

Town of Washington Zoning Board of Appeals
Jan 23 2018

A meeting and continued public hearing of the Town of Washington Zoning Board of Appeals was held on January 23, 2018 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the application of Wings Over Water Millbrook (Edie Flood) 2647 Route 44. Millbrook, New York for a Use Variance under the Town Zoning Code to allow for the operation of an Aquatic, Fitness and Wellness Center offering a full program of aquatics, fitness and exercise activities, as well as related health and nutritional support services. The property is zoned RL 5.

Dutchess County Tax Parcel Number: 6664-00-056922

Members Present: Chairman, John Parisi, Peter Audia, Fletcher Coddington, Ken Holzberg, Frank Redl, also Al DeBonis, councilman/zba liaison, and Howard Schuman, CAC representative.

Chairman Parisi opened the meeting at 7:30 P.M., announced the Wings Over Water Millbrook continued public hearing, called for a motion to approve the December meeting minutes.

A motion to approve the December 19, 2017 meeting minutes as submitted was made by board member Audia, seconded by board member Coddington. All ayes.

Edie Flood, owner, attorney Laura Nash, Wayne Neckles, designer, Neckles Builders, Inc. 57 West Old Farm Road, Hopewell Junction, NY, Bill BreMiller, Most Physical Therapy, Millbrook, appeared before the Board.

Chairman Parisi stated that tonight the Board is only discussing the former Cottonwood Inn Building. Said, a response letter to the Referral made to Dutchess County Planning Department was received, read the following **COMMENTS** made. "While we are not opposed to the proposed use, it does not appear that the applicant has grounds to be granted a use variance. The granting of a use variance requires the applicant meet the 4 part test outlined in New York State law to demonstrate "unnecessary hardship," for each and every permitted use in the district. For the financial hardship test in particular, the applicant must show competent financial data proving that all uses permitted within the zoning district are not feasible and do not allow for a reasonable rate of return. The applicant has not provided such information." "We see that special uses which may be

allowed by special permit to the RL 5 District, include membership club and nursing home or convalescent home. These uses may be somewhat similar to the fitness and wellness center being proposed. Rather than a use variance, the Town may want to consider adding fitness and wellness centers as a special use, allowable by special permit in the RL 5 District.”

Recommendation, “The Department recommends that the Board rely upon its own study of the facts in the case with due consideration of the above comments”

Chairman Parisi called for a motion to reopen the Wings Over Water Millbrook Public Hearing. **A motion to reopen the Wings Over Water Millbrook Public Hearing was made by board member Redl, seconded by board member Coddington. All ayes.**

Board member Audia questioned if it is relevant to look at the original variance for the Millbrook Training Center although it has been out of operation for a few years? Chairman Parisi said he reviewed on how the variance was proposed for the pool. Part of the problem is that the Board is not reviewing the entire project operation the applicant is applying for Phase One.

Attorney Nash spoke to the Statement of Proposed Use (originally approved 2//1/1996) that she submitted with the application, any changes to be made were in bold print, she took the prior language and used that as a basis.

Board member Redl commented that there was a prior use variance for this property but has expired, the board has to look at this as a new application. There are certain statutory hurdles to overcome to record, grant the variance, one, being you cannot realize a reasonable rate of return on the property unless the board grants the use variance. This wasn't addressed much at the last meeting, would like this expanded upon that the situation of the property is such that there is no way of a reasonable return on the property unless the variance is granted to be able to move forward.

Attorney Nash said that this is true, presently it is not renovated, they wouldn't be able to put in a business there now. The question is if the property would yield a monitory income that would be acceptable.

Chairman Parisi questioned, in going forward if the applicant is going to be able to have a reasonable rate of return to make it profitable? The Board needs some data to back this up. Ms. Flood questioned, does Chairman Parisi mean what they do for their business plan? Yes. Ms. Flood said she has that, doesn't have it with her. Attorney Nash questioned, the manner it is currently written or if they are granted the use? Chairman Parisi said if they are granted the use. Ms. Flood questioned if Chairman Parisi is talking about the Cottonwood Building or about the a aquatics? Chairman

Parisi said, the property. The board can grant a variance for the Cottonwood Building, but has to take the whole application into account because if the board is told that they are just renovating the Cottonwood they can get a reasonable rate of return without the remainder. When they come in for a use variance for the pool it is going to be difficult. The Board cannot grant the variance for Phase two, and Phase three now because the board doesn't have plans in front of them to see, also the Planning Board.

