

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
October 16, 2019 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Weisel, Kim, Alternate Member Jolly;
Counsel Addona; Village Engineer Pennella; Secretary Meszaros

ABSENT: Member Rachlin

Chairwoman Lawrence called the meeting to order at 7:36 p.m.

APPROVAL OF THE MINUTES – September 9, 2019

Mr. Jolly moved, seconded by Ms. Lawrence, that the minutes of the September 9, 2019 meeting be approved as submitted. All in favor. Motion carried.

ADJOURNMENT:

Chairwoman Lawrence announced the following adjournment:

CONTINUATION OF PUBLIC HEARING - Michael and Janiki Degen – 86 Crest Drive
Variance needed for additions and alterations to a two story single family home.

CONTINUATION OF PUBLIC HEARING – Realty@460 S.B., LLC – 460 S. Broadway

John Hughes, Attorney, representing Realty @460 S.B., LLC, appeared before the Board and referred to his recent submission to assist the Board in their consideration of this matter. He raised the following points:

With regard to off-street parking, at the time of site plan approval, the number of off street parking spaces was studied very carefully in relation to the building to ensure that employees, customers, vendors, etc. can all access the site, park properly, and exit. The cars in question as described in the application are personal property for display. The question he is raising to the Board for their interpretation is, “Does the display of personal property, namely two automobiles on the exterior of the property, where no safety issues exist, constitute off-street parking, which would require site plan and or variances to allow the cars to exist?”

Mr. Hughes said that the number of spaces has already been determined and they work at the site. He advised the Board that the property was cited by the building inspector for being in violation of their site plan for off-street parking. Mr. Hughes contends that this is not off-street parking because the cars are not parked in a designated parking area. The area where the two cars were parked is not an area previously designated for parking on the site plan. No person would ever park in the area where these vehicles are. There is a curb in front and there is no room or access to park in this area. Only Honda employees move the cars from time to time. It would be different if his client

created two new additional parking spaces which would require site plan approval and a parking variance. These cars are simply for display and they are personal property. If this was not a car dealership and they sold lawnmowers or tractors, would that require a variance? Lawnmowers and tractors are moveable too. What about a store that sells gas grills or outdoor furniture? The issue here is whether or not the local government can control the display of personal property. Private property owners are allowed to store their own inventory at intermittent times to stimulate interest in their property. His client wants to display his inventory to stimulate interest in his product. His inventory is an automobile. It is not an off-street parking violation, it is simply a display. There are no safety issues.

Mr. Hughes referred to Exhibit B of his submission which is a summary of the business itself to give the Board a sense of the business. In reality, auto sales is a difficult business that requires a huge investment; between the taxes, debt service, overhead, inventory, floor plan, and the fluctuation in finance rates, there is a lot of risk involved in this business. Most of his client's customers are from the 10591 area and they have about 30,000 annual service appointments at the 460 location. His client brings a lot of good benefits to the local economy. These two cars are more than just a couple of cars in front of a building, they are essential to maintaining the business and the service relationship. As the Board is aware, the 480 site was no longer viable for sales and service so when the opportunity came to lease the diner site, Mr. Dachnowicz built the new site. This new venture dramatically increased his overhead and debt service and he needs to sell cars and service is key to selling the cars.

Mr. Hughes referred to Exhibit C of his submission – this application is only to permit the temporary placement of two new vehicles in the front of the building for the purpose of stimulating customer interest and sales. There are no safety issues to pedestrians or other drivers. There are no new parking spaces contemplated. The appearance of the building is also not a concern. The building is 4,700 s. f., and these cars represent 2 or 3 tenths of 1% of the total frontage which is very small. He can't see any negative impact to having the cars there. They represent inventory for sale of the dealership. If plants were put out at this location, would they be having this discussion? Ms. Lawrence said that plants are different from cars. Mr. Hughes said that the Board has no jurisdiction over personal property in a yard. Structures and parking yes, but not personal property. He just does not see it.

