



ZONING BOARD OF APPEALS

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Dec. 6th 2021 ZBA Minutes

Present: Patti Kelly (Chair), Henry Rua (Vice-Chair), Joe Mayone, Tim Scott, Randy Ricks & Holly Strutt, Alternate

Also Present: Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons LLC, Mike Crosby: Verizon Engineer, Brett Buggeln: Tarpon Towers, Alvah Weeks: Building Inspector, Kevin Freeman: Zoning Board Secretary, Dan Shuster: Planner, Ron Graiff: ZBA Engineering Consultant, George Redder: ZBA Attorney

Patti called the meeting to order at 7:00 pm. She took roll call of ZBA members and announced a quorum was reached. Patti asked Holly to join the board for the Verizon application, and Holly agreed.

HONORLAND LLC

Deo Celaya presented the Honorland LLC application. Honorland is seeking to build a two-story waterfront residence on River Road in Malden-on-Hudson and is requesting a 25-foot variance to the 50-foot setback requirement in the Waterfront Overlay Zoning District. Patti asked Mr. Celaya if the applicant knew the setback requirements of the Waterfront Overlay District before beginning this project. He said he did, but the setbacks don't give him sufficient space to build the home without the variance. Joe motioned to set a public hearing for Jan. 6, and Tim seconded the motion. The motion carried with Patti Kelly, Henry Rua, Joe Mayone, Tim Scott, and Randy Ricks voting yes.

TARPON TOWER II, LLC & VERIZON WIRELESS

Patti explained that two documents came in after the definitive close of the Nov. 4th public hearing on the proposed cell tower at 17 Industrial Drive. In consultation with our legal counsel and the understanding that courts have held that a new public hearing should be held if the ZBA receives information subsequent to the close of the initial public hearing in order to afford all interested parties the opportunity to comment or rebut the factual information that may ultimately impact a ZBA's decision on a matter, Patti offered the following motion:

Motion "to set a special virtual re-opened public hearing on Tuesday, Dec. 14 at 7 p.m. for rebuttal or comment only on those documents that came in after the close of the initial public hearing." Henry seconded. There was no Discussion. Patti called for a roll call vote and the following board members voted yes: Patti Kelly, Henry Rua, Joe Mayone, Tim Scott, and Holly Strutt. Motion passed. Patti said the documents are already on the ZBA website for public review. She said a notice of the public hearing is on the website and on Lighthouse TV. It is also at the Planning Board and Town Clerk offices and will be published in Hudson Valley One. Kim Garrison said written comments must be in by the December 10th.

PUBLIC HEARING

ANTHONY & JEANETTE APRILE

69 Red Maple Rd.

Saugerties, NY

File #: 21-08

The property at 69 Red Maple Rd. is located in a High-Density Residential Zoning District. Applicants are requesting 10 1/2-foot side yard variance from the required 15-foot requirement.

Henry made a motion to open the public hearing, it was seconded by Tim Scott. Patti Kelly, Henry Rua, Tim Scott, and Randy Ricks voted yes, and the motion passed.

Patti made a motion to declare SEQRA- TYPE 2 617.5(c) (17) Joe seconded. There was no discussion. Patti, Henry, Joe and Tim voted yes, and the motion passed. Patti asked Kevin Freeman if all the cards sent to neighbors came back, and he said they had. Only one email was received, and that neighbor was in favor of the Aprile request. Patti asked the board and Mr. and Mrs. Aprile if they had anything they would like to add. They did not. Henry made a motion to close the public hearing, and Tim seconded. The motion passed with Patti, Henry, Joe, Tim and Randy voting yes.

KINIRY WEST, LLC

1752 Rt. 212

Both parties are asking for an interpretation of the Building Inspector's letter of June 8th pertaining to a proposed Kiniry West, LLC business at 1740 Rt. 212. This property is in the Highway Business/Gateway Overlay.

