

**Zoning Board of Appeals
Minutes
January 16, 2020**

Members Present: Richard Ubert, Chairman
Tracey Cullen, Vice Chairperson
Todd Brice, Member
Roger Smith, Member
Bill Ordon Member
Eric Taylor (Alternate Member)

Other Attendees: Bryan Donato, Building Inspector
Tracey Gronbach, Secretary to the Board

Meeting called to order at 7:00pm.

Chairman Ubert welcomed everyone to the January 16, 2020 meeting of the Zoning Board of Appeals. Chairperson Ubert introduced himself and Board Members that were present for the meeting Todd Brice, Vice Chairperson Tracey Cullen, Roger Smith, Bill Ordon and our Alternate Member Eric Taylor. Also, in attendance was Bryan Donato, the Village Building Inspector and Tracey Gronbach, Secretary to the Zoning Board of Appeals.

Chairman Ubert stated for the record that all applicants are hereby notified that any and 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. He also asked that anyone who comes to speak at the podium please state your name and address for the record and sign on the sign in sheet so we can record everything properly.

Chairman Ubert stated the Board will approve the minutes with edits pending for the December 19, 2019 meeting. He asked all members of the Board if they have had the opportunity to review the minutes from our last meeting. Vice Chairperson Cullen made a motion to approve the minutes as edited, which was seconded by Mr. Ordon.

Vote on the Motion:	Chairman Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Brice	aye
	Mr. Smith	aye
	Mr. Ordon	aye

Motion carried: 5 ayes 0 nays

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Application of Zack Epley as agent for BEH Properties. Applicant seeks to erect a six (6) foot high fence. Premises located on the south side of south Railroad Avenue approximately 290 feet west of welling Place in a “Residential B” District known as 33 South Railroad Avenue also known as SCTM#101-4-3-6.

Mark Epley, BEH Properties, 33 South Railroad, Spoke on behalf of this application.

Findings:

- The property was a purchased about seven months ago from foreclosure.
- This application is to replace an existing fence around part of the property. There were 4-foot fences and 6-foot on the properties. They replaced fencing with 6-foot all around.
- The property has commercial properties behind it and residential properties adjacent to it.
- It’s a single-family residence, with up to 10 unrelated individuals live in it. This is a “sober house” and Applicant stated that it still is considered a single-family residence under long-standing Supreme Court caselaw
- Ken Cline of 15 Wellington Place spoke, expressing concerns about the use as a sober living facility and asked if that BEH Properties needed approval to function as a Sober House. He was told by the Board that the function of the home is not what tonight’s application is about and all that was before this Board was the fence application Mr. Cline was not opposed to the 6-foot fence.

Motion to approve this application was made by Mr. Orden and seconded by Mr. Brice with the following stipulations.

Vote on the Motion:	Chairman Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Brice	aye
	Mr. Smith	aye
	Mr. Ordon	aye

Motion carried: 5 ayes 0 nays

Stipulations:

1. Applicant must have fence with the good side facing towards the neighbors.
2. The fence must be properly anchored.
3. The fence must be inspected by the Building Department and Applicant must maintain all the necessary permits.
4. Applicant must abide by all applicable State, Village and Local Codes.

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Application of Christopher Pearson. Applicant seeks a special exception for the continuation of outdoor storage of construction materials and vehicles. Premises located on the East Side of Broadway (NYSRT110) approximately 215 feet north Oak Street (SCR12) in an in part “Business1” District and in part “Residential B” District known as 247-249 Broadway also known as SCTM # 101-4-3-55 and SCTM #101-4-3-56.

Christopher Pearson, 249 Broadway, spoke on behalf of his application.

Findings:

- The property stocks material, construction equipment and vehicles on site.
 - Approximately 8 trucks and 4 trailers on the property.
 - All vehicles on property are registered to Mr. Pearson or his company.
- Mr. Pearson has Village Permits for containers on the property, which contain building materials and things that cannot get wet; there is nothing toxic or flammable.
- Mr. Pearson no longer has any tenants or subtenants on the property.
- Building Inspector recently inspected the property and there were no violations currently.
- No one spoke for or against this application

Motion to approve this application was made by Vice Chairperson Cullen and seconded by Mr. Smith with the following stipulations.

Vote on the Motion:	Chairman Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Brice	aye
	Mr. Smith	aye
	Mr. Ordon	aye

Motion carried: 5 ayes 0 nays

Stipulations:

1. Applicant is approved for two years or change of ownership (whichever comes first)
2. Applicant may not lease or have any subtenants on the property.
3. Applicant is responsible for maintenance of the property.
4. Applicant must comply with the site plan submitted.
5. Applicant must abide by all applicable State, Village and Local Codes.

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6. Applicant is limited to 3 storage containers with an approximate size of 8 feet by 20 feet with non-hazardous materials. Applicant must secure proper licenses from the Board of Trustees if he does not already have them
7. Maximum height of construction materials is 6 feet. Maximum height of construction equipment is 12 feet.
8. No debris is allowed on the property.
9. All vehicles must be loaded or unloaded on the owner's property. No loading or unloading can take place on municipality owned land.
10. 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 Code Enforcement Officer.
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.
14. All vehicles not owned or leased by NY Poly Steel or Pearson and Pearson Construction are not to be stored on lot.
15. The property may not be used for the storage of repossessed vehicles.

