



ZONING BOARD OF APPEALS
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June 3, 2024

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

ALSO PRESENT: Becky Bertorelli (Zoning Board Secretary), George Redder (Zoning Board of Appeals Attorney) and Sean Weaver (Building Inspector)

PLEDGE

Schirmer welcomed Henry Rua back and asked that Holly Strutt join the Board for this meeting to continue the review of the Samadhi Center Inc.

PUBLIC HEARING

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-this public hearing is a continuation of the public hearing opened last month at the monthly meeting, May 6, 2024. The Board had received a request from Scenic Hudson to keep the public hearing open so that they may review and make comments. They have since responded that they have no further comment. The public hearing continued at 7:02 pm.

Public Comments:

- David MacNamara, Executive Director of Samadhi Center Inc.-would like to reiterate that the proposed use is transformational housing for physical/domestic violence abuse victims. The intended use is substantially the same in which the Dominican Sisters have operated for generations. The Villa will be used as temporary housing, the same as previously used. Will provide psychological services for women and children. Mirror those services used by the Dominican Sisters with spirituality and holistic health. The continuation will be substantially the same as previous use. A list of legal cases was submitted to the Board for review to help reinforce. There is a legal standard set forth within these case files. Simple temporary housing, the home will be used to provide services and housing, therapeutic and spiritual with refuge like the Dominican Sisters did. Sisters chose Samadhi because of the continued use that fits their vision for the parcel. There will be no changes to the physical character or added structures to the parcel. No expansion is proposed. There will be no drug rehabilitation center. No intent to do so.
- Adam Bosch, 28 Lancelot Drive - the “grandfathering” clause expires 12-months after a parcel is not used in the same manner as previously used. The use that Samadhi is proposing is a prohibited use within the zoning district. The property has not been used by

the Dominican Sisters within the last 12-months in the same capacity as in the past, therefore, “grandfathering” the use is not allowable. Acknowledge that this use for a treatment house like this is necessary but not in this location, where it is not permitted. I will always show up at any review for this at this location with polite opposition. There are places where this could be moved that are more reasonable for the neighborhood and those that would be using the services. Focus should be on somewhere appropriate and is more in line with the community and zoning law.

- Ben Compain, 15 Sherwood Place - I have submitted a FOIL for the submitted affidavits and they show a difference in proposed use. The Dominican Sisters used the land for retreats, maybe a couple of times a year. There has been no activity on that property within the last 12-months and when the Sister was questioned about the number of attendees at the last retreat she was hesitant to give that information, which turned out to be four individuals that were all associated with the Dominican Sisters.
- Dan Whalen, 23 Sherwood Place - supports the mission of the Samadhi Center but it does not fit in this space. The applicant seems to be forcing the proposed use to make it the same as the Dominican Sisters. Would like to work with the Dominican Sisters to see what would fit at this site and within this neighborhood.
- Joe Ferraro, 49 York Street - have lived in this area entire life and attended mass, religious education and retreats at this site. Not concerned with the physical changes. Work with the sisters to find a use for this property to stay on point with the zoning. There has been media coverage that is not in favor of the applicant and their current locations. The Kingston Freeman posted an article dated May 16, 2024 addressing many undesirable issues. This is the wrong area of Town for this proposed use and it is not religious work like the Dominican Sisters used the property for.
- Regina Melchin, 16 Sherwood Place - owns World of Dance for 24 years and is very aware of the consequences of a similar facility within the vicinity of my studio at its current location, which we have been at for the last 9 years. We have found individuals sleeping in the yard and needles that were discarded on our property. We have installed cameras for our protection costing a significant amount of money. The integrity behind their name is not really established. Do they have an RFP for what they are going for? There are homes with children all around this site and the unintended consequences are the concern. The difference between what the goal is and what actually happens is a concern as well. This should not be located near a school.
- Marc Miller, applicant attorney - there is confusion and misinformation going around regarding the proposed use. This is not a new venture but a continuation of the use that is non conforming but is grandfathered in. Samadhi has chosen the legacy of the Dominican Sisters. Used full time or part time and continuously, as shown with the affidavits submitted to the ZBA. There has not been abandonment of the property. A misinterpretation of the law seems to be evident. The proposed use is similar beyond question. If this is not approved it would be like taking away the property rights of the owner. How would everyone here like that to be done to them? There has been case law to support the claims of the applicant that this is similar enough to be considered a continuation of the use. (“**Table of Authorities Cases**”, *attachment #1*) Rua-what laws are you citing? Miller-the zoning law of cessation of use for 1-year. Qualitative and Quantitative. Strutt-please provide the board with the cases that have been cited in the legal memorandum, copies of the briefs. Miller-we do not have to, they are cited in the submission and can be looked up with the information that was given.
- Nadine Cavallaro, York Street - lived in the same house entire life. The Dominican Sisters moved out and closed the building in Fall of 2015. I know because a service on the

