

Minutes of: Oct. 14, 2015
Date Approved: __Feb. 10, 2016__
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October 14, 2015 (Revised Feb. 10, 2016)
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Ronald Gallo Chairperson
John Palladino Member
Tom Ringwald Member
Nathan Jackman Member

Absent: David Scalzo Member

Also in Attendance:
Gary Gjertsen Village Attorney
Bill Williams Building Inspector

Pledge of Allegiance

Chairman Gallo announced the agenda as follows:

Item #1 Approval of minutes from the Sept. 9, 2015 Regular Meeting
Item #2 10 Fisher Ave. Interpretation of the code

Item #1 Approval of minutes from the September 9, 2015 Regular Meeting
Chairman Gallo motioned to approve the minutes from the September 9, 2015 meeting, was seconded by Member Jackman and upon roll call was carried 4 – 0.

Item #2 10 Fisher Ave. Variance

Les Maron, attorney representing the applicant Martine's Bakery, requested an interpretation from the Zoning Board regarding Section 7-712B NYS Village Law which states the following:

Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to

that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken..

Mr. Maron noted that the applicant is not requesting a variance, rather an interpretation from this Board regarding the actions taken. The building is approximately 80 years old. The bakery at this site has been in business for approximately 50 years. The present owners purchased the bakery in 2008 and acquired the Certificate of Occupancy, which is required by the Village. A few years ago, the applicants were granted permits to install a second form an egress on the lower level. Employees from the neighboring business filed a complaint about the use of the driveway. The bakery property has deeded access to this driveway. Mr. Williams visited the site and suggested the applicants build a wall to separate the area where the trucks are parked and install a bathroom and employee lounge area. The applicants followed the suggestion and recently filed the application for the permits. Mr. Williams denied the building permit referring to Section 4-6.1 of the Building Code, and added that the proposed use was not permitted.

Mr. Williams, Building Inspector, stated that he received complaints that there was work being done at the site and they had expanded their use. Some of the construction was completed without the proper permits. The applicant then filed the application to legalize the construction that had been done. A second letter dated Feb. 5, 2015 was a denial of the application, because Mr. Williams determined that the use changed from retail to manufacturing.

Gary Gjertsen, Village Attorney, noted that the Board's position is to determine if Bill Williams's interpretation of the code is accurate or the Board could override the interpretation. The Section 4-6.1 Code in the Business District states that a retail store could operate as of right. Mr. Williams states that the retail store has expanded its use and thereby is now considered a manufacturing use. The manufacturing use requires a Special Use Permit. The Board needs to determine if the bakery is operating as a retail use or a manufacturing use.

Member Ringwald asked if the applicant plans to continue as a retail business or expand in the future as a manufacturing site.

Mr. Maron stated that it was the bakery's intent to continue as a retail business.

Mr. Williams added that he visited the site and heard complaints that there was an increase in truck traffic. He noted that the owner stated that she had another bakery in Scarsdale which some baked were delivered to. During a recent workshop meeting, the applicant stated that she also sells baked goods to outside catering companies. Mr. Williams stated that he concluded with the knowledge that the business had expanded to a manufacturing business, which now supplies to outside caterers and supplies the site in Scarsdale.

Chairman Gallo asked if there is a limit to the number of trucks.

Bill Williams noted that the number of trucks would be an issue that the Planning Board would determine.

Member Jackman noted that the number of trucks coming and going would help the Board in making this determination. A number of 30 trucks would constitute a manufacturing site while one or two trucks may determine a retail site.

Mr. Maron stated that 80% of the baked items sold are to the residents in the village. Another 18% of baked goods are brought to the retail shop in Scarsdale, and 2% of their business is to supply country clubs. That is an extremely small portion of their business. The majority of their business is to the local residents. Mr. Maron added that this business is considered a retail business. An argument could also be made that the Special Use Permit codes were established in 2001 so essentially; this retail business pre-dates the code and could be considered a prior legal non-conforming use.

Chairman Gallo asked about the criteria for a Special Use Permit for manufacturing. The question of the amount of horsepower was asked.

Mr. Maron noted that the refrigerator on premises is more than five horsepower, which is the same for the refrigerators in every restaurant in the area.

Member Jackman asked about the number of employees.

Mr. Maron noted that all the area businesses are retail and services. The retail store Villarinass could be arguably considered a manufacturing use and as far as he knows, they do not have a Special Use Permit. The manufacturing definition in the code states - manufacturing, assembling, cleaning, altering of goods and products; which are clearly not being done on these premises. There are 12 – 14 employees, but not at the same time. The employee's schedules are staggered with a night baker there through the night and counter girls, bakers and dishwashers rotating shifts throughout the day.

Mr. Maron noted that there are three cold storage units and one oven.

