

Minutes of: Apr. 10, 2013
Date Approved: May 8, 2013
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April 10, 2013
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

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

Also in Attendance:
John Cavallaro Village Attorney
Bill Williams Building Inspector
David Scalzo Member (ad hoc)

Chairman Gallo announced the agenda of this meeting as follows:

Item #1 Approval of Minutes from the Regular meeting dated November 14, 2012
Item #2 100 Main St. Extension for Special Use Permit
Item #3 300-308 Columbus Ave. Extension for Special Use Permit

Item #1 Approval of Minutes from the Regular meeting dated November 14, 2012
Chairman Gallo motioned to approve the Nov. 14, 2012 minutes, seconded by Member Kubaska and carried with a vote of 5 – 0 with Member Scalzo abstaining due to his absence.

Item #2 100 Main St. Extension for Special Use Permit
Chairman Gallo noted that this application was granted approval back on April 11, 2012 after many months of discussion. The Planning Board also worked thoroughly with this application.

Mr. Les Maron, attorney representing the applicant, noted that the Special Use Permit was granted on April 11, 2012. The applicant then spent months presenting plans to the Planning Board and was granted Site Plan approval on December 18, 2012. Since the approval, the engineers have completed testing for the foundation. Those plans will be submitted tomorrow. The applicant still needs to present the materials for Architectural Review. The project remains unchanged as approved one year ago.

Mr. Maron noted that the owner intends for the apartments to be rental units, but if the market changes, he may convert the apartments to condominiums. He noted that apartment ownership is not necessary for approval, but he thought it was necessary for the Board to be aware of the applicant's plans.

John Cavallaro, Village Attorney, noted that ownership, rentals or condominiums, is not governed by the Zoning Board of Appeals.

Bill Williams, Building Inspector noted that there have been no changes made to the plans that were approved on April 11, 2012.

Member Alfasi noted that Mr. Maron was very complete in his presentation tonight. There is progress being made such as Site Plan approval and testing for the foundation.

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

Public Comments

Claire Mottola 43 Terrace Place, noted that her property line abuts the applicant's property line. She has worked closely with the applicant discussing her concerns. Her one main issue is parking. The loss of parking on Terrace Pl. will be detrimental to the two houses on Terrace Pl. that do not have driveways, one of which is hers. She asked the Board to support her suggestion of permit parking to the area residents to prevent commuters from using the few available spaces.

Chairman Gallo stated that he has worked diligently on the parking plans for this project. The Board is extremely concerned about parking in this community. The issue of permit parking has to be brought up to the Village Board. This Board does not approve permit parking.

Mrs. Mottola stated that she would present her request to the Village Board. She asked the Board for their support.

Member Scalzo noted that he once lived on Terrace Pl. and sympathized with Ms. Mottola regarding the tight parking. He assured her that this Board would put in a good word of support to the Village Board and Chief Costanzo.

Member Palladino offered his support as well.

Victoria Angelillo 84 – 86 Main Street, stated that she was very upset. This project began in 2007, was granted an extension in 2011 and 2012. She objected to the granting of this extension. She claims to have severe flooding in the basement of her building due to the removal of some trees and displacement of soil. Mrs. Angelillo stated that the approval granted on August 24, 2011 stated that the applicant shall retain 100% of storm water on his property. The Planning Board granted approval in December, and there has been no work started. She added that parking is an issue and Terrace Pl. would be a very dangerous street if converted into a two-way street.

Bill Williams, Building Inspector added that there is no proof that storm water is going onto her site. When construction commences, he will be able to see the flow of the water. As of right now, there is no water flowing onto her property. He added that he has pictures if the Board requested.

Member Alfasi stated that unless we can show that the owner is taking measures to deviate the water, this issue would belong in a court of law.

John Cavallaro, Village Attorney, noted that the standard of review for granting an extension for a Special Use Permit is to examine if there is any material change to the surrounding circumstances. If a denial were to be issued, it would have to be based on change of circumstance, for example, change on the site, change to surrounding buildings, change with the character of the community, any factual changes. If factors from the original approval have not stayed the same or there have been some changes, the basis for approval would change and the application would now warrant a denial.

Chairman Gallo stated that he sought Mr. Fish's professional opinion and he concluded that there were no material changes.

Mrs. Angelillo voiced her concern regarding the date of the SEQR for this site. It was her opinion that there have been significant changes to the Village within the last few years and that should warrant a new SEQR. She added that the applicant stated that finances were a concern last year and now finances are not a concern. No financing is necessary.

Chairman Gallo noted that finances are not an issue. This Board would like this to move forward. He has allowed Mrs. Angelillo to speak at workshop meetings. The applicant has worked diligently with the Planning Board for approval.

Mrs. Angelillo claims that she has no confidence that anything will go forward. She is afraid that she will be back here in another year for another extension application. She asked if the applicant was limited to the 3315 square footage of retail space that was approved.