anniversary of my mother's passing was the last event and when we said our goodbyes to the Sisters. It has been closed since then, no one living there. My family has known the Dominican Sisters since 1935 and had a relationship with those living there. In 1935 they did use the site for housing but it has been closed since 2015. The use that has been continued is nowhere near what it once was and not continually. This is not the same level of use. Respect to what the site was used for in the past is important. The proposed use is not remotely the same. The building has been empty and closed for nine years. A four person retreat in April is not a continued use as it once was or is proposed to be. What did that retreat consist of? Four individuals visiting the site and walking around? The proposed use has to happen in the right location. For the applicant's team to state that this is exactly the way it has been used is not true. There have been no overnight accommodations since 2015. Trespassing from Scenic Hudson to our property occurs regularly and will be the same there. There is a statute of limitations on the preexisting use for a reason and that time has lapsed.

- Gaetana Ciarlante, York Street - I have hiked on the property and looked at that property, it has been vacant for a long time. To propose a domestic violence shelter at that location is a problem on a dead end road. Tempting for drug dealers to know where to go and tempt the recovering individuals that will be sheltered there. The road way in is very narrow and leads to a dead end, leaving no way out. Safety is a big issue.

Redder-if there are no more comments or any other information to be presented to the Board by the public the Board can close the public hearing at this time and will have 62-days to render a decision.

A motion was made by Mayone, seconded by Scott, to close the public hearing since there were no further comments. Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing was closed at 7:41pm. Schirmer - the Board will review the information presented and make a decision at the July 1, 2024 monthly meeting.

JOSEPH & AMANDA MOSELEY: APPLICATION FOR 35' FRONT YARD SETBACK AREA VARIANCE

159 Fawn Road
Saugerties, NY 12477
File #: 24-002
SBL #: 8.3-3-13

The property is located in the Low Density Residential (LDR) zoning district with Sensitive Area Overlay (SA). Presented by the applicant/owner, Amanda Moseley. Requesting a 35' front yard setback area variance to build a 300 square foot addition.

A motion was made by Mayone, seconded by Strutt, to open the public hearing. Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing opened at 7:45pm. There were no public comments. A motion was made by Mayone, seconded by Strutt, to close the public hearing since there were no public comments. Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing was closed at 7:46pm.

Schirmer the Board will now do the Balancing of Interest Test:

- 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.
- There is no other feasible method for the applicant to pursue, other than an area variance, because of the topography of the parcel.
- The requested variance is substantial.
- The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood.
- The alleged difficulty is self-created but there is no other location to build out the addition.

Therefore, a motion was made by Ricks, seconded by Mayone, to grant 35' front yard setback variance. Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Schirmer-Aye. Motion carried.

DOUG & SUE MYER: APPLICATION FOR 23' SIDE YARD SETBACK VARIANCE

18 Warren Myer Road
 Saugerties, NY 12477
 File #: 24-003
 SBL #: 28.4-3-5.111

Presented by the applicant's agent Dan McCarthy, Preatorius & Conrad, P.C. The applicant is requesting a 23' side yard setback variance to meet the 25' setback requirement for solar farm fences.

