

MINUTES OF A HEARING AS HELD BY THE
ZONING BOARD OF APPEALS OF THE
TOWN OF AURORA

June 15, 2023

CASE #1439-Saverio Marrazzo aaf JJJ Bros. LLC/John Lattanzio
1342 Quaker Road, East Aurora, NY

The hearing was called to order by the Acting Chairman Davis Heussler with the following Board members present:

Mandy Carl
Nancy Burkhardt
Rod Simeone
Stephanie Morgan, Alternate

Excused: Paul Ernst

Others Present: Elizabeth Cassidy, Code Enforcement Officer

The notice of the Public Hearing was read by the Deputy Town Clerk. The notice was duly published in the East Aurora Advertiser as evidenced by the Affidavit of Publication, marked as exhibit 1. The Affidavit of Posting was marked as exhibit 2. The ZBA Application was marked as exhibit 3. The Petitioners Letter of Intent was marked as exhibit 4. A Letter of Authorization was marked as exhibit 5. A List of Hours of Operation was marked as exhibit 6. The Building Department Letter of Determination was marked as exhibit 7. The ECDP Form and Response was marked as exhibit 8. The Short Environmental Assessment form was marked as exhibit 9. An Aerial View was marked as exhibit 10. The List of Abutting Property Owners was marked as exhibit 11. A Letter of Objection-R. Ellis was marked as exhibit 12. A Letter of Objection-S. Langendorfer was marked as exhibit 13.

The Chairman opened the hearing with the Pledge of Allegiance to the Flag and stated the purpose and procedure of the hearing. Following the hearing a meeting would be held to render decision for an amendment to a use variance to operate a bistro at 1342 Quaker Road, East Aurora, NY.

Marrazzo Saverio Marrazzo, 11 Kathryn Dr. Orchard Park, NY.

Marrazzo Mario Marrazzo 689 Prospect Ave.

Lattanzio John Lattanzio, I own the property at 1342 Quaker Rd.

Heussler We have read the request so explain to us what it is you plan to do.

Marrazzo M Thank you for visiting us. We are doing a commerce service bistro to incorporate what was already at the premise which was a service operation. We are providing a simple service from 7am-2pm which would be extended in July.

Heussler Right now it appears that you are only serving breakfast.

Marrazzo M Breakfast and lunch.

Heussler The plan is to open for dinner.

Marrazzo M Yes with the grand opening July 22nd. Dinner will hopefully be in August, but we will be extending our hours in July until 3 or 4 pm.

Heussler I know there is a plan to serve alcoholic beverages at some point.

Marrazzo M Provided with dinner.

Heussler We have a copy of your liquor license, and it is a little concerning. There are certain boxes to check but it marked bar/tavern.

Marrazzo M New York State has specific language when you have beer and wine. I asked the same question and the consultant that I am working with stated those words and that is how it is. It is not going to be a bar it is going to be a bistro. Right from the consultant.

Heussler You would think there would be a provision for a restaurant which would be more appropriate.

Marrazzo M I wish there were. There are no plans for taps.

Heussler You checked the box for juke box/disc jockey/recorded music/karaoke, it sounds more to me like a bar.

Marrazzo M Karaoke would be a possibility but that would be along the line of a juke box or music.

Heussler I thought you were going to serve nice Italian meals and a little music in the background, but this sounds more like a hangout where people are going drink all night and listen to music.

Marrazzo M No that is not the plan and if you have seen the spot it is not even fit for something of that occasion. It is a very sit-in location. I am very well connected with the Orchard Park Symphony Orchestra, and I have a lot of friends who I was planning on including.

