

Leon Blair, Vice Chair of the Town of Peru Zoning Board of Appeals, called the meeting of September 16, 2009 to order at 7:02 pm.

ROLL CALL:

WALTER RUSSELL, CHAIRMAN	: EXCUSED
LEON BLAIR, VICE CHAIR	: PRESENT
ROB BASHAW	: PRESENT
FRANK DENCHICK	: EXCUSED
JAMES FALVO	: PRESENT
TOM FUSCO	: EXCUSED
ROY ZALIS	: PRESENT @ 7:05
LAWRENCE BOSLEY (ALT)	: EXCUSED
DON MCBRAYER (ALT)	: PRESENT
ATTY. THOMAS MURNANE	: PRESENT
CEO. PAUL BLAINE	: PRESENT

APPROVAL OF AUGUST MINUTES:

MOTION: Mr. McBrayer made a motion to approve the August minutes. Second by Mr. Falvo.

ALL SO MOVED.

MOTION APPROVED.

PUBLIC HEARING:

1. APPLICATION:

DONALD THEW
Special Permitted Use for an Auto Repair Shop at 3458
Route 22

Mr. Thew submitted a letter requesting that his application be withdrawn.

MOTION: Mr. Bashaw made a motion to withdraw the application. Second by Mr. Falvo.

ROLL CALL: Mr. McBrayer- yes, Mr. Bashaw- yes, Mr. Zalis- yes, Mr. Falvo- yes,
Mr. Blair- yes.

MOTION CARRIED.

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5. APPLICATION: DENNIS MASON
Area Variance for an Addition at 793 Fuller Rd.

Mr. Mason stated that he is looking for a 12ft variance to add on to his existing pole barn. Mr. Dandrow, the neighboring property owner, was present and stated that he had no problems with the variance.

MOTION: Mr. Zalis made a motion to approve the application. Second by Mr. McBrayer.

ROLL CALL: Mr. McBrayer-yes, Mr. Bashaw-yes, Mr. Zalis-yes, Mr. Falvo-yes, Mr. Blair-yes.

MOTION CARRIED.

MOTION: Mr. Bashaw made a motion to amend the agenda to move the Allen Turner application before the Linda Covell application. Second by Mr. McBrayer.

ROLL CALL: Mr. McBrayer-yes, Mr. Bashaw-yes, Mr. Zalis-yes, Mr. Falvo-yes, Mr. Blair-yes.

MOTION CARRIED.

6. APPLICATION: ALLEN TURNER
Special Permitted Use for a 2-Family Dwelling on Dashnaw Rd.

Mr. Blaine stated that the lot is part of a previous subdivision and is located in and RL-1 zone. Mr. Blaine stated that it is a 1.7 acre parcel and does meet all zoning requirements.

MOTION: Mr. Bashaw made a motion to approve the application. Second by Mr. Falvo.

ROLL CALL: Mr. McBrayer-yes, Mr. Bashaw-yes, Mr. Zalis-yes, Mr. Falvo-yes, Mr. Blair-yes.

MOTION CARRIED.

7. APPLICATION: LINDA COVEL
Interpretation of Zoning Ordinance

Linda Covell, Don Covell, CJ Madonna, and Al Sweenor were present on behalf of the application. Mr. Blaine stated that Mr. Douglas Ferris, P.E., was present to assist the town for the application. Mr. Ferris stated that he has never worked for the Town of Peru or the Covells. Mr. Ferris stated that in review of the applications presented to the board, he noticed that the 60 days for an interpretation has been up however he does feel the applicant should be allowed to be heard. Mr. Ferris stated that he believes it to be a retail operation and that the Code Enforcement Officers decision for Mrs. Covell to obtain a Use Variance is correct. Mr. Madonna stated that in review of the previous meetings minutes, it states that there are no problems with the Christmas tree operation and that he would like that to be removed from the table. Mr. Madonna stated that he would like the uses asked for on the list submitted by Mrs. Covell and if any other products are to be sold and the Code Enforcement Officer determines that a Use Variance is required, then the applicant will come back in front of the board for approval. Mr. Madonna stated that there is not a store located on the property; however, the items are sold from a truck. Mr. Madonna stated that the Code Enforcement Officer believes that a water business cannot have incidental uses, however he believes a water business can. Mr. Madonna stated that they go to office buildings and rent and sell water coolers. Mr. Madonna stated that they

