

Minutes of: Dec. 8, 2010
Date Approved: Jan. 12, 2011
Date Filed/Village Clerk: _____

December 8, 2010
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Kevin McBride Chairperson
 John Palladino Member
 Nicholas DiSalvo Member
 Ronald Gallo Member

Absent: Gloria Rosell Member
 David Kubaska Member
 John Santos Member

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

Chairman McBride announced the agenda as follows:

- Item #1 Approval of Minutes of the November 10, 2010 meeting.**
- Item #2 138-140 Columbus Ave. Return**
- Item #3 36 Midland Place Use Variance**
- Item #4 1 Midland Ave. Adjourned**

Item #1 Approval of Minutes from the November 10, 2010 meeting
Motion by Chairman McBride to approve the minutes of the November 10, 2010 meeting
was seconded by Member DiSalvo and approved by the Board with a vote of 4-0.

Item #2 138-140 Columbus Ave. Return
Sy Gruza, attorney representing the applicant asked the Board for the approval of the application.

Member DiSalvo offered the following Resolution for Columbus Avenue Realty, LLC,
138 Columbus Ave, Tuckahoe, New York :

Background and Findings of Fact

The Applicant is the owner of the premises commonly known as 138 Columbus Avenue, Tuckahoe, New York, and known on the tax map of the Village of Tuckahoe (the “Village”) as Section 38, Block 9 and Lot 20 (the “Premises”). The Premises is located in the Industry Zoning District located in the Village.

The Applicant seeks to establish an auto body use at the Premises. In the Industry Zoning District, auto body and repair shop uses are permitted by special use permit. Thus, in connection with this application, the
December 8, 2010

Applicant seeks a special use permit from this Zoning Board of Appeals to allow it to establish an auto body shop use at the Premises. Among the special permit uses outlined for the Industry Zoning District, the zoning code expressly enumerates motor vehicle filling stations or motor vehicle repair/body shops as uses permitted by special use permit. Zoning Code § 4-7.1(b)(3).

In connection with this application, the Applicant will not be making any structural alterations to the Premises or the existing building, thus negative effects will not be cast on neighboring properties as a result of construction activities. Moreover, the proposed use of the Premises is consistent with those uses allowed by special use permit in the Industry Zoning District.

Conclusions of Law

In order to grant the requested special use permit, the Zoning Board must consider the following general standards for all special use permits in reaching its determination:

1. Compatibility with District;
2. Compatibility with Comprehensive Plan;
3. Services;
4. Adjacent properties;
5. Nuisance;
6. Neighborhood Character and Property Values;
7. Traffic;
8. Parking; and
9. Conformance with Regulations.

In addition to the general standards applicable to all special permit uses, the Zoning Board must also consider the following specific standards as they apply to motor vehicle repair/body shops:

1. Location;
2. Repair Work;
3. Outdoor Storage;
4. Permit Compliance on Hazardous Materials;
5. The Annual Fee;
6. The Storage/Parking of Vehicles; and
7. The Hours of Operation.

Pursuant to Section 6-1 of the Zoning Code, the Zoning Board is vested with the authority to issue special use permits subject to the conditions set forth in the Zoning Code. “Any use designated in a given district as requiring a special use permit shall be deemed to be a permitted use in such district subject to satisfaction of the conditions and standards set forth in this article in addition to all other requirements of this Zoning Ordinance.” Zoning Code, Section 6-1.1. More specifically, the standards prescribed in Section 6-1.6 for all special use permit

uses must be satisfied along with more specific requirements set forth in the Zoning Code, which pertain to auto body shops in the Industry Zoning Districts.

A. General Standards For All Special Permit Uses

1. *Compatibility with District*

The application is harmonious with the goals for an Industry Zoning District because it limits the auto body repair shop use to the Industry District located within the Village. This goal is expressly set forth in the Zoning Code. See Zoning Code § 4-7.1.

By limiting these types of uses to the Industry District, the Village is placed in an advantageous position by not allowing such uses to be established in other districts. Put another way, limiting the use of auto body repair shops to the Industry District isolates such uses to such Zoning Districts, making them more concentrated in the Industry District as opposed to being permitted in the other Business Zoning Districts of the Village.

Additionally, such uses are specifically permitted by special use permit in the Industry District and, as such, are compatible to the district to which they are permitted.

