



ZONING BOARD OF APPEALS
4 High Street Saugerties, NY 12477
Tel: (845) 246-2800, ext. 358
Fax: (845) 246-0461



July 1, 2024

PRESENT: Bill Schirmer (Chair), Henry Rua (Vice-Chair) Joe Mayone, Tim Scott Jr., Randy Ricks and Holly Strutt (alternate)

ALSO PRESENT: Becky Bertorelli (Zoning Board Secretary), George Redder (Zoning Board of Appeals Attorney) and Alvah Weeks (Code Enforcement Officer)

Schirmer called the meeting to order at 7:00pm.

PLEDGE

Schirmer asked that Holly Strutt join the Board for the Samadhi Center Inc. appeal, which will be moved to the first item of review. Strutt-accepted.

OLD BUSINESS

SAMADHI CENTER INC.: APPLICATION FOR INTERPRETATION OF PROPOSED USE VS. PRE-EXISTING USE

996 Dominican Lane
Saugerties, NY 12477
File#: 24-001
SBL#: 29.9-2-42.120

Schirmer-the public hearing for this application was held open for two months to ensure that all comments from the public and/or involved agencies were received. A decision was drafted by the Zoning Board of Appeals attorney for review by the Board. A motion was made by Strutt, seconded by Scott, to adopt the decision as written. The decision was read aloud by the Chair, Bill Schirmer. (Copy Attached). Board vote: Strutt-yes, Scott-yes, Mayone-yes, Schirmer-yes. Motion carried.

Redder-the Zoning Board of Appeals did a thorough review of the applicant's request and all the supporting documentation along with the public comments and concerns. Great work.

NEW APPEALS

None

PUBLIC HEARING

JEFFREY KANTOR & SUSAN ROBBINS: APPLICATION FOR 10' SIDE SETBACK AREA VARIANCE

10 Buffalo Road
Saugerties, NY 12477
File#: 24-004
SBL#: 17.7-5-16

The applicant is requesting a 10' side yard setback area variance to install a shed.

A motion was made by Mayone, seconded by Scott, to open the public hearing. Board vote: Ricks-yes, Scott-yes, Mayone-yes, Rua-yes, Schirmer-yes. Motion carried. The public hearing opened at 7:27pm. No one from the public was present and there were no comments or concerns. A motion was made by Rua, seconded by Mayone, to close the public hearing. Board vote: Ricks-yes, Scott-yes, Mayone-yes, Rua-yes, Schirmer-yes. Motion carried. The public hearing was closed at 7:28pm.

Schirmer asked the Board if there were any additional comments/questions. None. A motion was made Ricks, seconded by Mayone, to approve the 10' side yard setback area variance for the installation of a shed 15' off the side yard property line. Schirmer-the Board will now do Balancing of Interest:

1. It was determined that an undesirable change will not be produced in the character of the neighborhood nor would a detriment to nearby properties be created.
2. There is no other feasible method for the applicant to pursue, other than an area variance, because of the location of the septic on the property.
3. The requested variance is substantial, somewhat.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood. The location of the variance is on the side of the parcel that abuts a road not a neighboring property owner.
5. The alleged difficulty is self-created but there is no other location to place the shed that would adhere to the setback requirements in the MDR zoning district.

Board vote: Ricks-yes, Scott-yes, Mayone-yes, Rua-yes, Schirmer-yes. Motion carried.

OLD BUSINESS

NONE

BOARD DISCUSSION

A motion was made by Scott, seconded by Strutt, to approve the draft minutes of the June 3, 2024 meeting. Board vote: Strutt-Aye, Ricks-Aye, Mayone-Aye, Rua-Aye, Schirmer-Aye. Motion carried.

The Planning Board meeting minutes were received.

ADJOURNMENT

A motion was made by Rua, seconded by Mayone, to adjourn the meeting as there are no further items to discuss. Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Rua-Aye, Schirmer-Aye. Motion carried. Meeting adjourned 7:36 pm.

Respectfully submitted,

Becky Bertorelli
Secretary
Zoning Board of Appeals

TOWN OF SAUGERTIES

ZONING BOARD OF APPEALS

DECISION and ORDER

Applicant/Appellant: Samadhi Center, Inc.
Property: 996 Dominican Lane
Saugerties, New York 12477
File No.: 24-001
SBL: 29.9-2-42.120

Resolution offered by Zoning Board Chairman, William Schirmer

APPLICATION

In this application to the Town of Saugerties Zoning Board of Appeals (ZBA) the application, Samadhi Center, Inc., has applied for interpretation of the determination of the Town Building Inspector's Decision regarding the proposed usage as a self-help woman's group home with peer advocates and a 24-hour staff of four individuals located at 996 Dominican Lane, Saugerties, New York (SBL: 29.9-2-42.120) which is zoned HDR (High Density Residential), with small Section LDR (Low Density Residential) with WO (Waterfront overlay). The ZBA actions are in accordance with the State Environmental Quality Review Act (SEQR) as a Type II action under Section 617.5(c)(31), interpretation of an existing code, rule or regulation.