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do not want vending machines, cup cakes, or any other snacks. Mr. Madonna stated that he would just like the board to find under interpretation that the selling of water coolers, coffee products and cocoa products are accessory uses to the water bottling facility. Mr. Madonna stated that he believes the interpretation is necessary because there was a fire and they had built a building thinking all uses that were previously done could be continued. Mr. Falvo stated that when they had previously come before the board the application was viewed as an agricultural use however now the use that is being asked for is a business. Mr. Falvo stated that he believes the items compliment the product but are not agriculture therefore it is a business. Mr. Madonna stated that he still believes it to be an agricultural use. Mr. Madonna stated that he has been to several businesses that are agricultural and they also sell incidental items. For example, Rulfs Orchard sells baked goods that are not produced on the farm. Mr. Madonna stated that the primary business is always agricultural because it was decided that the selling and bottling of water is an agricultural use. Mr. McBrayer stated that other businesses should not be brought into this application. If Rulfs were to have a fire, changes to the use would be researched by the Code Enforcement Officer and they may need to bring an application before the board for review. Mr. McBrayer stated that he does believe that the bottling of water is agricultural, however over the years they have added some products that he does not feel fit under what is considered incidental. Mr. McBrayer stated that for the applicants protection and for the opportunity to present other minor items in the future he believes the applicant should be seeking a Use Variance. Mr. McBrayer stated that he believes there would not be a problem with getting a Use Variance because they are not negatively impacting their neighborhood or businesses and because of that he believes that it should not be denied but done in the proper procedure. Mr. Murnane stated that if they did want to expand further then the applicant would have to come back before the board for approval. Mr. Madonna stated that the applicant does sell Christmas trees and with the Christmas trees, homemade wreaths are also sold and he does not want to come back before the board in the future and be told he cannot sell the items that are currently being sold at the Christmas Tree Shop. Mr. Murnane stated that the Christmas Tree Operation has never been brought before the board as an issue. Mr. Madonna stated that he does not want them to be told they had never come before the board in regards to the Christmas Tree Shop. Mr. Murnane stated that if the applicant starts selling other items from the Christmas Tree Operation in the future then it could become a problem and the applicant may have to come back before the board however right now there is no issue with the Christmas Tree Operation. Mr. Madonna stated that as long as the board knows what is being sold at the Christmas Tree Shop and the board is okay with it then the application for the Christmas Tree Shop is mute. Mr. Blair stated that at the previous months meeting the Christmas Tree Operation had been brought before the board by Mr. Sweenor not the board. Mr. Murnane stated that he believes also from what Mrs. Covell had stated the previous month; the Christmas Tree Operation is a Pre-existing Non-Conforming Use. Mr. Madonna stated that if the applicant sells anything other than what they are currently selling and the Code Enforcement Officer does not agree with the sale of the items the applicant will come back before the board for a variance. Mr. Madonna stated that with respect to the interpretation he would like the board to make a decision on that because the applicant is hesitant on the Use Variance. Mr. Madonna stated that they are limiting the interpretation to the items he asks for and if they want to expand the operation further then the applicant will come back before the board for a Use Variance. Mr. Murnane asked Mr. Madonna what items are being requested to be considered because it is not clear what the applicant is looking for.

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Mr. Madonna stated that located in the application there is a sheet that shows the items that the applicant would like to sell however the second page can be disregarded because the applicant is looking for the items just on the front page which state the applicant is looking to sell store, repair, service, clean and display water coolers. The applicant would also like to store, repair, service and clean coffee brewers. Also stated on the list that the applicant would like to sell are coffee; hot chocolate, cold cups and utensils. Mr. Blair asked why the applicant would need to display the items if they do not have a retail business. Mr. Madonna stated that they do not need to display the items however because they are being stored he does not want that being said that they are displaying the items. Mr. Falvo asked if they were not looking for retail but were looking to distribute the items. Mr. Madonna stated that they were looking to distribute the items. Mrs. Covell stated that along with the coffee, creamer, sugar, half and half and anything else related to do with coffee are being sold. Mr. Bashaw stated that there are no definitions in the Zoning Ordinance of incidental, customary or subordinate. Mr. Madonna stated that if the board does not vote in favor of the interpretation than he will go to court because he feels the applicant has the correct information for the board to vote in favor of the applicant. Mr. Madonna asked Mrs. Covell if there is anything else that she sells at Frosty Springs Bottling Co. that the board should be aware of. Mrs. Covell stated that they also sell crocks and tea. Mrs. Covell also stated she would like to have a small display in her office of the water coolers and other items she sells. Mr. Murnane stated that before any motion is made on the application that there are only 5 board members present so if the applicant would like the application tabled until the next meeting they can do so. Mr. Madonna requested the board act on the interpretation.

MOTION: Mr. Bashaw made a motion to approve the application. Second by Mr. McBrayer.

ROLL CALL: Mr. McBrayer-yes, Mr. Bashaw-yes, Mr. Zalis-yes, Mr. Falvo-yes, Mr. Blair-yes.

MOTION CARRIED.

8. APPLICATION: LINDA COVEL
Expansion or Change of Non-Conforming Use at 842 Mannix Rd.

No action taken on application.

9. APPLICATION: LINDA COVEL
Use Variance for Frosty Springs Bottling Co at 842 Mannix Rd.

No action taken on application.

ANY FURTHER BUSINESS:

Mr. Blaine stated that it had been mentioned several times this evening that he had previously stated that there were no incidental uses for a water bottling facility. Mr. Blaine stated that he did not make that statement and in fact had stated on the record at the last meeting that he does believe there could be incidental uses for a water bottling facility.

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CEO REPORT:

Mr. Blaine stated that building permits are down for the year with a total of 82. Mr. Blaine stated that Zoning Board applications are up with a total of 23 and Planning Board applications are down with a total of 15.

ADJOURNMENT:

Motion Made by Mr. Bashaw. Second by McBrayer. All so moved.

Date filed with Town Clerk _____