Schirmer-the Zoning Board Secretary reached out to the Ulster County Planning Board regarding referral and they have confirmed that it is not required per the Schedule B: Referral Submittal Reference Matrix.

A motion was made by Ricks, seconded by Mayone, to open the public hearing. Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing opened at 7:52pm. There were no public comments. Mayone-will the fence be removed when the solar project is done? McCarthy-yes, there is a decommissioning agreement with the Town that states that the fence will be removed and all items of the solar farm, returning the land to its previous state. Schirmer-the location of the proposed boundary line can not be moved without impacting an existing right-of-way, which is the reason for the required variance. There is no fence ordinance within the Town for residential properties, this fence setback requirement is only for large scale solar facilities. If this was not a solar facility the variance would not be required.

Schirmer the Board will now do the Balancing of Interest Test:

- 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.
- There is no other feasible method for the applicant to pursue, other than an area variance, because of topography and an existing right-of-way that cuts through the parcel.
- The requested variance is substantial but the fence will be removed when the solar facility is decommissioned.

- The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood, no physical changes are being proposed.
- The alleged difficulty is self-created but will be rectified when the solar facility is decommissioned because the Town does not currently have any fence setback requirements for residential parcels.

Therefore, a motion was made by Ricks, seconded by Mayone, to grant the 23' fence setback variance to meet the required 25' setback for "Large Scale Solar Facilities". Board vote: Strutt-Aye, Ricks-Aye, Scott-Aye, Mayone-Aye, Schirmer-Aye. Motion carried.

NEW APPEAL

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

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

The property is located in the Moderate Density Residential (MDR) zoning district. Presented by the applicant/owner, Jeffrey Kantor. Requesting a 10' side yard setback area variance to install a shed 15' from the property line where 25' is required in the MDR zoning district. The shed is a prefabricated structure from Brad's Barns. There are existing bushes and a fence between where the shed is proposed and the road. Rua-can you move the shed over 5' to decrease the variance needed? Kantor-it is not really feasible due to the location of the septic. Schirmer-just want to mention that the setback requested is from a road and not an adjoining neighbor's property. Strutt-not to scale? Kantor-the measurements are accurate for the setbacks, measured them myself. Set the location as far to the septic as possible.

A motion was made by Rua, seconded by Mayone, to declare this a Type II Action under SEQR. Board vote: Ricks-Aye, Scott-Aye, Mayone-Aye, Rua-Aye, Schirmer-Aye. Motion carried. A motion was made by Scott, seconded by Mayone, to set the public hearing for the July 1, 2024 monthly meeting. Board vote: Ricks-Aye, Scott-Aye, Mayone-Aye, Rua-Aye, Schirmer-Aye. Motion carried.

OLD BUSINESS

NONE

BOARD DISCUSSION

A motion was made by Ricks, seconded by Mayone, to approve the draft minutes of the May 6, 2024 meeting. Board vote: Strutt-Aye, Ricks-Aye, Scott-Abstain, Mayone-Aye, Schirmer-Aye. Motion carried.

The Planning Board meeting minutes were received.

The proposed Zoning Amendment regarding lodging and events was handed out and reviewed by the Board. If Board members would like to make comments they can always submit them in writing to the ZBA secretary.

ADJOURNMENT

A motion was made by Rua, seconded by Scott, to adjourn the meeting as there are no further items to discuss. Board vote: Ricks-Aye, Scott-Aye, Mayone-Aye, Rua-Aye, Schirmer-Aye. Motion carried. Meeting adjourned 8:19 pm.

Respectfully submitted,

Becky Bertorelli

Secretary

Zoning Board of Appeals

Attachment #1

TABLE OF AUTHORITIES

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NON-CONFORMING PRE-EXISTING USE CONTINUED

QUESTION PRESENTED

1. Is Samadhi Center Inc.'s intended use of the subject premises substantially the same as the current use of the premises of the current owners the Dominican Sisters, so that the Zoning Board of Appeals of the Town of Saugerties can grant their request for an interpretation that their intended use is substantially the same?

