

APPROVED
Town of Red Hook Planning Board
Meeting Minutes
July 2, 2012

CALL TO ORDER/ DETERMINATION OF QUORUM

The meeting was opened at 7:35 p.m., and a quorum was determined present for the conduct of business.

Members present — Chair Christine Kane, members Kris Munn, Charlie Laing, Sam Phelan, Sam Harkins and alternate Betty Carr. Members Brian Walker and Pat Kelly were absent. Planner Michele Greig was also present.

BUSINESS SESSION

Christine Kane confirmed the agenda as published. There was one announcement. Christine Kane said that the Association of Towns was sponsoring Planning and Zoning Summer Schools to be held at various locations around the state, the closest being in Fishkill on July 31st.

The June 18, 2012 draft minutes had been circulated among the members and reviewed. Kris Munn made a motion to adopt the minutes. Charlie Laing seconded the motion, and all members present voted in favor.

REGULAR SESSION – OLD BUSINESS

Robertson Farm, LLC – 7782 Albany Post Rd. – Site Plan

Michael Robertson was present for continued discussion of an application for minor site plan approval to establish a Farm Market 2 on a ± 63 acre parcel in the AB (Agricultural Business) Zoning District.

Mr. Robertson said that his newly submitted site plan showed the addition of a greenhouse, a change in the location of the parking area, and the addition of more space in the barn in case of future expansion.

The Board and the applicant discussed the difference in size between a Farm Market 2 and a Farm Market 3, noting that the larger facility would require more parking spaces.

Mr. Robertson went on to say that the cut sheets for the exterior lighting had not arrived from the manufacturer yet, but Michele Greig said that it was clear from the online description that the lights were fully shielded.

Mr. Robertson also said that he had measured the distance from the edge of the road to the free-standing sign and found it to be 16 ft. Michele Greig said the sign setback was 15 ft.

The Board and the applicant then discussed parking. Mr. Robertson said that he had moved the spaces so that cars would no longer park up against the barn.

Charlie Laing asked how Mr. Robertson would prevent people from parking on the Rte. 9 side of the barn. Mr. Robertson said that he would have directional signs to the back of the barn and that the door to the farm market would be in the back. Charlie Laing said that he was concerned that people would be tempted to park in the front area and possibly obstruct sight distance for those leaving the market. Michele Greig said that zoning regulations did not allow parking in the front of the market.

In discussing the free standing sign, Mr. Robertson said that he would not hang additional signs showing seasonal products or hours of operation from the primary sign. The Board underlined the fact that he must confine his signage information to the sign he had submitted, since the sign was the maximum size allowed without a variance. Christine Kane said that there was space underneath the lettering to hang removable small signs and still be within the perimeter of the sign. Mr. Robertson said that he wanted to have the signs directing the one way ingress sign say something like "Farm Market this way". Michele Greig said that the directional signs must be purely directional and that if they mentioned the farm market, they would be considered additional signage.

The Board then reviewed Michele Greig's memo. Mr. Robertson said that the greenhouse would be used for starting vegetables, not as another market building for selling nursery stock. Michele Greig said that in that case, no site plan was needed for the added greenhouse.

Michele Greig said that even with the expanded space and the greenhouse, the project remained a Type 2 action under SEQR.

She said that the applicant needed to add a scale to the plan inset, that he needed to locate the one-way directional signs on the plan, that he needed to add to the plan some way to discourage parking in front of the barn, and that he must show a handicap parking space on the plan. She reminded him that the handicap parking space must be 5 feet wider than a standard space and that there must be a sign in front of the space.

Christine Kane said that the directional signs must be clearly visible, especially since the parking spaces were now diagonally placed and that someone coming in the wrong way could cause problems.

Christine Kane said that the project had been referred to the Dutchess County Department of Planning and Development and that a response of "of local concern" had been received.

The Board discussed several methods of discouraging parking between the barn and Rte. 9, including moveable landscaping. Mr. Robertson said there were various grades there that would also discourage parking. Christine Kane said that effective and visible entrance and exit signs would help keep people from parking in that area.

Mr. Robertson said that he would fasten the wooden parking bumpers into the ground with metal rods.