2. *Compatibility With Master Plan*

Similar to Section One above, by limiting auto body repair shops to the Industry District which is a limited district in the Village, such uses are prevented from appearing throughout the Village. As such, it furthers the goal of the Master Plan in that other Zoning Districts are not hindered by such uses, which have been limited to the Industry District.

3. *Services*

The Premises will continue to be readily accessible for fire and police protection. The building is located on a public street that is navigable by fire and police protection services. Neither the existing building's physical dimensions nor the configuration of the Premises will change from its current state in any respect. Nothing in this record suggests police or fire protection services will be diminished by the application as proposed.

4. *Adjacent Properties*

To accommodate for the proposed use of the Premises, no construction or alterations of any structures thereon will be required. The proposed use will only affect a portion of the existing structure on the Premises and will not be significantly more intense than the current use at the Premises. The proposed use for the Premises will not

appreciably affect the value of the Premises to the detriment of adjacent and nearby lots. Thus, any properties adjacent or nearby the Premises will suffer no injury or deleterious effects from the proposed use of the Premises.

5. Nuisance

The intensity of use on the Premises will not appreciably change as a result of granting the special use permit discussed herein. The nature and scope of the proposed industrial use of the Premises will be such that no significant noise, fumes, vibrations, flashing of lights or other similar nuisance conditions to the surrounding neighborhood will occur. Additionally, no offensive, dangerous, destructive or hazardous conditions affecting the health of the surrounding community will be produced as a result of the proposed use on the Premises. Any perceived or potential nuisance conditions will be effectively mitigated by the equipment and materials to be utilized by the Applicant in connection with this auto body shop use to be sited at the Premises.

6. Neighborhood Character and Property Values

On this record, there is no evidence that the property values of adjacent and nearby lots in the community will be diminished by granting approval for this application. Neither the existing structure on the Premises nor the configuration of the lot itself will be materially altered in any respect. The existing character of the immediate and surrounding neighborhoods will not be significantly affected.

As a result of the influx of capital, economic support and overall appeal of this Project, property values for lots adjacent to and nearby the Premises will not be decreased. As discussed above, the Proposal is consistent with developmental goals for the Industry Zoning District.

7. Traffic

The Zoning Board acknowledges that the traffic volume to and from the Premises will change if the special use permit is granted, but the anticipated effects of this increased traffic volume will not be significant. The Premises is located in an area of the Village that regularly experiences high traffic volume. Thus, above-average traffic volumes at and around the Premises are commonplace. Despite this fact, any increases in traffic volume to the area as a result of the proposed use of the Premises will only occur during the time when vehicles are being dropped off or picked up from the Premises for auto body repair. These time periods will be before morning rush hours sporadically and at the conclusion of each business day. Any increase in traffic in the area, however, will be mitigated by the off-street parking spaces proposed to service the Premises. Thus, this Zoning Board of Appeals has determined that the effects on traffic from this Proposal will be reasonable in nature.

8. *Parking*

This Zoning Board of Appeals finds that the Applicant has provided for sufficient parking on the Premises and in the structure located on the Premises. This Proposal does not seek to construct additional parking on the Premises or create off-street parking.

Any negative effects of limited parking will be mitigated by the fact that the parking demand for the auto body repair shop use will be most intense during off-peak traffic and commuting hours in the Village. Thus, the Zoning Board has resolved that the project is harmonious with the Zoning Code and with its goals for an Industry Zoning District.

9. *Conformance with Regulations*

The Applicant has complied with the requirements for the Premises concerning a special use permit. Based on the foregoing, this Board finds that the Applicant has reasonably satisfied the general conditions applicable to the issuance of a special use permits as set forth in the Village's Zoning Code.

B. *Specific Standards for Special Permit Uses Applicable to Auto body Repair Shops*

1. *Location*

According to the Zoning Code, "New" motor vehicle repair/body shops shall not be permitted within 200 feet of an existing motor vehicle repair/body shop measured from the closest point on the Premises, maintaining such use to the point of the Premises wherein the proposed use would be established as opposed to measuring from lot line to lot line or building to building. In addition, no such shop shall be located within 200 feet measured from the nearest lot line of the facility along the street line on both sides of the street boundary of any residential district or the nearest lot line of any school, church, park, playground, hospital, public library or institution for children or the aged or infirm.

