

Town of Washington
Zoning Board of Appeals

A meeting and public hearing of the Zoning Board of Appeals was held on November 16, 2010 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the application submitted by Jean A. Meyer involving property located at 3716-3718 Route 44, Mabbettsville, in the Town of Washington. The application involves an appeal of a September 10, 2010 Order issued by the Town Building Inspector to Cease and Desist the operation of an automobile body repair facility at the cited premises. The property is located in the Hamlet Mixed Use (HM) District.

Members Present: Chairman, Jerry Baker, Peter Audia, Donald Marshall, Diane Parker, John Parisi.

The meeting was called to order by Chairman, Baker at 7:36 P.M., read the published public notice.

A motion to approve the September 21, 2010 meeting minutes as submitted was made by board member Parker, seconded by board member Marshall. All ayes.

Chairman, Baker referred to the application as an appeal request to a Cease and Desist Order issued September 10, 2010. The question has been raised whether the auto body repair is the same type of business as the vehicle repair. That led the planning board to ask the zoning enforcement officer to issue a Cease and Desist Order because they felt that it was a different use since this business operates under a special use permit. The filing of the Appeal stays the Cease and Desist Order, the business can be operating.

Previously submitted to the board were completed Application to Board of Appeals, Short Environmental Assessment Form, September 10, 2010 Cease and Desist Order, Memorandum dated December 12, 2000 under the signature of Ruthe Fiore, Zoning Administrator, Part 82.3 Registration page (a) underscored, Official Business Certificate date 3/2/09 for Wesley J. Berlinghoff- Wes Auto Body, Official Business Certificate for Diesel Performance of Millbrook NY dated 3/02/09, Official Business Certificate for Diesel Performance of Millbrook Inc., Licensed as a Public Inspection Statio, copy of New York State Department of Environmental Conservation Air Facility Registration Certificate dated 10/07/10, copy of EPA Rule 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (HAP) Successfully Training Requirements Certificate for Paint Technician, Wesley J. Berlinghoff, training date 7/15/10.

Jean A. Meyer and Wes Berlinghoff appeared before the board.

A motion to open the Meyer Appeal public hearing was made by board member Audia, seconded by board member Parker. All ayes,

Mrs. Meyer and Mr. Berlinghoff stated that everything has pretty much been said during the last two meetings, her business was issued a special use permit for repair, should still continue, be able to use it for a repair shop. No neighbors have come forth to complain about the business. The business is operating and conforming to New York State Regulations.

Chairman, Baker brought the board up to date on a new development concerning this application as is required when public hearings take place, not only to notify the property owners within five hundred feet from the property line, but also are required to notify municipalities, Department of Transportation, Parks. For this application, the Village of Millbrook was notified, owns one hundred plus acres on the other side of Little Rest Road, that is their major pumping station for water. In 1992 the Village approached the State for a special resolution passed that granted special protection to the watershed for that area, part of Mabbettsville is included in the outer band of this area. This is not something that the ZBA is empowered to consider, is a Village issue. The Village of Millbrook is aware of this application, has been notified, the issue is hazardous materials. The watershed special restriction has three (3) zones, the most protected zone is directly over the pumping area, this application is in zone 3, the major restriction is hazardous materials which leads by reference to an enormous document that lists every conceivable chemical that someone might use including talc powder.

The Village of Millbrook is involved in this application, whose interest is protecting the aquifer, how materials are disposed of, how much are used, is not an air quality issue. Chairman, Baker said that he was alerted that the Village has an interest in what goes on in this area, is outside of the Zoning Board purview relative to the Town of Washington Zoning, is a New York State Regulation, extra care might be required in handling, documenting, chemicals and waste products. Chairman, Baker remarked that the auto body repair facility will likely get a telephone call or visit from someone representing the Village who enforces this, probably the water commissioner. This regulation was pursued when there was talk of creating a County landfill in the area, additional protection was provided to the Village water supply.

Fletcher Coddington, 3788 Route 44, Mabbettsville addressed the board. Said, regarding any business in Mabbettsville, "the more the merrier." The economy, overall traffic, in that area has decreased, anything to increase traffic, interest, in that area would be a blessing.

Chairman, Baker reiterated that under the advisement, guidance, of the Town attorney, consultant, the zoning board is limited to the rather specific question as to whether the auto body works would be considered subset of the permit that was issued. Said, the Town of Washington has no commercial or industrial zoning, is basically residential zoned with use of special permits. There are traditional areas like Mabbettsville Hamlet that had businesses in it for many years, special zoning was created to permit that to continue.

Page 2

The other area that is similar is not a Hamlet, is Washington Hollow, the Cottonwood Health Club, Robert Campbell, Jr. & Sons, Kitchen Design, all operate under a special permit that the planning board reviews.

