

Minutes of: Sept. 10, 2008
Date Approved: Oct. 15, 2008
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September 10, 2008
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 8:00pm

Present: Gloria Rosell Chairperson
Philip Allison Member
Susan Crane Member
Kevin McBride Member
Thomas Giordano Member

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

Chairwoman Rosell welcomed Thomas Giordano as a new member to the Board.
Chairwoman Rosell announced the agenda as follows:

Item #1 Approval of Minutes of the July 9, 2008 meeting.
Item #2 50 Columbus Ave. Return
Item #3 98 Park Ave. Area Variance
Item #4 104 Yonkers Ave. Special Use Permit
Item #5 11 Jackson Ave. Interpretation of Non-conforming Use

Item #1 Motion by Chairwoman Rosell to approve the minutes of the July 9, 2008 meeting was seconded by Member Crane and approved by the Board with a vote of 3-0, with Member McBride and Member Giordano abstaining.

Item #2 Metro PCS NY LLC 50 Columbus Ave.

Ms. Lucia Chiocchio, attorney representing the applicant, summarized the need to locate a wireless telecommunications facility on the roof of 50 Columbus Ave., which now handles the wireless telecommunications for three companies. The application is for four panel antennas, an electronic equipment cabinet, both placed on the roof and a utility connection in the building. This facility would provide service for the local area. Ms. Chiocchio displayed photos of a simulation of the facility once installed. The applicant will comply with all Federal laws and standards. The equipment will penetrate through the roof, which is standard practice, and will be a fire resistant penetration. A janitor's closet may be the path the applicant will use to penetrate the building. The antenna will travel through the closet from floors 2 – 10. The cell companies, which have their equipment in place, must have used this convenient path.

Member McBride voiced his concern regarding the interference with the resident's appliances. Ms. Chiocchio stated that Federal regulations require that there be no interference with appliances. All wireless carriers must operate on different frequencies.

Member Crane asked about the dimensions of the closet which would be used for the antenna, and if the antenna would be visible.

Mr. Donald Dedrick, architect, stated that the antenna would be 6ft. high which is below the top of the penthouse. This antenna would not be higher than the other antennas on the roof.

Chairwoman Rosell asked about the approval letter from the County of Westchester.

Ms. Chioocchio noted that this application qualifies for a notification from the county only, as the facility is too small for an approval. The confirmation letter was submitted to John Cavallaro, Village Attorney.

Member Allison motioned to open the public hearing seconded by Member Crane and was carried unanimously.

No Public Comments

Chairwoman Rosell submitted a letter from a resident in opposition to the application.

Member McBride motioned to close the public hearing seconded by Member Allison and was carried unanimously.

Member Crane offered a Resolution for the application of Metro PCS, for a special permit use is granted. It has been determined by this Board that the following conditions have been met:

1. That the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with such use, the size of the site in relation to the use, the assembly of persons in connection with the use and the location of the site with respect to streets giving access to the site are such that the use will be in harmony with the appropriate and orderly development of the district in which the use is proposed to be located. This does not apply as the use is confined to the rooftop of an existing building.
2. That the proposed use will be compatible with the goals and objectives of the comprehensive plan. The comprehensive plan does not address cell towers.
3. That the proposed structures, equipment or material will be readily accessible for fire and police protection as confirmed by the Building Inspector. This property is accessible by three different roadways.
4. That the location, nature and height of walls and fences and the nature and extent of landscaping on the site does not hinder and discourage the appropriate development and use of adjacent land and buildings. This does not apply, as this is an existing building.
5. That the operations in connection with the use will not be offensive, dangerous or destructive of basic environmental characteristics or detrimental to the public interest of the Village and will not be more objectionable to nearby properties by reason of noise, fumes, vibration, flashing of or glare from lights and similar nuisance conditions than would be the operation of any permitted use not requiring a special permit. This will be confined to the rooftop.
6. That the neighborhood character and surrounding property values are reasonably safeguarded. Currently there are many towers on the building.
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. Does not apply.