Notwithstanding the above restrictions set forth in the Zoning Code, this Zoning Board of Appeals finds that the proposed body shop is not a "New" body shop as expressed under Section 6-2.1(b)(1) of the Zoning Code. The subject body shop is an existing body shop within the Village of Tuckahoe and thus will not add to the overall number of body shops that exist within the Village. In addition, the history of the property shows that body shops have existed at such location for an ample number of years, thus the subject body shop is not deemed to be a "New" body shop under the express terms of the Zoning Code.

2. *Repair Work*

The Zoning Code requires that all painting, body, fender or similar work shall be performed indoors in compliance with all applicable federal, state, county and local laws, rules and regulations. On this record, the Applicant has represented that all work shall be completed indoors with no outdoor work in violation of Section 6-2.1(b)(2). In addition, all work shall comply with federal, state, county and local laws, rules and regulations.

3. *Outdoor Storage*

According to representations made by the Applicant and conditions imposed by the Zoning Code, there shall be no outside storage of damaged or partially disassembled vehicles, unregistered and/or unlicensed vehicles, parts, supplies or other materials. All storage shall be on site, including an area for refuse as approved by the Planning Board in connection with its site plan review.

4. *Hazardous Materials*

All hazardous materials shall be stored and disposed of in accordance with federal and state rules and regulations. The Applicant shall comply with all such rules and regulations and, on demand, indicate to the Building Inspector its compliance with applicable federal and state regulations.

5. *Annual Fee*

The Applicant shall remit an annual fee to the Village of Tuckahoe as established by the Board of Trustees to cover the costs of periodic inspections necessary for the purpose of verifying the Applicant's compliance with all applicable laws, rules and regulations.

6. *Storage/Parking of Vehicles*

No automobiles or other vehicles shall be stored or kept at the Premises except for auto body repairs.

There shall be no storage of unregistered vehicles, partially dismantled and/or vehicles incapable of being driven on public roads except for temporary parking before and after repairs, not exceeding five days in duration for any vehicle. One motor vehicle each for an owner or an employee shall be permitted to be parked on the Premises during their actual hours of employment.

No motor vehicles shall be stored or parked on the sidewalk in the area between the street and the sidewalk at the Premises.

7. *Hours of Operation*

The hours of operation shall be as set forth in the conditions attached to this approval which are attached hereto and made a part hereof.

Conditions

The approvals granted herein are subject to the conditions set forth and contained on Schedule A, attached hereto, made a part hereof and incorporated by reference herein. The Zoning Board finds that the conditions set forth and contained on said Schedule A are reasonable conditions imposed on the Applicant in an effort to make this project more compliant with the Zoning Code standards as well as to reduce any negative environmental impacts associated with this project.

SEQRA

Based on the foregoing, the Zoning Board finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEQRA.
2. This Zoning Board is in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed special use permit application.
3. That the action taken herein shall not have a significant impact upon the environment and it is declared that a Negative Declaration be hereby adopted with regard to this action.

Conclusion

Based on the foregoing, it is resolved that the subject special use permit be and is hereby granted to the Applicant. The Applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance with the New York Civil Practice Law and Rules.

SCHEDULE A

CONDITIONS TO THE ISSUANCE OF A CERTAIN SPECIAL USE PERMIT FOR THE APPLICANT COLUMBUS AVENUE REALTY, LLC FOR THE PREMISES COMMONLY KNOWN AS 138 COLUMBUS AVENUE, TUCKAHOE, NEW YORK

1. The Applicant shall install and operate a paint booth that is compliant with federal, state, county and local laws, rules and regulations and such paint booth shall, as a minimum, have an efficient capture rate of over 99%.
2. All 55-gallon drums or other containers located within the Premises for the disposal of rags or other materials containing solvents shall be placed on spill-containment pallets to prevent any leakage.
3. The Applicant shall contract with and utilize the services of a private carting company to remove said 55-gallon drums containing rags or other materials with solvents.
4. All flammable materials shall be stored in a fire-proof cabinet at all times when not in use.
5. No vehicles or other equipment or materials shall be parked or placed on the public sidewalk abutting the subject Premises and no vehicles shall be worked on, on the exterior of the Premises. All work shall be completed within the subject auto-body repair shop.