It is respectfully submitted that these questions should be answered in the affirmative.

2. Does the Town of Saugerties Town Code 245-39(g) regarding discontinuance of non-conforming use apply to the subject premises due to an abandonment by the current owner?

It is respectfully submitted that these questions should be answered in the negative.

STATEMENT OF FACTS

Samadhi Center Inc. ("Samadhi") entered into contract with the current owner Dominican Convent of Our Lady of the Rosary ("Dominican Sisters") to purchase the subject property 996 Dominican Lane, Saugerties, NY 12477 also known as the St. Dominic/ St. Joseph Villas ("The Villas") on January 29, 2024. Samadhi was chosen by the Dominican Sisters because their intended use continued the use and legacy of the Dominican Sisters.

On February 23, 2024, Samadhi met with the Town of Saugerties Building Department, to discuss their intended use of the property. The Town of Saugerties Building Department advised Samadi needed to apply for an interpretation from the Saugerties Zoning Board of Appeals ("Saugerties ZBA"), that their intended use of the property is substantially the same as the current use of the property. Samadi submitted their application to the Saugerties Zoning Board of Appeals and appeared before the Saugerties ZBA on April 1, 2024.

A public hearing was scheduled on May 6, 2024, for Samadhi Center's application. The supporting documentation submitted to date to the Saugerties ZBA included thirteen affidavits, which gave great detail and description about the use of the property under the Dominican Sisters. These affidavits are from individuals with intimate personal knowledge of how the subject property has been utilized. The Villas have been used to provide retreats, temporary housing for those leaving traumatic living conditions, providing therapeutic workshops, group workshops, group therapy and religious and spiritual counseling given to these individuals. At the onset of the COVID-19 Pandemic in March 2020, programs at the Villa had to be suspended for safety precautions, but by June 2021 retreats were once again being held at the Villas.

The COVID-19 pandemic continued with many of the participating Dominican Sisters being elderly and part of the at-risk population. Such retreats have continued through 2023 and as recently as March 9, 2024. Sister Irene testified and clearly stated and addressed at the Saugerties ZBA public hearing held on May 6, 2024, that the Dominican Sisters intended to continue the pre-existing use despite COVID-19, setbacks and risks limited the services they could safely provide, risks that currently exist to some extent today. Sister Irene also clearly stated why they chose Samadhi as their successor to the Villas. To carry on their mission to provide for those in need, as the Dominican Sisters have done for over ninety years. Sister Irene clearly addressed that not only was there no intent to discontinue the use, but that there was every effort made to assure compliance and continuation of use of the property.

ARGUMENT

POINT I

SAMDHI CENTER'S INTENDED USE OF THE SUBJECT PREMISES IS SUBSTANTIALLY THE SAME AS THE DOMINICAN SISTERS CURRENT USE.

Samadhi submitted a program proposal letter to the Saugerties ZBA. In that proposal letter Samadhi detailed how they intend to use the Villas as temporary housing for those leaving traumatic living conditions. Samadhi also intends to provide psychological and spiritual services for women and children who have endured physical, sexual and emotional trauma, who are trying to escape their respective traumatic domestic

living situations. Samadhi intends to institute programs that mirror those that have been administered by the Dominican Sisters for over ninety years. These include, providing residents emotional healing, therapy for stress due to trauma and addiction, counseling, counseling for depression and loneliness, space to practice spirituality and spiritual wellbeing and workshops focused on holistic health. Samadhi Center's intended use is substantially the same as the Dominican Sisters use of the Villas.