Ms. Lawrence asked Mr. Hughes why the cars can't be parked in regular parking spots and noted that there were some empty spaces at the site visit on the morning of Sunday, September 8, 2019. If a customer sees a car parked in the lot with a sticker on it, she thinks this would be preferable to having a car in front of the building. Mr. Hughes explained that the dealership is set up in a way to accommodate the customer while they are waiting for their car to be serviced. When they walk in, there is a sitting/waiting area with free donuts, coffee, cable TV, magazines and internet. At any given time, there are about 10 to 20 people waiting for the car to be serviced. During that time, there is one larger vehicle in the showroom which is all that can fit. Some people will look at this car but not everyone is interested in the larger car so the other two smaller

cars are displayed outside, weather permitting, to give customers the opportunity to look at other models. Looking at a car can sell the car.

Chairwoman Lawrence asked if anyone in the public would like to speak. No one appeared.

Chairwoman Lawrence asked if staff or Board Members had any questions or comment.

Mr. Kim asked Mr. Pennella if the Zoning Code regulates structures in the public right-of-way? Mr. Pennella said the vehicles are not in the public right of way, the vehicles are displayed within the 50 yard setback. Mr. Pennella read the definition of a structure which is regulated by the zoning schedule. Ms. Lawrence said the cars are marketing tools for selling. Mr. Pennella asked if someone were to park their car for sale in their front yard would that be okay? Mr. Hughes said, yes it would be, since the car is personal property. Mr. Kim said that would be different because it is a residential area. The car in question here is really a product.

Mr. Pennella said it is either a structure, which is not on the site plan, which would require an amendment to the site plan and a variance, or it is a display, which is similar to a sign, which would require ARB approval.

Mr. Hughes said these cars are a lot closer to a sign because they are marketing displays. He does not think they fall into off-street parking because he does not think they are structures. However, they still are not signs because they are temporary displays, which is the distinction he is making.

Ms. Lawrence is still not convinced that it is not off-street parking. The cars are parking off street for the business.

Mr. Hughes said off-street parking is when customers, vendors, employees etc. go in park their vehicles for a period of time. The lots have stripes, have ways of going in and out and are subject to site plan approval, at which time the parking plan is considered. These two vehicles do not fall into this category. Off-street parking in the code relates to traffic and pedestrian safety.

Ms. Lawrence feels there is a safety issue to pedestrians since the cars are on the sidewalk. Mr. Hughes referred to his pictures and said the cars are parked in a way so access is not affected. They are parked for display. The cars are placed before operating hours by employees who drive cars all day long. If there was ever an issue, it would be handled through worker's compensation. They are parked in a way so access to the building is not affected. The sidewalks in front are much larger than regular sidewalks. The vendor, customer, etc., is not affected by any of that activity.

Ms. Weisel asked if a person has a business to re-finish cars, can they display the cars on concrete platforms in front of their business touching in front of their house? She feels that the cars are automobiles and not signs and asked if it would be okay to put a

car in front of a home on private property. Mr. Pennella asked if it is a vehicle that operates. Ms. Weisel said the vehicle could operate. She still does not feel a car is a sign, it runs, it has wheels. Ms. Weisel is worried about setting a precedent. It is marketing so it is a self-created problem.

Mr. Pennella said there are two avenues; you can consider it to be off-street parking or you can consider it to be a display. If it is a display, it is within the 50 foot setback.

Mr. Hughes does not agree. He thinks that parking requirements are determined at site plan and applicants must provide required parking, not in the front yard, but, there are no laws that govern people parking in front of their homes. People park cars in their front yard or side yard regularly when they have company, visitors and guests and they are not ticketed. Ms. Weisel thinks tickets are issued. Mr. Hughes said that parking is different than marketing. There are no laws in place which govern this.

Mr. Pennella asked Mr. Hughes what he considers the cars to be. Are they off-street parking or a display?

Mr. Hughes said it is not parking; you can't park in these areas. It is a display and it should be before the ARB but there is no law that governs display. It is not a sign because it is not permanent. A law has not been designed that governs this particular concept. Mr. Pennella said it is a sign because you have the Honda decal on it. Mr. Hughes said a sign is permanent and this is personal property which can be moved. It does not fit the code and it is a totally different concept.