8. That the parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses and the entrance and exit drives have been laid out so as to achieve maximum safety. Does not apply.

If this Special Use Permit is granted, it is stipulated that completion be within one year after receipt of the granting of this variance and for the construction to adhere to and be in compliance with the existing building code. The Board adopts a negative declaration pursuant to SEQR.

Member McBride motioned to adopt this resolution, seconded by Member Giordano and upon roll call was carried with a vote of 5 – 0.

Item #3 98 Park Ave. Area Variance

Jack Hughes, attorney representing the applicant Ann Jackson, submitted a package with exhibits and a survey of the area and fence shown. The applicant purchased the property in 2007. A fence that was not in compliance, due to its height, surrounded the perimeter of the property. The fence, old and rusted, was removed and replaced with the same height fence. The new fence is made of natural wood, while the old fence was a chain link fence. The purpose of the fence is to buffer the noise from Midland Ave. The contractor who installed the fence did not mention the need for a variance as he was just replacing the fence that was presently on the property.

Bill Williams, Building Inspector, noted that the citing for the fence was not for the rear yard, rather only one side of the fence. He also noted that the fence measures 8 - 9ft. He stated that the stonewall measures 3ft. in height and the 5ft. fence on top of the wall is intrusive to the neighbor.

Chairwoman Rosell stated that while visiting the property she noticed the significant difference in the grade of the property.

Member McBride motioned to open the public hearing, seconded by Member Crane and unanimously carried by the Board.

Ronald LoPinto, 102 Park Ave. resides next door to the applicant. He submitted photos of the fence, which sits between the two properties and stated that he does not like the height of the fence. He has lived at the property for 38 years and has taken care of the stonewall. It is his opinion that the stonewall is enough of a barrier between the two properties, without the fence. He stated that it was his opinion that the wall sat on the common property line. Mr. LoPinto also added that the tall fence blocks the sunlight.

Member Giordano asked if there was any conversation between Mr. LoPinto and the applicant concerning the fence.

Mr. LoPinto answered no.

Ms. Ann Jackson, applicant and owner of the property, indicated that the new fence was the same size as the original. It was her intent to update the fence, as the old fence was quite old and rusty.

If the neighbor would prefer that she reinstall the old chain link fence on the side of the property that is next to his, she would oblige.

John Cavallaro, Village Attorney, reviewed the survey and concluded that the stonewall was indeed on Ms. Jackson's property.

Member McBride motioned to close the public hearing, seconded by Member Allison and unanimously carried by the Board.

Member Allison offered a Resolution for the application of an area variance requested by Ann Jackson, 98 Park Ave. Tuckahoe, for relief of the following sections of the Zoning Code 5.13 Fences and Hedges

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance 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: the rear yard fence is on Midland Ave and serves as a buffer between a residence and a heavily traveled road.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. The existing stonewalls have been in place for many years and would not be feasible to remove.
3. The requested variance is not substantial. The uniqueness of the rear yard, which is terraced up by 3 levels, decreases an overbearing appearance.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that the size and color green of the fence blend in perfectly with the surrounding area.
5. The alleged difficulty was not self-created.

Member Allison made a recommendation to approve the requested area variances with the stipulation that construction adhere to and be in compliance with the existing building code.

The Board adopts a negative declaration pursuant to SEQR.

If this variance is granted, it is stipulated that completion be one year after receipt of granting all variances.

Member Crane motioned to approve this resolution, seconded by Chairwoman Rosell and upon roll call was carried with a vote of 3 – 2, with Member McBride and Member Giordano voting 'Nay'.

