

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

PUBLIC HEARING DATE: July 20th, 2023

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Curtis Neureuter
Doug Scheu
Candice Pineau
Joseph Winiecki
Drew Riedel
Patrick Riester

TOWN COUNCIL: Gary Sam
CODE ENFORCEMENT: Dave Rice

ENGINEER FOR THE APPLICANT: Jim Hannon

APPLICANT: Jeff Walker, Bubba Kalooster LLC
RE: **Appeal No. 2023-3**
8178 N. Main Street

Ms. Kent called the hearing to order at 7:00 p.m. and asked for comments on the June minutes. **Mr. Neureuter made a motion to approve the minutes from the June 15, 2023 meeting; seconded by Ms. Kent. Minutes approved unanimously.**

Ms. Kent then read the Legal Notice for the hearing published in the "The Sun":

Bubba Kalooster LLC (aka Rayzor's Dawghouse): Application for a variance at 8178 N. Main Street, to allow construction of a miniature golf course in violation of the minimum setback rule under Code section 225-15 B(1)(b).

Ms. Kent confirmed with Ms. Crowe that the property notice list was completed.

Mr. Walker was then asked to explain the reasons he applied for a variance. Mr. Walker explained that the original proposal from the miniature golf course company was squeezing 18 holes within the same area. He felt that 18 holes was too much and that 9 holes was a more appropriate size for the area. Mr. Walker further explained that a miniature golf course should not have the same requirements as a regular golf course. He plans to add a 4' iron fence with balusters 1-2" apart to the perimeter of the course, to prevent golf balls from leaving the course. Mr. Walker also plans to add a row of pine trees for additional screening. The direction of play is towards the rear of the property which is vacant land. Mr. Walker stated that he was permitted to build a pavilion on the property line, but out of respect for the neighbor, chose to build it 11' from the property line. The miniature golf proposal is 15' from the neighbor to the south and 10' from the vacant land to the west.

Mr. Walker was then asked questions by the board related to the requirements the board must consider in variance requests (*the responses provided by Mr. Walker and Mr. Hannon are in italics*):

Will this variance create an undesirable change in the neighborhood? *The proposal will not produce a change in the neighborhood character. It is the applicant's understanding that miniature golf is a permitted use in the MU1 zoning district. The proposal is to add an additional (but new) recreational use for a business that already has like activities occurring on the premises. Rayzor's Dawghouse presently has an outside pavilion for dining and associated recreational activities such as a playground and cornhole competition that take place in the area that is proposed for the miniature golf course. It is noted that the applicant has opted to limit the size of the mini-golf course to 9 holes in an effort to reduce the density of the construction impact. Further, the applicant proposes to mitigate any impacts to nearby properties with fencing, landscaping or other means of buffering.*

Is there an alternative method that could provide a solution? *The applicant has examined non-variance methods to achieve his stated goal of constructing a miniature golf course and found that this is the only reasonable avenue to pursue. The business exists on a small parcel with an irregular shape and already contains a dining facility, pavilion and associated parking. The only reasonable location for the development is in the southwest quadrant of the site (refer to proposed site plan). This location communicates with the pavilion and other existing outside activity areas. Note that miniature golf is proposed to be an ancillary activity and not the main business which is food service. Other configurations of the mini golf course were considered during the preliminary design process; however, they were considered infeasible due to the physical constraints of the property or the deficient communication with other buildings and/or site functions. Mr. Riedel asked if there is an option to purchase additional land at the rear of the property. Mr. Walker responded no, not at this time.*

Will this be a substantial variance? *Ms. Kent noted that the setback on the south is 15' or 70% deficient; on the west it is 10' or 80% deficient. The requested variances are substantial based on the setbacks presently required by the zoning law. However, it is noted that the zoning law lumps miniature golf courses in with full scale golf course fairways which require a 50' setback. The applicant believes this to be excessive, since mini-golf is played with only a putter and does not warrant the wide separation distance as does a full-scale golf course fairway. Further, the 10' setback proposed on the rear of the site backs up to a property that is undeveloped due to the presence of a drainage easement. The 15' setback on the south is consistent with that of the existing pavilion which is built within 11' of the property line. The applicant intends to supplement the south setback with vegetation, fencing or a combination of both and will work out those details with the Planning Board and the adjacent neighbor. Ms. Kent noted that this is a small parcel and a mathematically substantial request. According to New York State standards, variances over 50% can be considered substantial. The applicant confirmed the parcel is approximately 1.2 acres.*

Will the variance create an adverse environmental effect on the neighborhood? *The requested area variance will have no physical or environmental impact on the neighborhood. The end use of the property, should the variance be granted, is miniature golf which is an environmentally benign activity. The applicant proposes to comply with the hours of operation, noise, lighting and other regulations of the zoning law and any other reasonable conditions recommended by the Town Planning Board.*

Is the need for the variance self-created? *The site conditions were not self-created as the property is essentially the same as it was prior to the applicant's purchasing of the business in 2019. The applicant could avoid the necessity for a variance by simply not constructing the mini-golf course, but that does not achieve his objectives to provide a variety of recreational opportunities to his*

customer base. The main reason for the variance is the geometric limitations of the site and the excessive setbacks required by the zoning law.

