

DRAFT
Tivoli Village Zoning Board of Appeals

Minutes of Monthly Zoning Board of Appeals Meeting
August 25, 2008

CALL TO ORDER/ DETERMINATION OF QUORUM

Meeting was opened at 7:00 pm and a quorum determined present for the conduct of business.

Zoning Board of Appeals Attendees:

Michael Braun, Chairman
Joseph Cicileo
Karen Cleaveland
Laura Gail Tyler

Absent:

Donna Griffith
Robin Logan (alternate)
Vin Roca (alternate)

Also Present:

Mayor Thomas Cordier
Village Attorney Christine Chale
Village Trustee Susan Ezrati
Planning Board Attorney Scott Volkman
Recording Secretary Marina L. Schmid

BUSINESS SESSION

After review a motion was made by Joseph Cicileo and seconded by Laura Gail Tyler to approve the minutes from the July 28, 2008 meeting. All in favor. Motion carried.

Chairman Braun reported that the Agenda will be changed to accommodate the Public Hearing for the Waterfront Project.

Chairman Braun asked the applicants Jonathan Trombly and Mary Chang, 11 Pine Street, to come forward and explain their request for an area variance.

The applicants explained that they would like to remove the existing front stoop and replace it with a full width front covered porch. At the rear of the house they would like to remove the dilapidated rear porch and replace with a two story covered porch.

Board reviewed application and discussed and clarified setbacks with applicants.

A motion was made by Laura Gail Tyler and seconded by Joseph Cicileo to schedule a Public Hearing concerning this request for September 22, 2008 at 7:00 pm. All in favor. Motion carried.

The Chairman explained to the applicants that the Zoning and Building Administrator will forward the information for the procedures necessary to complete this application request to them and to the ZBA Secretary.

Next on the Agenda was the request by Kathleen Mandeville for a Special Use Permit. Kathleen Mandeville was not in attendance.

Attorney Chale recommended it be referred back to the Zoning Enforcement Officer to see if a "Special Use" permit applies when a separate structure is proposed that is not to be used in a manner that is consistent with the use of the principal residence. A motion was made by Laura Gail Tyler and seconded by Joseph Cicileo to refer this back to the Zoning Enforcement Officer. All in favor. Motion carried.

Correspondence

1. A letter from McCabe & Mack LLP Attorney Richard J. Olson was read by the Chair concerning Stuart Hannan's Appeal. He has concluded that the appeal currently pending before the Board will not resolve any issues for his client, therefore he has withdrawn his client's appeal.
2. Invitation to attend Sustainable Living Communities Thinking Green for Golden Living at the Cornell Cooperative Extension DC Farm and Home Center on Wednesday, October 15, 2008.
3. Community Development Block Grant and HOME Program applications for 2009 stating due date as Friday, Oct. 3, 2008 and a Public Hearing to review the application process for the CDBG and HOME Program.

Chairman Braun requested a recess till after the Public Hearing scheduled for 7:30 pm. A motion was made by Joseph Cicileo and seconded by Karen Cleaveland to recess at 7:20 pm. All in favor. Motion carried.

Tivoli Village Zoning Board of Appeals
Public Hearing
August 25, 2008

Chairman Braun read the Notice of Public Hearing:

Please take notice that the Zoning Board of Appeals of the Village of Tivoli, New York, will hold a public hearing on August 25, 2008 at 7:30 p.m. at the Village Hall, One Tivoli Commons, Tivoli, New York to hear all interested persons, on the request of the Applicant, the Village of Tivoli, on the following variances:

1. Variances from Section 231-22 of the Village Code to permit a 1.09 acre lot and a 1.25 acre lot to be subdivided from a parent parcel, owned by CSX Transportation, located near the terminus of County Route 78, Diana Street, and the Hudson River Waterfront in the LC District.
2. A variance from Section 231-22 of the Village Code to permit a lot with a Width of Lot at Front Building Line of 199.11' to be subdivided from a parent parcel, owned by CSX transportation, located near the terminus of County Route 78, Diana Street, and the Hudson River Waterfront in the LC District.
3. A variance from Section 231-15 of the Village Code to permit a lot which does not have at least 50 feet of frontage on a street to be subdivided from a parent parcel, owned by CSX Transportation, located near the terminus of County Route 78, Diana Street, and the Hudson River Waterfront in the LC District.

Alternatively, the applicant seeks an interpretation that the requested variances are not required for this application.

PLEASE TAKE FURTHER NOTICE that copies of the application are available for review at the Village Hall, One Tivoli Commons, Tivoli, New York.

Written comments will be accepted until 4:00 p.m. on August 25, 2008 at Village Hall or may be filed with the Board at the public hearing.

