

**Town of Gardiner, Zoning Board of Appeals**  
**Meeting Minutes**  
**August 24, 2023**

**Members Present: Richard Cerruto, (Chairperson), Michael MacElhiney, Nicole Wistreich, Zach Heller, David Serman, (Alternate)**

**Member Attending via Zoom: Lisa Lindsley**

**Also Attending via Zoom: William Hurst, Esq., Trevor Hults, Building Inspector**

[2023.05.16 Administrative Appeal to CEO Use-Determination](#)

**Public Hearing:**

The public hearing began at 7:00 pm. R. Cerruto set the order and conduct of the meeting. Each party would be given an opportunity to speak. The board would be given the opportunity to ask questions. Interested members of the community would be given an opportunity to comment.

The Zoning Board of Appeals first addressed the pre-qualifying matter of standing by the appellant, Lisa Minnetto, 141 Dusenberre Road Gardiner, NY SBL: 94.1-4-31 to appeal a use-determination made by the building inspector of the Town of Gardiner on May 16, 2023 for the property located at Osprey Extension West, Gardiner, NY SBL: 93.4-6-1.111.

Jonathan DeJoy, representing PDR Properties, LLC spoke first about *standing* as a legal test. Proof of aggrievement was the burden of the appellant: that injury differs in fact from those of others. *Standing* does not mean a legally protectable interest. The PDR Properties, LLC proposed site plan was in compliance with §220-40 Environmental Performance Standards.

Andy Willingham, P.E., the engineer retained by PDR Properties, LLC introduced aspects of the plan on an easel set in front of the board. He showed buffers created naturally by the exclusion of timber harvesting through much of the property, a berm, landscaping and a fence. He spoke about the stormwater filtering process. He spoke about the process by which type 3 cement is housed and transferred in an entirely contained manner. Cement will be stored in an exterior storage container and *augered-in* through process piping to the point of use within the new facility.

The gravel surface of the parking area and storage yard could be the only source of dust. All production activities would be inside the facility. The yard outside of the facility would be used for storage of palletized finished goods, ingress/egress of traffic, and parking for employees.

N. Wistreich asked about the use of *noise-detectors*.

J. DeJoy cited Andrew Millspaugh's review letter dated May 19, 2023 that the dB level at the perimeter of the existing DKI Concrete facility was in compliance with §220-40.

N. Wistreich asked further questions about noise, after-hours shipping / receiving, hours of operation and waste.

Andy Willingham clarified that exterior noise would be limited to fork lifts, shipping / receiving, and the arrival / exit of employees. PDR Properties, LLC would have one day shift. They would be in compliance with conditions imposed by the planning board for hours of operation already listed on the proposed site plan.

D. Kucera explained that there could be approximately one ton of concrete per week. Concrete is heavy. The dimensions of one ton of concrete in solid form is equal to one cubic yard.

Mixing concrete is analogous to preparing batter and baking a cake. Once the recipe is set, there is very little waste. Any concrete waste is gathered and recycled off-site for road base material.

R. Cerruto confirmed what is necessary to prepare concrete; Type 3 cement, sand, and gravel. Cement is stored in vertical silos and not exposed to the environment. The aggregates are off-loaded outside and moved to large bins in the production area. Finished products are palletized and stored outside.

There was a lengthy discussion about the proposed numbers of trucks planned to service the new facility for PDR Properties, LLC. The number of trucks estimated was not doubling because a new facility is proposed.

Matt Liponis, Esq, represented the appellant and was given the opportunity to speak. He addressed noise, dust, vibration, and truck traffic concerns for the appellant. There was one route in and out of the Commercial Light Industry (CLI) District. There was an acute concentration of disturbance due to the location of the home. The appellant began complaining about the noise one month after buying the home. Large truck traffic sometimes encroaches upon the appellants property in order to make the left hand turn on to Dusinger Road. The appellant suffered from noise generated by air brakes on large trucks.

Wolfe Scandinaro, 141 Dusinger Road, Gardiner, (partner of appellant) claimed to have witnessed that trucks passed in and out of the CLI after business hours. He also claimed to have witnessed trucks tracking dust and even once a driver shoveling dust from a truck onto Steve's Lane.

Although the appellant stated that they had video of evidence of these episodes, it was not viewed by the board during the meeting. PDR Properties, LLC representatives did not have explanations for either event.

R. Cerruto re-directed and summarized that this is a cost of living when a house is purchased on a corner outside of an industrial area.

