

**November 19, 2015
Zoning Board of Appeals
Minutes**

Members Present: Tracey Cullen, Chairperson
Richard Ubert, Vice Chair
Kirk Hurme, Member
Bill Ordon, Member
Chuck Vinciulla (Alternate)

Also Present: Thomas Whalen, Code Enforcement
Stephen Greenwald, Director of Operations

Meeting called to order at 7:03pm

Chairperson Cullen welcomed everyone to the November 19, 2015 meeting of the Zoning Board of Appeals, and introduced all the members. Chairperson Cullen stated applicants are hereby notified that any/all agreed concessions, promises, pledges, assurances or declarations given by them or their duly appointed agents, during their hearing process shall become stipulations to any approvals given by this Board.

Ms. Cullen asked the Board for a motion to approve the minutes from the October 22, 2015 meeting. A motion was made by Mr. Ubert and seconded by Mr. Ordon. Ms. Cullen abstained as she was not present at the prior months meeting.

Vote on the motion:	Ms. Cullen	abstained
	Mr. Ubert	aye
	Mr. Ordon	aye
	Mr. Hurme	aye
	Mr. Vinciulla	aye

4-0

Application of James Prisco as agent for Thomas Pappas. Applicant seeks to exceed the permitted building height and seeks to exceed the required side yard setback pursuant to the proposed elevation of the two story single family dwelling and addition of a front roofed over porch and open rear deck to comply with FEMA and New York State Residential Building Code requirements pursuant to Section 183-51 and 183-46 of the Village Code. Premises located on the west side of South Bayview Ave. approx. 221 feet south of MacDonald Ave. in a "Residential B" district k/a 249 South Bayview Ave. a/k/a SCTM# 101-14-2-8

Findings:

1. Applicant shared a rendering of what proposed dwelling would look like after completion

2. Applicant is asking to exceed height limit by going from 28 feet to 28.9 feet to make the house FEMA compliant. Applicant stated that this will also help drastically lower the cost of flood insurance for the homeowner
3. There is an existing non-conforming side yard setback of 4.8 feet on east side and 9.8 on west side
4. Applicant will be adding a front porch and stairs with a landing that does not require a variance
5. Fire Safety Sprinklers will be installed
6. A proposed rear deck measuring 16 feet by 36 feet will be within the side lines of the home and does not require a variance
7. There will be a 6.7 foot uninhabitable crawl space which will be flood resistant and accessed from a door in the rear of the home
8. The variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties
9. The requested variance is not considered "substantial" by the Zoning Board of Appeals
10. The Zoning Board of Appeals does not believe the variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood
11. The difficulties complained of by the applicant are not self-created

A motion to approve the application with the following stipulations was made by Mr. Ordon and seconded by Mr. Ubert

Stipulations:

1. Planning Board approval is required
2. Applicant must secure all necessary permits
3. Applicant will abide by all state and local codes

Vote on the motion: Ms. Cullen aye
 Mr. Ubert aye
 Mr. Ordon aye
 Mr. Hurme aye
 Mr. Vinciulla aye

5-0

Application of James Prisco. Applicant seeks to exceed the required lot coverage and maintain the existing non-conforming side and aggregate pursuant to the elevation of the existing two story dwelling to FEMA requirements and the addition of a proposed new open deck and roof deck to the east side of the dwelling pursuant to Sections 183-15 and 183-17 of the Village Code. Premises located on the south side of MacDonald Ave. approx. 175 feet west of Grand Central Ave. in a "Residential A" district k/a 60 MacDonald Ave. a/k/a SCTM# 101-14-1-3

Findings:

1. This project is being funded by New York Rising
2. The home had approx. 30 inches of water during Super Storm Sandy but has since been repaired
3. The existing home is 12,000 square feet.
4. There is a canal to the south and west of the property
5. An upper rear deck will be added but will be flush with the home and not protrude outside of the lines of the home

6. A rear deck will be added that will be flush against the home and will not require a variance, but will increase the total lot coverage by 4%
7. The variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties
8. The requested variance is not considered "substantial" by the Zoning Board of Appeals
9. The Zoning Board of Appeals does not believe the variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood
10. The difficulties complained of by the applicant are not self-created

A motion to approve the application with the following stipulations was made by Mr. Herme and seconded by Mr. Ordon

Stipulations:

1. Planning Board approval is required
2. Applicant must secure all necessary permits
3. Applicant will abide by all state and local codes

Vote on the motion: Ms. Cullen aye
 Mr. Ubert aye
 Mr. Ordon aye
 Mr. Hurme aye
 Mr. Vinciulla aye

