

Minutes of: June 10, 2009
Date Approved: July 8, 2009
Date Filed/Village Clerk: _____

June 10, 2009
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

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

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

Chairwoman Rosell announced the agenda as follows:

Item #1 Approval of Minutes of the May 13, 2009 meeting.
Item #2 11 Jackson Ave. Return
Item #3 346 Columbus Ave. Area Variance
Item #4 184 Midland Ave. Adjourned
Item #5 20 Bronx St. Adjourned

Item #1 Motion by Chairwoman Rosell to approve the minutes of the May 13, 2009 meeting was seconded by Member McBride and approved by the Board with a vote of 6-0.

Item #2 11 Jackson Ave. Return
Member Allison recused himself from the Board for this applicant.

Mr. Maron, attorney for the applicant, Robert D'Ambrosio, stated that the applicant was requesting a confirmation of legal non-conformity use.

Member Giordano offered the following resolution:

ZONING BOARD OF APPEALS
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

ROBERT D'AMBROSIO

Premises: 11 Jackson Avenue
Tuckahoe, New York,

Applicant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

Background and Findings of Fact

The Applicant is the owner of the premises commonly known as 11 Jackson Avenue, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 67, Block 3, Lot 10E (the "Premises"). The Premises is otherwise vacant improved only by several storage sheds located throughout the Premises.

The Applicant seeks an interpretation from this Zoning Board of Appeals concerning whether he shall be permitted to continue to use the Premises as a yard for the storage of vehicles and equipment as a prior legal nonconforming use.

The Premises is located in an Industrial Zoning District, which does not permit the outdoor storage of vehicles and equipment as a permitted principal use. Moreover, parking lots are not permitted in the Industrial Zoning District as a permitted principal use.

The Nature of the Application

The Applicant seeks to continue to use the Premises as a yard for the storage of vehicles and equipment as a prior legal nonconforming use. The Applicant further seeks to legalize the existing conditions based on the assertion that the outdoor storage of vehicles is a legal prior nonconforming use.

Conclusions of Law

The Zoning Code of the Village of Tuckahoe provides, in pertinent part, that:

Nonconforming Buildings and Uses. The following provisions shall apply to all buildings and uses existing lawfully on the effective date of this chapter, which buildings and/or uses do not conform to the requirements set forth in this chapter:

5-1.6.1. Such nonconforming use of buildings or open land may be continued indefinitely, but:

- (a) Shall not be enlarged, extended or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, nor shall any external evidence of such use

be increased by any means whatsoever;

(b) Shall not be changed to another nonconforming use; and

(c) Shall not be reestablished if such use has for any reason been discontinued for a period of over one year or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

5-1.6.2. Except as provided in § 5-1.6.4 below, no building which houses such a nonconforming use shall be:

(a) Structurally altered or enlarged; or

(b) Moved to another location where such use would be nonconforming. Subject to § 5-1.6.1, if a building which houses such a nonconforming use is destroyed accidentally due to fire, explosion or other cause, such building may be restored within one year in substantially the same form and location, and the same nonconforming use may be reinstated, without being extended.

5-1.6.3. Any building, the use of which is in conformity with the regulations set forth in this chapter, but which building does not conform to one or more of the requirements hereof other than the use requirements, may be altered, enlarged or rebuilt, provided that such building shall not be altered, enlarged or rebuilt so as to increase the degree of nonconformity thereof.

Here, the Applicant contends that there has been no change to the use of the Premises for nearly 50 years. However, the Applicant overlooks that the use of the Premises has intensified over the years, thus the prior nonconforming use that once existed at the Premises can no longer be viable under the terms of the Zoning Code of the Village of Tuckahoe.

From the record, it is clear that the Premises was initially used by the Applicant's father for his construction business. Subsequently, the applicant used the Premises for the storage of vehicles and equipment in connection with his tree business. In the 1970s the Applicant and the Applicant's brother used the Premises in connection with a stone business. In and about 1974, the Applicant and/or the Applicant's family determined to open the Premises up for rental to tenants.

Thereafter, in the 1980s storage containers were added to the Premises and in the late 1990s additional storage containers were added to the Premises. At some point, temporary trailers were added to the Premises as well.

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Where there was one business operating from the Premises originally, the Applicant currently has five to six businesses now operating from the Premises and storing their respective equipment and vehicles at the Premises. Unquestionably, the nonconforming use that once existed at the Premises has been enlarged and intensified in violation of the Zoning Code.

Additionally, the Applicant asserts that since the mid-1950s there has been trucks and equipment present on the Premises but the Applicant fails to recognize that the number of trucks, vehicles and equipment has been increased and intensified. Put another way, the alleged nonconforming use that once existed at the Premises has been enlarged and increased, thus the use at the Premises does not benefit as a legal, prior nonconforming use.

The Zoning Code is clear in that nonconforming uses may not be enlarged, extended or increased by any means whatsoever. Here, it is without question that the alleged nonconforming use of the Premises has increased. For example, by the Applicant's own testimony it is conceded that five to six businesses now operate from the Premises, the very Premises where one business once operated from.

