

REGULAR MEETING, TOWN OF TUSTEN ZONING BOARD OF APPEALS, February 14, 2022

The regular meeting of the Town of Tusten Zoning Board of Appeals was held February 14, 2022 in person at the Tusten Community Hall, 210 Bridge Street, Narrowsburg, NY 12764 and via zoom.

PRESENT: Neal Latkowski, Chairman
Richard Norton, Deputy Chairman
Patricia Hawker
Nico Juarez
Stephen Stuart

ABSENT:

OTHERS PRESENT: In person: Amy Lohmann Board Clerk; Crystal Weston, Town Clerk; Ken Klien Attorney, 23 town members in person and 21 town members on zoom

The regular meeting was opened at 7:56 PM following the Pledge of Allegiance.

RESOLUTION #05-2022

Accept Minutes

On Motion by Stuart, seconded by Hawker that the following resolution was

ADOPTED 5 AYE 0 Nays

RESOLVED, to accept the January 2022 monthly minutes.

Roll Call Vote:

Neal Latkowski	AYE
Nico Juarez	AYE
Richard Norton	AYE
Patricia Hawker	AYE
Steve Stuart	AYE
CARRIED	

Correspondence:

There were 39 letters received regarding the application for Kathryn Andrews that included 38 letters against the project and 1 neutral. The board members reviewed the letters that were received.

Email from Robert Olman regarding allegations against board member Juarez, the allegations are unfounded.

Old Business:

Kathryn Andrews, 13 2nd Ave, Narrowsburg, NY 12764. SBL 11-3-1 for a use variance. The resolution was emailed to the board members.

Corrections: On page two the date should read January 24, 2022

Cover page last 2 lines -only one permitted use, one entity

This is the first time that Nico is seeing it, it was stated that it was emailed out to the board members

Stuart mentioned that this is accurate representation of the workshop

Nico wrote a statement in regards to Kathryn Andrews application stating that this is a fantastic idea for the town and the exceptions need to be considered.

RESOLUTION #06-2022

Adopt Resolution for Kathryn Andrews

On Motion by Stuart, seconded by Latkowski the following resolution was

ADOPTED 4 AYE 1 Nays

RESOLVED, to adopt the resolution for Kathryn Andrews.

Roll Call Vote:

Neal Latkowski	AYE
Nico Juarez	NAY
Richard Norton	AYE
Patricia Hawker	AYE
Steve Stuart	AYE
CARRIED	

WHEREAS, Kathryn Andrews, Courtney Canale and Josh Kessler (“the Applicants”) are contract vendees for the purchase of a parcel of land and a building existing thereon, owned by Alison Peck and Jason Kean, that is identified on the Town of Tusten Tax Map as Section 11, Block 3, Lot 1 located at 13 2nd Street (“the Premises”) upon which there is situate a non-residential structure that was established prior to the existence of the Town of Tusten Zoning Law (“the Zoning Law”); and

WHEREAS, the Premises are situated in the General Residential - GR zoning district, which is intended to provide for higher density residential neighborhoods where public water and sewer is available along with other essential public services and, as such is the most restrictive zoning district established under the Zoning Law with only one (1) permitted principal use allowed and only nine (9) special uses; and

WHEREAS, it appears and has not been refuted that any of the pre-existing non-conforming uses made of the Premises prior to enactment of the Zoning Law have been discontinued for in excess of one (1)

year resulting prior to the Applicant's application for the requested Use Variance, such pre-existing uses being deemed abandoned pursuant to §9.8.1 of the Zoning Law; and

WHEREAS, the Applicants made application to the Town of Tusten Zoning Board of Appeals ("ZBA") for the granting of a Use Variance providing relief from the requirements of the Zoning Law so as to permit the use of the Premises and the structure existing thereon for commercial purposes, including a plant shop and photography studio together with some short-term living space to be occupied by workers at the Premises; and

WHEREAS, the ZBA held a duly noticed meetings on October 11, 2021, October 25, 2021, November 8, 2021 and January 10, 2022, at which meetings it examined the application and received, in addition to the application, several submissions of documentation from the Applicants in support of their application; and

WHEREAS, the ZBA held a duly advertised and properly noticed public hearing on January 10, 2024 at which the ZBA received the comments of all interested parties appearing thereat, commentary received being mixed, with some residents in the neighborhood being opposed and others being in favor of the granting of the requested Use Variance, those being opposed primarily express concerns about the proposed use having a negative impact upon the character of neighborhood; and