Ms. Flood questioned, what if this property was zoned commercial? Board member Redl said it would be a different story. The property is now zoned residential. At the last meeting Ms. Flood projected it would cost five hundred thousand dollars to rehab the building. Ms. Flood said yes, the Cottonwood and to take down the structures, fourteen thousand square feet of structure and to renovate the Cottonwood, do other work in preparation of the land. Board member Redl questioned, could he ask what she paid for the property? Ms. Flood said the amount paid is two hundred fifteen thousand dollars. Board member Redl remarked that Ms. Flood has two hundred fifteen thousand dollars into the property, will cost another five hundred thousand dollars just to rehab the building, so that would cost her seven hundred twelve thousand dollars to make the property useable. Questioned, if this was just residential property would she be able to rent it out and get a reasonable rate of return? Ms. Flood acknowledged affirmatively. Board member Redl said she would only get a reasonable rate of return if the property was used as commercial. Ms. Flood responded if she used it for what is proposed, the aquatics.

Ms. Flood said the reason she purchased the property is for the wellness center. She and Bill BreMiller have been talking for years on how to design this, they cannot do it with the structure that is there now because it would cost more and didn't make any sense to do it any other way.

Board member Coddington questioned the square footage of the building? The entire Cottonwood Inn structure is four thousand square feet. There are two apartments upstairs. are approximately 1,500 sq. ft. the first floor is approximately 1,500 sq. ft.

Board member Redl remarked that they can't use the property unless the five hundred thousand dollars are spent to demo and rehab the initial building. Ms. Flood acknowledged, to start, nothing is useable. Board member Redl said it appears that in order to make any return from the property the applicant is going to have to spend at least seven hundred fifty thousand dollars, would never get a return on that investment unless it is used commercially as is proposed for the aquatic center. Ms. Flood said yes, the aquatic and wellness center. She is hoping that the rental for the businesses downstairs will cover the cost of the loan for the building, is not talking about the purchase price, is talking about the loan for the renovation of the building and taxes.

Board member Redl referred to the mortgage, she still isn't getting any return on it. Ms. Flood concurred.

Board member Coddington referred to the applicant demonstrating a hardship. If she would submit some detailed description of the cost of rehabing the property and the amount she expects to get in return for the lease of the two apartments and commercial space, could very easily demonstrate a hardship.

Attorney Nash stated that the purchase price is two hundred fifteen thousand dollars, the estimate to renovate it to make it useable for the renovation of the Cottonwood is approximately five hundred thousand dollars, includes to clean up what is there, clean up the parking lot, gut out the interior of the Cottonwood which is the older building, renovate the top floor for two residential rental apartments that are to have two bedrooms each, then open the space on the first floor for an incoming commercial tenant or two. The first floor could be divided into two commercial spaces, have two smaller tenants, maybe an attorney and office space, is approximately fifteen hundred square feet. Said, the adjusted price for fifteen hundred square feet is twenty two hundred dollars per month rental. Board member Audia feels they should rent by the square foot, it would be more advantageous. Board member Redl said using those numbers, the first floor rental would be about seventeen dollars per foot. would be twenty two hundred dollars for the whole first floor of fifteen hundred square feet, about twelve dollars per sq. ft. rental space.

Attorney Nash spoke to the two bedroom eight hundred sq. feet apartment divided into two bedrooms, the suggested rental would be eleven to twelve hundred dollars per month. This would be the second floor apartment, parking included, not including the heat, there is a well on the property so there would not be a water bill, also a septic system on the property. Wayne Neckles stated that each apartment will have its own lp tank service.

Board member Redl spoke to the numbers given to the board, assuming that the rental for the rental space is twelve dollars per foot, his calculations are that it, not including any interest on her loan that she would have to pay back would take seventeen years to get even. She would never be able to make that if she used the building for residential only. Ms. Flood concurred.

Ms. Flood said this is why it is important to try to install the pool as soon as possible. Said, she has always liked the Cottonwood building, feels its part of the community, is historical, is a beautiful building on the exterior.

