

Zoning Board of Appeals
September 17, 2019

The Zoning Board of Appeals met for a scheduled meeting on Tuesday, September 17, 2019 at 7:05 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Chairman Robert Lanier, Members Judy Smith, Jordan Haug, David Jensen, and Garrett Duquesne (in at 7:15 p.m.); City Attorney Drew Gamils and Building Inspector David Buckley were in attendance.

Mr. Lanier read a memorandum regarding the moratorium recently enacted by the City Council:

On September 3rd, the City Council adopted a moratorium. According to the local law that enacted the moratorium, the purpose of the moratorium is to “protect the City and its residents, businesses and visitors from the potential impacts of new development on the City’s water supply given the condition of Well #2.” Well #2 is one of six (6) sources of the City’s water supply and it has been taken offline for repairs. The moratorium applies to land use applications filed after June 11, 2019, **except** the following:

1. Building Permit application for single family home
2. Modification or extension of an existing approval that does not increase density
3. Residential application that involves less than 330 gallons per day of water usage
4. Non-residential application that involves less than 2,000 gallons per day of water usage
5. Reuse of any existing non-residential building for industrial or manufacturing uses where the use does not increase the existing building footprint or otherwise increase the building square footage.

The moratorium is scheduled to expire in March 2020, or thirty (30) days after the repairs to Well #2 are completed. The moratorium does not preclude the Planning Board from reviewing and otherwise processing applications that are subject to the moratorium. However, while the moratorium is in place the Planning Board cannot vote to approve an application. The full details of the moratorium can be found in the local law available from the City Clerk’s Office or the Building Department.

City Attorney Drew Gamils reported the moratorium has no affect on any items on this agenda. Mr. Lanier changed the order of the agenda, allowing the second item to be heard first. He then called for corrections/additions or a motion to approve the minutes of the August 20, 2019 meeting. Mr. Haug made a motion to approve the minutes of the August 20, 2019 meeting as presented, seconded by Mr. Jensen. All voted in favor. Motion carried; 4-0.

ITEM NO. 1 APPLICATION SUBMITTED BY ROBERT VYE, 19 SOUTH ELM STREET, TAX GRID NO. 30-5954-27-813875-00, R1-5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(E) TO CONSTRUCT A 425 SQ. FT. DETACHED GARAGE (300 SQ. FT. MAXIMUM PERMITTED)

The public hearing on the application submitted by Robert Vye, 19 South Elm Street, for relief from Section 223-17(e) to construct a 425 sq. ft. detached garage was opened on a motion made by Mr. Haug, seconded by Ms. Smith. All voted in favor. Motion carried. Ms. Smith informed the board that she was the Realtor who sold Mr. Vye this property however did not recuse herself as she felt that she could hear the case and vote without prejudice.

Owner Robert Vye reported he purchased the house at 19 South Elm Street approximately 1.5 years ago with the full intent to build a garage. However after further review of the survey plan and zoning code, he discovered the garage footprint would exceed the maximum square footage permitted by zoning. He thought the size of accessory structures was based on floor space rather than square footage of the primary structure. Mr. Vye explained he wants to construct a one car detached garage that provides enough space for a small workshop area. He presented comparisons of other houses and accessory structures in the neighborhood that exceed the limits currently regulated in the zoning code. (Garrett Duquesne in at 7:15 p.m.). Mr. Vye contended that this proposal will not change the character of the neighborhood as similar situations exist elsewhere in the area. The garage will have the same design as the house and will be located toward the rear of the property. Mr. Vye reported an existing 10 ft. x 10 ft. shed is setback behind the proposed garage location. A lengthy discussion took place about the square footage of the house footprint, and the survey and measurements taken by the owner were compared. Mr. Vye reported his measurements of the house footprint came to 746 square feet. Mr. Buckley reported the survey that was provided with the application scaled it at 699 square feet which would allow a 279 square foot accessory structure. The request is for a 425 square foot structure, leaving a difference of 145 square feet. A larger garage would be permitted if the house footprint was larger. Mr. Vye reported the upper area of the proposed garage is for storage only and will be accessed from a drop down staircase.

A closer review of the public notice revealed it to be incorrectly cited that a 300 square foot maximum garage was permitted. After some consideration, City Attorney Drew Gamils reported that due to the error, the applicant will be required to renotice the public hearing. Mr. Haug made a motion to adjourn the public hearing and renotice the variance request for the month of October, seconded by Mr. Jensen. All voted in favor. Motion carried.

ITEM NO. 2 CONTINUE REVIEW OF APPLICATION SUBMITTED BY 23-28 CREEK DRIVE, LLC, 23-28 CREEK DRIVE, TAX GRID NO. 30-6054-37-037625-00, FISHKILL CREEK DEVELOPMENT (FCD) ZONING DISTRICT, TO CONSTRUCT A MIXED USE DEVELOPMENT WITH EIGHT APARTMENTS AND 20,000 SQ. FT. OF COMMERCIAL SPACE WHICH REQUIRES RELIEF FROM SECTION 223-26(F) TO PROVIDE 93 PARKING SPACES (113 PARKING SPACES REQUIRED), SECTION 223-4.14(C) FOR APARTMENT SIZE OF 2,750 SQ. FT. FOR TWO OF THE UNITS (2,000 SQ. FT. MAXIMUM PERMITTED), SECTION 223-1.14(F) FOR A FOUR STORY BUILDING (THREE STORIES MAXIMUM PERMITTED) AND SECTION 223-1.14(F) FOR A BUILDING HEIGHT OF 53 FT.-4 IN. (40 FT. MAXIMUM PERMITTED)

Mr. Lanier opened discussion of this item by noting public comment will not be taken as the public hearing was closed at the August meeting. A letter regarding the application was received from the Dutchess County Chamber of Commerce however the public hearing is closed and the letter will not be made part of the record.