The Board generally agreed that the Agricultural Data Statements should be sent out and that Mr. Robertson's plan should be revised adding the location of the directional signs, the location of the handicap sign, any information affixed to the barn, and a scale

on the insert map. Christine Kane said that he also needed to submit cut sheets for the lights. The Board generally agreed that since the existing sign location and sign posts would be used, the free standing sign was grandfathered and an additional scaled insert showing the location of that sign was not necessary.

The project was scheduled for the July 16th meeting.

Patrick Motors/Ruges/Powers- 7311 South Broadway – Amended Site Plan

Patrick Sheehan and attorney Wayne Graff were present for continued discussion of an application for amended site plan approval to establish a used car lot and rental car and scooter business on a 1.38-acre lot in the TND-CC (Traditional Neighborhood Development-Commercial Center) Zoning District.

Mr. Sheehan said that it was clear during the site visit that the 12 display cars he had arranged on the lot--and that were shown on the site plan--looked like 12 islands in a sea of asphalt and that he would need more display cars to portray a successful business and adequate inventory.

Christine Kane said that since the discussion at the previous meeting had not progressed constructively, the members had decided to conduct a site visit to look closely at the various parts of the lot. She said that the members who went on the site visit had not discussed the project at all during that visit and that this was the first time since that day that members would be discussing what they saw.

The Board then reviewed a referral response dated June 28, 2012 from Noela Hooper, senior planner at the Dutchess County Department of Planning and Development. Christine Kane said that Ms. Hooper noted the ZBA's interpretation of the zoning regulations to allow the rental and sale of used cars as permitted uses in the TND-CC. She said that Ms. Hooper also stated that since Mr. Sheehan would be a subtenant of a tenant on the property, his business would be an accessory use to the car parts business previously approved and would be subject to the regulations concerning accessory uses in the TND-CC, including the prohibition of permanent outdoor display.

Michele Greig said that she believed that since two principle uses were now allowed on lots in the TND-CC, Mr. Sheehan's business should not be considered "accessory" but rather a principle use. Still, she said, permanent outdoor displays were also prohibited for principle uses in the TND. As a result, she said, the inventory cars would have to be considered "parking" if they were to be placed on the lot. She said the regulation regarding permanent outdoor display could be found in Section 143.49.1H(1)(c). She said that as "parking", the cars would have to be placed at the side of the building--20 feet back from the front facade--or at the rear.

Mr. Sheehan and Mr. Graff said that Section 143.49.1H(1)(c) in the zoning code referred only to accessory uses and that if his business was considered a principle use, the prohibition did not apply. Michele Greig said that the prohibition applied to all uses. The applicants did not agree, saying that the section specifically said "Accessory uses".

Michele Greig said the section cited said that an outdoor display itself was an accessory use and that a principle use or business was allowed to have a temporary outdoor display, such as a temporary sale table, but that it was not allowed to have a permanent outdoor display.

Michele Greig went on to say that even if Mr. Sheehan drove the cars out to the front every morning and parked them in the rear at night, he could only have that display for a maximum of 30 days.

Mr. Graff asked whether these rules would also apply if a nursery was established at that location. Michele Greig said that the Board must confine itself to the current application.

Mr. Sheehan said that some of the display cars would be rented, sold or otherwise moved in the course of a day, so the display would be fluid. Michele Greig said that the car display itself could only remain for 30 days, no matter what happened to the individual cars. She said that Mr. Sheehan's cars had to be considered as parking and as such must be placed at the side and to the rear of the building.

Christine Kane then moved on to Ms. Hooper's comments about landscaping. She said that Ms. Hooper had said that nearby local businesses fit into the Traditional Neighborhood Development model, noting that Ulster Savings Bank had 40 ft. of landscaping between the business and the road and that a similar business, Ruge's Subaru in nearby Rhinebeck, had a 30 ft. landscaped front area.

Michele Greig noted that Section 143-38 of the Town Zoning Code discussed required screening for parking for nonresidential uses. She said that landscape vegetation and earthen berms were the preferred methods of screening.

Mr. Graff said that the large asphalt area of the subject parcel had been in continuous use as a parking lot for the businesses there and so the parking use should be considered grandfathered.

