

Zoning Board of Appeals – 4-23-2012

Zoning Board of Appeals
April 23, 2012 at 7 pm
Watts dePeyster Hall
Final Minutes

Zoning Board

Attendees

Chair, Laura Gail Tyler
Karen Cleaveland
Robert Zises

Others Present

Susan Ezrati, Board Liaison and Recording Secretary
Victoria Polidoro, Lawyer – Rapport Meyers
Jack Grumet, 5111 Rte 9G, Applicant for Interpretation of Zoning Code

Public:

Radley Glasser	Cory Baright
Todd Baright	Gail Torchia
Melanie Moore	Gary Moore
Tom Cordier	Daniel Mangieri
Steve Hanrehon	Martin Clarke
Thomas Crisci, Sr.	Thomas Crisci, Jr.
Marc Hildenbrand	Emily Mangieri
Patrick Hildenbrand	Rick Neely
Theresa Neely	George Smith
George B. Harrar	Edward Carroll
Sandra Carroll	Shibu Divakaran
Alex Zane	Tim Lynch
Leigh Palmer	John Corcoran
Liza Macrae	Susan Huysen
Matthew Kobalkin	Kathy O'Connor
Chris Rubertone	Ralph L Pauleri
Ralph Torchia	Ian Mesman
Danielle Debellis	Tim Voell

Meeting Agenda

Laura Gail Tyler opened the meeting at 7:06 pm. She briefly told the assembled that she would review the minutes, seek their approval and then proceed to a review of a particular request for interpretation that is before the board.

Old Business

The minutes were reviewed and amended to reflect the following language:

1) in the third paragraph, 4th sentence following the Public Hearing subtitle, the words “her to have two dwellings on the property” were deleted and the words “her to create a second dwelling, one on each new parcel” were inserted; and, 2) in the fifth paragraph following the subtitle Public Hearing, subsection #3, the section should read, “The variance is substantial; it is a 50% reduction

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in the allowable frontage for the driveway. However, the 25 feet is adequate for emergency vehicle access.”

The amended minutes were then approved.

New Business

The issue before the Board tonight, April 23, 2012, is to interpret the law which led the Zoning Enforcement Officer to reject an application to establish a self-storage facility on a parcel located on Rte 9G, one lot north of Rte 199. – at 5111 Rte 9G Tivoli. The applicant and owner of the parcel, Jack Grumet, introduced himself as a resident of Red Hook and presented the rationale for his application. He noted that the district in which his property is located is “the only commercial zone in Tivoli” and that it was established to allow commercial use. He purchased the land with commercial use in mind. His request is that he be able to locate self-storage units on the parcel. He described the characteristics of the units and noted that they would be screened from the road. He also noted that there would be an office. He anticipated that the traffic to the business would likely be no more than 10 vehicles daily. He read from the Zoning code that the purpose of the district was to allow both commercial and residential use. In particular the permitted uses include “light industry” as defined in the code to be industry which does not require the use of heavy, noisy machinery or vehicles.

Laura Gail Tyler noted that she did not anticipate that the Board would make a decision at the current meeting.

Public Hearing

The chair opened the public hearing.

George Smith introduced himself as residing on an adjacent property. He indicated that the facility would be directly in his view. He noted that he has a beautiful view of open land that would be detrimentally impacted by the facility. He is concerned that it would lead to a deterioration of the scenic properties of the area. He also noted the Kerleys Corners farmland protection project, just completed was designed to protect this scenic gateway and that the applicants intended use would mar it.

Theresa Neely said that she moved to Tivoli to find a beautiful scenic area with her husband who is since deceased. She noted that the property on which she resides used to be a gas station, but that is has since become a residential parcel and that the tanks have been removed. She noted that something that is light industry will detract from her property value and the rural quality that attracted her to Tivoli.

Marc Hildebrand, Tivoli Fire Chief, expressed concern that an introduction of heavy traffic concentrated at particular times of the year when Tivoli’s more transient residents, students at Bard College, move in and out, will cause a dangerous traffic condition on what already is a dangerous road. He noted that in the past year, there have been several traffic fatalities at that location.

Another resident on Rte. 9G, Melanie Moore, objected to even landscaped units in that location. She expressed concern that renters of the space would create problems.

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Emily Mangieri, a resident on RTE 9G just south of the intersection with Broadway, noted that she is located in the same district. She noted that if a similar facility were placed on her property, it would be an eyesore. If she wanted to see storage facilities, she would move near a mall in Kingston. It will greatly devalue her property.

Matthew Kobalkin expressed concern that the scale of the storage facility is way out of proportion to other properties in Tivoli and, hence, out of character with Tivoli's designation as a Landmark Historic District. He also expressed concern about the traffic, noting that it would be seasonal (end of school) and especially heavy and dangerous to the area. He noted that there are much more suitable commercial uses to which the parcel could be applied.

