

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

PUBLIC HEARING DATE: February 15, 2024

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Curtis Neureuter
Doug Scheu
Joe Winiecki
Herb Stocksclaeder

EXCUSED: Drew Riedel
Patrick Riester

TOWN BOARD: Gary Sam

OTHERS: Dave Rice, Code Enforcement Officer

APPLICANT: TJ Forness, Operations Manager
Jim Hannon, Hannon Engineering PC

RE: **Appeal No. 2024-003**
Laing-Gro Fertilizer Inc.
8639 Depot Street

Ms. Kent called the hearing to order at 7:55 p.m.

Ms. Kent then read the Legal Notice for this hearing as published in The Buffalo News:

Laing-Gro Fertilizer Inc.: Application for variances at 8639 Depot Street to allow construction of a storage building in the MU-1 zoning district, in violation of the design requirements for setbacks, height and window glass under Code section 225-12 A7 Table 1.

Ms. Kent noted that in addition to the variance requests needed under MU Table 1, the applicant also is asking for a variance to use vertical metal siding, which is prohibited by the MU design standards.

Ms. Kent noted that if the applicant disagrees with the decision, it can appeal to the Supreme Court of Erie County. Ms. Kent also noted that any audience members who wish to speak will be allowed to do so after the application has been presented to the Board and the Board has asked its questions. When speaking, please identify yourself and state your address for the record.

The representatives for Laing-Gro Fertilizer were asked to explain why they requested the area variances. *As we expand as a company, we are looking to modernize and update. As our company grows, we need more storage, and more ability to hold liquid product. One of our storage buildings is very aged along with our current liquid dike area. We're looking to replace that with something more current.*

Mr. Forness and Mr. Hannon were then asked questions by the board related to the requirements the board must consider in area variance requests.

- 1. Will this variance create an undesirable change in the neighborhood?** *Mr. Forness stated that he does not believe it will. Laing-Gro will be adding additional landscaping to the corner area; working to add more greenery. There will be a containment dike and a metal building. There are three functions there. One is for warehousing; one is for loading and unloading of equipment/trucks and the third is the containment dike for tank storage. Ms. Kent noted that the Mixed-Use zoning code requires that buildings be 0 – 20' from the road so the yard setbacks requested are actually not close enough to the street. Mr. Hannon advised that Laing-Gro considers this building an accessory building. Mr. Rice stated that the MU zone lacks guidance for accessory buildings. Laing-Gro Fertilizer has a unique situation. They have a corner lot with two front yards, and with the rail lines, it would be a challenge to construct this accessory building 20' feet from both front yards. Mr. Forness stated when looking at the rest of the property and the way the buildings are aligned, it's along a specific property line. This building would be matching setbacks of other buildings on Depot Street. Mr. Rice - In other zones you can match the neighboring setbacks. Anywhere else in town, these requests would not be necessary.*

Ms. Kent asked if this new building will be more than one story? The building will be a single story but it's taller than most two-story buildings. It's 29' high? At the ridge, yes. This will also align with storage space and liquid containers outside. Mr. Rice commented that in an industrial business where there is palletizing, the height is necessary. It would be uneconomical to build a second story unless it could potentially hold 300-400 tons of material. Mr. Neureuter asked if there are other buildings on the property this tall? There are some smaller and some larger but all are similar. Mr. Rice noted that the MU district, through the Town's Master Plan, was designed to create a retail storefront, walkable community in the hamlet area. If we were discussing a retail shop on Main Street, we would want the two-story look to have the small-town walkable community feel. The MU Code was written to provide that image. This property and the Hemlock area are different. Other than the gun store, this part of Depot and Hemlock is an industrial setting. Requiring 40% window glass doesn't make sense on a storage building. No vertical siding was put in place for the future storefront image on Main Street.

- 2. Is there an alternative method that could provide a solution?** *Mr. Forness noted that there is no other location on the property that could fit this accessory building. Mr. Scheu asked if they are working within the confines of their space? Yes - when we bring our equipment in, we block our roadways. We have growers trying to get fertilizer. When we have to bring our sprayer in for loading on the pad, it sticks out; we can't move vehicles through. This variance would allow the larger equipment to get in. Mr. Stocksclaeder asked if Laing-Gro considered whether it has outgrown this parcel? I don't believe we've outgrown the parcel. With this storage building, there will be adequate room outside in the foreseeable future.*
- 3. Will this be a substantial variance?** *No. Mr. Scheu asked if this was because of the unique constraints of the MU and the existing conditions on the site? There are many things in that area. Depot Street is also a private road in that area from Green Street to Hemlock. Ms. Kent noted some of the variances are mathematically large, because MU now includes this industrial property, where the new regulations would interfere with operation of the business.*

