

1900 Bausch and Lomb Place
Rochester, New York 14604
P 585-987-2800 F 585-454-3968



1900 Main Place Tower
Buffalo, New York 14202
P 716-248-3200 F 716-854-5100

www.woodsoviatt.com

Writer's Direct Dial Number: 585.987.2905

Writer's Direct Fax Number: 585.362.4623

Email: bbrugg@woodsoviatt.com

February 2, 2022

Planning Board
Town of Canandaigua
5440 Route 5 & 20 West
Canandaigua, NY 14424

Re: Application of Frontenac Holdings, LLC-2121 State Route 332- Site Plan Approval

Dear Planning Board Members:

This office has been retained by Frontenac Holdings, LLC, (Frontenac Holdings and FLX have the same owners, and Frontenac Holdings leases real estate exclusively to FLX Marine), to assist in obtaining the municipal approvals required for the proposed modifications to their property at 2121 State Route 332 in Canandaigua. This letter is submitted in support of the pending application for site plan approval, and to request approval be granted in accordance with applicable law.

The applicant last appeared before the Planning Board on October 26, 2021. The Planning Board Continuation Resolution states that *"...The Planning Board at their October 26, 2021 meeting requested that the applicant revised the site plans to provide the proposed display boat area further back within the site so that it is not visible from the NYS Rte 332, to provide landscaping in compliance with the Town Code 220-76, and to provide stormwater mitigation measures to meet the NYSDEC and Town MS4 requirements...."* Given the comments in the minutes and the legal issues raised, the applicant has engaged this office to assist in resolution of the issues and in moving forward to secure site plan approval for the proposed modifications to the site.

FLX Marine has been operating its business and permitted use at the property since Frontenac Holdings acquired the property and secured Planning Board approval in 2018 for the establishment of the business, with its building, customer parking, and an unenclosed sales area in the front adjacent to the NYS Route 332 right of way. The proposal is now to maintain the same

use. The proposal is to expand the existing unenclosed sales area adjacent to NYS Route 332 together with related improvements, including landscaping and stormwater management.

The property is in the CC Zoning District, which permits the sale, lease, or rental of vehicles (which per Code § 1-17 includes boats) as a permitted use. Code § 220-23(B)(5)(b) provides that the sale of vehicles in an unenclosed area is a permitted use provided the following provisions are met. The Planning Board granted approval in 2018 for the permitted use. The use will remain the same, with the proposal simply to expand the size of the area as illustrated in the site plan. The applicant continues to propose a permitted use, as reaffirmed below:

(b) The sale of vehicles may be carried on in an unenclosed area, provided that:

[1] Such area is on the same or an adjacent lot to such building. If the enclosed area is on an adjacent lot, the lot shall be not more than 200 feet from the lot with the building and shall further be in the same ownership as said building, be in a Community Commercial (CC) District, and be used for no other purpose.

The proposed outdoor sales area is on the same lot as the building.

[2] Such unenclosed area shall be paved, shall be suitably drained, and shall be maintained in a neat and orderly manner.

The unenclosed area will be paved, suitably drained in compliance with applicable regulations as addressed by the project engineer, and maintained in a neat and orderly manner as proposed. As a technical matter, drainage will be addressed in accordance with professional standards and applicable regulations, as reviewed by Town Engineer and Planning Board. The unenclosed area will be maintained in a neat and orderly manner, simply expanding the existing outdoor sales area. Safe vehicular ingress and egress and internal pedestrian access will be maintained. Boats, being different sizes and changing stock, will be kept in a safe, clean and organized manner at all times.

[3] All exterior illumination shall be approved by the Planning Board and shall be shielded from the view of all surrounding properties and streets in compliance with Town Code.

No new exterior illumination is proposed. No shielding is required as there is no light spill.

[4] Suitable landscaping and/or fencing of such unenclosed area shall be required.

Per the minutes, the Planning Board has apparently been most interested in the visibility of the unenclosed sales area from the road. The applicant is proposing "suitable" landscaping along the front appropriate to complement and enhance the appearance from the road. Since last appearing, the landscaping has been enhanced, as shown on the enclosed landscape plan. The

landscaping provided is consistent with the approach taken in 2018, when the Board granted site plan approval and provided guidance from the Board in 2018. Continuing the approach is appropriate and consistent with applicable law. Fencing is not appropriate or proposed in the front of the property. The proposed landscaping includes a mix of shrubs along the front of the sales area to complement the site (as shown on the revised landscaping plan), enhance the appearance of the property, and soften the view of the *unenclosed sales area* from the road without blocking the view of the boats available for sale from the road. The elevation and slope conceal the pavement from view. The plantings minimize the visibility of the trailers.

The October 26, 2021 Planning Board Continuation Resolution directs the applicant to relocate the unenclosed sales area, with discussion in the minutes regarding relocation to behind the building. The minutes also talked about screening to prevent its visibility from the road and dictate a particular "look." Per the minutes, the project engineer, Mr. Thornton asked "*...if the display area should be moved further back from State Route 332 out of view from the road. Mr. Humes said that this was his intention.*"

The Code does not regulate the location of the unenclosed vehicle sales, which is a permitted use (although the Code could have prescribed that it be located in the rear, it doesn't), accordingly the outdoor vehicle sales area is permitted without restriction as to location on the site-leaving only a question as to what is "suitable" landscaping.

