

Minutes of: Oct. 10, 2012
Date Approved: Nov. 14, 2012
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October 10, 2012(revised Nov. 14, 2012)
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

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

Also in Attendance:

John Cavallaro	Village Attorney
Bill Williams	Building Inspector

Chairman Gallo announced the agenda of this meeting as follows:

<u>Item #1</u>	Approval of Minutes from the Regular meeting dated Sept. 12, 2012
<u>Item #2</u>	225 Alpine Place Adjourned
<u>Item #3</u>	173 Marbledale Rd. Special Use Permit
<u>Item #4</u>	1 Midland Pl. Variance

Chairman Gallo announced the start of a new portion of the meetings, “Old Business – New Business”. This discussion will focus on the review of projects that have been approved and future projects.

Item #1 Approval of Minutes from the Regular meeting dated September 12, 2012
Member DiSalvo motioned to approve the minutes from the Sept. 12, 2012 seconded by Member Kubaska and carried unanimously by the Board.

Item #2 225 Alpine Place Adjourned
Chairman Gallo stated that the Board is working diligently and vigorously with the applicant, Building Dept. and Legal Dept. for this application.

Item #3 173 Marbledale Rd. Special Use Permit
Mr. LaMothe, owner of Broken Bow Brewery, indicated that this is a family run business. The intention is to produce a very high quality beer, not quantity, and sell to individuals and commercial. He will provide educational tours of the facility, which will engage, involve and educate the community. He looks forward to joining the community.

Member Alfasi welcomed Mr. LaMothe to the community and wished him much success. He requested that when the business grows, the applicant would consider hiring local residents.

Chairman Gallo offered a resolution declaring a Negative Declaration under the State Environmental Quality Review Act as it concerns a certain Special use Permit application for the Premises 173 Marbledale Rd. Tuckahoe NY

At a regular meeting of the Zoning Board of Appeals of the Village of Tuckahoe, New York (the "Zoning Board") held at Village Hall, 65 Main Street, Tuckahoe, New York on October 10, 2012.

WHEREAS, the Zoning Board of the Village of Tuckahoe is considering the grant of a Special Use Permit for the premises commonly known as 173 Marbledale Road, Tuckahoe, New York; and

WHEREAS, the project consists of the development of the site with a micro brewery, tasting room, office and storage area; and

WHEREAS, based on the Environmental Assessment Form ("EAF"), submitted by the Applicant, and any supplemental materials thereto, the Zoning Board has determined that there will be no significant environmental impacts from this action as it concerns the proposed Project.

NOW, THEREFORE, BE IT RESOLVED

Section 1. Based on the information included in the EAF submitted by the Applicant, and any supplemental materials thereto and the criteria contained in the State Environmental Quality Review Act and its implementing regulations, the Zoning Board hereby adopts the attached Negative Declaration for this Unlisted Action under the State Environmental Quality Review Act.

Section 2. That this resolution shall take effect immediately.

This motion was seconded by Member Kubaska and unanimously carried with a vote of 6 – 0.

Member Alfasi offered the following Resolution in the matter of the application of Broken Bow Brewery 173 Marbledale Rd. Tuckahoe, NY 10707

Background and Findings of Fact

The Applicant is the lessee of the premises commonly known as 173 Marbledale Road, Tuckahoe, New York, and known on the tax map of the Village of Tuckahoe (the "Village") as Section 39, Block 4 and Lot 8 (the "Premises"). The Premises is located in a General Commercial Zoning District located on Marbledale Road in the Village of Tuckahoe.

The Premises consists of a plot of land that is approximately 18,548 square feet which is improved with a one-story warehouse building, which is approximately 18.67 feet high. The warehouse structure is surrounded by yards, with the front yard being 0.84 feet, the right side yard being 1.32 feet, the left yard being 107.54 feet and the rear yard being 9.19 feet. The Applicant proposes to convert the existing warehouse building into a micro brewery and tasting room, which would be approximately 7, 582 square feet. The Applicant further proposes to use the entirety of the building for its proposed micro brewery and tasting room.