Michael Braun
Zoning Board of Appeals Chair

Chairman Braun asked if certified receipts were received from the adjacent homeowners surrounding the waterfront parcel. Secretary Schmid stated that they were received. The Chair also stated that the Board is recording this Hearing by taping as well as by a written record. He stated that a representative from the Village or the Attorney will explain proposal.

Mayor Cordier gave a presentation explaining the proposal for the Waterfront.

The goal of these meetings is to acquire the Waterfront parcel. There are no set plans till engineering firm looks at it and also the State and Federal agencies.

The Mayor pointed out that this process has been in the works for about 15 years. Earlier this evening the Board did a site visit for better clarification.

Going down Broadway would be a proposed fenced in parking lot. At the waters edge there are outcroppings where old docks were which go out about 80' under water and are owned by OGS . They offered them for \$1.00, but Mayor feels that would be a major undertaking, but maybe someday.

Village Board is the Lead Agency. Planning Board has a continued Public Hearing tonight concerning the waterfront.

Mayor Cordier stressed that no Grants can be applied for unless land is owned. The railroad crossings are a problem and word is that all crossings will eventually be closed off. It may be 2, 5 even 10 years before the Village can do anything with the parcel.

He informed those in attendance that approximately 50 people were on the Waterfront Committee that worked on this. A questionnaire had gone out when this was first started and almost 100% was positive. The main concern seemed to be boat launching.

Scenic Hudson has been very supportive and has stated that they will cover the \$40,000.00 purchase price.

Mayor Cordier pointed out the drainage problems currently on Broadway and Friendship. If this acquisition occurs, the railroad will allow the Village to rectify and repair. Right now, no one wants to handle this issue.

Village Attorney Christine Chale reported the procedural notes before her:

1. Village Board reviewed recommendations from Planning Board
2. LWRP consistency finding
3. Negative Declaration
4. Adopted Resolution for acquisition contingent on variance and subdivision
5. Correspondence from Dutchess County Department of Planning stating that this matter is of Local concern.
6. Variance review and projected approval
7. Subdivision review and projected approval

Also stated that it was determined that although this proposal may impact some residents, the public benefit outweighs that. Also noted potential restoration.

Planning Attorney Scott Volkman suggested opening the Public Hearing and to consider factors of the variances, balancing test to determine that the benefits outweigh deterrents effecting the neighborhood and a Resolution to consider balancing test and to make a determination.

Chairman Braun opened the Public Hearing at 8:50 p.m.

Alexander Zane, 6 Friendship Street-Is this discussing purchase only?

Concerned that the erosion on site is very severe and wants to know what the railroad's motivation is. He's concerned about liability. He stated that when railroad becomes endangered they pass the blame to Amtrak. Also concerned with the river's edge in some spots is only 6" to maintenance track. Are they selling access road? Mayor said no.

Also asked if our attorney has looked at this and seen our responsibility. Mayor said

access road will remain open. They would have to take care of it. Federal and State Grants should help. Filling bulkheads will help. Alex said that is very expensive.

Jerome Crandell, 5 North Road- Uses River. He feels it will not erode that much. Shoreline has changed.

Alexander Zane, 6 Friendship Street- Has lawyer looked at issue?
Attorney Chale stated Village looked at area for development. Even though CSX offered north of parcel the Village thought it would not be enough to work with.

Tim Voell, 8 Friendship Street-Has Village looked at legal ramifications of ownership?
Concern about losing access to River. What message has CSX given?
On State funding-availability does not necessitate it being done.
Mayor stated that they have visited other riverfront parks along River. Some can't be reached because they are fenced off. We were advised that this could happen to us.
Tim Voell-8 Friendship Street-What does CSX say when you talk to them?
Mayor-Have not talked to them. Never return phone calls.

Danielle Riel, Broadway-CSX is willing to sell for \$40,000.00. If railroad owns track are there any liability issues and do they have say on accessibility to waterfront. How much will that effect planning of park?

Mayor said that has been reviewed and if park and parking lot go in they will have to be fenced in.

Susan Ezrati, Village Trustee- Liability to maintain fence limiting access to park.

Phyllis Pellet, 9 Friendship Street-Positive attitude about parcel. Concern about easement and overhead pass. It will effect views. Original easement was up by where parking lot was planned. There was room for easement up there. Concerned about visual impact on waterfront.

Mayor stated that we have no idea where overpass will be. No footprint on west side of tracks. No land. When filling River, they get really tough.

Phyllis Pellet-Negotiations now with CSX-maybe we should rethink where easement is.

Jack Woodruff, 5 Broadway-Once purchased, would you be trespassing going over tracks?

Mayor- Certain amount of time before we have to do any fencing.