The Applicant also contends that he is storing vehicles at the Premises. However a close examination of the use reveals that the Applicant is actually using the Premises as a parking lot for the vehicles associated with the various businesses that exist at the Premises.

Under the Tuckahoe Village Code, a parking lot is defined as:

Parking lot shall mean any outdoor space, or uncovered plot, place, lot, parcel, yard or enclosure, or any portion thereof, which is not accessory to and contiguous with a permitted residence or apartment use for the exclusive use by the occupants of such residence or apartment premises where six or more passenger automobiles and/or light commercial vehicles, or six or more trucks, may be parked, stored, housed or kept, whether or not charge is made. However, the term shall not be deemed to include any property owned, operated or maintained by the Tuckahoe Parking Authority or the Village of Tuckahoe.

The Applicant's use of the Premises, as described in the Record, evidences that the Applicant is operating a parking lot from the Premises without the requisite permission from the Village of Tuckahoe. Pursuant to the Village Code, "it [is] unlawful for any person to own, operate or maintain a parking lot within the village unless a license has been obtained in the manner set forth in this division." Tuckahoe Village Code Section 21-98. A search of Village records reveals that the Applicant never obtained a parking lot license from the Village, thus he is operating a parking lot within the Village unlawfully.

SEORA

Based on the foregoing, the Zoning Board of Appeals of the Village of Tuckahoe finds and determines that:

1. The action taken herein is a Type II action.

Dated: Tuckahoe, New York
June 10, 2009

Gloria Rosell, Chairperson
Zoning Board of Appeals of the
Village of Tuckahoe

Member McBride motioned to accept the resolution, was seconded by Member Crane and upon roll call was carried with a vote of 4 – 0 with Member Santos abstaining.

Item #3 346 Columbus Ave. Area Variance

Mr. Ross submitted proof of mailings but did not have the proof of publication on hand. Mr. Williams checked the property folder in his office and it was not found.

Mr. Ross, owner of the property, indicated that the approval for a variance for the existing garage, dated March 11, 2009 will now need to be changed as the garage needed to be torn down. The original part of the garage was unable to withstand the addition. The new plans are for an entire new garage. Now the plans are for the garage to sit 6.5ft. from the back property line and 8ft. away from the main house. The garage will stay the same height.

In comparing the old plans with the new plans, Mr. Ross noted that the original garage was 3ft. from the property line, new plans will be 6.5ft from property line. The original garage sat 3ft. from the main house, the new garage will sit 8 ft. from the main house. The garage will meet all required set backs except for the back. He will repair the rear wall behind the garage. The overall height of the garage will be 18.6ft, with the first level 7.3ft. and the upper level 7.6ft. The garage will not be higher than the original garage.

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

Public Comments

Donald Pirone, 65 Oakland Ave. voiced his concern regarding the trucks entering and exiting this property for many years. As a resident for 8 years, he has had to live with the commercial vehicles using this property even at night. The area is residential with many children in the vicinity, which is a safety concern. He also noted his concern over the lack of proof of publication of this meeting.

Ralph Fuschillo, 69 Oakland Ave. asked if the proposed garage would be wider than the original garage. He also noted the safety issue regarding commercial trucks in the residential area. Mr. Fuschillo asked if the applicant could replace the existing fence.

Mr. Ross indicated that the proposed garage will measure 18.6ft. as opposed to 19.6ft. He also mentioned that the Zoning Code permits a commercial truck.

Mr. Williams stated that the two tenants of the main house must park their vehicles in the garage.

James Nardelli, 332 Columbus Ave., asked the size of the garage and who would use it. Chairwoman Rosell stated that the garage will be a three-car garage for tenants use only, not for trucks.

Mr. Williams indicated that after reviewing the plans, he noticed that the proposed garage will be approximately 2.5 ft. wider than the original garage. The original architect wrote 19ft. and the new architect wrote 21.6ft. These plans would need to be corrected prior to a vote. By widening the garage, it expands the non-conforming use, but it gives ample room to park the vehicles. The Village Code for a parking space is 9ft. x 20ft.

Mr. Ross stated that he did not believe that the original plans were accurate. He has since changed architects.

Donald Pirone stated that extra two feet could potentially be used for commercial use. The large trucks may unload goods to be stored in the garage.

Member Giordano stated that the Board understands the concern, but the applicant has decreased the height of the garage and claimed that it is not his desire to store a commercial vehicle. Commercial use is an enforcement issue. The second level is not too big to be a crawl space and not big enough for an apartment.

Mr. Fuschillo noted that the original request by the applicant was for storage space to store a lawn mower and snow blower. He has changed his plans each time. Mr. Fuschillo requested that the garage be decreased in size.

Chairwoman Rosell advised the public to call the police department if there is an enforcement issue.

8:25pm The Board moved to executive session for attorney/client privilege.

8:30pm The Board reconvened.

Chairwoman Rosell asked the applicant to return next month with the necessary proof of publication and accurate plans for the proposed garage, as the Board cannot approve plans that are not accurate.

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.