Ms. Kent opened the hearing for public comment. Mr. Riedel noted that letters were received from two neighboring property owners in opposition to the variance request. David and Susan Engle, immediate neighbor to the south and Patricia Hartman, a second neighbor to the south. Both letters were read by Mr. Riedel and are attached to these minutes.

The following residents spoke about their concerns with the proposed mini-golf course:

Susan Engle, 8196 N. Main Street
David Engle, 8196 N. Main Street
Emily Zalacca, daughter of Mr. & Mrs. Engle

They emphasized concerns about noise, lighting, stray golf balls, trespassing, property damage, character of the neighborhood and impact on the use and enjoyment of their property.

Board members noted the applicant's perspective regarding the reach of the zoning code setbacks for recreational uses, but explained the ZBA cannot change the code. They will consider recommending that the Town Board review the setback limitations for recreational uses.

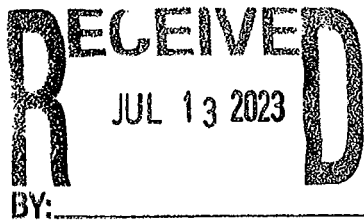
The board discussed the items it reviews for area variance applications. Discussion included that the 50' setback rule specifically includes miniature golf courses, and that the variance sought is substantially less than the required setback, given the size of the parcel and the placement of existing improvements, and the effect as a precedent of granting a variance that deviates so much from the setback rule.

Based on these factors, Mr. Riedel made a motion to deny the variance at 8178 N. Main Street, seconded by Mr. Winiecki. Ms. Kent, Mr. Riedel, Mr. Scheu, Mr. Neureuter and Mr. Winiecki all voted in favor. Motion approved unanimously.

Meeting was adjourned at 8:15pm.

Respectfully submitted,

Jen Crowe, Secretary
Eden Zoning Board of Appeals



MPH HOLDING, LLC.

8226 N. Main Street

Eden, NY 14057

716-572-4673

July 12, 2023

**Kristin Kent, Chair
Zoning Board of Appeals
Town of Eden
2795 E. Church St.
Eden, NY 14057**

Re: Bubba Kalooster, LLC DBA Rayzor's Dawg House

Dear Kristin;

I am strongly opposed to a variance at 8178 N. Main St. I respect the value of helping and supporting my neighbors however, this only serves one person with zero consideration to my neighbors.

Thank you to the Zoning Board of Appeals for your diligence to our town.

Sincerely,

A handwritten signature in cursive script that reads "Patricia A. Hartman".

**MPH HOLDING, LLC
Patricia A. Hartman
President**

July 12, 2023

Attention to the Eden Zoning Appeals Board:

I, David Engle, and my wife Susan S. Engle, reside at 8196 N. Main St. We are located immediately next door to Rayzor's Dawg House on the south side.

We have lived at this location since 1984. My wife has lived in Eden for over seventy years & I for 57 years. We have never experienced an issue with a neighbor until Rayzor's Dawg House was taken over by the current owner. He was given a ~~variance~~ ^{PERMISSION} to build his pavilion 11' at the closest point to our property. When the pavilion was built the owner agreed to install arborvitae (as was stated at the planning board meeting and presented on the architect's rendering of the proposed building prior to construction) which was never done. WE recently planted trees between our property line as a privacy hedge. He also agreed to abide by the sound ordinance & also keep all speakers facing inward. There were many issues - which I'm sure you are aware of - over this time frame. There was negativism, especially towards my wife, with vulgar language, and overly loud music that was unbearable. This caused us substantial stress & magnified a condition I have called Tinnitus. We had company that left because of excessively loud music. Because of the experiences we have had with the current owner there has been tremendous friction & distrust with whatever he says he is going to do.

Once again, we are the **ONLY** neighbors directly impacted by this mini-golf course proposition.

We agree with the current ordinance of 50' off the property line for his miniature golf course. There is great concern on our part about potential property damage to our home & shed. There are sliding windows on the patio & windows on both the front and the side of our shed. There will be many children using the miniature golf course. Through many years of vacationing in Myrtle Beach with my family & playing miniature golf together, we have witnessed how wild folks get while doing this event. The siding is also of major concern to us because the current owner has been so defiant with us & numerous others in our town. I can't trust his word that he would take care of any issues that might occur.

We also have major concerns with drainage to our property. Since the original owners built this property, we have had major drainage issues with the

rear portion [water in specific] of our property. This is a situation we have never incurred before.

The proposed lighting is also an issue for us. Our 3 bedrooms face the rear of our home.

Also, at times parking has been a huge issue. There are customers that park on the shoulder of Main Street at times. In specific, right next to the entrance of our driveway as we enter onto Main St. Last year I was almost broad-sided by a truck because of this. I can't imagine more vehicles in Rayzor's parking lot which we know will end up on Main Street.

The owner has tried twice through Hunt Reality to purchase our home. The current owner operates under a business heading of Bubba Kalooster LLC . Our lawyer told us that gives legal protection that he can't personally be sued.

We know we can't control what your final decision may be. However, we are asking that we are considered in your final decision. We believe this next venture next door to us is another attempt to drive us out of our home.

We are including with this letter a series of pictures to give you a perspective of what we must look at through our patio windows if this next project were to take place. If for any reason you would like to get a view of what we would be facing on the rear of our property, please contact me/us at 716-982 -4371. We welcome you to our property to view the proposed site as it sits adjacent to our property.

Respectfully,

David and Susan Engle