

Minutes of: Nov. 12, 2008
Date Approved: Dec. 10, 2008
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November 12, 2008
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Gloria Rosell Chairperson
Philip Allison Member
Susan Crane Member
Thomas Giordano Member

Absent: Kevin McBride Member

Also in Attendance:
John Cavallaro Village Attorney
William Williams Building Inspector

Chairwoman Rosell polled the applicants to inquire if they would like to continue since there are only four members of the Board present.

All agreed to continue.

Chairwoman Rosell announced the agenda as follows:

- Item #1 Approval of Minutes of the October 15, 2008 meeting.**
- Item #2 100 Sagamore Rd. Return**
- Item #3 125A Marbledale Rd. Special Use Permit**
- Item #4 97 Lake Ave. Area Variance**
- Item #5 11 Jackson Ave. Adjourned**
- Item #6 35 Bronx St. Adjourned**

Item #1 Motion by Chairwoman Rosell to approve the minutes of the October 15, 2008 meeting was seconded by Member Allison and approved by the Board with a vote of 4-0.

Item #2 100 Sagamore Rd. Area Variance

Mr. Les Maron, attorney representing the applicants Mr. and Mrs. Gentile, indicated that there is an existing wood patio in the rear of the property, which will be removed and replaced with a stone patio. There are existing stone steps, which lie within the side yard requirement of 4 ft. He submitted papers, which display the steps as originally part of the property and then upgraded by the current owners.

Mr. Maron indicated that there were never any complaints regarding the steps during the past. In 2005, the owners of 90 Sagamore Rd. discovered that a small portion of the existing wood patio extended into their property. The applicant began to take the necessary measures to legalize

the patio and will remove the portion of the deck, but is requesting a variance for the continued use of the stone steps. Mr. Maron indicated that the steps existed when the property was purchased by the Gentiles, they were just upgraded due to safety reasons. The removal of the steps would impede the owners' use of the property and the maintenance of the lush gardens surrounding the steps.

Bill Williams, Building Inspector, indicated that the survey of the property, dated 1991, indicated that there were no stairs on the property.

Mrs. Gentile noted that the retaining wall on the upper part of the property could not have possibly been built without the steps for the workers to carry the stones up to the site. The property slopes from 96ft. to 55ft. and the workers could not climb carrying stone without going up steps. She bought the home in 1986 and built the house in 1990. The plans filed with the building Dept. for the retaining wall were dated 2001.

Mr. Maron noted that the survey was submitted by an architect and not an official survey. Most surveys do not show steps, just property lines.

Mrs. Gentile indicated that she hired a surveyor to stake out the property and it was solid rock. The reason the stairs curve was due to the solid rock, and they could not blast the rock. She hired engineers, surveyors and contractors to oversee the plans. This oversight was not intentional.

Member Allison asked if the applicant would consider decreasing the width of the steps.

Mr. Maron indicated that the steps offer a safe form of egress and ingress. The property slopes dramatically, this would not be a safe solution. Mr. Maron noted that the neighbors are concerned about a fire hazard, with the wood patio extending onto their property. The applicants will remove the portion of the deck on their property and rebuild the patio using stone and within the code, when the Board gives approval for the steps.

Chairwoman Rosell motioned to open the public hearing, seconded by Member Crane and carried unanimously.

Mr. Seth Mandelbaum, attorney representing the owners of 90 Sagamore Rd., stated that the lights along the steps are an issue. He also stated that there is no proof that the steps existed prior to 1986. These steps were built without a variance and would be considered a 100% variance, which is quite significant. The client is concerned about liability. There is access to their property and electrical equipment on their property line. He asked the Board to deny the request for a variance.

Margaret Yu, owner of 90 Sagamore Rd., noted that the Gentiles have a reckless regard for her property. She submitted photos of the property line from her property. She restated the concern regarding a fire hazard.

Thomas Lee, owner of 90 Sagamore Rd., noted that the applicant could have moved the steps 4 ft. to the right when the steps were upgraded. He noted his concern regarding liability. If the Gentiles have guests and they climb the steps with no setback, they will fall on his property. The

steps increase the Gentile's property value, but decrease his property value. The applicants have violated the Village Zoning code in the past.

Mr. Maron indicated that all the work on the walls and steps were done prior to the Mr. Lee adding a second floor to his house. The Gentile's cannot access the steps on the top of the property beyond the retaining wall.

Mr. Lee indicated that the second floor addition to his house was legal and has all the building permits.

Member Giordano asked Mr. Lee and Ms. Yu if they were able to see the Gentile's deck at the time of the purchase of 90 Sagamore Rd.

Ms. Yu answered yes, but noted that she thought it was in compliance, and that the deck was treated with fire preventive materials.

Chairwoman Rosell announced that the public hearing would remain open until next month.

