

Minutes of: Dec. 13, 2017
Date Approved: Jan. 10, 2018
Date Filed/Village Clerk:

December 13, 2017
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present:	Tom Ringwald	Chairperson
	John Palladino	Member
	David Scalzo	Member
	Nathan Jackman	Member
	Daniel Lang	Member
	Anthony Fiore Jr.	Member (Ad Hoc)

Also in Attendance:
Gary Gjertsen Village Attorney

Pledge of Allegiance

Chairman Ringwald announced the agenda as follows:

- Item #1 Approval of minutes from the November 8, 2017
 Regular Meeting**
- Item #2 173 Marbledale Rd. Return**
- Item #3 100 Marbledale Rd. Renew Special Permit**
- Item #4 198 Midland Ave. Return**
- Item #5 20 Underhill Area Variance**
- Item #6 180 Lake Ave. Adjourned**

Item #1 Approval of minutes from the November 8, 2017 Regular Meeting
Chairman Ringwald motioned to approve the November 8, 2017 minutes,
seconded by Member Palladino and carried with a vote of 5 – 0, with Member
Scalzo abstaining due to his absence.

Item #2 173 Marbledale Rd. Return

Mr. Lyle Lamothe, owner of Broken Bow Brewery, stated that he was seeking approval to expand the existing beer garden, invite high-end food trucks on the premise and get clarity regarding hosting functions outdoors on the premise.

Chairman Ringwald noted that the public hearing was closed on this application.

Member Jackman offered the following resolution in the form of a motion.

SPECIAL PERMIT RESOLUTION

This application by Broken Bow Brewery is for an amendment to an existing Special Permit issued by this Board on November 14, 2012. Broken Bow Brewery has an address of 173 Marbledale Road, Tuckahoe, NY, Sec 39 Blk.4 Lot 8.

Broken Bow Brewery has been operating as a brewery and tasting room since its inception in 2012. It has been an asset to the community and has been an anchor in revitalizing the Marbledale Road corridor as envisioned by the Tuckahoe Master Plan.

The Applicant is currently operating under a Special Permit as it was determined by this Board in 2012 that the use of the Brewery is a manufacturing use and thus is required to operate under a Special Permit pursuant to Zoning Code Section 4-8.1(b)(3).

Over the years the applicant has held numerous events, mostly charitable, at the Brewery and has been required each time to seek permission of the Village Board to conduct those events. The Applicant after being in operation for in excess of five years now sees the need to have an amended Special Permit as the business has evolved. The Applicant is seeking three main amendments to the Special Permit.

First: Applicant is seeking to extend its beer garden, a courtyard adjacent to the exterior of the building, to encroach on two existing parking spaces.

Second: Applicant is seeking to rotate a high end food truck on the premises. The food truck would be located at an area in the parking lot, not to effect any of the existing parking spaces. The food truck would not be owned or operated by the applicant and the applicant envisions the truck to serve high end gourmet food and Applicant would rotate among food truck operators.

Third: Applicant is seeking to host functions at the site. These functions would be consistent with the functions already held at the facility and have been approved on as needed basis from the Village Board. As an addition to conducting certain functions at the facility the Applicant seeks to utilize a tent that would cover a portion of the parking lot.

DISCUSSION

Applicant is located in the General Commercial District . As such there are certain permitted uses as of right in said district. Those permitted uses as of right are the following:

1. Offices for executive, administrative or clerical purposes.
2. Scientific or research laboratories.
3. Warehouse and storage facility enclosed within a building.
4. Schools.
5. Sports and health clubs.
6. Hotels.
7. Restaurants.
8. Retail and service businesses.
9. Churches.

There are then uses in said district that must operate under a Special Permit. Those uses are

1. Motor vehicle filling stations or motor vehicle repair/body shops.
2. Outdoor storage. In case of temporary outdoor storage for a duration less than 90 days, permission may be granted by the Village Building Department.
3. Manufacturing, including the fabrication and assembly of products, and incidental storage, sale and distribution of such products, but excluding heavy industrial processing where products are extracted from raw materials.

It was determined by this Board in 2012 that the Applicant is a manufacturer and thus operates under a Special Permit in the General Commercial District. It was determined that the manufacturing is the brewing of the beer. The Applicant is now seeking by this application to expand the uses of the premises to uses outside of the “manufacturing” use. However, it is determined that the requested uses are still consistent with the permitted uses in the General Commercial Zone. The expansion of the beer garden, the utilization of a food truck and the hosting of functions are ancillary to the main manufacturing use, but are not inherently a manufacturing use. It is deemed that the requested ancillary uses would fall under the restaurant and services business uses that could be operated in the General Commercial District as of right.

Since, the main use of this business is brewing beer, which is a manufacturing use we will analyze the requested ancillary uses under the performance standards of a Special Permit as the main use of the business is manufacturing.