Item #4 104 Yonkers Ave. Special Use Permit

Mr. Les Maron, attorney representing the applicant Vladimir Zolotter, owner of the Ki Marshall Arts Inc., requested a special use permit to open a sports health club. This facility will be a school for Marshall Arts as well as personal training. Mr. Maron submitted a package for the Board members to review. The proposed hours of operation will be from 9:00am to 10:00am Tues. and Thurs. morning one on one personal training. Afternoon classes would be for 3 – 7 years old classes, and 6 – 12 years old classes, Saturday morning classes would be for family classes. Mr. Zolotter also plans to schedule classes for students with special needs. Mr. Maron submitted letters in support of the proposed school. At the present location, there is currently a personal trainer, so there are no plans to renovate the premises at all. The structure is assessable to fire and

police. There will no environmental hazards, no equipment and will not be offensive to the area as it will house only small classes periodically throughout the day.

There will not be any change in the appearance of the building, should not cause an undo traffic congestion as the children are usually dropped off in a carpool situation. Mr. Maron spoke with Chief Costanzo, from the Tuckahoe Police Dept., regarding the drop off area and was advised that the owner may use metered spaces temporarily, paying the Village the amount of time used. As for parking spaces, the lease provides two off street spaces. The previous occupier of the property has been in operation for 7 years and has not received any complaints regarding parking or traffic. Mr. Maron submitted a FOIL request, which supports that there have been no reports dating back 10 years. The commuter lot is available after 4:00pm, and a private lot could be used after 6:00pm if necessary.

Member McBride voiced his concern regarding parking, double parking to drop the children off, traffic being very busy at certain times on Yonkers Ave., and Yonkers Ave. being very narrow.

Mr. Maron noted that the Marshall Arts students are very disciplined. If Master Zolotter asks the clients not to double park, they will comply. If he finds that there are students who disregard his request, he will take steps to prevent this.

Member McBride also noted the concern of the school growing.

Mr. Maron stated that the space is for only 10 students at one time. Each class is 50 min. so there should no be overlap between classes.

Member Allison motioned to open the public hearing, seconded by Member McBride and carried unanimously by the Board.

Suzanne Cantor, Steven Bosan, Etta Eskridge, Lucretia and Stephan Marcovici and Philip McKale all spoke in support of Vladimir Zolotter and his school. Each spoke highly of the discipline found with this program and noted that there would not be any problem with parking.

Chairwoman Rosell motioned to close the public hearing, seconded by Member Giordano and carried unanimously by the Board.

Member McBride offered a Resolution for the application of Ki Marshall Arts, 104 Yonkers Ave. (Section 32, Block 4, Lot 3) for a special permit use is granted. It has been determined by this Board that the following conditions have been met:

1. That the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with such use, the size of the site in relation to the use, the assembly of persons in connection with the use and the location of the site with respect to streets giving access to the site are such that the use will be in harmony with the appropriate and orderly development of the district in which the use is proposed to be located. The parcel is zoned business.
2. That the proposed use will be compatible with the goals and objectives of the comprehensive plan. The comprehensive plan did not suggest this area be rezoned. Any type of business such as retail stores, personal service stores and many others would be permitted in this area without a special use permit.

3. That the proposed structures, equipment or material will be readily accessible for fire and police protection as confirmed by the Building Inspector. This property is accessible by 2 different doorways.
4. That the location, nature and height of walls and fences and the nature and extent of landscaping on the site does not hinder and discourage the appropriate development and use of adjacent land and buildings. This does not apply on existing store.
5. That the operations in connection with the use will not be offensive, dangerous or destructive of basic environmental characteristics or detrimental to the public interest of the Village and will not be more objectionable to nearby properties by reason of noise, fumes, vibration, flashing of or glare from lights and similar nuisance conditions than would be the operation of any permitted use not requiring a special permit. This does not apply.
6. That the neighborhood character and surrounding property values are reasonably safeguarded. No recorded evidence has been submitted that existing surrounding businesses have been affected.
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. The size of this location will not lend itself to undue traffic congestion.
8. That the parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses and the entrance and exit drives have been laid out so as to achieve maximum safety. Class size will be small in number and children will be driven to and from classes.