Mr. Jolly asked Mr. Hughes what would happen if someone wanted to buy or drive the car. Mr. Hughes said that the employees would carefully remove the car from the spot. The problem is that sales and service are not combined under the same roof and there is no easy access to get to the 480 building. His client is trying to stay in business and maintain his shop and it is not a trivial matter.

Ms. Lawrence asked Counsel Addona to clarify exactly what the Board is interpreting.

Counsel Addona read part of the public hearing notice:

"To seek an interpretation of the provisions of Zoning Code Section §305-63, which govern "Off-Street Parking and Loading", whether the temporary and intermittent display of two (2) vehicles in the front of the premises constitute "Off-Street Parking", to be regulated by the applicable provisions of this section, and requires site plan review."

Counsel Addona advised that the issue before the Board allows the Board to make whatever determination they feel which could go beyond the scope of what she just read. For example, they could consider this a subset of a broader category of display. The Board could be as specific as possible to avoid the issue of setting a precedent. She advised the Board members, based on discussion with the chair, that she could

prepare multiple resolutions based upon the discussion this evening and the most recent submission by Mr. Hughes.

Chairwoman Lawrence would like to keep the hearing opened so that a discussion can take place among all of the Board members right now.

Mr. Hughes said that there is no pressure for a decision this evening. Site plan approval was a long laborious and stressful process. If we had the time, we would have put it in, but his client is a very honest guy. Ms. Lawrence agreed since Mr. Dachnowicz has been before the Board before.

Ms. Lawrence asked the Board if they want to discuss this further.

Mr. Pennella asked Mr. Hughes what the difference was between the two lots at 460 and 480. Mr. Hughes said the 480 lot is a very busy lot. It is fully operational with safety issues. There are some display cars but they are not all for sale. There is access, ingress, customers walking throughout the lot. There are about 35 cars on that lot. Some are for sale, some are off lease and some are used cars.

Mr. Pennella asked Mr. Hughes what approvals he feels would be required if it was considered a display.

Mr. Hughes said no approvals would be required since it is not off-street parking; the cars are strictly for display so you can only talk about the aesthetics.

Counsel Addona asked Mr. Hughes how the cars are moved into the area and if they are moved during regular operating hours. Mr. Hughes said the cars could be moved during operations or after but would only be moved by Honda employees.

Mr. Jolly said he would be fine if the Board agreed to restricting the number of cars being displayed. Mr. Hughes said they are moved by Honda personnel not daily but frequently, weather permitting.

Ms. Lawrence feels that it is in violation of site plan because it constitutes two cars in the front of the building which was not part of the approved site plan. In that sense, it does constitute off-street parking and is in violation of the site plan and requires approval.

Ms. Weisel said she can't get past the first site plan and the fact that there is a special setback along Broadway and they gave the applicant a variance of 50 feet. They were under the impression that there would be proper ingress and egress with ample parking on the sides and in back and that service would be in this building and sales in the other building. She is thrown by the two cars in the front.

Mr. Jolly said that, whether relevant or not, the restaurant before also had parking very close to the street. Ms. Lawrence said this is a totally different project. Counsel

Addona said it is relevant because each application is different and the Board is not being asked to grant the variance they are being asked for an interpretation. Mr. Jolly is asking whether a variance could be appropriate in this case.

Mr. Kim thinks the cars parked are for display. It does not seem that off-street parking should regulate it. How the display is regulated in particular to the site plan, if it was not on the plan, then it may have to be approved in some other way.

Ms. Lawrence said it seems that the Board is divided and she asked Counsel Addona to prepare the two different resolutions to be considered at the next meeting.

The first interpretation would be that this is a violation of site plan and therefore it applies to off-street parking code. Ms. Weisel agrees but is there a subset of display and she does not want to ignore that. If it is a display, then it different than being in violation of the site plan. Displays were not brought up during site plan.

With regard to the second interpretation, Mr. Kim feels that this should not be governed by off-street parking but that does not negate the fact that the site plan was not approved with the displays.

Mr. Jolly wants it to be a defined outcome.