Gail Torchia – who lives behind Ralph's Automotive Services in the direction of Tivoli -- believes that a self-storage facility would destroy a beautiful view and could create a danger at that section of Rte 9G. She noted that on her property the commercial portion is at the front of the property and the residential portion is in the back. Therefore, the use at the rear of the adjoining property would affect her quality of life and property value.

Todd Baright, 83 Apple Ring Road, Red Hook, NY 12571, brought a written statement in favor of accepting the use as proposed. This opinion provided and attached. Mr. Baright noted that he is the owner of self-storage units elsewhere.

Alex Zane, 6 Friendship Street, Tivoli, NY 12583 spoke. He noted that a self-storage unit makes no sense in Tivoli. Tivoli has worked hard to create an attractive environment for restaurants, massage therapists, yarn stores and other retail establishments. Placement of a self-storage facility at the Gateway to Tivoli will destroy all of this achievement. In particular a 270-unit facility that will involve several acres of asphalt will destroy the scenic character of the gateway area.

Sandra Carroll posed a question to the Board: She asked that Laura Gail Tyler explain what she said at the beginning of the meeting. Laura Gail clarified that this is an interpretation of existing law, not the creation of new zoning or the designation of new zoning districts. Laura Gail noted that the applicant was denied by the Zoning Enforcement Officer for his application for self storage as it is not specifically on the list of permitted uses. She read 231-21 which states that "purposes must be specified in the schedule of permitted uses". Laura Gail then read out the list of principal and special permitted uses for the residential business district, the district in question. She followed with consideration of whether or not a self-storage facility falls under a particular special permitted use, light industry. The Board is considering whether self-storage can be considered light industry. The board will consider definitions included in Tivoli's zoning code and language such as whether self storage will "constitute a nuisance or be detrimental to neighboring properties" as specified on the schedule of permitted uses.

Ms. Carroll asked where the location of the driveway is anticipated. Laura Gail noted that the site plan is not the purview of the ZBA. Site plan issues would be considered by the Planning Board. Ms. Carroll noted that she is located on Tom's Way and that their developer was told by the Department of Transportation that no further "cuts" would be allowed on 9G because there already are too many.

Martin Clarke introduced himself as a person who worked on the Comprehensive Plan in 2005. He wanted to read language concerning Rte 9G from the plan. Laura Gail noted that the ZBA can only look to the Zoning Law in interpreting this issue and because the Comprehensive plan vision has not been incorporated into the Zoning Law, it cannot be considered.

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Martin read from pages 46-47 of the Plan. This section of the plan details the Village's vision for Rte 9G, including that all residential and commercial construction, both new and rehabilitated, be in harmony with the physical scale and architectural features of a rural scenic roadway.

Victoria Polidoro, Attorney to the ZBA, noted that the Village has been working to incorporate the Comprehensive Plan Vision into Zoning Law, but it is a major project and is being done piecemeal.

Liza Macrae of Kidd Lane noted that the self-storage units are clearly not part of the vision in Tivoli.

Kathy O'Connor of Tivoli Gardens noted her concern that a huge expanse of pavement would be detrimental to the ecology and to water resources.

Tim Lynch noted that he is against the self-storage units. Does not see any ambiguity to the definition of industry and it does not include storage.

Emily Mangieri agrees with Tim Lynch's definition and agrees that self-storage is not suitable to the area.

Ralph Torchia noted his concern that the Board's decision will set a precedent in terms of what light industry means. Laura Gail noted that the Board would not take the decision lightly.

Tom Crisci, a Director of the Tivoli Fire Department noted his concern that self-storage sheds could create a fire hazard because many of the items stored in such a unit might be combustible.

Tim Voell of 8 Friendship Street asked could the Zoning Code modification be expedited?

Laura Gail noted that the Village Board is the legislative body that must codify the intent of the Comprehensive Plan. Laura Gail then explained to the assembled the role that the Planning Board would play. If the interpretation is to be found in the applicant's favor, two more applications will be required, one for a special permit and one for a site plan, both requiring additional public hearings,. She also noted that the bulk regulations were modified in 2010 and that they limit the amount of footprint of all buildings on a single parcel to 7600 square feet, rather than the 18,000 square feet anticipated by the applicant. This would require an additional application before the ZBA for an area variance if the applicant wishes to build what he has proposed.

Matthew Kobalkin expressed a concern that the storage unit would involve light pollution that would change the character of the area, by creating ambient light that would interfere with Tivolians ability to see the stars.