5-0

Application of Frank DiVittorio. Applicant seeks to maintain a Special Exception pursuant to a non-permitted erection of a six foot fence pursuant to Section 183-139 A (3) of the Village Code. Premises located on the south side of Gaylore Dr. South approx. 279 feet west of Lake Drive in a "Residential B" district k/a 2 Gaylore Dr. South a/k/a 101-6-4-48

Findings:

1. The fence was already erected and applicant did not realize he need a variance until he applied for a permit from the Building Department
2. Applicant purchased the home in 2011 and changed out the fence after living there for 6 months
3. The fence was installed by a contractor
4. The fence runs on the left and right side as well as the rear of the property and replaced an older dilapidated wood fence
5. The current fence is a white vinyl solid 6 foot fence in the rear and side of the property and the part that facing the front is 5 feet with an additional 1 foot of lattice
6. No neighbors spoke for or against the application
7. Three other 6 foot fences were observed in the same area, one vinyl and two wood

A motion to approve the application with the following stipulations was made by Mr. Ubert and seconded by Mr. Vinciulla

Stipulations:

1. Applicant must apply for all necessary permits
2. Applicant must adhere to all state and local codes
3. Fence must be securely anchored with the god side facing out
4. Fence must be erected as diagramed or amended on the plot survey as submitted
5. Applicant will not be allowed to place barbed wire or razor ribbon on top of the fence
6. Maintenance of the fence will be the responsibility of the owner

Vote on the motion: Ms. Cullen aye
 Mr. Ubert aye
 Mr. Ordon aye
 Mr. Hurme aye
 Mr. Vinciulla aye

5-0

Application of Christopher Pearson. Applicant seeks a continuation of a Special Exception permitting the outdoor storage of construction equipment and vehicles pursuant to Section 183-81 B of the Village Code. Premises located on the east side of Broadway (Rt.110) approx. 215 feet north of Oak St. in a part "Business 1" in part "Business 2" and in part "Residential B" district k/a 247/249 Broadway a/k/a SCTM# 101-4-3-55 and 101-4-3-56

Findings:

1. Applicant has owned the property for the past 12 years
2. Applicant has renewed his Special Exception every year
3. Applicant has yearly inspections by the Building Inspector. The last inspection showed that there were several stipulations which the applicant was out of compliance with
 - a) Storage containers must be placed as close as possible to the existing buildings
 - b) There were construction materials higher than 6 feet
 - c) There are pictures of vehicles being loaded and unloaded in the municipal parking lot by applicant tenant
 - d) There are unregistered vehicles on the property
 - e) There is not a 20 foot clearance on all areas of the property to allow Fire Vehicles access in the event of an emergency
 - f) No copies of registrations for owner owned vehicles on the east side of the property have been provided to the Building Department
4. Applicant requests that the Certification be extended for a longer period of time
5. The property is used to store construction materials, and vehicles applicant uses for his business
6. There is a 55 square foot building on the property which has electricity
7. There are currently one 18 foot and four 20 foot trailers on the property
8. Applicant stores his boat on the property during the winter
9. A part of the property is leased to Avante Towing Company a repossession company for the storage of cars at a rate of \$850 a month
10. No one spoke for or against the application
11. Applicant has a history of non-compliance

A motion to approve the application with the following stipulations was made by Mr. Ubert and seconded by Mr. Vinciulla

Stipulations:

1. The Special Exception will be approved for one (1) year, or until a change of ownership or any lessee, whichever comes first
2. Applicant is limited to 3 storage containers with an approximate size of 8 feet by 20 feet with no-hazardous materials. Applicant must secure proper licenses from the Board of Trustees
4. Maximum height of construction materials is 6 feet
5. Maximum height of construction equipment is 12 feet
6. No debris is allowed on the property
7. A maximum of 40 cars can be stored on the western portion of parcel
8. All vehicles must be loaded or unloaded on the owner's property. No loading or unloading can take place on municipality owned land
9. All materials and equipment to be stored must be owned or legally leased by the property owner and stored/ arranged orderly to the satisfaction of the CEO
10. Applicant must abide by all applicable state and local codes
11. Applicant must apply for all necessary permits from the Building Department
12. The Building Inspector has the right to inspect the premises at any time to make sure the stipulations are being maintained
13. There are to be no unregistered vehicles on the property

Vote on the motion:	Ms. Cullen	nay
	Mr. Ubert	aye
	Mr. Ordon	aye
	Mr. Hurme	nay
	Mr. Vinciulla	aye

3-2

Application of Buzzell, Blanda, and Visconti LLP as agents for Richmond Auto Body LTD. Owner. Applicant seeks a Special Exception to permit parking and storage of vehicles within the rear of the premises by Section 183-6 of the Village Code. Premises located on the south side of Merrick Road approx. 169 feet west of Richmond Ave. in a part "Business 2" and in part "Residential BB" districts k/a 91 Merrick Road a/k/a SCTM# 101-7-6-6

