

Minutes of: November 13, 2013
Date Approved: December 11, 2013
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November 13, 2013
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Ronald Gallo Chairperson
John Palladino Member
Steve Alfasi Member
Nicholas DiSalvo Member
David Kubaska Member

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

Absent: David Scalzo Member

Chairman Gallo announced the agenda of this meeting as follows:

Pledge of Allegiance

Item #1 Approval of Minutes from the Regular meeting dated October 9, 2013
Item #2 200 Marbledale Rd. Area Variance
Item #3 85 Yonkers Ave. Area Variance
Item #4 199 Marbledale Rd. Special Use Permit

Item #1 Approval of Minutes from the Regular meeting dated October 9, 2013
Chairman Gallo motioned to approve the October 9, 2013 minutes, was seconded by Member DiSalvo and carried with a vote of 5 – 0.

Item #2 200 Marbledale Rd Area Variance
Mr. Rocco Salerno, attorney for the applicant Home Ice LLC, requested approval for an ice hockey rink at this location. This location is in the commercial district. The site is 22,495 sq. ft., which was previously a warehouse for automobiles. The proposed use is permitted and there will be no changes to the existing structure. The Zoning Board granted a resolution requiring 20 parking spaces. The space provides only 10 spaces on site. BFJ Planning has reviewed the plans and concluded that a minimum of 16 parking spaces would be available on the street. Mr. Salerno noted that the applicant plans to approach the Village Board to discuss the parking spill over as a result of the Crestwood development. Due to the spill over, there seems to be a need for parking meters to prevent commuters from taking up the parking spaces available on Marbledale Rd.

Member Alfasi asked if the applicant would provide the costs of the installation of the new meters, if approved.

Mr. Salerno stated that his applicant, in conjunction with other business owners in the immediate vicinity, would present to the Village Board. He noted that the Village and his client may share in the cost, as the Village would benefit from all the revenues collected from the meters.

Chairman Gallo motioned to open the public hearing, seconded by Member DiSalvo and carried unanimously.

Public Comments

Fred Madonna 192 Marbledale Rd. voiced his comments regarding the 100ft. of curb area in front of his house. He has two driveways on either side of his house and a fire hydrant in the middle of the driveways. This allows for a long strip of space that he feels will be a temptation for customers of the ice hockey rink to park and leave their car illegally. The Village painted white strips, but he would like to have No Parking signs installed.

Bill Williams, Building Inspector stated that this is an issue for the Police Dept.

Chairman Gallo noted that he is sympathetic to the needs of the resident and supports the idea of No Parking signs. He noted that he would speak to the Police Chief and offer support for this idea.

Mr. Madonna noted that it was his opinion that the proposed ice hockey rink will destroy his property value. He offered the idea of a senior care/assisted living for Marbledale Rd. which would be good for the Village and not be a stress on the schools.

Oliver Stauffer resident 145 Main Street noted that his place of employment on Marbledale Rd., Packaging Technologies and Inspection employs many people from the local area. His concern is that Tuckahoe continues to foster these types of jobs by maintaining industrial jobs on Marbledale Rd.

Chairman Gallo added that the Board is trying to maintain diversity. The zoning changed so not to be so highly restrictive and to keep all options open.

Zev Abraham, owner of the ice hockey rink, noted that there will be a public address system in the facility to make an announcement to move any car illegally parked.

Chairman Gallo motioned to close the public hearing, seconded by Member DiSalvo and carried unanimously.

Chairman Gallo stated that he spoke with many neighbors in the vicinity of the proposed hockey rink and they were very excited and felt it will have a positive impact in the community.

Chairman Gallo offered the following resolution in the form of a motion:

The application for an area variance requested by Home Ice, LLC 200 Marbledale Rd. Tuckahoe NY Section 39, Block 3 Lots 3E and 3T for the relief from the following section of the zoning code: Section 4-8.6 and the determination by the Planning Board that the proposed use requires 20 off-street parking spaces at the project site.

Recommendation is for the area variances to be granted as the benefit to the applicant of the area variances outweighs the detriment to health, safety and the welfare of the neighborhood: In this application, the applicant, as determined by the Planning Board, is required to have 20 off-street parking spaces where 10 off-street parking spaces are being provided. This Zoning Board finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood and hereby grants this area variance subject to the conditions stated herein.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: There appears to be adequate on-street parking for the additional 10 off-street spaces required by the applicant in this variance application, however, this Zoning Board does find that many of the uses on Marbledale Rd. use the on-street parking for all day parking because there are no parking restrictions on Marbledale Rd. Also, this Zoning Board finds that commuters park along Marbledale Rd. for all day parking, which this Zoning Board seeks to remedy by the conditions stated below. This Zoning Board further finds that by the granting of this area variance, subject to the conditions stated herein, there will not be an undesirable change in the character of the neighborhood.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance: Based on the proposed use and existing building, there is not adequate space for 20 off-street parking spaces as required of the applicant. Also, in this application, the applicant is not going to expand the existing building.
3. The requested variance is not substantial: Although the applicant seeks a variance of 50% (20 required spaces, 10 proposed), this application must be viewed in its entire context where adequate on-street parking would be available within a reasonable distance from the site based on the conditions stated below. This Zoning Board is viewing the application as a whole not merely applying percentages based on this application.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that: Environmental conditions such as poor aesthetics, pollution, traffic and noise will not be significantly increased as a result of a parking variance for 10 parking spaces.
5. The alleged difficulty was self-created: The alleged difficulty was self-created, however, such self-created difficulty is not fatal to this application.