The legal precedent is clear on what constitutes continuation of a non-conforming use. A continuation of use occurs when the use is "substantially the same" as that which previously existed Aboud v. Wallace, 94 A. D. 2d 874, 875-76. Where the "essential character" of the use has not been changed YM YWHA of Mid-Westchester v. Town of Eastchester, 201 N.Y.S 2d 622, 624. In *Aboud*, the Third Department found that the prior use as a medical office was substantially the same as the new owner's use of the property as a lobbying office. In *YM YWHA*, the Second Department found that the use of the subject property as a youth organization from the previous use as a veteran's organization also passed the "substantially the same" and essential character tests. This is the case here, Samadhi's intended use passes this legal standard, as their intended use of the property substantively mirrors the use of the Dominican Sisters as detailed in the statement of facts *supra*, even more so than the cases *supra*, as similar temporary housing, therapeutic and spiritual programs and workshops is intended to take place at the Villas under Samadhi's ownership.

The Court of Appeals of the State of New York found continuation of non-conforming use when a home used for children with cardiac issues was changed to a home for mentally disabled children, the court finding that a restriction or limitation of the prior nonconforming use does not sufficiently change the use so as to be a qualitative

change Rogers v. Assn. for Help of Retarded Children, 308 NY 125, 132-133. Samadhi's intended use qualitatively and substantively exceeds the situation in *Rogers*, where use as a home for children with completely different medical issues was found to be substantially the same use. Samadhi intends to provide services and housing to residents that mirrors and continues the use the Dominican Sisters have had at the Villas.

A nonconforming use that has a qualitative change in operation is impermissible and may be enjoined Gilmore v. Beyer, 46 A.D. 2d 208, 210. There is no such qualitative change in operation here. Samadhi intends to use the facility as a retreat for individuals seeking therapeutic and spiritual refuge, the same exact type of use the Villas have been used as by the Dominican Sisters. It is why the Dominican Sisters chose Samadhi as their successor to the premises, to pass on the property and entrust it to an owner who would continue to carry on the same use of the property. In *Gilmore*, the property use was changed from a milk trucking terminus for eight milk hauling trucks to a general trucking business operation that included twenty milk tankers, twenty tank haulers, two pickups, five vans, flat and low bed trailers, gravel trucks, scrapers, bulldozers sanitation trucks and related equipment. *Gilmore*, where there was a clear extension from the original use in no way mirrors the situation here. Samadhi is not expanding the buildings. They do not have plans to construct new buildings or structures or add equipment that exceeds the current use. Samadhi intends to use the property as it has been used for decades by the Dominican Sisters.

In the New York Court of Appeals finding in Matter of Kaltenbach v. Board of Stds. Appeals of City of N.Y., 274 N.Y. 34, the subject property in that decision involved a monument and stone cutting business that was remodeled to add gas pumps, a garage and service building in order to serve as a gas station. Samadhi has no intention to change the

physical character or add structures to the Villas for a completely different use and purpose for the property and in no way can it be construed that their intended use is not substantially the same as the current use.

POINT II

THE DOMINICAN SISTERS USE OF THE PREMISES DOES NOT CONSTITUTE AN ABANDONMENT OR DISCONTINUANCE OF USE

Under Saugerties Town Code §245-39(g) a discontinuance of use occurs when there is a period of twelve consecutive months of nonuse. There is no enacted code in Saugerties which specifies a lesser standard than substantial discontinuance of a legal non-conforming use.

The right of a property owner to continue a nonconforming use may be lost through abandonment of such use Realty Corp. v. Le Boeuf, 201 Misc. 220, 104 N.Y.S.2d 247. Abandonment requires intent which is a voluntary and affirmative act. City of Binghamton v. Gartell, 275 App. Div. 457, 90 N.Y.S.2d 556, when a town code regarding discontinuation of a nonconforming use does not specify a lesser standard of a “substantial discontinuance” of a legal nonconforming use, an "abandonment" of a legal nonconforming use requires "a complete cessation" of the nonconforming use. See Matter of Eccleston v. Town of Islip Zoning Bd. of Appeals, 40 A.D.3d 854, 855 (citing Matter of Marzella v Munroe, 69 N.Y.2d 967, 968).