Item #3 125A Marbledale Rd. Special Use Permit

Mr. Les Maron, representing Ki Marshall Arts, indicated that a special use permit was granted to this applicant for a Marshall Arts instruction site for 104 Yonkers Ave. That property is no longer available; the applicant is now pursuing a special use permit for the property of 125A Marbledale Rd. The prior tenant at this address was granted a special use permit for Kids in Motion activity gym. The hours of operation will stay the same. From 4:00pm – 4:45pm 3-7 year olds---5:15pm -6:00pm 8 – 12 year olds—6:15pm – family karate. There is sufficient time between classes to vacate the premises before the next class arrives. He submitted letters of support for the facility. There will be no undue traffic in the area as it is industrial and most of the classes will begin after the industries close for the day. There is no parking on site, but there is plenty of parking on the street after the businesses close. He noted that the applicant understands that he is required to provide evidence of one parking space.

Mr. Maron asked the Board to grant a waiver to appear before the Planning Board, as there will not be any changes to the current facility.

Member Allison motioned to open the public hearing, seconded by Member Crane and unanimously carried by the Board.

Ms. Amy Bruster and Ms. Scanga both have children enrolled in the program and offered support for the facility.

Member Crane motioned to close the public hearing, seconded by Member Allison and unanimously carried by the Board.

Member Crane offered a Resolution for the application of Ki Marshall Arts, 125A Marbledale Rd. for a special permit use is granted. It has been determined by this Board that the following conditions have been met:

1. That the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with such use, the size of the site in relation to the use, the assembly of persons in connection with the use and the location of the site with respect to streets giving access to the site are such that the use will be in harmony with the appropriate and orderly development of the district in which the use is proposed to be located. The proposed location's prior use was for a business office space and prior to that, a similar exercise wellness center.
2. That the proposed use will be compatible with the goals and objectives of the comprehensive plan.
3. That the proposed structures, equipment or material will be readily accessible for fire and police protection as confirmed by the Building Inspector. Full access is available by emergency vehicles.
4. That the location, nature and height of walls and fences and the nature and extent of landscaping on the site does not hinder and discourage the appropriate development and use of adjacent land and buildings. This is an existing structure, therefore, this test does not apply.
5. That the operations in connection with the use will not be offensive, dangerous or destructive of basic environmental characteristics or detrimental to the public interest of the Village and will not be more objectionable to nearby properties by reason of noise, fumes, vibration, flashing of or glare from lights and similar nuisance conditions than would be the operation of any permitted use not requiring a special permit. There is nothing in the record that would indicate that the proposed use would be offensive or destructive nor will there be the addition of any nuisance conditions such as fumes, vibrations or flashing of lights.
6. That the neighborhood character and surrounding property values are reasonably safeguarded. There is no evidence in the record that in this industrial zone, the values of the surrounding properties would be negatively affected.
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. The size of this location and the scheduling of classes will not lend itself to undue traffic congestion.
8. That the parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses and the entrance and exit drives have been laid out so as to achieve maximum safety. There are no designated parking spaces for the subject building. Street parking is the only parking available. There are no adjoining residential properties.

That a condition of the granting of the special use permit the following conditions is required to assure continual conformance to all applicable standards and requirements.

Condition:

1. Under Section 6-1.2 of our Zoning Code, we are required to refer applicants for a special use permit to the Planning Board for site plan review. The applicant is required, therefore, to obtain site plan review from the Planning Board in adherence to our code.
2. The submission from the applicant which sets forth class size and hours of operation shall lie incorporated in this approval and shall be deemed a condition of this approval.
3. The applicant will be required to secure one parking space.

Member Allison motioned to approve the resolution, seconded by Member Giordano and upon roll call was carried with a vote of 4 – 0.

Item #4 97 Lake Ave. Area Variance

Mr. John Ferrara, architect for the applicants, owners of Angelina's Restaurant, indicated the desire to construct a 642 sq. ft. conservatory using 4 parking spaces in the parking lot. The variances requested are for parking and set back requirements. The use of 4 parking spaces leaves only 11 spaces in the lot. The municipal lot across the street offers 60 additional spaces for the patrons' use. The agreement allows Angelina's Restaurant the use of all the center parking spaces Monday through Friday after 6:00pm and all day Saturday and Sunday. There is no option to build in the structure, therefore the need to expand outdoors. The conservatory will add character to the neighborhood.

Chairwoman Rosell indicated the need to expand the handicap parking space to 16 ft. wide to conform to the present zoning code.

Mr. Ferrara agreed.

Mr. Ferrara also noted that he would submit proof that the applicants obtained additional permit parking spaces from the village.

Member Crane asked about the air conditioning unit for the conservatory.

Mr. Ferrara noted that this conservatory is screwed together like a puzzle and therefore the unit and condenser will be mounted inside the building. The unit cannot penetrate the glass structure at all. The conservatory comes with a complete compliance report as it relates to the geographical region.

Chairwoman Rosell motioned to open the public hearing, seconded by Member Crane and unanimously carried by the Board.

No Public Comments

Chairwoman Rosell motioned to close the public hearing, seconded by Member Allison and unanimously carried by the Board.

Chairwoman Rosell asked the applicant to return with revised plans for the handicap parking space and proof of parking spaces. She noted that the Board would render their decision next month.

There being no further comments from the public or business before the Board, upon motion duly made, seconded and unanimously carried, the meeting was adjourned at 9:30 p.m.