Angelica Henja, 11 Richmond Ave. spoke in opposition of the application

Jack Apsens, 51 Riverleigh Ave. spoke in opposition of the application

Joan Donnison, 150 South Ketcham Ave asked a question but did not express an opinion for or against of the application

Nancy McNicholas, 31 Richmond Ave. asked a question but did not express an opinion for or against the application

Michael Lynch, of Lynch Appraisal Services, 15 Dewey Street, Huntington, NY spoke for the applicant as an expert in the area of Commercial Real Estate Appraisal. He stated that the property has been one property dating back to 1923 and has been used for automotive use since 1950. He also reiterated many of the items found in the findings below.

Findings:

1. The property is approx. 45,646 square feet
2. There is approx. 140 foot frontage on Merrick Road
3. The property is divided into two zones. The front is a Business 2 and the rear is a Residential BB
4. The property has a 50 foot rear buffer zone with plantings that abuts residential properties and a 15 foot planted buffer on the east side
5. All buildings on the premises have permits and current Certificates of Occupancy
6. The business use on the property goes back to 1925
7. The property has been used for an automotive use since 1950
8. The current owner has owned the property since 1998 and obtained a permit for auto use at that time
9. A property repost showed that the property has been on one deed since 1923
10. There are four (4) access points for the property. Two (2) on Merrick Road and two (2) use the same right of way as a restaurant located on the west side.
11. There is a used car lot on directly to the west and a Foreign Auto Parts store with outside storage of vehicles on the east side
12. In 2005 owner applied to the Planning Board for approval to add a 7,500 foot addition and was granted approval which was challenged by the neighbors and annulled by the court on June 11, 2006 with the stipulation it needed Zoning Board of Appeals approval
13. On March 12, 2007 the Board of Trustees gave approval for the expansion and the Zoning Board of Appeals issued an approval on August 8, 2007
14. An Article 78 petition was submitted to both the Planning and Zoning Board of Appeals which the court upheld those decisions on June 6, 2011. This decision was then appealed but again the court upheld the findings of the Planning and Zoning Board of Appeals.
15. An additional suit was filed to stop construction but was denied by the court
16. Applicant is seeking a variance for parking on the residential part of the parcel and will abide by any stipulations set forth by this Board
17. Applicant keeps all necessary licenses for automotive use current
18. The residential portion of the parcel is approx. 70 feet on the east and west side by 125 feet on the north and south side
19. The Zoning Board of Appeals considered the application under Section 183-6 of the Village Code. This section of the code states that the Zoning Board of Appeals "may permit" the use requested. The Zoning Board of Appeals has interpreted this to be permissive, rather than mandatory, language, and also opines that a case by case analysis related to the facts and circumstances of each specific application and pieces of property should be employed when interpreting Section 183-6 of the Village Code.
20. In considering a special exception application, the Zoning Board of Appeals notes that the applicant's burden of proof "is much lighter than that required for a hardship variance." See, e.g., North Shore Steak House, Inc. v Board of Appeals of the Inc. Village of Thomaston, 30 NY 2D 238, 244 (1972).
21. The application need only show compliance with any legislatively imposed conditions on an otherwise permitted use. See, e.g., Serota Smithtown LLC. V Town of Smithtown Zoning Board of

Appeals, 43 Misc. 3d1206 (A) (Sup. Ct., Suffolk County, May 25, 2014). ; the Zoning Board of Appeals is of the opinion that the applicant has done so.

22. The applicant has taken efforts to minimize its impact on the surrounding neighbors. See, e.g., Serota Smithtown LLC. V. Town of Smithtown Zoning Board of Appeals, 43 Misc. 3d 1206 (a) (Sup. Ct., Suffolk County, Mar. 25, 2014).

23. The Zoning Board of Appeals does not believe granting a special exception will adversely affect the neighborhood. See, e.g. Serota Smithtown LLC. V. Town of Smithtown Zoning Board of Appeals, 43 Misc. 3d 1206 (a) (Sup. Ct., Suffolk County, Mar. 25, 2014).