Christine Kane said that a use must be shown to be continuous to have that status. Mr. Graff said that the continuity did not have to be shown to be continuous to the same extent. He said that a use could be discontinued for 30 days and then used for a day or two and then discontinued again and the use would still be considered "continuous". Michele Greig said that this was a legal question and that the applicants should submit a letter or memo to be reviewed to the Planning Board's attorney.

The Board continued to review comments from Ms. Hooper. Mr. Graff asked whether the comments were simply recommendations. Michele Greig said that these comments did not require a super majority vote from the Planning Board.

Christine Kane said that the discussion was still stuck on the parking of the cars in the display area. Kris Munn added that there could be no permanent display. Michele Greig said that the placement of the cars must be considered "parking" and so must be located 20 ft. back from the front façade of the building, to the side and rear of the building.

Mr. Sheehan noted that the TND-CC regulations allowed for waivers and that, given the fact that he was a subtenant, the Planning Board could grant waivers for these exceptional circumstances. Michele Greig said that waivers could be granted only in cases of extreme circumstances, mostly concerning topographic impediments. Mr. Graff said that the large pavement area was existing and that the Board was deconstructing a commercial use.

Michele Greig said that, unless grandfathered, new applications gave the Town the opportunity to bring parcels into conformance with new zoning regulations. Mr. Sheehan said that with the existing building, which was used for a specific use, so far back from the property line, conformance with the parking and display regulations would put an undue burden on the property. He said that parking on the side of the building might impede the night time delivery of merchandise to the NAPA store, which he was not allowed to do. Moreover, he said that parking to the side and rear of the building was not commercially viable. Sam Phelan said that no one forced Mr. Sheehan to lease this lot, that it was a voluntary act on his part.

Kris Munn said that when the zoning changed, nonconforming uses were created all over the Town and that, as new applications came in, those properties were brought into conformance with the new regulations. Sam Phelan added that the site would now not necessarily be used in the manner in which it was historically designed to be used.

Christine Kane said that there was a large space behind the building where cars could be parked. She also said that while it might be inconvenient and costly to take up pavement and increase the size of the landscaped area, Hudson Valley Motor Cars had been required to do just that. She said that that applicant had also been a tenant.

Mr. Sheehan said that this site was consistent with the other sites in the zone, such as Triebels' Garage and CarQuest. Sam Phelan said that those sites were designed for particular uses before the zoning was enacted. He said this application was coming in after the zoning was adopted and therefore different standards were being applied to it.

Christine Kane said that several of these businesses had deeper landscaped areas between the sidewalk and the parking or business area. She said that the subject parcel had a 3-4 ft. planting area. Mr. Sheehan said that extensive planting had been done in 2008. Christine Kane said that the trees had been planted by NYS DOT and that the other plantings in the strip, required by the Powers site plan approval in 2008, had not been maintained. She noted that when Dunkin Donuts came in with its newest amended site plan, the Board required additional landscaping. She added that if Triebels or CarQuest came in now with a new application, additional landscaping would be required. Kris Munn added that screening and landscaping were required of the Bayliss Auto Repair facility.

Michele Greig said that the new zoning regulations allowed for more coverage on commercial lots in the TND-CC and that a new additional building could be built closer to the road on that lot, with parking to the side and to the rear.

Sam Phelan said that the discussion should be focused on how to accommodate a use that was not anticipated when the zoning regulations were adopted but that had been allowed by the ZBA. He said that the discussion should be about how to accommodate that change and what the applicant was willing to do.

Mr. Graff said that Sam Phelan's remarks brought up two questions: first, whether the display prohibition was applicable to all commercial uses in the district and second, whether the use of the property by the present tenant, NAPA, was sufficient to have maintained the non-conforming status of the improvements to the property. Mr. Graff said that since he had not received the Dutchess County Planning memo or seen it until

this meeting, he would have to research these issues. He said that he would also look at the “accessory use” issue raised in the memo.

Michele Greig said that she believed that what Noela Hooper was saying was not that the proposed business was an “accessory use” but that the “accessory use” was actually the parking itself.

Sam Phelan asked how the applicants and the Board could adapt this property to the new regulations.