In 1986 the Town planning board was approached to create a vehicle repair facility in Mabbettsville, was granted a special permit that said, vehicle repair, it permitted a certain number of trucks to be parked there, had a set of rules that said the work had to be done inside the building, etc. The question now, is this application of an auto body shop the same as vehicle repair. It is assumed that the auto body shop operates and complies with all regulations such as air filtering, inspections, there are appropriate permits for those on file. The aquifer issue is left to the Village, the zoning board will only discuss the use permit.

A comment from the public, it would seem that the chemical component of the auto body repair would be the one area that might be different from the repair shop, the board should know what chemicals are being used, how they are being handled.

Board member Audia remarked that the State of New York Department of Motor Vehicles does not differentiate between a repair shop and auto body shop. The 1986 special use permit stated that any changes would need to be brought for review, but doesn't specify what kind of changes. Chairman, Baker read from the special use permit, "any change in the business". Board member Audia said the permit is vague, only addresses a certain issue, said watershed zone three is a very critical area, there have been serious issues over the years in that area, Mrs. Meyer said she feels Wes Auto Body is conforming to all regulations of the EPA and DEC. Said, she lives on the property, feels comfortable with the operation of the business.

Chairman Baker referred to the 1986 special use permit that went into a great detail about putting up a stockade fence, how many vehicles could be parked outside, at that time there wasn't much concern over environmental issues. There has been some concern expressed if a damaged vehicle is dropped off during a weekend, leaked hydraulic/assorted transmission, radiator, fluid, outside, not being part of the workplace. Mrs. Meyer expressed that permission would be needed from Wes Auto Body.

A comment from the public, with all of the paint around in the event of a fire could result in an environmental hazard. Mr. Berlinghoff said the paint he uses is not flammable. Chairman, Baker remarked on water based paint, said he cannot speak to the accuracy, the water based paint could be more of an environmental hazard because it can mix with water, the oil based paints tend to float, separate; the spill might be easier to isolate, the water based paint just mixes with water, washes away. Again, this is an aquifer issue, there is an aquifer overlay that covers that area but is not as specific as Village regulations.

Chairman, Baker expressed that he hoped some Village representatives would be in attendance tonight. Because they are holding a meeting that was deferred from last week, and only enough members are in attendance for a quorum are unable to attend this meeting. West Auto Body most likely will be contacted by Mayor, Laura Hurley or Stan Morse, Water Commissioner,

Page 3

or the company that manages the Village water system.

A motion to close the Meyer Appeal public hearing was made by board member Parker, seconded by board member Parisi. All ayes.

Chairman, Baker remarked that because of the very weak definition of a repair shop, there is no definition in the Zoning for that. A reasonable, but broad view is to be taken because there is nothing to be based upon, a definition will need to be written in the future. Board member Parker said there is a definition of repair shop in the application to Board of Appeals, Part 82, page 3, Registration, that was submitted, and underlined, "A motor vehicle repair shop is any person who, for compensation, is wholly or partially engaged in the business of repairing or diagnosing motor vehicle malfunctions or repairing motor vehicle bodies, fenders or other components damaged by accident or otherwise, except those persons excluded by subdivision (b) of this section" questioned if this is a New York State definition? Board member Audia, confirmed that this is New York State Department of Motor Vehicles definition.

Board member Audia referred to the New York Town Law Section 267-b(1), questioned if the board of appeals may reverse or affirm the Cease and Desist Order? Chairman, Baker confirmed, said the reason it is written in this manner is if the Cease and Desist Order had several components to it, the board could be selective, permit some activities to continue, others not to continue. In this case its "up or down." Board member Audia expressed that this board can make a recommendation to the planning board if the business stops operating under the one year law, if another special use permit is to be issued, if the special permit expires after ceasing to operate for one year, is not maintained as a repair shop for one year, to deny an approval. Board member Parker remarked that this is the only way the board can amend the special permit, there is no expiration date of the special use permit, is specified that this is not an approved activity. Chairman, Baker referred to the mobile station that burned, was not used for three or four years, if there is a one year "drop dead provision", in terms of altering or withdrawing the permit, the requirement is that the business has to operate in compliance with all the environmental regulations, that level of protection is there.

Board member Marshall questioned if the EPA has visited the site? Chairman, Baker questioned Mr. Berlinghoff if there has been an inspection by any agency? Mr. Berlinghoff said they might visit, hasn't heard anything more. Board member Audia remarked, in the scope of business OSHA is more likely to visit the site.

Board member Audia questioned the word partly in the first sentence of New York Town Law Section 267-b(1) "the board of appeals may reverse or affirm, wholly or partly." Board member Parker said it is her understanding that the word partly is written if the Cease and Desist Order had several components to it, the board could be selective, partly permit some activities to continue, others not to continue; there is only one component to the Cease and Desist Order.

Page 4

A motion to reverse the September 10, 2010 Cease and Desist Order issued by Building Inspector/Zoning Administrator, Neubauer was made by board member Parker, seconded by board member Parisi. All ayes.