- Heussler I just do not like the idea of disc jockeys and karaoke in a small place like that. I would be inclined if we approve this to limit what type of music that you could have. The other box that is checked is patio or deck and that is going to raise some concerns with the neighbors. Right now, you do not have a patio or deck right?
- Marrazzo The only thing that is there is that is stationed out with some fencing that is the only outside seating. Like an eating area.
- Heussler When we were there you said you did not think they were using the outside seating area.
- Marrazzo The tables in the back I am not sure why they are there to begin with.
- Heussler So the plan is to use the seating in front of the store but nothing behind it?
- Marrazzo Correct it is difficult to maintain as well.
- Morgan Is your intent would you say you would not be serving per say but you would have alcohol available in a cooler section that someone could purchase and then consume on premises or purchase and take home like a convenience store.
- Carl I have that question too because a mini mart is permitted to sell do you require a liquor license?
- Marrazzo It is the same license under tavern and serving food at the same time.
- Cassidy That is a different kind of license however during Covid the Governor had changed some of the regulations and people can purchase and take off premises in certain situations.
- Heussler You are saying you are not going to have a bartender or waiter serving beer or wine so the beer is easy you can just go to the cooler and get a beer. The wine though there is no one pouring?
- Marrazzo They are a quick top. They are a smaller wine they are a pop top or individual serve like a beer. Single servings is the basic style we do not have the staff well he does not have the staff to manage that. It is a bistro; we are not going to be dealing with that.
- Heussler How many people could be seated?
- Marrazzo 40-person capacity.
- Heussler Inside and out?
- Marrazzo Inside.

Morgan Could you apply for a permit that would be for a convenience store?

Cassidy You can't drink a convenience store.

Heussler Your hours in your listing here when you are open for dinner it looks like you were planning on staying open until 10pm.

Marrazzo The kitchen would close, and we would allow people to enjoy their meal.

Morgan What time would your kitchen close?

Marrazzo 8pm

Simeone Right now your hours are 7-2pm?

Marrazzo Yes

Simeone In July you said 7-4pm and in the fall is when you are proposing 7-8pm.

Marrazzo 7-8 for dinner and then we would allow people to enjoy their meal.

Heussler The only nights that you would be open in the evening would be Thursday nights?

Marrazzo That is correct.

Morgan I have a question for the owner. What were your hours of operation?

Lattanzio I bought this property from my nephew in January. His hours were like 7 until 6-7pm then he shortened it to 2pm. He has six kids at home, and it was just too much for him to handle.

Morgan I am looking at the variances here in the history and I do not see any bistro at all. So, your nephew was operating that?

Lattanzio It was like it a bistro. There were tables sitting out there. He has a full kitchen.

Morgan So there was no variance application?

Lattanzio I do not know.

Simeone So I am confused. The prior application I thought it was just premade sandwiches, but did they prepare food there?

Lattanzio Yes my wife worked there for 6 months with him trying to help him out. She would make the sandwiches to order.

Morgan I understand a deli but there is an oven hood in there?

Lattanzio Yes.

Morgan Did you install that?

Lattanzio No it was there since the previous owner before my nephew.

Morgan What year did you purchase?

Lattanzio In January of this year.

Morgan Do you know when your nephew bought it?

Lattanzio A year or two prior to me buying from him.

Carl There has been nothing since 2011 so this all happened without variances.

Morgan So you started renting under the assumption because it was previously operating a working bistro restaurant that they had the proper permits in place. So, this man was misrepresented with what this property was able to do.

Marrazzo When was the last time it was here?

Morgan 2011

Carl As a greenhouse.

Lattanzio Prior to my nephew I heard the gentleman's name was Chris and he is well known, and he managed it as a convenience store.

Heussler In 2008 we approved it as a convenience store with oil change on the side.

Marrazzo I was going to make it a destination place.

Morgan My question is your working assumption was it was presented to you when you rented it that it was in affect for a year?

Marrazzo That is correct.

Simeone Did your nephew, did he have consumption on premise?

Lattanzio I am not sure I know he had tables and chairs in there?

Burkhardt Do you know if he was selling alcohol in there?