I. THE TOWN OF SAUGERTIES CODE ENFORCEMENT OFFICER HAS ISSUED A DECISION THAT IN HIS OPINION THE APPLICANT/APPELLANT'S INTENDED USE OF THE PROPERTY IS NOT PERMITTED AT THE ABOVE LOCATION.

On or about February 22, 2024 a meeting was conducted with representatives of the Applicant/Appellant, Samadhi, Inc., Sean Weaver, Assistant CEO and Alvah Weeks, CEO (Code Enforcement Officer).

At the meeting they reviewed the Town of Saugerties Planning Board Workshop minutes which was prepared for the meeting conducted on January 24, 2024 for Samadhi, Inc. The CEO of the Department of Safety and Buildings found that the proposed usage "as a self-help woman's group home with peer advocates and a 24-hour staff of four individuals", as a Residential Care Facility. See Exhibit "1", PB minutes of the workshop.

The CEO rendered a written decision on February 27, 2024 and filed it with the ZBA on February 29, 2024 finding that the proposed usage of a rehabilitation center/self-help group for women and children would not be a permitted use in the HDR (high density residential) designated zoning

district in accordance with Section 245-10 Schedule of Use Regulations of the 2008 Town of Saugerties Amended Zoning Law. (See Exhibit "2").

On or about March 12, 2024 the applicant filed an appeal to the ZBA for a review of the interpretation rendered by the Saugerties Department of Safety and Buildings.

The Applicant/Appellant states that the CEO's decision of February 27, 2024 and filed with the ZBA on February 29, 2024, is incorrect because: The current owner's use of the property is substantially the same as the Applicant/Appellant's intended use, that it is the same as the pre-existing non-conforming use. See Exhibit "3", a copy of the Applicant/Appellant's March 12, 2024 application for interpretations to the ZBA.

On April 1, 2024 the Applicant/Appellant appeared before the ZBA. Based upon the need by the board to make an informed decision a public fact-finding hearing was established the following month (May 6, 2024) for submission of requested information by the ZBA.

The hearing was left open for the submission of any other information for the Applicant/ Appellant and for the public. This matter was fully submitted for the ZBA's review on June 3, 2024 and the hearing on the above appellant issues was fully submitted.

II. HISTORY OF THE USE BY THE PRESENT OWNERS, THE DOMINICAN CONGREGATION OF OUR LADY OF THE ROSARY, DOMINICAN COVENANT, SPARKILL, NEW YORK.

The Town of Saugerties Zoning Law was enacted on November 2, 1989. Before the zoning law was enacted the Dominican Sisters applied for building permit with the Town of Saugerties Building Department on June 7, 1989.

In an acknowledged statement sworn to by Sister Mary E. Shea on July 6, 1989, states:

The existing use and occupancy are a Sisters' Convent. The intended use and occupancy (for the proposed hermitages) was for retreats. Furthermore, the use requested for the hermitages were for: Single occupancy for purpose of religious retreat (prayer). Since the July 6, 1989 building permit was issued the use of the property has been the same. A Religious Organization for the Dominican Sisters and the use of their convent. See Exhibit "4".

At the public hearings there was evidence that the Dominican Sisters left the premises on or about the Fall of 2015 and closed the convent. Sister Irene Ellis submitted an Affidavit sworn to on March 11, 2024. See Exhibit "5". Sister Ellis served as the Treasurer from 2010 through 2022, for the congregation. She states that between March of 2020 through June 10, 2021, the convent was not used by the congregation. Sister Ellis said in June of 2021, "We opened up the

convent building for individuals or small groups in need of time away from the stress and isolation of their regular environment.

Sister Ellis states that between June 10, 2021 through November 16, 2021, that the convent was used for private small group retreats for a total of 28 days and at most three sisters or less during the weekend retreats.

From February 4, 2022 through October 23, 2022, the convent was used a total of 31 days with only three sisters, or less, participating.

From April 5, 2023 through December 31, 2023, the sisters used the convent only 13 days with six sisters, or less, for that year.