Board member Redl related that based upon these numbers, it doesn't appear that Ms. Flood could just do this project with the old Cottonwood, she would have to build the other building. The Cottonwood building by itself is not self supporting of the investment that Ms. Flood has in it. Response by applicant, "absolutely not." Board member Redl said the numbers given by the applicant are realistic, is comfortable with that, satisfies the first of the four (4) hardship criteria, #1) can the applicant realize a reasonable rate of return providing the lack of return is substantial as demonstrated by competent financial evidence. Chairman Parisi referred to hardship criteria #2, the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district of the neighborhood. Board member Redl said this is probably true, the area is residential. Board member Audia referred to its historical value that has grown over time, now is in disrepair, in the past generally has always been commercially related. #3) that the requested use variance if granted does hold the essential character of the neighborhood. Board member Redl said the board can all agree that the essential character of the neighborhood is not going to change at all, will improve the appearance of the neighborhood. #4) the alleged hardship has not been self created. Board member Redl agrees that the hardship is not self created, the applicant didn't cause the property to become a state of disrepair, that is causing a five hundred thousand dollar investment. This is something that is inherited. The applicant didn't create the zoning issue, it is the Town Code. All board members were in agreement. Chairman Parisi stated that the applicant has met the four hardship criteria conditions.

Chairman Parisi urged proceeding with caution, referred to the Dutchess County Department of Planning and Development response comments received to the Board's 239 Planning/Zoning Referral, needing Board super majority for the variance. Ms. Flood questioned how Dutchess County Planning Department became involved? Chairman Parisi explained anytime there is a property on a County, State, Road, this needs to be sent to the Dutchess County Planning and Development for their review, comments. The Board takes into consideration what is said, decides the outcome on its own. Since there are five board members, at least three members votes are needed to approve the variance. In this case the County has said more than three votes of the majority are required to grant the variance.

Bill Bremiller questioned about the nature of the variance? Chairman Parisi said the variance being considered tonight is for the Cottonwood building. For all three phases being proposed. the board needs to see plans, numbers, for the three phases. Next questioned, whatever the board decides in the first phase, does that limit what they are able to put in those two commercial spaces on the first floor? Board member Redl remarked this is the next point to be considered, suggests after reviewing the statutory criteria of the Code, which allows the board to impose conditions, the type of use the board deems appropriate for the downstairs space. The prior owner had a list of

permitted uses that could be considered. The applicant has submitted proposed uses for this application. Attorney Nash referred to the Statement of Proposed Use originally approved 9/3/96 changes in the language which she has shown in bold print that she submitted with the application, said she has the list of what could be considered from 9/96. Chairman Parisi remarked that he reviewed the list of considered uses for the retail space. Ms. Flood said there are commercial uses that she would not have there, a gun shop, a liquor store.

Chairman Parisi spoke to the prior granted variance having had something related to the fitness swimming type activities. For any others, the applicant would need to return to the Board for approval. Review of the proposed uses to be considered followed. Bill BreMiller said the decision that is made now in this process doesn't negate something in the future, would mean appearing before the Board and requesting the approval. Ms. Flood questioned the time frame to get an approval, said when they build it she needs to pay for it. Chairman Parisi questioned if she is referring to the retail space. "Right" said the process would take about one month. Board member Redl remarked that it would be a simple application taking only one meeting.

There being no further discussion, questions, a Motion to close Wings Over Water Millbrook Public Hearing was made by board member Redl, seconded by board member Coddington. All ayes.

Chairman Parisi called for a motion for a Negative Declaration of Environmental Impact. **A motion that the Board adopt a Negative Declaration of Determination of No Significance based upon the information supplied by the applicant in the Short Environmental Assessment Form, submitted during the Public Hearings supporting documentation, that the proposed action will not result in any significant adverse environmental impact was made by board member Redl, seconded by board member Coddington. All ays.**

The motion was made by Chairman Parisi "that the board grants approval to Wings Over Water Millbrook for a use variance to allow use of the property known as the Old Cottonwood Inn ONLY structure on 2647 Route 44 for a commercial rental and two second floor apartments with the following conditions:

- 1) Use of the property for commercial uses shall be limited to those that would complement the proposed future Swimming Pool and Fitness and Wellness activity.**
- 2) The ZBA shall resolve the question of interpretation as to whether a particular use of the property falls within a list of uses. An outline of potential uses that would compliment the Swimming Pool and Wellness activity are contained in paragraphs**

1,2,3 and 4 of the attached Statement of Proposed Use. Page one only. Page 6

3) All future phases of applicant's development use of the property shall be subject to site plan approval by the Town Planning Board.

4) Cessation of the use of the property as herein permitted for 24 month consecutive months shall result in loss of this use variance. Applicant shall have 24 months from the date of this use variance to secure a building permit.

The Motion was seconded by board member Redl. The vote follows:

Chairman, Parisi aye

Peter Audia aye

Fletcher Coddington aye

Ken Holzberg aye

Frank Redl aye

There being no further discussion, comments, business, a motion to adjourn the meeting was made by board member Redl, seconded by board member Audia. The meeting was adjourned at 8:45PM

Respectfully submitted,

Nikki Caul, secretary