Leonard Brandes, architect for Martine's Bakery, noted that the applicant filed for a permit to expand the seating area. When the application was made, Mr. Williams noted that the work done in the basement had not been done with the proper permits and needed to be legalized. The traffic increased in the back driveway, which Martine's Bakery has access to, due to the public parking lot being renovated over the summer months. The trucks make deliveries in the early morning so they park right on Columbus Ave. They do not back up into the driveway. There may be one or two trucks daily. There was a complaint that there was cooking being done in the garage. Mr. Williams, the Fire Dept. and Mr. Brandes met in the garage and determined that baking was not being done in the garage. Mr. Williams noticed that a portion of the garage was being used for storage. He requested that the applicant apply for a permit to use the garage for storage. He also suggested that a bathroom and a lounge be constructed in the garage. After applying for the permits for these suggestions, the applicant received the denial letter stating that this site was now determined to be a manufacturing use.

Mr. Williams noted that he started to reconsider the use when he saw the storage of goods in the garage, the number of employees and the complaints about the trucks.

Chairman Gallo noted that Martine's Bakery is the best in the county. When a retail store flourishes due to its success, sometimes it expands past the approved use that the Village permitted.

Mr. Brandes added that if this bakery is considered a manufacturing site, then all pizza places should also be considered manufacturing because they deliver all over the area. Also when one manufacturers products, they are sold to many distributors to be sold. That is not the case here.

Member Jackman noted that there is a line between retail and manufacturing, even with baked goods. He asked how the numbers of 80% local business, 18% to Scarsdale and 2% to catering came about.

Tal Campana, owner of the bakery, stated that all items are baked at Scarsdale for Scarsdale except some chocolate mousse cakes and a few specialty items. That is due to the fact that the chef at the Tuckahoe site specializes in baking those goods. Those few specialty items are driven to the Scarsdale site.

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

Public Comments

Rocco Salerno, attorney for Crestwood Station Plaza Co., 269 and 270 Columbus Ave., representing the business that is located in front of the garage. The access to this garage is on a very small easement that belongs to his client. This applicant is requesting that the Board make a factual determination, which, in his opinion, this Board does not have the authority to do. He argued that this is not the proper forum to determine if this is manufacturing or retail. He suggested that the matter be an Article 78 proceeding and be taken up at the Supreme Court. He questioned the authority of this Board to make a factual determination as to if this business is retail or manufacturer.

Member Jackman noted that the code is written so there is room for interpretation as to where retail ends and manufacturing begins.

Mr. Salerno asked that the public hearing remain open as his client would like to offer testimony as to the amount of deliveries to this location. He submitted photos of a tractor-trailer delivering to this site. He added that his client is concerned that the expanded use has wreaked havoc on this small driveway.

Mr. Maron stated that this retail business does not have tractor trailers delivering as it is too small for large deliveries. The delivery trucks do not park in the driveway now that the public parking lot has been completed. Trucks are parked on street or in the lot and hand trucks are used. This could not be an Article 78 unless the applicant has exhausted all administrative avenues.

Chairman Gallo requested a written document of the percentages of customers and deliveries to and from the site. The amount of customers that are country clubs and the number of deliveries per week and especially the deliveries of raw goods, such as the butter, flour etc.

Mr. Salerno noted that the photo of the tractor-trailer shows the truck is parked on Columbus Ave. blocking the access to his client's driveway.

Frank Campana, co-owner of Martine's Bakery, noted that this shop seems to be under a lot of scrutiny. The local pizzeria should also have to report how many pizza pies are delivered to country clubs. There is a woodshop in the rear with very loud power tools. He asked why a complaint has not been made regarding the noise and traffic that is made from the wood shop. He noted that Mr. Salerno stated that the easement was very small yet, he stated that tractor-trailers are in and out.

Member Ringwald noted that the expansion done to the basement was not legal. He asked why the applicant did not file for permits prior to expanding.

Tal Campana, owner of the bakery, stated that the person who filed the complaints has a vendetta against her. The woman filed a complaint that the bakery was discarding wastes down the sewer. That was found to be untrue as the superintendent of the building was on video discarding soapy water down the sewer and the video was submitted to the Building Dept. The person also filed a complaint about trucks using the driveway. A plumber has two trucks that are using that driveway. She asked what evidence is there that the tractor-trailer was delivering to Martine's.

Chairman Gallo noted that Villages have codes for everyone's well-being. The bakery business has thrived and expanded and has become a victim of its own success. This Board now has to determine if this still is considered a retail business or has it crossed the line and now operates as a manufacturing business. This is a fair and reasonable Board. This is the first time the Board has to make an interpretation of the code.

Chairman Gallo motioned to keep the public hearing open, seconded by Member Palladino 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.