Jerome Crandell, 5 North Rd.-Once bought , time limit on when fencing must go up?
Mayor-CSXwould require fencing when construction commences. Village will make decision after purchase.

Alexander Zane, 6 Friendship St.-Toxic waste on land?

Mayor-Railroad had to do tests. We got samples and borings from area. DEC got involved. D.C. Planning said rail trail had same contaminants. They only had to put 2 foot of cover over it. We will be putting a couple of feet of fill on park and parking lot areas.

Jeffrey Scales, 10 Friendship Street-At last meeting we were told not time or place for development questions, but they are a concern.

Also concerned about overpass and easement and the effect on views.

What is the time frame and the contingencies in agreement. Access for kayaks? How can they lug kayaks 50'-55' high over trains.

Mayor stated that there will not be steps. It will be a ramp.

Submitted letter with his concerns to the Board for the record. See attached.

ZBA Board Member Karen Cleaveland asked what kayaks weigh.

Unidentified audience attendee-Lightest about 30 lbs, most over 50 lbs.

Danielle Riel, Broadway-What about purchasing land and not building?

Planning Board member Harry Colgan stated that eventually plans to put high speed rail in at grade crossings will occur and have to be fenced.

Jerome Crandell, 5 North Rd.-Time line?

Mayor stated once purchase is done then we can put in for grants.

Nevin Sharma, 17 North Rd., Planning Board Member-Decisions will come later and that there will be meetings to address these issues. Is it important to discuss now?

Elly Dubinsky, 4 Friendship St.-Buy and leave fallow. When railroad decides to do something then worry about it.

Alexander Zane,6 Friendship St.- Buying land. Argument later about park. How it will look and how it effects lives. My only concern is liability. Any alternatives to overpass? Sliding gate?

Mayor-No. What they offer is close at grade crossing.

Barbara Eichin, 10 Friendship St.-Not convinced at grade crossings will be closed and have limited access. They have a small parcel that they purchased as a buffer and are concerned about their views being affected.

Jerome Crandell, 5 North Rd.-How long will it take to develop?

Mayor-Would like to be able to have a large celebration for Centennial in October, 2009.

Jerome Crandell-Construction should be done after celebration.

Laura-What is timeline for purchase?

Mayor -2 major Grants-1/2 million each. Before being considered we need to show we purchased land.

Trustee Susan Ezrati-If issues before the Boards pass, then be sign purchase agreement.

Alexander Zane, 6 Friendship St.-Friendship Street will not be railroaded. Liability issues.

Joseph Cicileo, ZBA Board Member-We're here to decide area variance-even though requirements are not met.

Planning Board Attorney Volkman stated variance needed so they can allow Planning to subdivide. Concerns limited to area variance to create 3 lot subdivision. The only application is subdivision application before Planning Board.

Joseph Cicileo-Reiterated- Only deciding variances.

Village Attorney Chale stated Village and Planning Boards will be involved with development issues.

Jeffrey Scales, 10 Friendship St. – Feels it is an appropriate time for comments. Even though lots are not 5 acre minimum (smaller). Not adverse impact on neighborhood. Purchase agreement-Who reviews terms-Village vs CSX. Timeframes? Village fencing off-timeframe? Appreciate time over years Mayor and others have spent on this. Why can't CSX take care of drain issue? Grants - Construction or drainage? Mayor-Priority to fix drains. Railroad will give us authority to go under tracks to repair drains.

Harry Colgan, Planning Board Member-Grants for landscape and engineer.

Attorney Chale stated that time period will be 1 year to meet contingency to seek additional grants. When construction starts, fencing required as per CSX.

Phyllis Pellet, 9 Friendship St.-No one addressed fact that there is underground cable on West side of track.

Attorney Chale- Already aware of utility easements.

Laura Gail Tyler, ZBA Board Member-Concern if this is being treated the same as an ordinary person acquiring a parcel.

Chris Chale- Different for individual. It is a public trust.

Attorney Volkman- If Village wanted to sell it would have to be passed by State Legislature. Different scenario.

ADJOURNMENT

On a motion by Karen Cleaveland and seconded by Joseph Cicileo to close the Public Hearing at 8:55 pm

Respectfully submitted,

Marina L. Schmid
Secretary,

**Tivoli Village Zoning Board of Appeals
Continued Regular Meeting
August 25, 2008**

The Zoning Board of Appeals continued their regular Meeting at 9:00 p.m.

**Variance Resolution
Tivoli Waterfront Acquisition**

On a motion by Karen Cleaveland and seconded by Joseph Cicileo to consider the variances as stated in the following Resolution.