The Applicant is a start-up business that would be family owned, that would operate under the name of Broken Bow Brewery. The Applicant seeks to convert the existing warehouse into a micro brewery with a tasting room. This resolution was adopted at a regular meeting of the Zoning Board of Appeals of the Village of Tuckahoe, New York on October 10, 2012.

room that would also be enhanced by tours of individuals who wish to see the micro brewery in operation. The Applicant currently has a ten-year lease with the owner of the Premises to operate a micro brewery at the Premises.

The Applicant will not be making any structural alterations to the Premises as only cosmetic changes are proposed for the office area, micro brewery area and tasting room area. In connection with the proposed operation, the Applicant seeks a Special Use Permit from this Zoning Board of Appeals to operate the micro brewery facility in the General Commercial Zoning District in the Village of Tuckahoe.

The Current Nature of the Application

As mentioned, the Applicant seeks to develop the Premises with a micro brewery and tasting room that would operate seven days a week in the General Commercial Zoning District located on Marbledale Road in the Village of Tuckahoe. In connection with this application, the Applicant does not seek any variances from this Zoning Board of Appeals but rather seeks a Special Use Permit to accommodate its proposed use of the Premises. Pursuant to Section 4-8.1 of the Tuckahoe Zoning Code (the "Zoning Code"), certain uses are permitted by way of Special Use Permits in the General Commercial Zoning District. Included in those uses is the "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." Zoning Code Section 4-8.1(b)(3)

The General Commercial Zoning District regulations set forth certain performance standards for Special Permit Uses that must be satisfied before a Special Permit Use may be established, maintained or conducted in the General Commercial Zoning District. As such, this Zoning Board of Appeals must consider and weigh the performance standards set forth below in the Conclusions of Law section of this Findings of Fact, Conclusions of Law and Decision in considering whether to grant a Special Use Permit in the General Commercial Zoning District to the Applicant.

Conclusions of Law

In order to grant the requested Special Use Permit, the Zoning Board must consider the following general standards for all Special Use Permits in reaching its determination:

That the proposed use will not cause any:

a. Dissemination of smoke, gas, dust, odor or any other atmospheric pollutant 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.

b. Noise in violation of Article II of Chapter 15 of the Code of the Village of Tuckahoe entitled, "Noise and other enumerated nuisances."

c. Discharge of any waste material whatsoever into any water course.

d. Dissemination of glare or vibration beyond immediate site of the use.

e. Traffic on any street primarily serving residential districts that is incongruous with the traffic normal to such streets.

f. Physical hazard by means of fire, explosion, radiation or similar cause to property in the same or an adjacent district.

Pursuant to Section 6-1 of the Zoning Code, the Zoning Board is vested with the authority to issue Special Use Permits as set forth in the Zoning Code. The Building Inspector has determined that the proposed use of the Premises falls within the category of manufacturing, including the fabrication and assembly of products, and incidental storage, or the sale and distribution of such products, but excluding heavy industrial processing where products are extracted from raw materials. As such, pursuant to Sections 4.8-1 and 4-8.2 of the Zoning Code, a Special Use Permit subject to the satisfaction of the performance standards is required in order for the Applicant to utilize the Premises as proposed.

Performance Standards For Special Use Permits in the General Commercial Zoning District

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.*

On this record, there does not appear to be any dissemination of smoke, gas, dust or any other atmospheric pollutant that would be disseminated from the building during the process of brewing beer at the Premises. With respect to odor, the Applicant has conceded that certain odors do disseminate from the building during the brewing process but has repeatedly indicated that the odors are similar to that of a bakery baking bread, because the ingredients for the brewing of beer and baking of bread are very similar in their processes. Other than an odor of the baking of bread, there does not appear to be any noxious odors that would disseminate from the building that would cast negative atmospheric pollutants outside of the building or in the general surrounding community. Moreover, the Applicant has indicated that the entire processes of brewing beer would be conducted entirely within the building and no portion of the beer-brewing process would take place outdoors. As such, atmospheric pollutants would not be cast into the generally surrounding community.