A recommendation to approve the requested area variances with the conditions that:

1. The work under this application be commenced and diligently prosecuted within one year of the granting hereof, failing of which such variance shall become null and void.

2. In addition, this Zoning Board finds that many uses on Marbledale Rd. use the roadway of Marbledale Rd. for all-day on-street parking in conjunction with the adjacent uses and other uses and sites, and in addition thereto, many commuters use Marbledale Rd. for all-day on-street parking. In order to avoid this applicant not having access to on-street parking spaces on the Marbledale Rd. roadway as a result of such conditions, and as a condition of this approval, this Zoning Board shall require that the applicant pay for and reimburse the Village for the full cost of installing 10 two-hour parking meters on the Marbledale Rd. roadway and adjacent sidewalk to ensure that the applicant's use has access to the needed on-street parking spaces on Marbledale Rd. Currently, there are no parking restrictions on Marbledale Rd. and this Zoning Board wants to avoid the applicant not having access to and the use of on-street parking spaces near and about the project site. The location of the parking meters to be installed shall be determined by the Tuckahoe Police Department.

Motion was seconded by Member DiSalvo and upon roll call was carried unanimously by the Board.

Item #3 85 Yonkers Ave.

Area Variance

Leonard Brandes, architect for the applicant stated that the Planning Board granted his client a change in the parking requirement from one parking space per 200 sq. ft. to one parking space per 400 sq. ft. The BFJ Planning noted that there is adequate parking across the street at the metered spaces. There is a handicap parking space on the site. The architect displayed a three dimensional model of the proposed building.

Chairman Gallo noted that this is a very visible location and has been an eyesore for too long.

Chairman Gallo motioned to open the public hearing, seconded by Member DiSalvo and carried unanimously.

Public Comments

Ms. Erin Fitzgerald 1 Scarsdale Rd., supported the proposed plan and agreed that there are ample parking spaces on the street for this site.

Chairman Gallo motioned to close the public hearing, seconded by Member DiSalvo and carried unanimously.

Member DiSalvo motioned that the Board adopts a negative declaration pursuant to SEQR. Motion was seconded by Member Kubaska and carried with a vote of 5 – 0.

Member DiSalvo offered the following resolution in the form of a motion:

The application for an area variance requested by Mario Durante for the relief from the following section of the zoning code: Section 5-1.2 where 7 off-street parking spaces are required and 5 off-street parking spaces are being provided.

Recommendation is for the area variance to be granted as the benefit to the applicant of the area variances outweighs the detriment to health, safety and the welfare of the neighborhood: The

surrounding neighborhood will not sustain a negative impact as a result of a 2 parking space variance thus the benefit to the applicant outweighs the detriment to the surrounding community.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: The neighborhood will not have undesirable changes because of a two space parking variance.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance: Based on the size of the existing lot, the applicant cannot achieve its goal with this site other than the granting of this variance.
3. The requested variance is not substantial: This Zoning Board finds that two-space reduction is not a substantial variance and the application must be viewed in the context as a whole.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that: Environmental conditions such as noise, traffic, and negative aesthetics will not be significantly increased as a result with the granting of this variance.
5. The alleged difficulty was self-created: Although the alleged difficulty was self-created, it is not fatal to this application.

A recommendation to approve the requested area variances with the condition that: the work under this application be commenced and diligently prosecuted with one year of the granting hereof, failing of which such variance shall become null and void.

Motion was seconded by Member Alfasi and upon roll call was carried unanimously by the Board.

Item #4 199 Marbledale Rd.

Special Use Permit

Mr. Christopher Tiso, attorney for the applicant Michael Capone, stated that he was a former member of the Tuckahoe Zoning Board. He noted that his client is requesting approval to open up an auto body repair shop at this location. Mr. Tiso stated that this application meets all the requirements of the 5 – prong test for an area variance. He referred to a recent court case, Kabro Associates, LLC vs. the Town of Islip Zoning Board of Appeals. He stated that the NY Appellate Court deemed the Zoning Board decision to deny the Special Use Permit arbitrary and capricious. He added that this Board would need to have a rational explanation to deny this application. It is not a purview to keep business out or suppress competition and a denial would be arbitrary. He made a FOIL finding and found that there are no complaints filed with regard to this site being used as an auto body shop in the past. Mr. Tiso added that this use is permitted with the granting of a Special Use Permit and the applicant has met the 5 – prong test.