WHEREAS, the ZBA held a duly noticed workshop meeting on January 24, 2022 to evaluate the merits of the application and deliberate thereon in furtherance of the discussion and consideration by the ZBA that occurred during the regularly scheduled ZBA meeting that followed the aforesaid public hearing, at which workshop meeting the Applicants appeared and further discussed the application with the ZBA and whereat the ZBA considered the materials originally submitted and the supplemental materials submitted as aforesaid and discussed whether, under the circumstances presented, the Zoning Law is caus-

ing an unnecessary hardship upon the Applicants and whether the Applicants presented the requisite evidentiary proof to establish that, with respect to each and every permitted use in the General Residential – GR zoning district, (a) a reasonable return cannot be realized on the entirety of the Premises and that such lack of return is substantial and demonstrated by competent financial evidence, (b) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved, (c) the requested Use Variance, if granted, will not alter the essential character of the neighborhood, and (d) the alleged hardship has not been self-created; and

WHEREAS, the members of the ZBA are personally familiar with the Premises and the surrounding neighborhood and have observed the same; and

WHEREAS, the ZBA has given thorough and complete consideration to the foregoing matters and the general purpose and intent of the Zoning Law and Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED THAT the ZBA hereby makes the following findings and determinations:

1. The Applicants have not established that the strict application of the literal terms of the Zoning Law would impose an unnecessary hardship:

(a) The Applicants have not established that if the requested Use Variance is denied, the Premises cannot realize a reasonable return on the entire parcel. The Applicants have not presented what the Zoning Law defines to be competent financial evidence (i.e. appraisals and economic studies) and the financial evidence that has been provided is limited to certain but not each and every permitted use for which the Premises could be lawfully made under the Zoning Law. The proofs presented by the Applicants, particularly as to values, are limited to certain of the permitted uses and are not of an independently objective nature as would exist if provided by a certified or licensed appraiser.

(b) There has been no demonstration by the Applicants that the Premises are burdened by characteristics (i.e. such as geographic or environmental constraints, size or shape) distinctly unique to the Premises as compared to other properties in the neighborhood and within the General Residential – GR zoning district so as to render the Premises incapable for utilization for purposes comprising each and every permitted use for which the Premises could be lawfully made under the Zoning Law.

(c) Granting of the variance would alter the essential character of the neighborhood. Although there are a very few pre-zoning vestiges of commercial uses remaining in the neighborhood, the neighborhood is predominantly residential and such character is consistent with the stated intent and purpose of the General Residential – GR zoning district - - to provide for higher density residential neighborhoods where public water and sewer is available along with other essential public services.

(d) The hardship appears to be self-created in that the current owners of the Premises, with whom the Applicants are in contract to purchase the same, have allowed whatever pre-existing, non-conforming uses there were on the Premises, that could otherwise be allowed to continue indefinitely, to become deemed abandoned by operation of §9.8.1 of the Zoning Law which provides that “if a nonconforming use of land or structure ceases operation, is discontinued or is vacated for a period of twelve (12) months or more, then this shall constitute an abandonment of such nonconforming use, and any subsequent use of the land or structure shall be for conforming purposes only and said use shall in all respects conform to the applicable provisions of this Zoning Law.”

And be it further

RESOLVED, that the application of Kathryn Andrews, Courtney Canale and Josh Kessler for a Use Variance to utilize the parcel of land and existing building thereon, owned by Alison Peck and Jason Kean, that is identified on the Town of Tusten Tax Map as Section 11, Block 3, Lot 1, located at 13 2nd Street, for commercial purposes including a plant shop and photography studio together with some short-term living space to be occupied by workers, be and the same hereby is denied for the reasons and upon the findings set forth above.

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

Neal Latkowski voting _____

Nico Juarez voting _____

Richard Norton voting _____

Patricia Hawker voting _____

Stephen Stuart voting _____

The resolution was thereupon declared duly adopted.

Correspondence:

NA

OLD BUSINESS:

NEW BUSINESS:

Application from the Weidens regarding the certificate of occupancy determination on 10/24 for 174 Bridge Street. This was filed on 1/14/22 and 10/5 the certificate was issued

Chairman Latkowski stated that this is out of the 60 day window, it is in black and white in the zoning laws.

The applicant requested a copy of the CO that was received on 12/16 which is no in the application and that is a critical part. The clients new about the certificate and should have inquired earlier. The CO was not received till 12/16. Applicant it filing litigation.

Nico questioned how the board can proceed when this was just received tonight.

Ben – attorney for applicant- the litigation will include claims of monetary damages constitutional rights allegations.

RESOLUTION #07- 2022

Dismiss application

On Motion by Latkowski, seconded by Stuart that the following resolution was

ADOPTED 5 AYE 0 Nays

RESOLVED, to dismiss this application on grounds of untimely of 11.8.b of Town of Tusten Zoning

Roll Call Vote:

Neal Latkowski	AYE
Nico Juarez	NAY
Richard Norton	AYE
Patricia Hawker	AYE
Steve Stuart	AYE

Kathryn Andrews read a letter pertaining to the denial of her application.