2. *Noise in Violation of Article II of Chapter 15 of the Code of the Village of Tuckahoe entitled, "Noise and other enumerated nuisances."*

In connection with this application, the Applicant has been repeatedly questioned concerning noise that would emanate from the building particularly during the brewing process. The Applicant has assured this Zoning Board of Appeals that the machinery used for the brewing process and the canning of the beer is extremely quiet and would not present any noise violations in excess of that allowed by Article II of Chapter 15 of the Code of the Village of Tuckahoe. Under Article II of Chapter 15 of the Code of the Village of Tuckahoe, there does not appear to be any express limitations on the micro brewing process, but Article II of Chapter 15 does set forth general limitations for noise standards in connection with permitted noise levels. Thus, on this record, noise does not appear to be an issue in connection with the proposed micro brewing process which appears to be generally a non-noise generating process, as explained by the Applicant.

3. *Discharge of any waste material whatsoever into any water course.*

The Applicant has explained that its waste material in the brewing process would be expended water that would be discharged into the sanitary sewer system. However, pursuant to this Findings of Fact, Conclusions of Law and Decision, the Applicant is strictly prohibited from discharging any waste material into the storm water system of the Village of Tuckahoe because such discharge would be inconsistent with waste materials being discharged into any water course. The Applicant is advised that it must comply with all state and county regulations that govern the discharge of any waste material into the sanitary sewer system.

4. *Dissemination of glare or vibration beyond immediate site of the use*

Nothing in this record suggests that the Applicant's proposed use at the Premises will result in the dissemination of glare or vibration beyond the immediate site of the use. In fact, there appears to be no dissemination of glare or vibration beyond the immediate site at the Premises.

5. *Traffic on any street primarily serving residential districts that is incongruous with the traffic normal to such streets.*

As mentioned, the Applicant seeks to develop its proposed use in the General Commercial Zoning District. There does not appear to be any negative impact from this proposed use in terms of traffic on any streets that primarily serve the residential districts that would prove to be incongruous with the traffic normal to such streets. The Applicant has indicated that at certain times during the week, it proposes to have tours of its micro brewery with up to approximately 12 persons. The addition of the tours as an aspect of the micro brewery use would not create negative traffic impacts on streets that primarily serve the residential districts. Nothing in this record suggests that the traffic impacts would be so great as to create negative impacts on the streets that primarily serve the residential districts. In addition, the Applicant has proposed 16 parking spaces that would accommodate the projected 4 employees at the Premises as well as the up to 12 individuals that would comprise a tour of the proposed micro brewery. As such, the Applicant appears to have adequate parking in connection with its proposed use at the Premises.

6. *Physical hazard by means of fire, explosion, radiation or similar cause to property in the same or an adjacent district.*

The micro brewing process and canning of the beer does not appear to create physical hazards consisting of fire, explosion, radiation or similar cause to the Premises or other properties in the General Commercial Zoning Districts or adjacent districts. The micro brewing process has been explained to this Zoning Board of Appeals and there does not appear to be the threat of fire, explosion, radiation or similar causes to the subject Premises or adjacent districts. It appears that the Applicant would be utilizing state of the art machinery and equipment in connection with its micro brewing process and physical hazards to surrounding properties does not appear to exist in connection with this proposed micro brewery.

Conditions

The approval granted herein is subject to the conditions set forth and contained on Schedule A, attached hereto, made a part hereof and incorporated by reference herein. The Zoning Board finds that the conditions set forth and contained on said Schedule A are reasonable conditions imposed on the Applicant in an effort to make this project more compliant with the Zoning Ordinance standards as well as to reduce any negative environmental impacts associated with this project.

SEQRA

Based on the foregoing, the Zoning Board finds and determines that:

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

Conclusion

Based on the foregoing, it is resolved that the Special Use Permit be and is hereby granted to the Applicant. The Applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance with the New York Civil Practice Law and Rules.