From January 1, 2024 to date, the convent was used only on March 4, 2024 by Sr. Marge Saich.

The present pre-existing non-conforming use appears to have been discontinued for more than one year. This issue will be addressed below.

III. THE INTENDED USE BY THE APPLICANT/APPELLANT FOR A RESIDENTIAL CARE FACILITY FOR USE FOR REHABILITATION FOR WOMEN AND CHILDREN IS NOT THE SAME OR SUBSTANTIALLY THE SAME USE AS THE PRIOR NON-CONFORMING USE AS A RELIGIOUS CONVENT/RETREAT.

The zoning law's schedule of uses set forth in Section 245-10 does not permit residential care facilities in HDR zoned districts.

Under Section 245-6 (c) of the zoning code: HDR is defined as:

1. "A district that is intended to provide concentrated suburban housing adjacent to educational cultural, recreational, retail business, employment, public transportation at and/or other supportive uses along state roads".
2. The ZBA must consider the use regulations set forth in Chapter 245-10, as follows:
"The use schedule of District Use Regulations is hereby incorporated into and made a part of the Zoning Regulations and shall be referred to as the Use Schedule. No structure or use of lands shall be made, except as provided in this Schedule. Uses which are not permitted are prohibited unless specifically stated elsewhere in the Chapter".

The use schedule which established the uses permitted in each district was based on the categories and terminology used in the standard industrial classification (SIC) manual published by the Federal Office of Management and Budget (OMB).

The Building Inspector (CEO) is required to determine which SIC category of the proposed use was under. The zoning district standards which would apply to the specific use were based on those of the most restrictive district in which the use was permitted in the use schedule.

The SIC code is divided into divisions, major group and use codes. Classification of the preexisting non-conforming use by the Dominican Sisters, is classified as a Religious Organization.

Classification of the pre-existing use under the SIC as major group 86 (membership organizations) Industry group No. 866, Industry group no. 8661, "Religious Organization" provides, in part, for the "Establishments of Religious organizations operated for worship, religious training or study, government or administration of an organized religious activities', churches, convents, etc. are included in this group".

The Applicant/Appellant's intended use as self-help women's group home with peer advocates and a 24-hour staff, is classified under the SIC manual: Division I: Services; a major group 83 Social Services; Industry group 836, residential care. This category provides in part, that:

Establishments primarily engaged in the provision of residential social and personal care for children, the aged and special categories of persons with limits on the ability of self-care, but where medical care is not a major element. Included are establishments providing 24-hour year-round care for children, included in this group are:

1. Drug rehabilitation centers, residential: with health care incidental;
2. Halfway group homes for persons with social or personal problems;
3. Homes for destitute men and women;
4. Rehabilitation centers, residential: with health care incidental for four (4) individuals;
5. Self-help group homes for persons with social or personal problems.

IV. SUBMISSION TO THE BOARD

This application has been the subject of several reviews, and a Zoning Board of Appeals Meeting held on April 1, 2024 establishing a Public Hearing on the aforesaid interpretation on May 6, 2024 and on June 3, 2024.

With respect to this application, voluminous submissions were received from the applicant's attorney, the attorney for the Town of Saugerties and other professionals. At the hearings on May 6, 2024 and June 3, 2024, evidence was taken in the form of testimony and affidavits and written submissions, from over thirty (30) individuals including the applicants', Freeman and Loftus RLLP, Patrick S. Loftus, Esq., of counsel, and Attorney Marc Miller, the Town Attorney George W. Redder, Esq. and the attorney for the Town Zoning Board. See Exhibit "6", the List of Witnesses, Affidavits and additional materials that was reviewed by the ZBA.

V. LEGAL ANALYSIS OF PRE-EXISTING NON-CONFORMING USE AND THE PROPOSED USE BY APPLICANT/APPELLANT, AS APPLIED TO THE FACTS OF THE CASE

The Appellate Division of The Third Department has held "that a zoning board of appeals has the power to interpret the provisions of the local zoning ordinance or code". See (Matter of Rember v. Board of Appeal of Vill. of E. Hampton, 148 AD 2d 619,620 (2nd Dept. 1989) and its interpretation will not be disturbed unless unreasonable or irrational. In Re: Traveler Real Estate, Inc. et. al. v. Cain, ZBA of the Village of Kinderhook, 160 AD 2d 1214, 1215 (3rd Dept. 1990).