A motion to approve the application with the following stipulations was made by Mr. Ubert and seconded by Mr. Ordon

Stipulations:

1. The Special Exception will be approved for a period of 5 years, or until change of ownership or any lessee, whichever comes first.
2. There can be no reduction or impact on the 50 foot rear buffer or the 15 foot buffer o the east side of the property.
3. No work or repairs can be done to the vehicles in the residential section of the property
4. No one vehicle can be parked in the same spot for more than 15 consecutive business days
5. Applicant must retain or replace the buffers zones on an as needed basis
6. Applicant must abide by all state and local codes

Vote on the motion:	Ms. Cullen	aye
	Mr. Ubert	aye
	Mr. Ordon	aye
	Mr. Hurme	aye
	Mr. Vinciulla	aye

5-0

Continuation of the application of Anflo Auto Electric. Applicant seeks a Special Exception to permit the proposed outdoor storage of motor vehicles within the rear yard of the premises pursuant to Section 183-82 (A) (10) (B) of the Village Code. Premises located on the south side of Merrick Road approx. 228 feet west of Bennet Place in a "Business 2 District" k/a 123 Merrick Road a/k/a SCTM# 101-7-7-2

Findings:

1. Applicant has owned the parcel for approx. 30 years
2. Applicant has received a variance for approx. 30 years
3. There are currently eight (8) vehicles stored on the property; 1960 Chevy, 1958 Chevy, a boat on a trailer, three (3) oil delivery trucks, a mobile food truck, and a Chevy Van
4. The applicant also rents space to a towing company to keep cars for overnight storage
5. Applicant also keeps delivery vehicles for his own business on the premises
6. Applicant receives revenue for the storage
7. The stored vehicles are kept slightly off the fence line of the property
8. Applicants original intention for renting out the storage spaces was to earn revenue

A motion to approve the application with the following stipulations was made by Mr. Ordon and seconded by Mr. Ubert

Stipulations:

1. Applicant is approved for a period of three (3) years or until change of ownership, whichever comes first
2. No landscaping trucks can be stored there.
3. There will be no working or repairs on the vehicles stored outside the building
4. Applicant must clean up the property immediately
5. Applicant must repaint and maintain the western outside wall of the building
6. There will be no storage of any flammable liquids
7. There shall be no idling or engines left running on any vehicles at any time
8. Applicant will send a letter to this Board stating that the oil truck does not contain any product when it is stored on the property
9. Applicant is allowed up to eight (8) neatly placed vehicles
10. Applicant must be in compliance with the New York State Fire Code

Vote on the motion: Ms. Cullen aye
 Mr. Ubert aye
 Mr. Ordon aye
 Mr. Hurme aye
 Mr. Vinciulla aye

5-0

Continuation of the application of 16 Sprague Ave. Realty LLC. Applicant seeks a Use Variance pursuant to the proposed outdoor storage of new and used motor vehicles pursuant Sections 183-43 and 183-82 of the Village Code. Premises located on the east side of Broadway (NYS Rt. 110) approx. 275 south of South Drive in a part "Business 2" district and in part "Residential B" district k/a 475 and 481 Broadway a/k/a SCTM# 101-2-3-10 and 101-2-3-11

Findings:

1. Lot is approx. 1.4 acres
2. 180' frontage on west side is fronted by Route 110, to the North by the Junior High School, on the east by a Recharge Basin and on the south by the north bound exit ramp from Sunrise highway to Route 110
3. Current zoning on the property is 200' from the front is Business 2 and the rear part of the parcel is Residential B.
4. The parcel is currently vacant and overgrown
5. There was once a dilapidated house on the parcel that had since been torn down
6. A Special Use Permit was granted by the Board of Trustees on September 14, 2015 for a storage yard for vehicles (dead storage of vehicles)
7. The Applicant's hardship is unique and does not apply to a substantial portion of the neighborhood. The "uniqueness" relates to the land; particularly the uniqueness of the ingress and egress
8. Applicant states that the property will be cleaned up

9. Applicant submitted a site plan to be reviewed by the Planning Board
10. Applicant states that there would be a minimal egress and ingress of vehicles as it would be used to only store cars
11. Applicant states that his client is in contract to buy pending the approval of the appropriate uses from the Village
12. Applicant states there will be no lighting on the property
13. Applicant states there are other automotive uses nearby
14. The character of the neighborhood is primarily a business area
15. The Zoning Board of Appeals does not believe that the requested Use Variance will alter the essential character of the neighborhood

A motion to approve the application with the following stipulations was made by Mr. Ordon and seconded by Mr. Ubert

Stipulations:

1. Applicant must adhere to all state and local codes
2. Applicant will apply for all necessary permits
3. Planning Board approval is required
4. Approval is pending until we receive confirmation from the Suffolk County Planning Department stating the decision is a matter for local determination
5. A landscaping plan must be included in application to the Planning Board

Vote on the motion:	Ms. Cullen	aye
	Mr. Ubert	aye
	Mr. Ordon	aye
	Mr. Hurme	aye
	Mr. Vinciulla	aye

5-0

Meeting adjourned at 10:30pm

Dina Shingleton, Clerk/Treasurer