Application of United Properties Corp. Applicant seeks to amend a previous approval to legalize an increase in the number of allowable tenancies from six to seven pursuant to Section 4-2 B. of the Village Code. Premises located on the Southeast Corner of the intersection of Merrick Rd and Richmond Ave in a B-2 Business District known as 111 Merrick Rd also known as SCTM#101-7-7-1.

George Badger, Architect, Spaces, 410 West Montauk Highway, Lindenhurst and Spencer Cohen, Leasing Manager from United Properties Corp. spoke on behalf of this application.

Findings:

- United Properties has approval to have six storefronts but is seeking permission to have an additional storefront (for a total of seven) within the existing footprint.
- United Properties came before this board in June 2019, after receiving a violation in February 2019. A 2008 ZBA decision restricted the number of tenants at the property to six. They chose to not be heard in June 2019 as a full panel was not available, and subsequently withdrew the application.
- Royal Prestige, a former tenant, had grossly exacerbated the parking issue, by having too many cars in the lot.
- In December 2019, United Properties terminated its lease with Royal Prestige.
- The parking lot has forty-nine spaces (forty-eight are required by a 1995 ZBA Variance)

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- There are currently two vacancies on the property, and the next lease to expire is in 2021
- United Properties committed to ensuring that going forward, none of its tenants play a role in violating the parking restrictions, including containing appropriate lease language
- **Joan Donnison, Bay Village Civic Association**, expressed concerns about the parking problem and would not like to see another parking issue arise. She thinks the Board should wait to see what type of tenant goes into the first vacancy before extending approval on the number of units.
- Applicant failed to offer documentation regarding profitability of center with limited number of tenants.

Motion to approve this application was made by Mr. Smith seconded by Vice Chairperson Cullen with the following stipulations.

Vote on the Motion: Chairman Ubert	aye
Vice Chairperson Cullen	aye
Mr. Brice	aye
Mr. Smith	aye
Mr. Ordon	aye

Motion carried: 5 ayes 0 nays

Stipulations:

1. Applicant is approved for no more than a total of seven tenants, provided the combined usage does not exceed available parking spaces.
2. All new tenants must apply for appropriate permits.
3. All existing buildouts must be legalized, if this has not already been done.
4. Applicant must abide by all applicable State, Village and Local Codes.

Application of Maria Finocchio. Applicant seeks a variance to install plumbing for a sink in an accessory building to be utilized as a storage and changing room pursuant to Section 183-40 of the Village Code. Premises located on the East Side of Unqua Place approximately 240 feet South of Richmond Ave in a BB Residence District known as 26 Unqua Place also known as SCTM#101-13-15-14

Maria Finocchio, 26 Unqua Place, spoke on behalf of her application.

Findings:

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- Ms. Finochio said her original plans were approved by the Zoning Board in March of 2016. She also went before the Planning Board and was approved and received her permits, but the work was stopped.
- Ms. Finochio said that she wants the cabana that she had before Superstorm Sandy.
- Ms. Finochio said that never rented the cabana out but stated that her daughter stayed there while she was looking for a new home.
- The current application has no bathrooms, just a sink and a large closet. Her new plans have changed. They do show insulated plumbing. Not like the pass plans. The new plans show the plumbing will be insulated.

Richard Handler, Esq., 50 Broadway, Amityville, spoke for the neighbors, Robin and Jane Schmitt from 6 Unqua Place.

- Before speaking, Mr. Handler submitted a brief on behalf of his clients.
- Mr. Handler said that the Schmitt's appreciated that the building has been moved further from the boundary line of their home.
- The plans show that the storage area has no outside access, doors or windows, which he found odd as it would be easier to bring items to a storage area in through a direct access door. He noted that the 310-foot changing area has a utility sink. It has a sliding glass door entrance facing the bay and an in-wall air conditioner for the brief period someone would change from street clothes to a bathing suit.
- Village Code Section 183-40 of Village Code says no accessory building shall have interior plumbing or habitable space.
- Mr. Handler spoke about res judicata: The Board already decided on this issue, on both the question of law and question of fact.
- The Schmitt's were asked by Chairman Ubert to come up. They both spoke against the application. They aren't opposed to the building; they understand that is permitted. The law does not allow for accessory buildings with plumbing. They want us to stand by our decision and are not okay with it being winterized.
- Ms. Finochio stated there are other applicants who were allowed to have bathrooms. When asked by Vice Chairperson Cullen if the plumbing could be turned off in the winter, to satisfy her neighbor's fear that it would be used for living space, Ms. Finochio expressed opposition to this idea.

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Motion to approve this application was made by Chairman Uber seconded by Mr. Brice with the following stipulations.

Vote on the Motion:	Chairman Ubert	aye
	Vice Chairman Cullen	nay
	Mr. Brice	aye
	Mr. Smith	nay
	Mr. Ordon	aye

Motion carried: 3 ayes 2 nay

Stipulations:

1. Applicant must comply with the site plan submitted before the board.
2. Applicant must go before the Planning Board.
3. Applicant must abide by all applicable State, Village and Local Codes.
4. The plumbing is only permitted for a sink; there may be no other plumbing attached for a shower, bathroom, laundry or any other plumbing usage.
5. The plumbing must be seasonal and turned off for the winter months. No exterior plumbing may be insulated.
6. The structure may not be for any habitable space at any time of year. Applicant may not lease or otherwise have any tenants in this space.
7. The Building Inspector has the right to inspect the premises at any time to make sure the stipulations are being maintained.

Chairman Ubert adjourned the meeting at 8:02 pm.

Respectfully submitted:

Catherine Murdock, Clerk/Treasurer