SCHEDULE A

CONDITIONS TO A CERTAIN APPROVAL FOR A SPECIAL USE PERMIT APPLICATION TO
BROKEN BOW BREWERY FOR THE PREMISES 173 MARBLEDAL ROAD, TUCKAHOE, NEW
YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE

1. The building and Premises shall not operate as a bar or food service establishment in any manner whatsoever.
2. The proposed building and Premises shall not operate as a 24-hour facility and **shall be permitted to operate** during the time from 7 a.m. until 8 p.m. on Mondays through Thursdays; 7 a.m. until 10 p.m. on Fridays and Saturdays and 7 a.m. until 8 p.m. on Sundays.
3. No part of the proposed structure shall be utilized for dwelling quarters or for dwelling purposes.
4. This Special Use Permit shall be limited to a period of 10 years and at its expiration, the Applicant shall be required to renew this Special Use Permit from the Zoning Board of Appeals of the Village of Tuckahoe.
5. The Special Use Permit granted herein to the Applicant is specifically limited to the Applicant and any change in ownership of the business to be operated on the Premises shall require the issuance of a new Special Use Permit from this Zoning Board of Appeals.
6. The representations, illustrations, depictions and statements made by the Applicant in its: (i) application; (ii) any memorandum in support; (iii) plans, drawings and renderings; and (iv) presentations during the course of the public meetings before this Zoning Board of Appeals incorporated by reference herein and shall constitute conditions for the approvals granted herein, in the event that any of the foregoing (i-iv) conflict with this Findings of Fact, Conclusions of Law and Decision the terms, provisions and conditions set forth herein shall control.

Member Alfasi seconded the motion.

Discussion: Member Scalzo asked to amend #2 in Schedule A to read, “*..shall be permitted to operate between the times...*”.

Chairman Gallo motioned to accept the amendment to Schedule A, was seconded by Member DiSalvo and unanimously carried by the Board.

Member Alfasi seconded the motion approving the Resolution and was carried unanimously by the Board.

Item #4 1 Midland Pl.

Variance

Mr. Martin Hero, architect representing the McGrath family, noted that the applicant was seeking a variance for a front yard setback for a parking space. This is a single-family residence with a 33 ft. narrow front at the intersection of Midland Ave. and Midland Pl. The front yard drops 30in. from the street level. The Planning Board received the plans and made suggestions regarding a pedestrian walkway, a picket fence and landscaping.

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

No Public Comments

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

Chairman Gallo stated that the Building Dept. was in favor of this application. He noted that he received a memo from the Planning Board stating that they had no objection to the granting of this variance.

Member Palladino offered the following Resolution:

The application for an area variance requested by Mr. Joseph McGrath for the relief from the following section of the zoning code: 4-4.11; 5-1.2; 5-1.2.1.2; 5-1.6.3; 5-1.2. The applicant seeks to construct an off-street parking space in the front yard at Midland Place, Section 30, Block 8, Lot 5.

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: The installation of one parking space would not create adverse impacts on the environment.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: A parking space in front of the structure would not change the character of the neighborhood.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance: Due to the nature and size of the lot, there appears to be no other method feasible for the applicant in order to achieve the goals of this project.
3. The requested variance is not substantial: This variance is not substantial because it is providing for one off-street parking space where one would otherwise be required.

4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that: The installation of one parking space at this time would not have an adverse impact on the physical or environmental conditions in the neighborhood.
5. The alleged difficulty was self-created: Although the difficulty was self-created, it is not fatal to this application.

A recommendation to approve the requested area variances with the stipulation that: all construction shall be in conformance with plans presented by the applicant and that construction shall be completed within one year.

The Board adopts a negative declaration pursuant to SEQR.

Motion was seconded by Member Kubaska and carried unanimously by the Board.

Chairman Gallo stated that this village was planned and constructed when residents had one or no cars. The Board continues to address this issue as families tend to have two or more cars per household.

New Business/Old Business

Bill Williams, Building Inspector updated the Board on both Main St. and Crestwood projects. The 150 Main St. has crews cleaning up the tanks, 160 and 233 Midland the applicant is submitting the drawings. 100 Main St. is presenting before the Planning Board. The applicant just had soil samples tested and rock conditions evaluated.

John Cavallaro, Village Attorney, noted that there was a case against the Town of Greenburgh - Fortress Bible vs. Town of Greenburgh. The 2nd US Circuit Court of Appeals issued a ruling that upheld a Trial Judge's August 2010 decision that the town had violated Fortress Bible Church's land use rights and constitutional rights in a decision. Under RLUPA specific standards have to be applied to religious institutions.

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.