Patti made a motion for the for the board's consideration:

*Kiniry West owners Kim and Gina Kiniry are represented by attorney Mike Moriello. Heather Hutchison and Mark Kanter of 24 Adams Road are represented by attorney Lisa Svenson. Both parties asked the ZBA for an interpretation of the Building Inspector's letter of June 8th (**attachment 1**) pertaining to a proposed Construction Demolition Processing Facility owned by Kiniry West, LLC at 1752 Rt. 212 in Saugerties. Both parties presented the reasons for their applications at a public ZBA meeting on Sept. 7, 2021. (**Attachment 2**) A well-attended public hearing was held on Oct. 4th. In addition, letters from the public pertaining to the applications were received by the ZBA and made part of the public record.*

The application for Interpretation dealt with two subjects in the June 8th letter by Alvah Weeks, the Saugerties Building Inspector/Zoning Administrator: (1) Mr. Weeks' instruction that the a special permit application must be submitted to the Town Board to acquire said permit to process construction land clearing debris obtained within the Town of Saugerties; and (2) Whether the proposed use of the property at 1752 Rt. 212 is permitted to be an Accessory Use to the property at 1740 Rt. 212 under Section 245-10 Schedule of District Use regulations of the Zoning Law.

(1) Mr. Weeks cited Sect. 204.4 of the Town Municipal Code in telling Mr. and Mrs. Kiniry that they would need to submit a special permit application to the Town Board and acquire a special permit for their proposed land clearing. He also said a permit from the New York State Department of Conservation (NYSDEC) would be required to process overburden such as soil and wood products. Ms. Svenson, on behalf of her clients, agreed with Mr. Weeks on this matter. Mr. Moriello, on behalf of his clients, disagreed with Mr. Weeks on these requirements. Both Attorney Moriello and his client, Gina Kiniry, stated during the Sept. 7 ZBA meeting that the activities quoted in the Building Inspector's letter, with the exception of stump grinding which Mrs. Kiniry agreed to do off-site, were, indeed, part of the plan for the property.

Section 245-36(E)(1)(b) of the Saugerties Zoning Code provides that the ZBA's function is to hear and decide appeals from any decision, determination, act or failure to act of the building inspector, and all matters properly referred to it by the building inspector. The Zoning Law does not, however, give the ZBA

the authority to interpret decisions or determinations of the Building Inspector pertaining to Municipal Law.

Therefore, the ZBA defers to Mr. Week's recommendations pertaining to Sect. 204.4 in his June 8th letter.

(2) Mr. Weeks cited sub-section 245-10 Schedule of District Use Regulations of the Zoning Law as they pertain to accessory use. He said the Schedule "permits Accessory Uses customarily incident to any use listed herein, and on the same lot the more restrictive laws such as the Town Law and NYSDEC Law would prevail." His letter went on to say that after "acquiring the necessary permits from the Town Board and NYSDEC, only then can the processing facility operate accessory to the permitted excavation company." Although it was not in Mr. Week's June 8th letter, we note that the Schedule also permits Accessory Uses customarily incident to any use listed herein, and NOT on the same lot, because this was mentioned in other correspondence by Mr. Moriello and was part of the discussion during the initial ZBA meeting with the applicants.

Ms. Svenson and her clients disagreed with the Building Inspector that the proposed processing facility at 1752 could be called an Accessory Use in any instance given the nature of the proposed activities. Mr. Moriello argued that his clients' proposed activities were no different than what other contractors and excavators do.

The Zoning Law's Sect. 245-56 titled General Definitions clearly defines Accessory Use as "a use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use."

Not only is the proposed processing facility not incidental or subordinate to the Kiniry West, LLC building on the adjacent property, but by the description of the activities that will take place on the site, the facility will be larger in size and more intrusive in scope. The proposed processing plant is also a use that is not permitted by right in any zone within the town.

It is the ZBA's interpretation that 1752 Rt. 212, the property on which the proposed activities as presented and described by the applicant and in a Zoning District where the activities are not permitted in the Zoning Law, would not be considered an Accessory Use.

Joe seconded the motion. Randy said he had met with Alvah Weeks and agrees with his reasoning on accessory use. There was no further discussion. Patti called for the vote: Patti Kelly, Henry Rua, Joe Mayne, and Tim Scott voted yes. Randy Ricks voted no. The motion passed 4-1.

Other Business

Patti discussed a November 22nd letter the ZBA received from Scott Olson asking the ZBA to re-open the the Use and Area Variance at the Mt. Marion Firehouse. She said that at the Jan. 6th meeting we are planning to vote on the Industrial Drive application currently before us. She suggested that after that vote on Jan. 6, and only if the ZBA does not approve the variances requested by Tarpon Towers & Verizon Wireless, the ZBA would vote to take the Mt. Marion Firehouse Use and Area application off the table and put it on the Feb. agenda for discussion. The board members agreed.

Joe made a motion to approve the minutes from the Nov. 4th ZBA meeting and Tim seconded. The motion was approved unanimously.

Randy moved to adjourn the meeting. Tim seconded the motion, and it was approved unanimously.