After discussion and review the motion was passed to consider and approve the attached resolution as amended. Page 1, at bottom #1 add-“for purposes of creating the subdivision only”. Page 2 , #5 add “The Alleged Difficulty was not self-created”. The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

Karen Cleaveland	Aye
Laura Gail Tyler	Aye
Michael Braun	Aye
Joseph Cicileo	Aye

All in favor. Motion carried.

Absent: Donna Griffith

See Attached

VILLAGE OF TIVOLI
Zoning Board of Appeals

VARIANCE RESOLUTION
TIVOLI WATERFRONT ACQUISITION

Application #:

Introduced by: Karen Cleaveland

August 25, 2008

Seconded by: Joe

Grid #:

Date:

WHEREAS, the applicant, the Village of Tivoli, is seeking subdivision approval from the Village Planning Board in order to acquire two undeveloped parcels of land, from CSX Transportation Inc., located near the terminus of Dutchess County Route 78 right-of-way, Diana Street, and the Hudson River Waterfront; and

WHEREAS, on July 21, 2008, pursuant to § 7-730 of the Village Law, the Planning Board referred the application to the Zoning Board of Appeals for consideration of three area variances, to wit; 1) An area variance from Section 231-22, Minimum lot size, to permit a 1.09 acre lot and a 1.25 acre lot to be subdivided from a parent parcel; 2) An area variance from 231-22 to permit a lot with a Width of Lot at Front Building Line of 199.11 ft. for Lot 1; and 3) An area variance from Section 231-15, Frontage on a public street, to permit the creation of a lot which does not have at least 50 feet of frontage on a street; and

Whereas, on August 20, 2008, the Village Board of Trustees, acting as lead agency determined that the proposed action would not cause any potential significant adverse impacts on the environment, and issued a Negative Declaration, and thus no further SEQRA review is required to be undertaken by the Zoning Board of Appeals; and

WHEREAS, pursuant to Section 239-m of the General Municipal Law, Dutchess County Department of Planning and Development has reviewed the application and by letter dated August 12, 2008 responded that it was a matter of local concern; and

WHEREAS, a duly noticed public hearing was held on August 25, 2008, during which all those who wished to speak were heard; and

WHEREAS, when considering whether to grant a variance, the Board must take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance Section 7-712-b of the Village Law:

1. The requested variances, for purposes of creating the subdivision only, will not cause an undesirable change in the character of the neighborhood. The “neighborhood” currently consists of railroad, residential and vacant residential property. The proposed lots will be bigger than many of the existing lots in the area and the public benefit outweighs any detrimental effects to the nearby properties.
2. The benefit sought by the Applicant cannot be achieved by some other method feasible for the Applicant to pursue. The Village cannot acquire the land without first subdividing it from the rest of the CSX property. The amount of property available at the waterfront is limited by the right-of-way necessary for railroad maintenance and safety. CSX is proposing to convey to the Village all of the available upland area and all of the waterfront area that the Village deems suitable for its public purposes.
3. The requested variances are substantial, the fact of which is not determinative and is only one factor for this Board to consider.
4. The proposed variances will not have an adverse effect on the environmental conditions of the neighborhood or district. Neighboring lots are generally comprised of an acre or less, the smallest being 765 sq. ft.
5. The Alleged Difficulty was not self-created. The historic uses of the waterfront led to the development configuration of parcels in the neighborhood which are not consistent with the Village’s Bulk Regulations. The Village is proposing to acquire the largest areas feasible for public purposes.

BE IT FURTHER RESOLVED, that the requested variances from section 231-22 of the Code to permit the creation of a 1.09 acre lot (Lot 2) and 1.25 acre lot (Lot 1) and to permit Lot 1 to have a Width of Lot at Front Building Line of 199.11 ft., are hereby granted.

BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby determines that the requested variance from Section 231-15, Frontage on a public street, is not necessary at this time, for the reasons set forth below:

1. Section 231-15(A) states that “No dwelling shall be erected on a lot which does not abut on at least one street for a distance of not less than 50 feet.”
2. A “dwelling” is defined as “a house or other building designed and primarily used for human habitation.”
3. The applicant is not proposing to construct a dwelling on either lot and therefore Section 231-15 is not applicable.

Adopted:

Michael Braun, Chair

Filed with the Secretary of the Zoning Board of Appeals on: August 25, 2008.

Marina Schmid, Secreta

Concerning the Trombly/Chang Variance application Chairman Braun stated that he would like the Board to do a site visit at 11 Pine St. at 6:30 p.m. on September 22, 2008 and conduct a Public Hearing for the requested application at 7:00 p.m. that same date. .

On a motion by Laura Gail Tyler and seconded by Joseph Cicileo to adjourn the meeting at 9:20 p.m. All in favor. Motion carried.

Respectfully Submitted

Marina L. Schmid
Secretary
Zoning Board of Appeals