That a condition of the granting of the special use permit the following conditions is required to assure continual conformance to all applicable standards and requirements.

Condition: Parking issue will be referred to the Planning Board.

Class size must not exceed 10 students.

The Board adopts a negative declaration pursuant to SEQR.

Member Allison motioned to approve the resolution, seconded by Member Crane and upon roll call was carried with a vote of 5 – 0.

**Item #5 11 Jackson Ave. Interpretation of Non-Conforming Use
Member Allison recused himself from the Board for this applicant.**

Mr. Maron, attorney for the applicant, Robert d'Ambrosio, referred to a letter the applicant received from the Building Inspector dated May 2008. The letter stated that zoning code required that the building be closed on all sides to shield the building material so that it is not visible. The letter required that the property be in conformance to the present code. Mr. Maron stated that the use of the property has not changed in 50 years. The prior use was of nonconformity. Mr. Maron submitted a FOIL request and there have been no reports, violations, noise issues, no complaints etc. dating back 10 years. This property has been used prior to the 1960's zoning code and there have been amendments to the code. There has been no change of the use of the property; there should be no requirement to obtain a certificate of occupancy. The owner does not give leases or written agreements to any of the tenants.

Robert d'Ambrosio, present owner of the property, testified that the property has been owned by his parents since 1953. His father had a construction business while he operated a tree business.

He has recently sold the tree business in 2004, but continues to own the property and lease the property to others. He rents the property and collects approximately \$24,000 per year. There have been storage containers on the property since 1981 and additional storage containers in 1998. In 1981, an electrical permit was granted to light up the storage areas.

Member McBride asked if any materials, such as stone, have been sold on the property. Mr. d'Ambrosio stated that nothing is being sold on the property. Many years ago, in the 1970's his brother occupied the property with him and he used stone for his business.

Member Giordano stated that since Mr. d'Ambrosio did not have any leases to supply proof of the rentals, he asked if he declares the rental income on his tax returns. Mr. d'Ambrosio stated that he did declare the income.

Chairwoman Rosell indicated that once the property was transferred from the mother to the current owner, the right to rent to transient tenants was abandoned.

Mr. Maron indicated that it was the use of the property that was in question, and the property is still being used for parking trucks.

John Cavallaro, Village Attorney, reviewed the ownership history. The mother and father owned the property until approximately 1974 when Mr. d'Ambrosio and his brother took over the property and paid rent to their mother. Shortly after 1974, Mr. d'Ambrosio's brother cleaned up the area to rent the space to tenants, whom also paid rent to the mother. He and his brother had a number of trucks parked on the property.

Paul Freeman, co-owner of 100 Marbledale Rd., has been neighbors with Mr. d'Ambrosio since 1966. He is a very good neighbor, and there has never been a problem.

Phil Denning, 125 Marbledale Rd., has been the owner since 1983 and noted that there has never been a problem with this property owner. He voiced his concern regarding the tax return question.

Member Giordano stated that he did not intend to review Mr. d'Ambrosio's tax returns, it was only to use as a tool to prove the rental income of the property, as there were no leases provided.

Mr. Maron stated that the use of the property was a prior legal non-conforming use, ownership could change, and tenants could change. Since the mid 1950's, there has been trucks, equipment and vehicles parked on the property.

John Cavallaro, Village Attorney, asked how many businesses are operating on the property today.

Mr. d'Ambrosio noted that there are 5 or 6.

Bill Williams, Building Inspector, stated that the Village's position is that the use has been extended beyond the original use and the use has intensified. He asked the applicant to provide a parking lot license, which is required by law.

Mr. d'Ambrosio stated that parking along Marbledale Rd. is very tight, so he insists that the employees of the tenants park on the property for safety reasons.

Mr. Maron noted that he would take this under advisement.

Member McBride motioned to close the public hearing, seconded by Member Crane and carried unanimously with a vote of 4 – 0.

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 at 10:15p.m.