- Lattanzio No he did not get his license.
- Simeon So you could purchase beer to go?
- Lattanzio The owner prior to my nephew did. My nephew was under application but never completed it.
- Simeone So we do not know if he served for consumption on site.
- Lattanzio No he did not have a license.
- Simeone This is the first consumption on site application.
- Lattanzio I'm not sure if Chris prior to my nephew had on site consumption.
- Heussler I was there a couple of times, and I do not think there was on site consumption it was just a convenience store.
- Morgan And the kitchen
- Heussler Yes he did make breakfast sandwiches. I am thinking if we are going to approve this we are going to put you on a tighter leash. We talked about the music, and I would like it to be more music to accompany dinner not juke boxes and stuff. I would like to limit the seating to right now and not in the back and no music outside. Let's see what the neighbors have to say but those are my thoughts.
- Simeone You are not going to have outdoor seating other than the few tables that are in the front correct?
- Marrazzo That is correct.
- Simeone There is not going to any to the side or back?
- Marrazzo No
- Simeone The music would be internal only and that would start at 8pm
- Heussler It sounds like the kitchen is going to close at 8pm but they can stay to finish meals.
- Carl One of the conditions that we have to consider in a use variance is that they have to prove in dollars and cents how any of the permitted uses cannot generate a reasonable rate of return. Do you have anything to substantiate why a car sales business, mini mart, pool sales, convenience store, bio-diesel station, auto repair and greenhouse cannot provide a reasonable rate of return on that location?

- Marrazzo I do not understand.
- Carl There are three requirements and all of them have to be met in order for us to grant a use variance and one of them is that you have to show us in dollars and cents why how the existing uses cannot generate a reasonable rate of return. We have several existing uses not just in the code but in the prior variances and so I am asking in dollars and cents how those other uses that are permitted do not generate a reasonable rate of return.
- Heussler Because there has been a succession of use variances in the past that we may not need all these variance criteria met?
- Cassidy I am not sure if it is the same requirement to amend it an existing use variance.
- Carl It's changing the use.
- Cassidy It is changing the use for sure, but I cannot answer that for you, I think that is a Town Attorney question.
- Burkhardt What would the hours be? 11am or 11pm
- Marrazzo It would be 11am it would be extremely limited hours on Mondays for prep work.
- Burkhardt Then the close for private order pick up, will you be doing some sort of catering too?
- Marrazzo If there are any orders outside the usual amount I would be open to be available and providing that pick-up service otherwise catering is maybe in the future.
- Burkhardt No drive through or anything like that?
- Marrazzo No
- Heussler I think he has addressed these in his application.
- Carl I am not seeing dollars and cents according to law.
- Marrazzo S When you are referencing dollars and cents is that the P and L?
- Carl Yes to show that there is no reasonable rate of return for any of the prior uses.
- Marrazzo S What is reasonable. You are doing a test to ensure the other businesses.
- Carl It's not my test is just the guidelines.

Marrazzo S The guidelines are saying you are testing each one of the businesses, but he just purchases the place how does he go about the past owners so how do you test that?

Carl I do not test that answer I just know that it has to be in dollars and cents.

Marrazzo S If you go back in past history there is no P & L how do you go back?

Carl In all honesty I do not have an answer for that.

Marrazzo M When was the last time a variance was issued?

Carl 2011 and the application was for a greenhouse.

Marrazzo M The hard part is getting the actual business to substantiate the position.

Carl I understand what you are saying, and I do not know the answer.

Morgan The nephew before that was running a similar operation could he pull up his because she was running a similar operation.

Lattanzio That is not my business, I should not ask that.

Morgan I understand that but that functioned in that building and that sets precedence.

Lattanzio If I took it over and ran it as a business I could provide that form, but I am not going to ask him for it.

Simeone Did he get out of business because of the hours or because it was not financially rewarding to him.

Lattanzio It was family and financially. He was making money, but he was not operating it right. He was never there and never open he just did not operate it the right way. Somedays he was closed and some days he was open.

Burkhardt It sounds like there is going to be 40 people. Is the parking lot big enough to accommodate that many?

Cassidy Yes, it is not marked or anything.

Burkhardt Would it require that once there is a head count established?

Cassidy No.

Simeone What is the ratio? If they could seat forty how many parking spaces would they need? Just looking at it I do not think there is an issue of the number of spots.