Kris Munn said that the applicant could build a new building in the front of the lot and put the cars in the rear or in the back. He said that the Ruge’s Subaru dealership in Rhinebeck would likely conform to the new regulations. Mr. Sheehan said that the Ruge’s dealership was using the services and infrastructure of the Ruge’s facility directly across the street for detailing, prep and servicing. He said that the dealership on the west side was only a showroom and parking. He said that the dealership could not exist as it was without the facility across the street. Mr. Graff pointed out that the Ruge’s Chrysler-Dodge-Jeep dealership at Route 9 and 9G had cars parked all over the lot. Michele Greig said that that sort of arrangement was what the Town was trying to avoid.

Charlie Laing said that since the subject lot did not have a building close to the road, he urged the applicants to look at Hudson Valley Motor Car, where the owner had gone to considerable effort to install the landscaping and other improvements required by the zoning. He said that the Board would be arbitrary and capricious if it did not insist on Mr. Sheehan’s adherence to the zoning regulations for this project in the same way that it insisted on Mr. Kelly’s adherence for the previous used car lot project. Mr. Sheehan said that the cars at the Hudson Valley Motor Car site were more difficult to see when driving by because of the landscaping. Michele Greig said that the Planning Board simply could not approve a project that was not consistent with the zoning law.

Christine Kane noted that the intent of the TND-CC District was for infill development and pedestrian oriented businesses with less of a strip look and more of a village look. She said that among the incentives included in the new zoning to achieve these goals were the doubling of the allowed density for the lots and the concept of multiple layers to fill up the space. She said that this vision was the intent of the zoning rather than the old practice of pushing the display cars up to the front.

Mr. Graff asked whether Mr. Sheehan could put his display cars in the lot during the day and then park them in the back at night. Michele Greig said that it would still be considered a display that could not be continued for more than 30 days. She said that Conways Lawn and Garden, which took the equipment inside each night, was a pre-existing use.

Mr. Graff asked whether the Planning Board was looking for Mr. Sheehan to put up a building close to the road on that site. Christine Kane said that someone could put up a building and lease it to a used car business where the cars were parked to the side and rear of the building. Mr. Sheehan asked whether he could put up a kiosk or a shanty near the road. Christine Kane said that there were still architectural standards and landscaping requirements that had to be met.

Mr. Sheehan said that he could put out car A for 30 days and then move it and put out car B. He said that he would be relocating the cars off the property and would not be violating the display regulation. Sam Phelan said that the regulation was not specific to the item for sale but to the display itself. Kris Munn said that on the 31st day, the display itself would be in violation. Mr. Graff said that Mr. Sheehan could put the cars behind the building at night. Christine Kane said that even so, the display itself could only last for 30 days. Mr. Sheehan asked whether the 30-day limit meant 30 days in a calendar year. Sam Phelan said that the discussion should return to the previous topics of the intent of the zoning and how the Board and the applicant could achieve them.

Mr. Sheehan said that the parking lot had been in continuous use, so the parking was grandfathered. Christine Kane said that the applicants should prepare a memo, stating their case, that could be reviewed by the Board's attorneys.

Mr. Graff said that there should be some recognition of the taxpayer's investment in the property and the continuous use of the property for automotive uses. He said that the Board should be looking at some middle ground. He said that that middle ground should not be to build another building or to turn the paved area into pasture or garden.

Sam Phelan said that the owner of the parcel now had an incentive to build another building and to maximize the potential of the property.

Mr. Graff said that the Zoning Board of Appeals had said the business was approved for a used car sales use, but, he said, that use cannot look like what used car dealerships look like all across America. He said that the Board could grant variances and conditions. Christine Kane said that the Board could not grant variances and that it could put some conditions on site plans. She said that the Board could not, however, approve a site plan that did not comply with the zoning regulations.

Christine Kane said that what she was hearing was that the applicants wanted to do some research on the issues of non-conforming use and parking, and she suggested that they should prepare a memo to submit to the Board. Mr. Graff said that even with a memo, he did not believe that the Board was now willing to entertain increased landscaping or limiting the number of display cars, as it seemed willing to do at the previous meeting. Sam Phelan said that the law prohibited parking in the front, no matter whether the Board liked that regulation or not.