The Planning Board confirmed that it cannot require landscaping to block the permitted unenclosed vehicle sales area when it granted approval in 2018 when the operation and its unenclosed vehicle sales use was first established. Applicable law requires that the Planning Board be consistent in its decision making. A Board that "*neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.*" Matter of Campo Grandchildren Trust v. Colson, 39 AD3d 746 quoting Knight v. Amelkin, 68 NY2d 975, 977 (1986).

The Planning Board granted site plan approval to the applicant in 2018 allowing the use to be established. The Planning Board minutes of the September 25, 2018 meeting include a statement clearly stating that, with respect to the outdoor vehicle sales area, "*[t]he area must be maintained in an orderly manner with suitable landscaping or fencing....this section of **the Town Code does not intend for the display area to be blocked by the landscaping**, but that the landscaping be suitable.*" (emphasis added.) In 2018, approval was granted based upon the foregoing understanding, with the landscaping deliberately proposed and approved not blocking the view of the unenclosed sales area from the road.

The applicant is merely proposing to expand the existing unenclosed sales area, a permitted use, to accommodate more boats. The use and the language in the Code have not changed. The law requires that the Planning Board be consistent with its 2018 approval. Every indication is that this is also consistent with the treatment of other vehicle dealers in the area.

The foregoing guidance being clear, in determining what is "suitable" landscaping for purposes of the Code, the applicable case law governing interpretation of zoning codes is well established. An interpretation of the Code by a municipality is generally accorded deference, "...[h]owever, where the issue involves pure legal interpretation of statutory terms, deference... is not required". Matter of Bartolacci v. Tarrytown Zoning Board of Appeals, 144 A.D. 3d 903 (2d Dept. 2016).

Even if the question of what is "suitable" landscaping were unclear and ambiguous, in accordance with the applicable case law, "[A]ny ambiguity in the language used in ... (zoning) regulations must be resolved in favor of the property owner". DeTroia v. Schweitzer 87 N. Y. 2d 338 at 342 (1996). The law requires that the Zoning Code be interpreted in favor of the property owner, who is proposing "suitable" landscaping consistent with the direction and approval by the Planning Board in 2018 when the unenclosed sales area was first established. The landscaping, as shown on the revised plans submitted, is consistent with the landscaping approved in 2018. It will enhance the appearance of the property, softens the appearance of the area (where pavement is not visible because of grade), and screen the view of the trailers.

It should also be noted that the inclusion of the use as a permitted use is a legislative decision to allow the use without restriction as to location on the site or requirement of enclosure. Had the legislative body sought to restrict the location of the unenclosed vehicle sales area or require an enclosure, it could have adopted additional restrictions as it has done in the Industrial District with boat storage.

[5] As used in this section, the sale of new vehicles shall be deemed to mean only the sale of such vehicles under a franchise granted to the person, firm, or corporation conducting such business by a vehicle manufacturer. Used vehicles shall be sold only in connection with the sale of new automobiles.

The applicant sells used vehicles only in connection with the sale of new vehicles, as permitted by Code. The applicant sells new boats under franchise, similar to other vehicle dealers. As with other vehicle dealers, an integral part of the business operation involves accepting or purchasing a trade-in vehicle when selling a new vehicle, leaving the business with a used vehicle to sell. (While we believe the proposed sale of used vehicles is clearly permitted as proposed, if there were to be any ambiguity in the Code in question, the law requires it to be construed in favor of the property owner).

[6] No establishment for the sale of new and used vehicles shall be opened, conducted, or maintained except as provided above. Site plans for any changes required to bring about such conformance shall be submitted to and approved by the Planning Board before any such change shall be made. The Planning Board may approve, modify, or disapprove such plans and may impose reasonable and appropriate conditions to such approval so that the spirit of this chapter shall be observed.

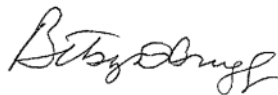
The proposal is intended to comply with the above as proposed. The unenclosed sales area was already approved in 2018. The application requests site plan approval for the expansion of a permitted use, already approved in 2018, to accommodate an expansion to the unenclosed vehicle sales area to accommodate up to 23-46 +/- additional vehicles (depending on boat sizes).

In conclusion, the unenclosed sales area is a permitted use established in 2018, and for which site plan approval was granted. The current application simply seeks expansion of the permitted use. As affirmed and demonstrated above, the proposal continues to satisfy the provisions for the permitted use. The site plan application has been updated to address applicable site plan application considerations. We look forward to working with the Planning Board to address any remaining site plan issues, if any, and respectfully request site plan approval for the proposed modifications to the property.

If you have any questions or require additional information, please do not hesitate to let me know. Thank you for your consideration.

Very truly yours,

WOODS OVIATT GILMAN, LLP

A handwritten signature in black ink, appearing to read "Betsy D. Brugg". The signature is fluid and cursive, with the first name "Betsy" being more prominent than the last name "Brugg".

Betsy D. Brugg
Please direct responses to Rochester Office

BDB/cjv