6. The Applicant shall not utilize any on-street parking in connection with the operation of its auto-body repair shop.
7. The Applicant shall, at all times, comply with the noise ordinance of the Village of Tuckahoe as the same shall be amended from time to time.
8. The Applicant and its employees shall utilize the central vacuum and individual vacuums in connection with the sanding process that is being completed on vehicles at the subject Premises.
9. The exhaust fan to be located on the roof of the subject structure will be turned away from nearby residences to reduce noise.
10. The hours of operation of the subject auto-body shop shall be Monday through Friday 7:30 a.m. to 6 p.m. and Saturday 8 a.m. to 3 p.m. with the subject autobody shop being closed on Sundays.
11. This special use permit shall be issued for a period of five years consistent with Section 6-2.1(a) of the Zoning Code of the Village of Tuckahoe. This special use permit shall terminate and expire in accordance with the terms of the Zoning Code of the Village of Tuckahoe. Unless terminated earlier pursuant to the terms of the Zoning Code, this special use permit shall terminate and expire on December 7, 2015.
12. In connection with the Applicant's spray-booth operations, the Applicant shall utilize a water-based paint so as to minimize and decrease any and all volatile organic compounds emanating from the Premises.
13. In the event the Applicant seeks to add an additional business to the Premises, such additional business shall require a special use permit from this Zoning Board of Appeals.
14. In connection with its auto-body shop operations, the Applicant shall utilize a silent compressor so as to minimize the amount of noise emanating from the compressor utilized upon the Premises.

Member DiSalvo motioned to accept this approval, seconded by Member Gallo and carried by the Board with a vote of 4 – 0.

Member Gallo asked if the members of the Board visited the site during the month and what their thoughts were on the condition of the site. Each member stated that they did visit the site and were very pleased with the condition. Member Gallo stated that the application of 138 – 140 Columbus Ave. brings to the forefront the importance of reviewing Village Code regarding separating auto body shops from auto repair shops. He spoke with Trustee Giordano regarding this matter. Chairman McBride stated that this is a matter for the Master Plan committee to review at length.

Item #3 36 Midland Place Use Variance

Joseph Crocco, architect for the applicant John Gentile and his son Joseph Gentile, noted that the building on 36 Midland Place has been owned by the Gentiles since 1998 and used for a construction business. There is office space on the second floor walk up which the applicant would like to convert to a two-bedroom apartment. The apartment would require two parking spaces which will be provided after the relocation of the fence. There are no safety issues, it would reduce traffic with a tenant compared to the traffic produce by a working office. The space exists and so the construction would be minimal. The Gentiles have not been successful in being able to rent the space as professional office space. There is a provision in the ordinance which allows a caretaker to stay on the premises.

Member Gallo asked if the applicant engaged a real estate agent to list the property. Mr. Gentile stated that he indeed listed the office space with a real estate office for 6 – 7 months about 6 years ago. He has not tried with the real estate since.

Member DiSalvo asked if it was the intention of the applicant to file for economic hardship. Mr. Crocco replied yes as the applicant could possibly rent the two-bedroom apartment for \$1200 per month.

Chairman McBride stated that the present day Zoning Ordinance does not permit living space in any building in the industrial zone. The Zoning Law cannot be changed as it would certainly set a precedent.

Mr. Crocco stated that 192 Marbledale was granted a variance for a new residence on the premises. Bill Williams, Building Inspector, noted that this application in question was for a hardship due to a health issue in the Shivone family. A single family home was approved on the property with a two family home already on the property. The applicant had submitted financial records to prove there was also financial hardship.

Mr. Gentile stated that he would indeed submit financial records.

Chairman McBride noted that there are restrictions in industrial zones such as health issues, safety issues and parking issues when adding residential to existing industrial zones.

Member Gallo noted that there are a few empty second floor offices in the village that would also apply to convert to residential.

Bill Williams, Building Inspector, noted that there are plenty of vacant second floor office spaces in the village.

John Cavallaro, Village Attorney, noted that if this variance were to be granted, the variance runs with the land. Any extreme business may rent the downstairs office space.

Mr. Crocco noted that industrial zones are not what they used to be. There are clean and green and have to comply with federal guidelines etc.

Chairman McBride stated that SEQR would be an issue along with safety issues.

Mr. Crocco noted that there are apartments right across the street.

Motion by Member Gallo to open the public hearing, seconded by Member Palladino and carried with a vote of 4 – 0.

No Public Comments

Motion by Chairman McBride to keep the public hearing open, was seconded by Member Gallo and carried with a vote of 4 – 0.

Chairman McBride wished all a Happy Holiday and a safe return for all our service men and women.

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.