do you have deliveries of product and supplies? *No, I like to go to Restaurant Depot and buy the product. I can get smaller quantities and cheaper prices and I don't think I would need a delivery company.*

Do you think that you would ever outgrow your capacity for storage? – *Well there are a couple options, I could take a prep table out and put another cooler in but typically the product is in and out. If I have three orders a week the food would be there Monday shipped out Tuesday and in Wednesday shipped out Thursday, so even if I had more orders it's not like I have to keep a month of food stored. If long term I do want to get another building and employees I do have the framing plans to convert this building into a garage. But I think this set up will last a long time.*

When you went to the pre-submission in front of the Planning Board did you discuss what uses are allowed in this neighborhood? *Yes.*

If you receive needed approvals could you turn it into a walk-in restaurant, theoretically? *I can't because there would be parking, lighting and signage issues. If it was going to be a restaurant I would have to come back and get approval for that change. I have no interest in making it a take-out or restaurant.*

Your food truck takes up a lot of space in your driveway. Are you going keep it?

No, I'm planning on selling it if I get this approval.

In looking at other property in Eden, were you aware there is a small plaza at the end of town on Route 62 that has an availability? *No, I did not, I know there is a building down on Green Street for sale but I don't think it would work for me. I'm not sure I would be able to afford to buy another property.*

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The board then reviewed with Ms. Allen the considerations for the approval of an area variance:

1. Would there be any undesirable change to the neighborhood or a detriment to nearby properties? *I don't think there would be any negative impact. The property directly to my right is a garage with a row of trees. Behind it is a parking lot, and a neighbor's back yard. I feel there is plenty of space to enjoy their backyards. The building would match the look of my house, so it would fit right in. It would be very similar to someone building a garage at the end of their driveway. It would be sided with vinyl and there will be windows, facing Depot Street and on the back of the building.*

2. Could the same result be obtained by a different method, such as finding alternate space? *There may be another space that is big enough but then I would have to get all the equipment in there and then it would be someone else's property that I am leasing. Another reason that I'm doing this is to try to get away from leasing.*

3. Is the requested variance substantial? How do we define substantial in this case?

Greg Keyser, Town Engineer calculated the lot coverage would increase from 37% to 44%. Is it substantial (including visually) to place a building on a small lot that is almost as big as the first floor footprint of the house? If the size of the lot was slightly bigger this wouldn't be an issue because the percentages would change and in that case, you would have more lawn but the size of the buildings would be the same and it would be fine. A neighboring house has a garage that I believe is bigger than mine would be, and is two stories so my building would actually be smaller than the one right next door. The next property is the gun shop and that building is very big. I believe that the building I would like to put up would be the smallest on the road.

The lot coverage calculations given to the board were reviewed. Mr. Scheu asked for them to be reviewed, and pointed out that placement of the building makes it look smaller, since you are looking at the end gable. Also, one question is whether the gravel driveway is impervious. He suggested the driveway is a gray area and if it is gravel, is it hard pan and thus deemed to be impervious? Measures could be taken to make the driveway impervious, such as putting in permeable pavers. This would significantly

reduce the coverage. (Ms. Kent said she understands the town doesn't generally consider unpaved driveways to be impervious.)

The percentage without the gravel driveway is at 28% coverage. Mr. Scheu's calculation does include the back-concrete driveway. He suggested the other option would be to go to a smaller building and stay within the 25% limit. Mr. Neureuter added that Depot Street is a mixed bag, and if a neighbor's lot coverage is considerably more than the 25%, Ms. Allen's proposal would fit in the neighborhood.

4. Would physical and environmental conditions have an adverse impact, including visual impact? Would this variance set a precedent for more cluttered spaces on this part of Depot Street, which essentially is small residential lots?

5. Is the need for this variance self-created? The need for a variance is because Ms. Allen owns a very small lot (1/10th of an acre) in a neighborhood that restricts lot coverage. Perhaps she sees the new building as a self-created opportunity to bring a business to Eden, not a problem. *Yes, I have only owned the house since December 2016 but since I've been here 7-11 closed, Subway closed and Rayzor's is only seasonal. The Chinese restaurant will probably be vacant for a long time. So bringing in a small business would be positive.*

The board members then discussed various issues. Mr. Neureuter asked if at all possible are there other options that would work; we understand the convenience of walking out the door to the kitchen. He doesn't know how long Ms. Allen has been looking, but feels there are other options in the town that would be almost as convenient. Perhaps this is something we can revisit. He expressed concern about setting a precedent for lot coverage, and asked Ms. Allen to understand that every decision we make has other consequences for the town. Can she find another way that works for her, and can we give her more time to consider it? It's technical, but we all have questioned the calculations for lot coverage. Even if the numbers are right, is there was a way to reduce lot coverage?

Ms. Kent noted that visually this part of Depot Street is seen from West Church Street, which is the gateway into Eden from the Thruway. Would the variance allow more visual clutter there?

Mr. Reidel addressed the self- created consideration, and asked whether this variance, if granted, would cause the parcel to be further land locked or "Code locked." Would we be creating another self-created hardship if Ms. Allen outgrows the building and needs to expand five years from now? *Ms. Allen responded that she won't be looking to expand it further, and repeated that the whole point of focusing on catering is to get away from a huge business with employees. She sees a lot of opportunity in her proposal and doesn't think it's something that she would outgrow in a few years.*

Ms. Kent asked Ms. Allen if she would agree to take some time and take a harder look into another location for her kitchen. *Ms. Allen said she can continue to look, but it's not*

something she can do quickly; it might take years to find space to fit her plans. She hasn't worked with a realtor, though.

Mr. Muck mentioned property available at the mini plaza across from the church.

Mr. Winiecki said that we need clarification of the percentage of lot coverage, and whether the building size can be modified. *Ms. Allen replied that she would be willing to rework her plans to make the kitchen smaller, but doesn't want to get another architectural drawing done and then have her application for a variance denied.*

Mr. Scheu explained the measurements he used. He scanned the survey into a CAD program. It measured the home, concrete driveway and the new building and calculated that lot coverage would be 28%, which probably would not be considered a substantial increase in the total lot coverage.

The math per the CAD program is as follows: The parcel is 5230 square feet, and the house and concrete pad use 1105 square feet, or **21% existing lot coverage**. The proposed kitchen is 16'x24', or 324 square feet. This adds 7% to the coverage, making a total coverage amount of **28%**.

If a smaller kitchen of 14'x24', or 224 square feet were built, that would add 4% to the 21% existing lot coverage, for total lot coverage of **25%**.

Mr. Neureuter made a motion to table the appeal until the board can get clarification of the percentage of coverage calculations and Ms. Allen can consider her options; seconded by Ms. Kent. Ms. Kent voted Aye; Mr. Neureuter –Aye; Mr. Muck –Aye; Mr. Winiecki – Aye; Mr. Reidel – Aye. The motion was approved.

The hearing was adjourned at 8:07 p.m.

Respectfully submitted,
Diane Herzog
Secretary
January 23, 2018

The above minutes were reviewed and approved on _____, 2018 by

Note: Following the hearing: (1) Ms. Allen advised Ms. Herzog that she has found a location for her kitchen in an existing building on Route 62, and she's withdrawing her request for a variance at Depot Street at this time. (2) The Code Enforcement Officer and the Town Engineer confirmed to Ms. Kent that use of the CAD calculations is acceptable, and that the gravel driveway can be excluded from the lot coverage math.