In *Marzella*, the property at issue contained a one-family dwelling in front and a three-family dwelling in the rear. A subsequent zoning ordinance, passed prior to 1969, made the use nonconforming, as it only permitted one two-family structure on the lot in question. Between 1969 and 1984 the rear building remained vacant while the front structure continued to be used. The court held that abandonment does not occur unless there has been a complete cessation of the nonconforming use and thus since one of the

nonconforming structures remained in use, the nonconforming use of both structures was upheld as a continued pre-existing use. The point being, as is the case here where the Dominican Sisters only curtailed their operations of the Villas when safety concerns for their staff and individuals attending their programs was presented by the COVID -19 pandemic, it in no way constituted a complete cessation of use.

"[A] discontinuance connotes a complete cessation so that a minimal nonconforming function, of itself, would not constitute an abandonment." See Islip v. P.B.S. Marina, Inc., 133 A.D.2d 81, 81 (App. Div. 2nd Dept. 1987) (quoting Baml Realty, Inc. v. State, 35 A.D.2d 857, 857 (App. Div. 3rd Dept. 1970). In *Islip*, it was held that a mere twice annual use of a marina constituted continuation of the nonconforming use and the complete cessation standard was not met.

When the COVID-19 pandemic in March 2020, it was not feasible or safe for the Dominican Sisters to continue the normal operations the Villas. The staff they have is elderly and a high at-risk population. Even with this great risk of COVID-19 continuing to this day, the Dominican Sisters have continued the use and provided documentation of that use. Holding nineteen retreats in 2021, twelve retreats in 2022, seven retreats in 2023 and another in March 2024. They have continued their preexisting use of the property throughout their ownership as a place for individuals to come for therapeutic and spiritual programs and workshops. The Dominican Sisters have used the property in every calendar year since their ownership of the property began. In no way can their use be construed as an affirmative or voluntary discontinuance of use to be considered an abandonment of the property. Further, it cannot be asserted that there has been anything even close to a substantial discontinuance of a nonconforming use in the facts at present. The case law presented *supra* mirrors the use of the Villas and the use present exceeds the use presented

in those cases. It is also irrelevant and not considerable that all the buildings on the Villas have been used continually. As in *Marzella*, where one of the buildings was not in use, continued nonconforming use was upheld when the other building continued the nonconforming preexisting use. Their use exceeds the standard set out in *Islip* where the subject property in that case was only used twice a year.

The Dominican Sisters maintained the property during the sabbatical from retreats from March 2020 to June 2021. There were stringent restrictions that occurred during the COVID pandemic due to health and safety concerns regarding large groups of people congregating. In no way can it be construed that the Dominican Sisters abandoned their property or intended to abandon their property. The property is currently being used as a retreat to this date, there can be no voluntary or affirmative act drawn from the facts to support an abandonment of the property.

CONCLUSION

Therefore, Samadhi's intended use qualifies as a pre-existing use within the zoning code of Saugerties. Samadhi's intended use of the subject property is substantially the same intended use the property has been used for by the Dominican Sisters for decades. To be used for therapeutic and spiritual services and a retreat from those escaping traumatic living conditions.

That is why Samadhi was chosen by the Dominican Sisters as their successors to the Villas in the first place. The Dominican Sisters extraordinary efforts during the COVID-19 pandemic to keep the Villas running at great personal risk to their own staff, clearly demonstrated their intent cannot possibly be construed to infer an intentional abandonment of their property. There is no intended expansion of the physical property or structures, no restoration projects planned and no invasive or expansive construction on the property is planned by Samadhi.

The Dominican Sisters have used the property in a way that it could not possibly be construed in any way as an abandonment or discontinuance of use under Town of Saugerties Town Code §245-39. The Dominican Sisters through an international pandemic with great risk to their own health, re-opened the Villas to continue their use of the property to serve individuals in need. Samadhi plans to continue this use of the property, to serve people in need of therapeutic and spiritual retreat and services. There can be no conclusion drawn by the Saugerties ZBA that the intended use qualifies for an interpretation that their use is substantially the same as the Dominican Sisters use of the Villas.