The Performance Standards For Special Use Permits in the General Commercial Zoning District that this Board must consider are as follows:

1. Dissemination of smoke, gas, dust, odor or any other atmospheric pollution outside the building in which the use is conducted or, with respect to a use or

any part thereof, is not conducted within a completely enclosed building, any such dissemination whatsoever.

2. Noise in Violation of Article II of Chapter 15 of the Code of the Village of Tuckahoe entitled, “Noise and other enumerated nuisances.”
3. Discharge of any waste material whatsoever into any water course.
4. Dissemination of glare or vibration beyond immediate site of the use
5. Traffic on any street primarily serving residential districts that is incongruous with the traffic normal to such streets.
6. Physical hazard by means of fire, explosion, radiation or similar cause to property in the same or an adjacent district.

1. Expansion of the Beer Garden

In applying the above performance standards to the expansion of the beer garden it is determined that the expansion meets all the above criteria.

- a. There will be no dissemination of smoke gas dust odor from this use.
- b. Noise must be in compliance with all Noise provisions of the Village Code.
- c. There will be no discharge of any waste into any water course
- d. There will be no dissemination off glare or vibration
- e. There will be no impact on any traffic by the beer garden expansion

Therefore, the request for the expansion of the beer garden is approved.

2. The use of a food truck on the premises:

In applying the above performance standards to the use of a food truck on the premises it is determined that the expansion meets all the above criteria.

- f. There will be no dissemination of smoke gas dust odor from this use.
- g. Noise must be in compliance with all Noise provisions of the Village Code.
- h. There will be no discharge of any waste into any water course
- i. There will be no dissemination off glare or vibration
- j. There will be no impact on any traffic by a food truck being located on the premises. We believe the food truck will services the patrons of the tasting room and do not feel that there will be any impact of traffic by the food truck operating on the premises.

Therefore, the request of the use of a food truck is approved with the following conditions.

1. The food truck may only be on the premises during the hours that the tasting room is open.
2. The food truck may only be located in the area next to the beer garden and shall not interfere or impact any of the parking space located on the premises.
3. All cooking done must be within the food truck. There shall be no outside cooking of food.

3 .The use of the premises for events

Almost since its inception the applicant has been holding events at the facility. Prior to this application the applicant would seek permission from the Village Board to hold said events. With this application the applicant is seeking approval from this Board to hold events so as not to have to apply to the Village Board for future events. This Board views the events in three separate categories: First, events that take place completely within the confines of the building. Second, events that take place in the parking area of the property and lastly, events that take place on the parking area and are covered by a tent.

- a. Events that take place in the confines of the building are approved as it meets the performance standards of the Code. The events shall not be limited in the frequency, but shall comply with all fire code regulations and only be held during the business hours of the tasting room.
- b. Events that takes place in the parking area, but not require a tent are approved with the following conditions:
 1. There shall be a limit of 12 days in the calendar year where the parking lot may be closed for events.
 2. Applicant must continue its agreement with its neighbor, which a copy shall be attached hereto as Exhibit A, for the neighbor to provide overflow parking for the event. If at any time the agreement between the parties ends then before applicant hosts any

further events applicant must provide to this board an alternative parking solution that is acceptable to this Board.

3. The events must take place during the normal business hours of the tasting room.
 4. Before hosting an event applicant must obtain any and all necessary permits or approvals from the fire and police departments.
 5. Any catered food at the events must comply with all Westchester County Department of Health approvals. It is recommended that applicant use its best efforts to use local business to catered said events.
 6. All events must comply with all noise restrictions of the Village Code
- c. Events that take place in the parking area and utilize a tent are approved with the following conditions:
1. All conditions listed in subsection (b) above are hereby reiterated herein and shall be conditions of this subsection (c). In addition to the above the following conditions are in addition to those listed above.
 2. There shall be a limit of 4 tented events in the calendar year. These events shall be included in the 12 events as listed above.
 3. The tent must meet all fire code regulations.
 4. The tent cannot exceed the dimensions of 40ft x 40ft
 5. The tent may not stay up for a period in excess of 48 hours
 6. The use of “pop-up” tents shall not be counted toward applicant’s 4 tented events limitation.

Further, the special permit decision granting the applicant the initial special permit expires 10 years from the date of the original decision by this Board. This Board hereby extends the original special permit approval, for the brewing of beer and tasting room operations, until either the applicant ceases doing business or the business is sold whichever is earlier.

The approvals for the ancillary uses as applied for in the instant application shall expire concurrently with the original uses originally approved by this Board provided that there are no more than five nuisance complaints (ie excessive noise) to the Police Department of Building Department in any calendar year. If there are in excess of five nuisance complaints in any calendar year then applicant must reapply to this Board to extend the approvals for these ancillary uses.