As requested at last month's meeting, City Attorney Drew Gamils reviewed all minutes, memorandums, and correspondence pertaining to the adoption of the FCD Zoning District to determine why the City established a 2,000 square foot maximum for residential units in that zoning district. She reported the language was adopted as part of the original creation of the FCD District in 2010, prior to John Clarke becoming the City Planner. She could find no

discussion about where the 2,000 square foot requirement came from or why it was adopted, and noted the number was left blank in most of the draft documents. At the Planning Board's June 11, 2019 meeting, John Clarke noted he could not provide justification other than they just didn't want giant luxury apartments. A maximum unit size is not typically listed in zoning laws. Mr. Clark also felt it was good to have some diversity in the apartment size and a three-bedroom unit is not that large.

On behalf of the applicant, Attorney Taylor Palmer of Cuddy & Feder, reported they were provided and reviewed the draft resolution prior to the meeting. City Attorney Drew Gamils advised members to review the resolution to determine that it reflects the discussion that took place at the August meeting, and to recommend any changes or additions deemed appropriate.

Minimum Number of Parking Spaces

Members reviewed the draft resolution and conditions that were outlined in the resolution with regard to the variance request for parking. Mr. Duquesne suggested adding a note about the Planning Board's support of this variance because members took that factor into consideration. A lengthy debate took place with regard to the first condition that the applicant cannot reserve surface parking for residents from 9:00 a.m. to 5:00 p.m. Monday-Friday, or during office hours of the commercial tenant. After much consideration, all members with the exception of Mr. Haug felt that requirement should be stricken which will allow the Planning Board and City Council to address shared parking during Concept Plan and Site Plan review.

Members agreed with the second condition that bicycle parking be provided on the site for residents and office workers. The third condition encouraged the applicant to allow shared weekend parking to the general public. After much discussion members wanted to let the Planning Board and City Council know that although this condition is only a recommendation and not a mandate, they strongly support shared parking as most spaces won't be utilized during the weekend. Mr. Haug made a motion to authorize the City Attorney to draft a memo to the Planning Board outlining this discussion, seconded by Mr. Duquesne. All voted in favor. Motion carried; 5-0.

After careful consideration, Mr. Duquesne made a motion to approve the resolution as amended, to include the Planning Board's support of the variance and comments as discussed, to grant a variance of 20 parking spaces where 113 parking spaces are required, seconded by Mr. Haug. All voted in favor. Motion carried; 5-0.

Maximum Dwelling Unit Size

Members reviewed the draft resolution with regard to the variance to permit two 2,750 square foot residential dwelling units where the maximum permitted size is 2,000 square feet. Discussion took place with regard to adding comments from the City Planner and lack of reason when the maximum unit size was established because those factors weighed strongly in making a determination. Members agreed to amend the resolution reflecting their comments.

After careful consideration Mr. Haug made a motion to approve the resolution, as amended, to grant a 750 square foot variance for two apartment units where the maximum permitted dwelling unit size is 2,000 square feet, seconded by Ms. Smith. On roll call all voted in favor. Motion carried; 5-0.

Maximum Building Height and Number of Stories

Members reviewed the draft resolution with regard to the variance requests to exceed maximum building height and number of stories for the project. City Attorney Drew Gamils explained that as part of this resolution, all variances issued in March of 2015 pertaining to a second four-story building approved for property at 9-11 Creek Drive which was not constructed will be rescinded and deemed null and void after the Planning Board's issuance of Site Plan Approval for this project. After further review and discussion of the resolution, the sentence "The additional fourth story allows the applicant to building up and not out." will be removed. In addition, the sentence "Plantings will also be designed to soften the building while framing and enhancing views of Fishkill Creek and Mount Beacon." will be changed to, "Plantings will also be designed to soften the building and enhance views of Fishkill Creek and Mount Beacon."

After careful consideration Ms. Smith made a motion to approve the resolution, as amended, granting a one-story height variance to include conditions outlined in the resolution, seconded by Mr. Duquesne. On roll call Ms. Smith, Mr. Duquesne, and Mr. Lanier voted in favor of the motion; Mr. Jensen and Mr. Haug voted against the motion. Motion carried; 3-2.

After careful consideration, Mr. Duquesne made a motion to grant a 13 foot 4 inch building height variance, seconded by Ms. Smith. On roll call Mr. Duquesne, Ms. Smith, and Mr. Lanier voted in favor of the motion; Mr. Jensen and Mr. Haug voted against the motion. Motion carried; 3-2. Mr. Lanier read each of the three conditions set forth for all variances granted.

There was no further business to discuss and Mr. Haug made a motion to close the public hearing, seconded by Mr. Jensen. All voted in favor. The meeting adjourned at 8:28 p.m.