Fee Status: \$150.00 application fee paid

Mrs. Elizabeth Borsch, 44 Elm Rock Road, Bronxville, New York appeared before the board for a pre-application discussion. Said she and her husband own property at 1082 Chestnut Ridge Road, near Hammond Hill Road with a small house on it. Mr. and Mrs. Borsch purchased one acre of land, then purchased the surrounding ten acres from another owner. Said, the reason for the survey map as shown is because the land was purchased as two separate parcels from two different owners.

Mrs. Borsch said they want to demo the existing three bedroom, two bathroom house, build a new three bedroom, two and one half bathroom house. Building Inspector Neubauer said they would need a temporary permit for two structures on one parcel. Board member Audia questioned if they will be living in the existing house? Response was affirmative, they live there on weekends.

Mrs. Borsch remarked that the reason they are not building in the same location is because the current septic system is unacceptable, the existing house is on a slab, they want a basement. The foundation for the new house will be constructed before the current house is demolished.

Chairman, Baker expressed there have been similar cases before the board. The board has granted permission for this type action with a special directive to Zoning Administrator, Neubauer. The Code reads that there can only be one Certificate of Occupancy in effect for the property. Said, Mrs. Borsch can use the existing structure until the new house is completed, but before Jack Neubauer can issue a Certificate of Occupancy he needs to 'cancel' the old structure. Chairman, Baker stated in order to have two legal residences on one parcel, twenty acres would be needed because they are in the ten acre zone.

Chairman, Baker suggested Mrs. Borsch apply for a building permit, say that the existing building will be demolished at some point during the construction before completion of the new house. If Building Inspector Neubauer feels that he cannot issue a building permit, he will ask Mrs. Borsch to return to the zoning board, which would then result in a formal application, application process.

Mrs. Borsch referred to construction of a barn on the property having to meet the setback requirements. Chairman, Baker said the proposed barn will have to meet the setback requirements for the ten acre zone, will need a building permit.

Page 5

Mr. John Perini appeared before the board for a pre-application discussion. Said he is considering, purchasing, property along Route 82, north of Hibernia Road, across from Taconic Trap property. Mr. Perini had a wood working shop at his home for many years in the Town of Clinton. He is interested in purchasing the property, building a wood working shop structure as a home occupation. The parcel is mostly hillside, there is only one place to construct the building for the size he wants to build as pointed out on the diagram. Because the property is mostly hillside it doesn't allow Mr. Perini to build very far back.

The proposed building is 62 ft deep, needs 20 ft. behind the building that goes up against the bank for clearance of vehicles, giving him approximately 50 ft. from the front of the new building to the road. The property is in the RL 5 zone, is 5.8 acres, has one house at the top of the hill that was built in 1964 and has an existing driveway.

Chairman, Baker read the RL 5 zone setbacks, minimum front setback 100 ft., minimum each side setback 75 ft., minimum rear setback 75 ft., minimum road frontage is 300 ft. Mr. Perini said the only problem is the setback from the road because of the topography of the lot. Said, the land is a little lower than the road, there is a berm, trees.

Mr. Perini said he works alone, has no employees, there would be a very limited amount of traffic for a home occupation. Mr. Perini was directed to the planning board for approval of a home occupation.

Mr. Perini said he wants to clarify what approvals are needed before he purchases the property, if a variance can be granted. Board member Parisi remarked that the board issues a variance to the property owner. The owner of the property needs to apply for the variance.

Chairman, Baker remarked that the proposed building is shown fifty foot from the existing road but the property line is considerably further back. Mr. Perini expressed that he was told that these property lines are not accurate. Chairman, Baker said that Mr. Perini will need to show the legal property lines by a land surveyor. Mr. Perini expressed that the owner did not have a survey map, there was no survey on record. Board member Audia suggested that Mr. Perini check with the neighbors for their survey that will show east and west property. Mr. Perini said he is in the process of trying to purchase the property now. Chairman, Baker remarked that Mr. Perini will need to get a survey, doesn't think any bank will want to talk seriously without one. Mr. Perini said he is not concerned with the bank. Board member Parisi expressed that the property deed should have that information, can be obtained from the County Clerk's office.

Mr. Perini expressed that he needs to get or look for a survey, establish the boundary lines, get the present owner to apply for the variance. Said, the original owner passed away, the family estate is now trying to sell the property.

Chairman, Baker suggested that Mr. Perini contact Zoning Administrator, Jack Neubauer for direction, have him suggest the sequence. Secretary Caul gave the planning board workshop date November 30th if Mr. Perini is interested in discussing the home occupation.

Page 6

Mr. Perini said he will see what can be accomplished before that date, will telephone to be placed on the workshop agenda.

A motion to adjourn the meeting was made by board member Parker, seconded by board member Audia. The meeting was adjourned at 9:15 P.M.

Respectfully submitted,

Nikki Caul, secretary