M. Liponis addressed the appellants concern about dust. The appellant claimed that dust from DKI Concrete was falling on their property. If there is more than one facility, then there will be more dust, traffic, and noise.

William Hurst, Esq. admonished M. Liponis for examining the appellant before the board and directed him to focus on the perceived incremental changes that will occur with the creation of a new business.

There was a discussion about noise and §220-40. Noise must be measured at the property line, not at a street corner removed from a business location. The appellant claimed that the noise ordinance is not enforceable.

R. Cerruto: This was not a trial about the CLI, but about the proposed location for a new business. Trucks are beyond the scope of any claim of aggrievement.

M. Liponis shifted his remarks to the definition of heavy industry. He then focused on dust and claimed that the appellant suffered from allergies and congestion.

R. Cerruto again confirmed the mixture of cement, sand and gravel would be controlled at the new location. Control of dust was not only a requirement during construction, but

ongoing. The DEC would monitor the Stormwater Pollution Prevention Plan (SWPPP) and issue a permit annually.

W. Hurst explained that “fugitive” emissions were a DEC issue. He asked again how the appellant was aggrieved by the new location. Were there already DEC violations at this site?

The appellants attorney overtalked the attorney for the town . Wolfe Scandinaro claimed that the building inspector made the use-determination without code references.

R. Cerruto opened the meeting for public comment.

Keith Libolt, Business-owner at 15 Steve’s Lane heard no complaints about DKI Concrete since being at the location for 10+ years. He was aware of no violation either.

Irwin Sperber, Bruynswick Road / County Road 7 said that a better way to show the maps would be with the use of drones. He asked the board to recognize the need to protect the safety of the public at large. He claimed that the thoughts of developers are being weighed over that of the public.

Andi Weiss-Bartczak, Bruynswick Road had concerns about dust and noise and that damage occurs all the way through exposure. She didn’t believe that this was light industry and asked if there wasn’t a better place to put it in the town. “There is plenty of open space”.

Linda Geary, 28 Sandhill Road said that Stormwater Pollution Prevention Plans (SWPPP) are more about water than dust and believed that the appellant was uniquely impacted by the proposed project.

Andy Willingham, P.E. said that the control of dust is part of the Stormwater Pollution Prevention Plan (SWPPP).

Tim Hunter, 584 South Mountain Road spoke about how play sand contained silica and that he was able to find silica free sand from a local landscape supplier. He stated that second hand exposure to harmful materials is a hazard to the community. He believed that the proposed project was not Light Industry. He urged the board to do what was good for the community.

Janet Kern, 79 Beecher Hill Road was concerned about a daisy chain of trucks damaging roads. She asserted that this wasn’t envisioned when the Commercial Light

Industry (CLI) District was established. The proposed project is not light industry. Cement is heavy by definition.

N. Wistreich asked if there was an air quality permit required.

Andy Willingham, P.E.: There is no air quality permit required.

Michael Hartner, 511 Sandhill Road asserted that we have a flawed law. Isn't the truck driving from the property, part of the property? The purpose of boards was to remedy the laws.

R. Cerruto asked the board if they had enough information. Was the appellant aggrieved? The merits of the appeal would be discussed at a future hearing.

**M. MacElhiney motioned to defer the vote on the matter of standing until the next meeting whereupon more information can be presented. N. Wistreich seconded the motion. The board voted 4:1 to approve the motion with L. Lindsley dissenting.**


Following the vote R. Cerruto established a briefing deadline of September 14, 2023. Both parties agreed. J. DeJoy asked that page limits be imposed.

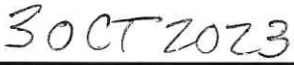
Page limits will not be imposed.

J. DeJoy announced that his client was open to the idea of paving the gravel areas shown on the proposed site plan.

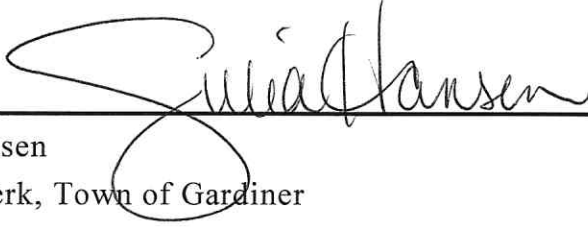
**M. MacElhiney motioned to adjourn the meeting. N. Wistreich seconded the motion. The board voted unanimously to adjourn the meeting.**

Prepared by:

  
\_\_\_\_\_  
Michael Makely

  
\_\_\_\_\_  
Date

Filed:



10/3/23

---

Julia Hansen  
Town Clerk, Town of Gardiner

Date