Lastly , based on this application as submitted, this Zoning Board of Appeals finds and determines that:

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

Member Palladino seconded the motion and upon roll call was carried with a vote of 5 – 0.

Item #3 100 Marbledale Rd. Renew Special Permit

Member Jackman noted that the applicant has submitted photos and plans to redirect the ductwork toward the front of the building. This was a voluntary gesture from the applicant.

Chairman Ringwald noted that the public hearing was still open.

Public Comments

Mr. Denning noted that the applicant, Edward Quintieri had once operated his auto body shop at his building. He received his Special Use Permit as his tenants. He has since moved his business across the street bringing the Special Use Permit with him. The Tuckahoe Zoning Code does not allow two auto body shops to be located within 200ft. As a result, he cannot rent out his space to an auto body shop.

Mr. Denning added that there is a conflict regarding the applicants owing Mr. Denning additional rent.

Gary Gjertsen, Village Attorney, noted that the rent dispute must be handled in a civil court, not at the Zoning Board.

Member Jackman noted that the Zoning Code that states that the restriction of auto-body shops within 200ft. must be deferred to Mr. Williams for clarification.

Mr. Denning added that he is losing potential rent at this location due to this Zoning Code. He cannot rent it out as an auto-body shop and as a result, he is renting the space out for much less per month.

Member Scalzo noted that the Special Use Permits go with the business owner; the variances to a property stay with the property.

Mr. Denning added that it is his opinion that the Village is bending over to please the hotel being built on Marbledale Rd.

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

Item #4 198 Midland Ave. Return

John Scovelli and Leonard Fusha were present as the applicants.

Member Jackman noted that he applicants have made changes requested by the Board members.

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

No Public Comments

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

Mr. Scovelli noted that the proposed plans is to renovate the existing basement to a recreation room, two bedrooms and a bathroom with a spiral staircase to the main floor. The spiral staircase provides the shared space.

Member Scalzo noted that there is a concern regarding renovating basements because it has the potential to be an apartment. The spiral staircase creates a shared space. It is a single-family home split between two floors.

Member Palladino offered the following SEQR resolution in the form of a motion:

AREA VARIANCE RESOLUTION

The application for AREA VARIANCES requested by _ Leonard Fusha

whose address is 198 Midland Ave, Tuckahoe, NY

for relief from the following section of the zoning code: : 4-3.6 Floor Area Ration, 4-3.4.2 Side Yard, and 5-1.6.3 Expanding a nonconformity

SEQRA RESOLUTION

Based on this application as submitted, this Zoning Board of Appeals finds and determines that:

4. The action taken herein is an Unlisted Action subject to the requirements of SEQRA and its implementing regulations.
5. This Zoning Board of Appeals is in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed area variance application.
6. That the action taken herein shall not have a significant adverse impact on the environment and it is declared that a Negative Declaration is hereby adopted with regard to this action.

Member Jackman seconded the SEQR motion and upon roll call was carried with a vote of 5 – 0.

Member Palladino offered the following Area Variance resolution in the form of a motion:

Applicant, Leonard Fusha, is seeking to “finish” the basement at the premises 198 Midland Avenue. The work to be performed will make the basement livable space. Since the basement’s livable space counts towards the Floor Area Ratio (FAR) the property will exceed the allowable FAR, hence this application seeking a variance to exceed the FAR. Since this property is an existing non-conforming property the applicant is seeking a Side Yard variance as the side yard is already non-conforming and the applicant is expanding the non-conformity even though no work is going to be performed on the exterior of the building. Lastly the applicant is seeking a variance to expand the non-conformity.

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 and applying the balancing test, this

Zoning Board finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: By granting this application, detriments to the surrounding properties will not be produced. This application concerns interior renovations and will not have any impact on the visual character of the neighborhood or be a detriment to nearby properties.
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 lot size and zoning classification, the applicant cannot achieve its renovation, absent the granting of the sought area variances.
3. The requested variances are not substantial: Although on its face it appears that the variances are substantial, the existing building is already non-conforming and the improvements are solely to be made on the interior of the building.
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, parking, and traffic and negative aesthetics will not be increased as a result of this application.
5. The alleged difficulty was self-created: Although the alleged difficulty was self-created, it is not fatal to this application.

Member Jackman seconded the motion and upon roll call was carried with a vote of 5 - 0.

Item #5 20 Underhill Area Variance

Peter Berghane, architect for applicant, noted that this property is next door to Village Hall and the proposed deck abuts the parking lot at Village Hall. There is an existing deck, which the applicant is requesting to renovate. The proposed deck will have a spiral staircase. The proposed deck will be on the same footing as the existing deck. The new deck will not encroach any further into the side yard.

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

This application will be left open until next month. There is no one in attendance.

Item #6 180 Lake Ave. Adjourned

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.