

September 20, 2007
Zoning Board of Appeals Minutes
Oswego Town Hall

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

Call To Order:

At approximately 7:00 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
Robert Dexter	Member
Kevin Caraccioli	Legal Advisor
Marjorie Best	Secretary

Acceptance of Agenda:

There were no objections to the Agenda, therefore it was accepted.

Approval of August 23, 2007 Minutes:

As there were no comments or corrections, Bob Dexter made a motion that the August 23, 2007 Minutes be approved. Deb Jaskula seconded the motion. All ayes. Motion carried.

Old Business:

Application #2007-02 - United Group - Oswego College Suites - Area Variance
Greg said he has nothing to report on the status of the application. Kevin Caraccioli said he has something that came across my e-mail at 3:40 this afternoon. The latest update:

"Dear Supervisor Mullen:

The Petitioners filed a Notice of Appeal on or about the last day permitted. For Supervisor Mullen's benefit, Petitioners will have to put together and file the record in their brief in their brief within 60 days. If they don't, we will have to move and we will have to make a motion to get them to do that. The Court will give them more time and set a schedule. We are not expecting to have anything happen for a while. When they file, I will keep you advised. "

That was from Appellate Counsel, Jim Stevens. They have a right to appeal. That does not stay our proceedings. It really doesn't affect anything that we do directly. The applicant can choose to continue forward with the variance application. By Law, and the regulations of the Appellate Division, which is the second highest Court in New York. There is a 60 day time frame to perfect the appeal by filing a brief. When the party doesn't do that, then the other

party prompts them along to file a motion to compel the filing of a brief. At that point, the Appellate Division will give the other party time to file. They will continue and extend this for months at a time. So if it is the intentions of the appellants to delay this, they have bought themselves 6 months. Kevin said he responded to Vickie and Jim afterwards to keep us posted, and would imagine for the Town to get close on his, we will file this motion on day 61 so we can move this along. This doesn't delay the process for the developer to go forward.

Greg said if the group is successful in their appeal, and if United Group comes through with all their material necessary for the SEQRA, at that point the Planning Board would decide. Kevin said a long Environmental Assessment Form has been filed. But there are essentially 5 gaps or issues that need to be explored. There are traffic, wetland issues, and others. As he understands it, they are going through the tests. They are checking traffic, the Indiana Bat, and all the other endangered species in that wetland. At that point in time, the Planning Board has to make a determination whether they have enough information to file a Negative Declaration, that there would be no negative impact on the environment, or a Positive Declaration. If there is a positive declaration, then you get into a draft environmental impact statement. Greg asked, if that were to take place and basically the Planning Board says there is a negative affect, and they feel the issues have all been dealt with. Then there is the issue of the height, and we pass a resolution - we decide we are going to grant a height variance. But then the Court reverses the decision - this is not a multiple use dwelling, this is a dormitory. Kevin said it would be the applicant's problem. We have finished our analysis. Everything is ready to go. If all of a sudden the Court comes back and says no, that the original determination was wrong, you basically have to reopen the process, and it would necessitate them to submit a brand new site plan. The Town could do everything, and it is up to the applicant to determine whether they want to apply for a building permit to break ground.

Tim Anderson said - say the Appeals comes back and they say that is good, let's go forward, and then we have a meeting here. And then we vote on the height restriction. Then we start that whole process over again. Kevin said they could very well file another Appeal, the Article 78, and they don't like that decision, they file another one. It could be tied up for a couple of years. Deb Jaskula said if she was this developer, she would not want to continue. Kevin said they are not abandoning it because of the situation. They had wanted to be breaking ground at this time, for next year, but that obviously not going to happen.

Greg asked if there are any other questions regarding the application. Deb said she notes one of the issues in doing the environmental impact statement during the training session talked about alternate sites. She asked if anyone knew what that means exactly. Why can't they build it on the other side of 104. You wouldn't have to have a height variance, as you could spread it out. You are not building it on a hill. Kevin said he doesn't see where that would be controlling. Greg said it was highlighted in the training session, as one of the things. Bob Baker said there would be a change of traffic issues, although they still will be going down Draper and Baylis. Deb said the landlords would still be upset.

Bob Dexter said since there are 5 buildings involved, there are two separate height variances - should they be separated? Deb said they are talking 3 story and 4 story. Kevin said that is not what Wayne's letter says. His letter says they are over the 2-1/2 story and over the height. Deb says if they are going to build them, they will have to have a height variance on all of them. Greg said his interpretation would be that if this Board would grant the variance, if the Board feels the granting of that variance is not going to do serious damage to the environment; it is not going to create a safety hazard. Or we could say we aren't going to grant that variance whether it is 2-1/2 stories high - whether you are requesting the story variance or height variance. If granting, we would say for Building A, B or C, we are granting a story variance, and for Building D, we are granting a story and height variance.

Deb asked what if this appeal goes through, and we did wrong, can United Group ask for a

Use Variance. Kevin said Yes, that would be their remedy.

New Business:

Greg asked Kevin if he would briefly summarize the letter that we have attached to our materials for tonight regarding the training session to Vicky Mullen dated September 13th.

Kevin said the letter was prepared in response to a question that was raised by at least one Town Board Member and believe was raised by Planning Board Members. That has to do with personal liability of board members for decisions that are made on applications that come before the Planning Board or Zoning Board. The question is "Is there personal liability?". The answer is "No." The Controlling Law on personal liability for actions of public officers has long been established for quite some time now. The key is whether the action of the individual public officer, which you all are through your appointment - if the action was malicious, or somehow an intentional act which you knew would create a substantial harm. Then there would be some degree of personal liability. But using your good judgment in making a decision, is not going to get anybody in trouble on personal liability. There is nothing to worry about in making any decision. Most of the examples of personal liability would be misappropriation of funds. This would be school boards, volunteer fire departments.

Kevin brought up the Zappala Farms Building on the Gardenier Road. He said he was contacted by a representative of the new owner of the warehouse. It is in an R-3 Zone. There are two questions. There are subdivision regulations within the town. In looking at the R-3, there is no mention of warehousing. If they are going to continue the use of warehousing, but they are going to be storing other materials than onions, They have customary roadside display and sale of garden produce. Greg said he would interpret as other accessory uses and buildings, provided such uses are incidental to the principal use. If the principal use is warehousing, then something other than warehousing would be incidental. Such uses shall not include any activity or serve any purpose in or for the promotion of a business, trade, profession, or calling except as herein provided. Kevin said it would be a warehouse for widgets. Greg said it would seem to him it would require a variance. Kevin said Zappala has sold the property off to a business, and that business is going to use it to store their materials. The principal of that business is not going to change. It will be trucking it in and out. Deb asked why they would have to go to Wayne to begin with. Are they changing anything? Greg said according to the training, a use variance is not transferable. Greg was confused with the map, whether it is in an R-3 Zone or in Open Zone.

Public Comment:

None

Open Board Discussion:

None

Adjournment:

At approximately 7:45 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