The Court of Appeals has held that the conclusion that Applicant/Appellant's main care business does not fall under the category of home occupation is neither unreasonable nor irrational. See In re: Fishman v. Schmidt, 61 NY 2d 823,826 (1994).

The Court of Appeals has also held that while an established lawful non-conforming use may be continued, a new non-conforming use may not be substituted for it, despite its generic similarity. See In re: Cowan v. Kern, 41 NY 2d 591, 598 (1977).

The Appellate Third Department has held that: "A continuation of use exists where the proposed use is "substantially the same: as that which previously existed and where the "essential character of the use is not to be changed. In re: Oreiro v. Board of Appeals of the City of White Plains, 204 AD 2d 964, 965, (3rd Dept. 1999), (citing Aboud v. Wallace, 94 AD 874, 875-876). In that case, the Court found that the evidence supported the Board's determination that change from retail store to retail laundromat was a change from lawful non-conforming use to another non-conforming use to another use requiring prior approval and the board had adequate guidelines to rationally determine that proposed retail use was not more appropriate for residential zoning district, Ibid., p. 965.

In Re: Calcagni Construction Co., Inc. v. ZBA of Town of Harrison, 56 AD 2d 845 (2nd Dept. 1977), the Court held: "A new non-conforming use may not be substituted for an existing non-conforming use, despite its generic similarity to such existing use.

From the evidence reviewed by the ZBA, the Applicant/Appellant's proposed use is not "substantially the same use as a religious organization". The Applicant/Appellant's purported use is not essentially the same character as the Dominican Sisters use is a religious convent and said proposed use would change the essential character of use as a rehabilitation center.

The CEO stated that the proposed use by the Appellant/Appellant is classified as a residential care facility, which includes the usage of a Rehabilitation Center/Self Help Group Home for Women and children, with peer advocates and a 24-hour staff of four (4) individuals. The Applicant/Appellant for Samadhi Center, Inc., employee, Alicia Griffin and Ronda Garcia, in answer to Gina Kiniry (PB member) question about how long the women/children would be

residing at 996 Dominican Lane, Laura stated that: "It will depend on the situation how long each resident will be at the facility. The goal is no more than six (6) months, but could be up to a year, 1-year residency. There are 22 bedrooms, but some will be used as office space and use 15- 18 of the bedrooms for residents. The facility will be staffed 24 hours a day, seven (7) days per week".

In reviewing the above evidence, the Saugerties ZBA has rendered a Decision set forth below.

THE ZBA'S DECISION

Section 245-36(E) generally provides that the function of the ZBA is to hear and decide any question before it regarding the interpretation of any provision of this Chapter. Based upon all of the evidence, the ZBA finds that the Applicant/Appellant's proposed use as a self-help women's group home with peer advocates and a 24-hour staff of four (4) individuals, is not substantially the same use as the pre-existing non-conforming use by the Dominican Sisters at 996 Dominican Lane, in the Town of Saugerties.

CONCLUSION

For the foregoing reasons, as well as those contained in all the submissions and testimony presented and received by the ZBA, this Board hereby DENIES the Applicant/Appellant's application as specifically set forth above. This Board also Affirms the Code Enforcement Officer's interpretation of the proposed intended non-conforming use by the Applicant/Appellant is not substantially similar to the Dominican Sisters present pre-existing non-conforming use. The ZBA finds that as a result of its decision, the ZBA determination as to whether the present pre-existing non-conforming use has been abandoned for more than twelve (12) months has been rendered moot.

Be it further Resolved, that within five (5) business days of the adoption of this Resolution, the Chair or other duly authorized member of the Zoning Board shall cause a copy of the Resolution to be filed with the Town Clerk and a copy sent to the Applicant/Appellant.

Resolution seconded by Zoning Board Member _____.

The vote was as follows:

- Board Member Joseph Mayone _____
- Board Member Randy Ricks _____
- Board Member Holly Strutt _____
- Board Member Tim Scott, Jr. _____
- Chairperson William Schirmer _____

CERTIFICATION

I, Becky Bertorelli, the duly qualified Secretary for the Town of Saugerties Zoning Board of Appeals, Ulster County, New York, do hereby certify that attached hereto is a true and correct copy of a Decision and Order of the Zoning Board of the Town of Saugerties, held on the 1st day

of July, 2024, and that the Decision and Order set forth herein is a true and correct copy of the resolution of the Zoning Board of Said Town adopted at said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law) said meeting was open to the general public.

IN WITNESS WHEREOF, I have hereunto set my hand and sela of said town, this day **X** of **July, 2024**..

Becky Bertorelli, ZBA Secretary