Ms. Lawrence and Counsel Addona advised Mr. Hughes that there will only be three Board Members at the next Board meeting in November and if he so desired he could adjourn until such time that there was a full Board.

Mr. Hughes agreed to adjourn to the December 9, 2019 meeting when there will be a full Board.

Ms. Lawrence moved, seconded by Ms. Weisel, to close the public hearing. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING - Peter Gaito & Associates - 84 Central Ave.

The following public hearing was re-noticed to properly reflect the use of the space and the number of spaces required for this use. It was made available to the public at this meeting:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Wednesday, October 16, 2019**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Peter F. Gaito & Associates
333 Westchester Avenue, Suite S-303
White Plains, NY 10604

For a variance from Chapter 305 of the Village of Tarrytown ("Zoning Code") in order to renovate the existing first floor space into a wholesale establishment for use by "Artisan

Makers” for the fabrication of high quality functional goods geared toward the hospitality industry and dining room table. This use will increase the number of off-street parking Spaces required.

The variance sought is as follows:

Code Description	Required	Proposed	Variance Required
§305-63 D.(1) Off Street-Parking (wholesale use)	Minimum of 1 space per 1,000 s.f. of gross floor space (4,648 s.f.)	0 spaces	5 spaces

The property is located a 84 Central Avenue, Tarrytown, NY and is shown on the tax maps as Sheet 1.40, Block 16, Lot 15 and is in the GB zone.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard.

Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

Additional approval will be required by the Planning Board and the Architectural Review Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

The mailing receipts were received and the sign was posted.

Peter F. Gaito, the project architect, appeared before the Board, representing his client, Connor McGinn, also present to answer any questions. He has returned with revised plans indicating the layout of the spaces to be used by the makers. He confirmed that the space will still be used as a “Makers” club with the club membership limited to no more than 10 Artisan Makers/members and advised that a description of the club was submitted with the application. In addition to being a club, they are taking the approach that it will also be used as a wholesale establishment. This use will require 5 off-street parking spaces which they are unable to provide and are before this Board to seek a variance for the spaces. He showed the loading area on the site plan and the hatched out working areas for each member. Mr. Gaito explained that there will be no high traffic or sales people coming in or out of the building. The makers will also come and go at different times. In addition, Mr. McGinn lives in Sleepy Hollow, and he will bike or walk to this shop.

Ms. Lawrence asked Mr. McGinn what he meant by “Socially fitting into the community” which was included in his narrative for Makers Central. Mr. McGinn said the idea is to build a community where everyone gets along and it is a good healthy working environment of people working toward similar goals.

Mr. Pennella asked if the club will be ADA accessible to potential club members. Mr. Kim would like the ADA accessibility provided.

Mr. Pennella suggested using the loading area to provide for this access since it is so large. Mr. Gaito agreed that a space could be provided in this area, tandem style to accommodate the ADA Access.

Counsel Addona asked the applicant if he had any objection to limiting the number of memberships to 10 members as a condition of approval. Mr. McGinn said, realistically, he thinks that 7 members would be an ideal number and agreed to limit the membership to 10 members as a condition of approval.

Counsel Addona advised that this is a Type II action with no further environmental review required under SEQRA.

Ms. Lawrence moved, seconded by Ms. Weisel, to close the Public Hearing. All in favor. Motion carried.

Ms. Lawrence read through the criteria for an area variance.

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence said that there will be no undesirable change to the neighborhood as a result of this project. The new business will liven up the neighborhood.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence said that there is no other method that can be achieved.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that the variances are not substantial based on the use.*
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that this project seems to be in line with the character of the neighborhood.*
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that this condition is self-created but does not preclude the granting of this variance.*

Ms. Weisel moved, seconded by Mr. Kim, to approve the variances and authorize Counsel Addona to draft a resolution memorializing the discussion to include a condition to limit the number of club members to 10 and require the applicant to revise his plans to include ADA access inside the loading area. All in favor. Motion carried.

ADJOURNMENT

Ms. Lawrence moved, seconded by Ms. Weisel, and unanimously carried, that the meeting be adjourned – 8:57 p.m.

Liz Meszaros- Secretary