- Cassidy You need one per three seats. Plus, one for employees. I do not think there is an issue.
- Heussler Before we leave your point we need to decide how we are going to proceed with them not having any past information to go on. If we are going to need assistance we are going to have to table this and ask them to come back next month but they have nothing to compare it to.
- Burkhardt Whether the Attorney would say that was necessary or not based on the past use of variances. The reason we are so cautious on this is because once this granted to the property it runs forever with the property. Say this business takes off and you decide to expand and move somewhere else this now has the ability to operate as a bistro for the future owner and they might not be as responsible as you all are.
- Lattanzio The future landlord will be. I had people come before this family here and I chose them because of the type of people they are. I am the type of landlord that would not lease it out to anybody, it has to be right.
- Morgan You can sell the building to, and it would still carry over.
- Simeone The application for serving on premise consumption does not go with the building does it?
- Cassidy No it is applicant specific.
- Carl Can we also limit it a not so generalized as a bistro but like food service limited to counter service, no table service, are we able to do that?
- Simeone That is not what they are asking for.
- Heussler You are not doing table service.
- Marrazzo M That is why it is called a bistro.
- Simeone So when you are open to 8pm serving meals it is going to be pick it up at the counter?
- Marrazzo M Yes.
- Carl I think that is an important limitation for future consideration.
- Simeone I thought you were having sit down, linens.
- Marrazzo Nothing of that high level. It will be counter service bistro.

Lattanzio There is a similar space downtown Buffalo called pour tap where you go up to the counter order your food, pay for it and then will have the cook or somebody come out and find you.

Carl I think it is important that we say no box and no taps.

Heussler Is there anyone else that would like to be heard on this matter?

Langendorfer I am Sue Langendorfer, I live at 1369 Quaker Road. I have lived there since 1988. I think that granting the Bistro a license with the NYS Liquor Authority will traumatically change the character of our neighborhood. It is rural residential; it is fairly quiet everybody keeps to themselves. I wish them much success. I usually do not go over, but I wish them much success, but I think serving alcohol at this location is not a positive addition to our neighborhood even though it's a very small neighborhood. This location changes owners and businesses often and we do not want any subsequent businesses using alcohol as a past precedence. Once you grant liquor there you change it.

Carl We cannot say no to alcohol.

Mandy Is it the alcohol that is your biggest concern.

Langendorfer I think so. They sit saying that it is going to be in the small serving sizes but still. Once you grant it is always going to precedence.

Heussler Your concern is not the Bistro itself?

Langendorfer No not at all. I think that adding alcohol is going to have a negative adverse detrimental effect on our property values. The intersection I think is a dangerous intersection. Speeding, crossing the double lines and if you add alcohol into the mix they are crazy there. I pulled in today and the curbing you cannot tell where the in or the out is. You actually go right over the curb.

Carl How would you feel about the one limitation of not being able to serve alcohol but running your Bistro?

Marrazzo M We setup the sign, we sent money in for the liquor license, we researched it, this is basically a trend of what is happening across the country. You are seeing it over and over again it is not a bar it is a place you eat and enjoy it is not like we are pouring like a bar. We are using it as accent to your meal, enjoying a glass of wine. That does not exist, they want to go somewhere else they could, but they can have a pop with their meal. We are adding a beer or a glass of wine. It may be an option that we only allow that service during dinner as it is an accent to dinner.

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As well as our dinner is Thursday through Saturday. It might be something with which we can work.

Heussler Is there anyone else that would like to be heard? (No response). The hearing is closed.

DRAFT

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Discussion:

Morgan I have empathy for the new owners because I think the case was misrepresented of this use, so they put their time, money and investment and now have to put more time, money and investment into getting this up to code again. I feel horribly for them that this has happened them again it was misrepresented as to what could be done. I will clarify the misrepresentation is that it was already operating illegally without permits or approvals previously so a new operator comes in and assumes that he of course or maybe wants to extend services only to start from square one of can he serve food out of there. I feel bad for any entrepreneur that is trying to make a living and to start over again by coming to us. My emotional heart is with you, and I have to look at the facts of the matter. I do believe that it was standing as an existing bistro I believe it was probably not having a negative impact on the community with it functioning for breakfast and lunch. If it were keeping the same hours and doing the same thing for me it would be fine. I think they have proven it is not a detriment to the community to operate for breakfast and lunches and make them fine up standing of community that can do it openly without any issue. I do have an issue with anytime you are closing down food service and hanging out because then it is more like a bar/tavern. So anytime you stop your food service your essence reverses to that bar/tavern. We are talking about counter service and two hours is extremely long it should be half hour tops, an hour. I am not sure how I feel about the liquor license because it really does not match up with the live music/karaoke and mixed genre, patio, and deck. We clarified that it was in the front, but it is not specific in the writing here, so it gives me concern as well.

