

February 16, 2006
Zoning Board of Appeals Minutes
Oswego Town Hall

Chairman: Greg Auleta
Board Members: Robert Baker, Timothy Anderson,
Debra Jaskula
Attorney to the Board: Kevin Caraccioli
Secretary: Marjorie Best

Call To Order:

At approximately 7:02 PM, Greg Auleta, Chairman of the Zoning Board of Appeals called the meeting to order.

Attendance:

Those in attendance were:
Greg Auleta, Chairman
Robert Baker, Member
Timothy Anderson, Member
Debra Jaskula, Member
Kevin Caraccioli, Legal Advisor
Marjorie Best, Secretary

Acceptance of Agenda:

Greg Auleta asked if there were any questions or modifications to the Agenda. He moved that the Agenda be accepted as proposed.

Approval of January 19, 2006 Minutes:

Greg asked if there were any additions or corrections. Tim Anderson made a motion that we approve the January 19, 2006 Minutes. Deb Jaskula seconded the motion. All ayes. Motion carried.

Old Business:

Greg asked if the members recall under Open Board Discussion at last months meeting, the interpretation of the Zoning Law regarding an attached garage. He had stated he would write a letter to the Town Board, but fell down on the job, but will draft the letter before the next meeting.

Greg also stated we have come to a screeching halt as to the revision of the Zoning

Ordinance. He said he, Judy Watson, and Brian Frazier attended several sessions regarding revisions, but then Brian left the state, and we have not gotten together since.

Greg asked if a letter of resignation had been submitted by Patty Blackwell. The secretary said she asked Theresa the other day when she picked up a folder, and as of yet, she has received no letter. Greg instructed the secretary to check with Vicky, to see if one had been sent to her.

New Business:

None

Public Comment:

No one from the public was present.

Open Board Discussion:

Greg opened up the discussion regarding a letter and attachments written by Spencer Ludington, Attorney for John Dickquist to Kevin Caraccioli. John Dickquist had submitted an application for a New Business Permit to sell cars on property he is proposing to purchase from Gary Shanley. This application was submitted on February 15, 2005. Wayne Newton, CEO denied the application by reason of the property being in an R-3 District, where this type of business is not allowed.

Mr. Ludington's letter suggests that this piece of property has always been used as a business, and therefore feels it should continue to be used as a business. He said the CEO has indicated that this use may be in violation of the Town Law because the commercial use has been abandoned.

Greg said the property has not been abandoned under the initial guidelines, as it has been used for 4 consecutive years. He said he is confused. It has been used as a radiator repair shop, and a gasoline station. He said a Use Variance should not be grand-fathered. This is not the same thing as an automobile dealership. He questions the abandonment issue. He also questions the types of business that can go into an R-1 or R-3.

Bob Baker stated that at one time, the property was used as a Taxi Dispatch.

Kevin stated there are a couple of issues. First, is it a non-conforming use? The next question is where the structure was designed to be used as a used auto business. According to the Zoning Regulations, abandonment means a non-conforming use of a structure designed for such use shall be deemed to have been abandoned whenever such use has been voluntarily discontinued for a period of 48 consecutive months.

A non-conforming use of a structure not designed for such use, and a non-conforming use of a lot or land whereupon there is not consequential structure devoted to such use shall be deemed to have been abandoned, whenever such has been voluntarily discontinued for any period of 12 consecutive months. Kevin said when he was a kid going out to Fair Haven, there was always some sort of business there. Bob Baker said it used to be Austin's Gas Station.

Greg Auleta questioned whether Mr. Dickquist is purchasing all the property, including the house. Is all the property going to be used as a car lot, or part of the property? There is also the question of ingress and egress on the corner of Route 104 and Thompson Road. He said we would need a site plan, which would go to the Planning Board. If there are several used cars there, where are people going to come in and out? That is kind of a dangerous corner. Bob Baker said the State should have guidelines.

Deb Jaskula asked just what Attorney Ludington is looking for.

Greg said to go to Mr. Ludington's letter - second from the last paragraph - "In any event, would you kindly review the law and these affidavits. If you agree, I would respectfully request that this be considered an application to the Town Code Enforcement Officer for a Certificate of Nonconforming Use". Kevin said under normal circumstances, if someone wanted to put a used car lot in, and it is not permitted, a Use Variance would be required, which he would

have to show the criteria.

Kevin again quoted from the Zoning Regulations, Article 5, No. 4, on Page 12, which he already quoted on Page 2 of these minutes. He said the basic law in New York State is that a non-conforming use runs with the land to the benefit of the successive owners.

Kevin also quoted a paragraph on a matter in the Town of Binghamton from the New York State Comptroller, which deals with a mobile home issue - "A zoning provision which limits the life of a non-conforming use to the existing owner is of doubtful validity and may be unconstitutional. It is an attempt to control the ownership and transference of the property rather than its use". He also quoted another section of the Town of Binghamton issue - "A non-conforming use, of course, is a use already in existence at the time a zoning ordinance or amendment is enacted, which does not conform to the requirements of the ordinance. In general, a non-conforming use is allowed to continue because enforcing its removal would be an unconstitutional deprivation of vested rights".

Greg stated if we look at Article IV, Section C, R-3 District, conditional use would be a church, place of worship, parish house, public park, public library, public or private school, home occupation; mobile home, apartment house, customary home occupation; and office of a physician. He said these other businesses are of a different definition - gas station, taxi dispatch, radiator repair and sale of used cars.

Greg stated we should have Kevin draw up an opinion as to our position in this matter. Kevin agreed to review the correspondence from Spencer Ludington regarding John Dickquist, as well as the regulations, and will review the opinion at next month's meeting.

Adjournment:

At approximately 8:15 PM, Deb Jaskula made a motion to adjourn the meeting. Tim Anderson seconded the motion. All ayes. Motion carried.

Respectfully submitted,

Marjorie Best
ZBA Secretary