Member Alfasi stated that this use is not a use that is permitted as of right. A Special Use Permit needs to be granted and a 200ft. restriction is a permissible restriction.

Mr. Tiso noted that this site was the location of an auto body shop for the past 20 years.

John Cavallaro, Village Attorney, stated that if the application is for a Special Use Permit, why is the 5 – prong test for an area variance mentioned? To get a Special Use Permit, the application must meet all the conditions. For the applicant to get relief from the 200 ft. requirement, than this is essentially an area variance application. This is an application wrapped in an application. The Kabro case cited was different as it met all the conditions for a Special Use Permit. The 200 ft. restriction exists in the Tuckahoe Zoning Code. There is no benefit that the previous use was an auto body shop as the prior use was non-conforming. The Zoning Code does not state that if the prior use is the same, the applicant does not need to fit the 200 ft. requirement.

Mr. Tiso agreed that the application is not in compliance with the 200ft. restriction stated in the Zoning Code, however, there is no difference from the shop that was on the site to the application for this site.

Member Alfasi stated that this application requires an area variance for the 200ft. restriction. The application must meet the 5 – prong test to have that area variance granted.

John Cavallaro, Village Attorney, noted that an area variance is a dimensional requirement, the auto body shop has a 200 ft. requirement. This application cannot meet the conditions of the Special Use Permit.

Member Palladino asked about the previous tenant moving to the location on Columbus Ave.

Bill Williams, Building Inspector noted that there are two distinctions, the previous tenant did not move to a new auto body shop, he moved to an existing auto body shop.

John Cavallaro, Village Attorney, stated that a new body shop triggers the 200 ft. requirement and there is no provision even if it is within one year.

Mr. Tiso argued that one auto body shop left, and another wants to move in.

Chairman Gallo stated that the auto body shop did not leave, but stayed and moved to the Columbus Ave. location within the Village. The concern for this Board is the density of these businesses. The zoning on Marbledale Rd. was changed back in 2009 from Industrial Zone to General Commercial Zone.

Mr. Stoffel, owner of the building 199 Marbledale Rd. indicated that it took quite awhile to find a tenant for this part of his building. He stated that Mr. Capone will use this space the same way as the previous tenant did. The auto body shop was at this site for 17 years.

Chairman Gallo noted that he was aware of the tax base and the stagnant economy. As a resident and a commercial real estate broker, these changes in diversity enhance the property value.

Mr. Tiso stated that the client's auto body shop will be housed in the rear of the building, taking up approximately 10% of the building.

Chairman Gallo motioned to open the public hearing, seconded by Member Alfasi and carried unanimously.

Public Comments

Oliver Stauffer, COO of Packaging Technologies and Inspection located at 145 Main Street Tuckahoe NY, noted that the corridor of Marbledale Rd. has been known for its auto body shops. The space is designed for an auto body shop. He offered his support for the application as it supports skilled labor in the community.

Chairman Gallo stated that the 200ft. restriction is not for competitive reasons rather to prevent high density of one type of business.

Janice Barandes Marbledale Rd., President of the Homeowners Assoc., and realtor stated that she understands Zoning Code and Special Use Permit applications and stated that she agrees with the Board that having diversity is a good thing. The new Zoning law was put in place to address diversity. If this application is permitted, why not the next? The law is there for a reason.

Chairman Gallo noted that this is a complicated issue and will hold over the public hearing until next month.

Chairman Gallo motioned to keep the public hearing open, was seconded by Member Kubaska and carried with a vote of 5 – 0.

Mr. Tiso added that the location of this garage is such that it limits the type of tenant; such businesses as a deli, flower shop etc. would not be suitable as the garage is set back in the driveway.

Chairman Gallo noted that the 200ft. restriction is for auto body shops. Businesses such as plumbing contractor, electrical contractor etc. would be fine.

Chairman Gallo noted that there is a history of many members of the community wanting a change to Marbledale Rd., which was referred to as gasoline alley. It was unappealing for future businesses. Residents such as Community Center Board members, Mayor Phil White, Mayor John Fitzpatrick, current Mayor Steve Ecklund, resident and Councilwoman Sheila Marcotte all agreed that change was necessary on this road.

The Zoning Code was changed so this road would not be gasoline alley and diversity would begin to happen. He added that he spoke with approximately 70% of the neighboring business owners and there was a concern regarding this application. Chairman Gallo voiced his concern regarding the amount of For Rent signs throughout the Village and agreed that this is must change. There is financial pressure in the Village coming from all the demands from Albany. This Board has to consider what is best for the long term. The Board is doing their due diligence.

This application will remain open until the next meeting.

Member Alfasi requested copies of the Kabro Assoc. vs. Town of Islip findings.

Old Business/New Business

John Cavallaro, Village Attorney, summarized the following:

Glenmark – moving forward.

Crestwood - reached out for an update and there has been no response from their attorney.

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.