Heussler We can amend it anyway we want if we want.

Carl Just to put it out there so we are at least thinking about that there are three standards we are supposed to be considering is that. The land in question could not yield a reasonable return if use only for the purpose allowed and that is with

the existing variances. The due to immediate unique circumstances and not to the general conditions of the neighborhood which reflect the unreasonableness of the zoning ordinance itself. The use authorized by the variance will not alter the essential character of the locality. Those are the three things. Those facts are to be considered.

Morgan If you were to keep the same hours and operate as a bistro I do not think the impact of the character, the question is once we are extending the hours on the weekend and allowing the purchase of alcohol.

Heussler There is a history of 40 years of commercial operations there.

Morgan It's not the commercial operation that I have an issue with.

Carl Which one is your concern?

Morgan My concern is the extended hours and probably the alcohol a little too.

Heussler It is not going to be a hangout if they close at 9pm. It is not going to be a place where people come out and drink all night. I am inclined to allow it, but I would have several restrictions. No outside seating, no seating in the back outside, no music outside and no karaoke or disc jockeys. No use of the patio or deck and I would want the hours to be shortened closer to 9pm the three nights that they are planning on serving dinner.

Carl No speakers or amplifiers inside.

Burkhardt Would you allow the purchase of alcohol?

Heussler Yes.

Simeone I tend to agree that 40 years of commercial business use has already been established because it was already permitted in that district. The alcohol without a bartender does not concern me. If you have a nice meal with a glass of wine or a brew with it is fairly common. The ambiguity from the building department of whether they have to justify this economically give me a little bit of pause. If we would consider tabling it I do not think that would hinder the grand opening to give our legal counsel the opportunity to give us advice on whether they have to justify it economically. If you think we would proceed I am tending to go along with it.

Carl To piggyback on what you were just saying the statute does say dollars and cents. They do not have a way to provide, and we just talked about the past 40 years of history of sales.

Simeone I do not know if we have to or if we don't have to.

- Morgan Is a month going to make a significant difference in showing us financial need?
- Heussler I am not sure they are able to. They could show us what they are planning but they really have nothing historical.
- Simeone They could make a go with it but now they want to change it to something else.
- Cassidy I am not sure if that financial standard applies for an existing use variance. That is definitely a question for the Town Attorney.
- Burkhardt This the only thing that I had flagged for my concern as well, so I concur with you as to whether these past use variances that were granted suspends the requirement on our end. I do feel that is something that is a technicality that could cause an issue if we were to bypass it is it was required. We could table it and have the Town Attorney weigh in on it, I would feel more comfortable.
- Carl I would feel more comfortable.
- Heussler If the Town Attorney did say that they did have to provide the financial information then we would communicate that back to them.
- Burkhardt In time for the next meeting?
- Heussler So we are going to bring you in on the conversation. There may be a technicality that we just have to make sure that we are clear on, and I do want to talk to the Town Attorney to be sure that we understand whether we have to require you to prove that you cannot make a reasonable profit with your use as opposed to a prior use. Our inclination is that we are going to table this tonight and have you come back next month, and we should be able to render a decision at that point.
- Simeone That you might require a P & L for the time that you have been in operation maybe in order. If the Attorney says no then we vote on the merits.
- Marrazzo So we can continue operating as is?
- Simeone Correct.
- Heussler My inclination is to approve this with some restriction on the music and the outside use, but I am speaking for myself, but we need to get this point buttoned down first. So, we will talk to the Town Attorney, and we will communicate back to you. We will come back next month and see if we can work out a deal.

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1342 Quaker Road, East Aurora, NY

Decision:

After lengthy discussions by the members of the Zoning Board of Appeals of the Town of Aurora, County of Erie and State of New York, the following motion was made by Rod Simeone and seconded by Davis Heussler to table Case No. 1439 pending the Town Attorney findings and documentation for financial documents that may or may not be necessary for an amendment to a use variance to operate a bistro at 1342 Quaker Road, East Aurora, NY.

Upon a vote being taken:

Heussler	Aye			
Simeone	Aye			
Carl	Aye			
Burkhardt	Aye			
Morgan	Aye	Ayes-five	Noes-None	Motion carried.

EXHIBITS

June 15, 2023

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