Christine Kane reminded the applicant that while the ZBA had interpreted the law, at the applicant's request, and had found the used car business to be allowed in the TND-CC, that ruling did not change the site plan regulations against which the Planning Board must review the project. Mr. Sheehan disagreed, saying that in this case there was a pre-existing building on a pre-existing lot and that building and lot had been in continuous use with a non-conforming status since Majestic Motors sold used cars there. Michele Greig noted that Majestic Motors had been out of business for many years. Mr. Sheehan said that then NAPA went in at that location. Michele Greig said yes, but NAPA was not a used car sales business. Mr. Graff said that the point was that there was a continuous parking use on that site. Michele Greig said that the TND regulations stated that an existing nonconforming building could continue but that this exception did not apply to parking, landscaping, lighting, signs or other features.

Mr. Graff asked whether the Board was saying that this was not an approvable project, even if the landscaping standards were observed, unless it was grandfathered or unless the prohibition against an outdoor display was found not to be applicable. Christine Kane said what the Board was saying was that at this point, the site plan did not appear to meet the requirements for the zoning district. Mr. Graff asked what landscaping would be required if Mr. Sheehan went back to the ZBA and the ZBA determined that the parking to be a grandfathered use and put in some language about the Planning Board being able to require some landscaping. He said that the existing landscaping was consistent with the other properties nearby.

Christine Kane said that zoning was for the welfare and safety for the community.

Mr. Sheehan asked whether the discussion could be over if he agreed to put his vehicles to the side and rear of the building. Michele Greig said landscaping would still be required. Mr. Sheehan asked why he had to landscape a part of the property that he had no ability to use. He said that the Planning Board had approved an extensive planting plan in 2008. He said that he needed to start selling cars. He asked, if he agreed now to the parking conditions and then went to the ZBA to fight the Board on the other issues, what else would he have to do now to get approval and to start selling cars. Christine Kane said that he needed to submit a site plan that complied with the TND-CC regulations. Michele Greig noted that the site plan and other regulations would also apply.

Mr. Sheehan said that he felt he would need to go back to the ZBA or to court to resolve the questioned issues and to get into business. He said he had wasted 6 to 8 months. He asked whether the conditions attached to a site plan approval would be unreasonable to him as a subtenant. Kris Munn said the Board could not speculate on a site plan that had not yet been submitted. Mr. Sheehan said that he had been hit with roadblocks at every step and that he resented a comment that he could pick another location. Kris Munn said that in fact other locations were available since the ZBA determination-- that every parcel in the TND-CC was available for this kind of business. Mr. Sheehan said that the Planning Board had forced him to do that.

Christine Kane said that the applicants could submit a site plan that was in compliance with the regulations or they could submit a memo stating their positions on the legal issues. Mr. Graff said that the Board was telling Mr. Sheehan to submit a site plan but it would not tell him how much landscaping it was looking for. Christine Kane said that the zoning regulations clearly state what would be required. Michele Greig said that these were not conditions that were being imposed on Mr. Sheehan by the Planning Board, that they were requirements in the zoning law.

OTHER BUSINESS

Review of proposed local law to clarify Town code and make minor amendments

The Planning Board considered a proposed Local Law referred by the Town Board for the Planning Board's review and comments. Christine Kane said that the law was meant to rectify errors, discrepancies and clarity problems and had resulted from a one year review of the most recent zoning amendments. Michele Greig said that Planning Board review was required under Section 143-141 of the Zoning Code.

The Board generally agreed that the proposed law achieved its goals. The members did find one sentence that they believed could be further clarified and suggested a different introductory phrase for the Town Board's consideration. The members also agreed that the suggested phrase was simply a language clarification, not a substantive change to the proposed law, and should not cause any procedural change or delay.

Christine Kane said that a letter would be drafted and sent to the Town Board with this suggestion.

The Board then considered whether the proposed law was consistent with the Local Waterfront Revitalization Program. Sam Harkins made a motion to determine that the law was consistent with the LWRP. Kris Munn seconded the motion, and all members present voted in favor.

ADJOURNMENT

Since there was no further business to come before the Board, Sam Harkins made a motion to adjourn. Kris Munn seconded the motion, and all members present voted in favor.

Respectfully submitted,

Paula Schoonmaker