Iris is not against the project presented by Kathryn, she is just against the location. That section of town is in the GR district. The residential district needs to stay residential. Willing to work with Kathryn about other ideas and locations.

Brendon Weiden spoke – he has been a resident here all his life and purchased the school building in 2015. They are rational people who have invested time and money into the town. The Town has a broken government to allow the building across from the Union, 174 Bridge Street, to be built and taking up parking spaces. Neighbors are fighting each other; the planning board meeting was for 45 people and 14 parking spaces. There is garbage /debris being thrown on the union property from 174 Bridge Street. Weidens have tried reaching out to the town and they just get the hand.

Edward Kraus is familiar with the Peck property. Allison is the daughter of Art and Beth Peck who have been in Narrowsburg since the 1960's and they bought the O & B grocery store and moved it to the Peck's Plaza and built the grocery store along with 4 other Peck's Markets in other towns. The Peck's built the library here in town. Allison wouldn't allow something her parents would not approve of.

Nico does not understand the technicality with the Weiden issue. They have a valid concern. What transpired? This needs to be discussed now

Stuart stated that the board needs to look at the allegations.

There are six reasons why this was brought to the board

Nico has no plans on making a decision on this tonight

Ben- multiple foil requests have been made, a copy of the CO was received on Dec 16 and the 60 days start on December 16 which its been about 40 days.

Brandon stated that this raises an issue about document control. Ben stated that other foil requests were made.

Nico suggested that before this gets nasty before allegations working towards the parking issued. Brandon stated that he constantly gets the hand when he asks questions.

7/31 Kathy Weiden, Town Attorney and Supervisor met to talk about what was going on.

Brandon Weiden stated that there are no parking spaces, no sidewalk he has no problem with the bar but not at 174 Bridge Street.

Joe Curreri stated that 174 Bridge Street was at the planning board meeting and approved was 1 floor and 45 people. They added the 2nd floor, took away the handicapped and no parking in the back At the September meeting they asked permission for the 2nd floor, there were no inspections, no approval for the 2nd floor with 60 people, just going by the architects drawing. They have not been back to the planning board since.

Stuart stated that there are issues here, how strict is the 60 days? It is 60 days. The Certificate of Occupancy was issued on October 5. Ben stated 60 days starts when requesting documentation. You can't be held on 60 days when your not given information.

Crowley stated that the CO covers the 1st floor and basement. Does not cover the 2nd floor. Curreri stated that it is far more than planning board approved there is more seating on 1st floor than what was approved.

Alicia Kraack – granddaughter of Allison Peck, wants to know how this has been abandon over a year. Klein stated that the use was abandon. There was nothing presented to show that is not abandon and nothing prevailed in the other three criteria's. Alicia stated that it is on the flats and nobody is there, nothing happens on the flats.

Mary Bermudez reiterating what Joe Curreri said in regards to Barbeluccis.

RESOLUTION #08- 2022

Abandon original decision

On Motion by Stuart, seconded by Juarez that the following resolution was

ADOPTED 4 AYE 1 Nays

RESOLVED, notifications of the CO Weidens received move to abandon the original decision not to hear this.

Roll Call Vote:

Neal Latkowski

NAY

Nico Juarez	AYE
Richard Norton	AYE
Patricia Hawker	AYE
Steve Stuart	AYE
All in favor	

The Board reviewed the documentation submitted by the Weidens and presented by Ben

- 1- CO does not confirm with planning board approval, the change of use is for 980 square feet and 1933 square feet is what the CO authorizes
- 2- Significantly greater floor area requires more parking spaces than approved. 14 parking spaces is not enough
- 3- Work itself does not comply with planning board or building department -chart on page 8 would demonstrate work done. 2700 square feet more than authorized of authorization from Code Enforcement Officer and Planning Board
- 4- Page 11- CO authorized for plan – no off street loading births, no application for waiver requested for the off loading
- 5- Parking spaces 10 feet by 20 feet requirement not waived
- 6- Page 13 access to property CO violates 6.12.3 unsafe access -also over property of neighbor included on page 15 other additional info

This was referred to the Sullivan County Division of Planning with a response of local determination

All 6 reasons directly to CO issued. No stop work order was issued.

Crowley is not commenting at this time

Ben requesting a public hearing.

Ken Klien suggested for the Code Enforcement Officer to respond to this, the other entity needs to be notified and able to speak. The Code Enforcement Officer be able to respond. Suggestion for next meeting for submission from the Code Enforcement Officer and all information be back for the next meeting and public hearing in April. Ken will notify Bar Veloce's.

CLOSING ITEMS

Board Comment

No further comment at this time

Adjournment

With no further business or board comment a motion by Rich Norton, seconded by Nico Juarez to close the ZBA regular meeting at 8:48 pm. All in favor. The next meeting will be on March 14 @ 7:30 PM

Respectfully submitted, Amy Lohmann, ZBA Clerk.