Chairman Gallo noted that the applicant would need to apply for additional square footage of retail space. A change in the retail space would be considered a material change.

John Cavallaro, Village Attorney, noted that the applicant applied for 3315 sq. ft. of retail space. The Board granted that approval. If there is a decrease or increase of that amount, the applicant must return for approval.

Chairman Gallo motioned to close the public hearing, seconded by Member DiSalvo and carried with a vote of 5 – 0.

Chairman Gallo motioned for a negative declaration pursuant to SEQR for 100 Main Street. Motion was seconded by Member DiSalvo and upon roll call was carried unanimously.

Chairman Gallo motioned to grant approval to 100 Main Street for an extension for the Special Use Permit with an expiration date up and through December 17, 2013.

John Cavallaro, Village Attorney, stated that under the extension, the variances and the Special Use Permit granted by this Board on April 11, 2012 decision shall expire if work and construction is not commenced by that date. In addition, terms, provisions and conditions of the April 11, 2012 decision shall apply to this extension. Member DiSalvo seconded the motion.

Discussion: Member Alfasi stated to Mr. Maron that the granting of this approval is being done at the 11th hour 59th minute. The previous approval expires today. He asks that in the future, any problems or concerns should not be held until the last minute.

John Cavallaro, Village Attorney, added that the Zoning Board's date of December 17, 2013 runs concurrent with the Planning Board date, which will also, expires on December 17, 2013.

Member Palladino agreed with Member Alfasi's statement.

Upon roll call, motion was carried with a vote of 5 – 0.

Item #3 300-308 Columbus Ave. Extension for Special Use Permit

Mr. Les Maron, attorney for the applicant, explained a change in the applicant. The property has always been owned by Crestwood Station Plaza, LLC, with Streetworks authorized to obtain permits, Special Use Permits and Site Plan approval. Streetworks will no longer be involved with this project. As of Feb. 2013 Streetworks had outstanding bills and unpaid taxes of approximately \$29000. All outstanding bills have been paid. The project remains unchanged.

Robert Davis, attorney representing Streetworks, supports and authorizes the new applicants. The applicants have finance commitments in place to move forward.

Chairman Gallo offered clarification that Crestwood Station Plaza, LLC is the fee owner of the property and Streetworks was working for Crestwood Station Plaza, LLC.

Gabriel Seidel, employee of Streetworks, stated that he was present to speak on the behalf of the company Streetworks to offer support for the extension of the Special Use Permit for this application. He noted that Streetworks was the contract vendee and now the owner has decided to move forward with this project.

John Cavallaro, Village Attorney, noted that this was not common in the Village that a fee owner would now move forward without the contract vendee.

This Board is not privy to the specifics of the contract between Crestwood Station Plaza, LLC and Streetworks. The Land Use Approval is granted to the land not to the applicant.

Chairman Gallo noted that the land owner should prove ownership through county records. In addition, the contract vendee, Streetworks, should offer a notarized letter to this Board giving authorization to Crestwood Station Plaza, LLC to move forward with the plans.

Member Palladino asked if Streetworks still considers themselves the developers of this property. Will there be legal action taken?

John Cavallaro, Village Attorney, stated that he is not privy to their contract. The owner is taking back the project. There could be legal implications in the future. There possibly could be a court order issuing an injunction to stop construction.

Member Alfasi asked that the Board require the property owner to put on notice the contract vendee to protect the Village.

John Cavallaro, Village Attorney, agreed that the Board could ask the owner to notice Streetworks as part of the radius mailing. The vendee should be notified of the next meeting, May 8, 2013.

Member Scalzo asked the applicant to characterize the legal issues between Crestwood Station Plaza, LLC and Streetworks. Is it the owners' intention to move forward with outstanding litigation?

Mr. Maron noted that he was not at liberty to discuss that, but was authorized to say that the owners want to put a shovel in the ground as soon as possible.

Mr. Giulio Monaco, one of the owners of the property, stated that their financing is secure.

Chairman Gallo stated that this project was very controversial. The Board sifted through the plans presented by Streetworks with a fine tooth comb. After much discussion, the Board decided to move forward with the project. This Board is not familiar with these owners as we were to Streetworks. He requested information about the owners as well as former projects. Chairman Gallo noted that he will leave the public hearing open for the next meeting.

John Cavallaro, Village Attorney, asked Mr. Seidel the following questions:

Are you an employee of Streetworks? Mr. Seidel responded yes.

Is your employer in favor of granting the extension of the Special Use Permit and variances that were approved February 8, 2012? Mr. Seidel responded yes.

Are you here with authorization from Streetworks to provide that statement to the Zoning Board? Mr. Seidel responded yes.

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

No Public Comments

Chairman Gallo noted that he would like Mr. Fish, Village Consultant to be present at the next meeting.

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

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.