Emily Mangieri mentioned rumors that further storage units are anticipated as well as a gas station. Laura Gail noted that a gas station would be accepted as a "principal use" but that to her knowledge none has been applied for. Furthermore, those rumors were not relevant to the matter at hand and only created more controversy.

Tim Voell asked if the nuisance issue would be dominant in the decision. Laura Gail noted that the nuisance and property value issues were within the Board's purview to consider.

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George Bennet Harrar asked Mr. Baright if he was related to the applicant. George asked a personal question of the applicant regarding whether he would approve of such a development near his residence. Laura asked him to direct his question to the Board. Bennet stated that he just wanted to express solidarity with Tivoli residents concerned about the development.

Ian Mesman expressed concern about truck traffic that it would generate. Danielle Debellis also expressed concern about traffic.

Laura Gail asked for a motion to continue the hearing to June 25 2012, at 7pm. Karen Cleaveland moved and Bob Zises seconded the motion to continue the public hearing. The motion was passed. The chair adjourned the hearing at 8:18 pm

Continuation of the ZBA Meeting

The chair noted that the ZBA would limit consideration of this particular use to whether it meets the definition of light industrial use, including whether it will be "a nuisance and/or detrimental to property values" as specified on the schedule of permitted uses. As defined in 231-4, Industry use does include services. Laura read the industrial performance standards from the code – including noise, glare, odor, fumes. The considerations are somewhat subjective. She noted that the bulk regulations passed in 2010 will impact the application. In cases where there are both residential and non residential uses, the maximum building coverage on the lot includes 5000 square ft plus 2600 square ft in total for all buildings on the property.

Laura Gail sought comments from the Board members. Victoria Polidoro recommended looking up "plain meaning" in standard dictionaries. She also counseled that the Board consider the broader zoning code to determine suitability. She said that the law looks to plain language usage for definition of terms. She also noted that when the legality was difficult to determine the Board should err on the side of favoring the property owner. Determination of the legislative intent requires the board to look to the other zoning code to understand the intent of the law as it was written.

Karen focused on the phrase within the definition that "constitutes a nuisance and detriment to other properties." Karen asked about the hours of operation. Laura Gail noted that the hours of operation is not an issue for the ZBA. The decision is not about a particular business plan but about the use in general. Visual effect could be considered as detrimental to neighboring properties. Bob Zises asked if issues in the Comprehensive Plan's vision could be considered in terms of the Visual Effect. The determination is that it is a "vision for the future" and was not anticipated when the law was codified. Laura Gail suggested analyzing the standards that can be applied. As defined in 231-32, dust, no. Glare, no. Odor, no. Victoria noted that nuisance and detrimental impact should be considered.

A Board member asked why the ZEO had denied the applicant and for a clarification of the ZBA's task. Victoria noted that the ZEO looked at the list of uses and noted that self-storage is not explicitly approved and, therefore he determined that it was prohibited. The ZBA really needs to determine if self-storage meets the definition of light industry. The applicant asked, "Can the ZBA approve the application, conditionally?" Laura Gail is concerned that the ZBA's decision sets a precedent for the type of use. Therefore, the Board needs to consider all self storage use not just the applicant's proposed facility and suggestions for mitigations.

Laura asked the Board to review the following:
Those characteristics that are favorable and unfavorable to the applicant.

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In favor, the chair notes the fact that Tivoli's own definition of industry includes services. Secondly, the definition of light industry only specifies that it is an "economic activity" and as to the latter half of that definition, self storage does not require "heavy machinery, noisy or otherwise objectionable machinery or transporting" and thirdly, she notes that the industrial performance standards set a low bar. As defined in 231-32, self storage would not impact the air quality, "emit unnecessary noises at the individual property line which would disturb a person of reasonable sensibilities", emit glare as defined or odor that "offensively affects the sense of smell" at the property line.

Those characteristics that are unfavorable are the "nuisance and detrimental impact on neighboring properties" standards.

Nuisance issues are traffic, the concern that the large scale of the buildings creates an eyesore and the consequent negative impact on neighboring property values. She also noted that the new bulk regulations clearly define smaller buildings than those that self-storage units require. This goes to the intent of the new bulk regulations which seems to be opposed to self storage as a use.

Bob Zises asked about the definition of light industry. Does its "plain meaning" limit it to manufacturing. Or did the designers of the code have a different definition in mind.

Karen Cleaveland noted that the lighting would comprise a significant change in ambient light and therefore a judgment of significant effect on neighboring property values.

Bob noted the criminal implications, i.e. creating an environment that would attract undesirables.

Bob will return with definitions of light industry.

Meeting adjourned at 8:55 pm.

Respectfully submitted
Susan Ezrati, Recording Secretary.