- 4. Whether the requested area variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.** *Mr. Hannon noted that Laing-Gro has recently acquired the corner lot. The plan is to keep the parking area and work with the neighbor to improve the parking area. We will also introduce landscaping to the corner area.*

To help inform the board's considerations, Ms. Kent noted that the Purpose section of the MU Code says it's intended to "support a vibrant economic and neighborhood environment" and maintain Eden's "traditional community character." The MU Purpose language also says that properties may contain a mix of spaces and uses that are "meant to evolve over time." There is a need for clear standards to meet goals and objectives, while allowing for "flexibility and creativity." The standards are meant to be a "framework for high-quality development and flexible design alternatives." **MU Code sections 225-12A (1) and (2)**

Unlike some other sections of our Codes, the MU language invites us to be reasonable. Ms. Kent opined that the Laing-Gro property is deserving of flexibility. We can consider whether Laing-Gro is part of our traditional community character. It's both an established business presence, serving Eden's agriculture, and its buildings are a long-standing historical form. Ms. Kent included in the record a photo of the original buildings on this site in 1882 when it was a canning factory. (Photo from *Images of America - Eden*, p.71, by Eden Town Historian Susan Minekime, 2011) Since that time, the business has evolved several times. Most recently it was purchased by an international company that is investing in the growth of the plant.

Mr. Forness added that Laing-Gro is run like a family-owned company, supporting the community through youth sport sponsorships, sponsoring the Corn Fest and various other donations.

Mr. Neureuter echoed Ms. Kent's sentiments, noting with relief that the Zoning Board is given guidance for flexibility. While we must consider the variance standards for Laing-Gro, they can be applied a little differently for this historic property.

Mr. Winiacki noted that Laing-Gro is going out of their way, although not meeting the standards entirely - windows and setbacks and vertical siding. They're trying to make it look similar to what is already there rather than making it stand out to match the new code.

Mr. Scheu stated that in the context of the neighborhood it's the right thing to do to match the current setbacks.

- 5. Is the need for a variance self-created?** *Mr. Hannon commented that the question of a self-created need is kind of irrelevant. Depot Street is not a real street; it's a private drive. It wouldn't make financial sense for the company to modernize what's there to meet code. Mr. Forness mentioned that Laing-Gro is pulling from one storage building and liquid holding area and transferring to a new area. Those other areas can be repurposed. It's not economical for us to lose space for an entire year.*

The following residents spoke about their concerns with the proposed building:

Ronald Sheffer, 2687 Green Street expressed several concerns, including failure of the prior owner to sell the corner lot to him; poor maintenance of the corner lot; Laing-Gro customers and employees driving across the corner lot; whether adequate care will be taken with suspected underground gas tanks; the closeness of heavy vehicles to his house windows, emitting diesel smoke; and the company's failure to be respectful when he voices complaints.

Ms. Kent noted that the ZBA isn't authorized or qualified to resolve neighbor disputes.

Bobbi Lynn Scheffer, 2687 Green Street indicated she has no problem with Laing-Gro putting up the new building. Her concerns are privacy (workers able to see her family, including in her pool); vehicles discharging diesel fumes; and whether the new building will lower her property's value.

Ms. Kent repeated that neighbor disputes can't be resolved by the ZBA.

Zac Mangialomini, 2709 Green Street asked whether the new building location would change any plan in place for storing volatile materials. Was that considered? Is there a blast radius, and will it be extended? *Mr. Forness: it's liquid fertilizer. It's not combustible, it's not anything hazardous. It is all materials that are already on the property. We're just modernizing and updating it with more storage capacity. The way it is designed is meant to hold spills.*

Mr. Forness then informed the board that the Planning Board has preliminarily reviewed the drawings and the five variance requests, and had no objections.

Ms. Kent noted for the record a letter received from Pamela O'Gorman, DMV and Kevin O'Gorman MD expressing their full support for the project. They feel it's in the best interests of the Eden business community, and see no negative impact on their business at the former rail depot building (which is being remodeled to become the location of a new veterinary practice).

Mr. Neureuter made a motion to approve the requested variances at 8639 Depot Street to allow construction of a storage building in the MU-1 zoning district, in violation of the requirements for setbacks, height and window glass under Code section 225-12 A7 Table 1, and to allow the use of vertical metal siding under the MU design standards. Seconded by Ms. Kent. All in favor. Motion approved.

Meeting was adjourned at 8:27 pm.

Respectfully submitted,

Shelly Griebel, Secretary
Eden Zoning Board of Appeals