

**VILLAGE OF RED HOOK
ZONING BOARD OF APPEALS MEETING
APRIL 28, 2022
7:00 PM**

Present: Chair Erik Cuthell; Member Maarten Reilingh, Member David Javsicas, Member Steven Appenzeller and Member Sherry Ou-Yang.

Absent: Lara Hart, Secretary
Clerk, Jennifer Cavanaugh filled-in for Lara

Chair Erik Cuthell opened the April 28, 2022 Zoning Board of Appeals Meeting at 7:01pm.

Chair Cuthell announced all members were present and that there was a quorum for tonight's meeting.

Chair Cuthell made a motion to approve the minutes of the ZBA Meeting dated March 24, 2022. Motion seconded by member Appenzeller. All in favor.

Chair Cuthell advised Village Attorney Victoria Polidoro was present with Associate Attorney Andrew Lessig.

Agenda Item #1.

Claire Stehling – 60 East Market Street, LLC
Continuation of Application for Interpretation
60 East Market Street
Tax Parcel ID# 6272-11-567659

Present:

Claire Stehling, Owner of property
Steven and Danielle Lown, Tenants

Chair Cuthell advised this application was tabled from March 24, 022 due to questions needing answering and for the Board to review the new Zoning amendment changing to Gateway Business District.

Chair Cuthell advised he did speak to both the Code Enforcement Officer and Village Attorney.

Chair Cuthell spoke on the meaning of what an Interpretation is by the Zoning Board.

Chair Cuthell said what is in front of us today is an interpretation trying to figure out the type of business and description of where it was and this application is straight forward but confused as to the change of use.

Chair Cuthell spoke on the complaint process and advised that Clark Kimble felt the use changed and prior use was not a towing company and definitely a change in use.

Chair Cuthell spoke on the new definitions and if that is what caused this to be flagged. Member Reilingh said this is definitely a building with 2 garage doors, so that has not changed, and prior it was housing vehicles outside of it, but in his opinion, the building as configured is the same as it has always been.

Chair Cuthell said this Board is limited to what they can do and not an advisory body but has to take Clark's opinion that the new use represented a change in use and therefore needs site plan approval.

Chair Cuthell said the changes to the now Gateway Business District changed none of this process so this is not something that was created by a change that happened after you moved in and bottom line is you should have gotten site plan approval when you set it up for that because it is a change in use according to how both he and Clark see it.

Chair Cuthell said all this Board can discuss is whether Clark was correct or mistaken in saying that a site plan approval needs to happen. Chair Cuthell said he does not understand why it wound up in front of this Board before the Planning Board.

Attorney Polidoro spoke at this time and advised as a landowner they have the right to appeal the determination of the Zoning Board and the right to challenge the letter and the question before this Board is limited to whether or not the decision was right, and the only issue is whether or not Mr. Kimble was correct when he said this is a change in use and site plan approval is needed.

Chair Cuthell said this is about whether or not we as a Board agree that what has happened constitutes a change in use and will require site plan approval.

Attorney Polidoro recommended that the Chair continue to public hearing.

Chair Cuthell made a motion to continue the public hearing. Motion seconded by Member Reilingh. All in favor. Motion approved.

Chair Cuthell asked the Board for comment.

Attorney Polidoro advised public comment should come first before deliberation.

Chair Cuthell asked for public comment.

Claire Stehling asked if a change in use was for business or for anything. Chair Cuthell asked if tow trucks or wrecked cars back there. Ms. Stehling said

Member Ou-Yang asked about change in hours of operation. Steve Lown advised it was a 24-hour business. Member Ou-Yang asked if business before was not 24-7.

The previous use and when it ended was discussed.

Member Javsicas asked how the law would define what a change in use means. Attorney Polidoro said some basic information is was the prior use a permitted use or was it pre-existing and grandfathered because if it was pre-existing non-conforming use and if stopped for a period-of-time that means its lost and needs new approval. There are use categories in the Zoning Law. Attorney Polidoro went over some allowed uses in the Gateway Business District. Attorney Polidoro indicated that the burden here is on the applicant as landowner and it would be helpful to have paperwork, dates and an understanding of when certain events took place.

Attorney Polidoro spoke on special use permit process. Chair Cuthell said we do not know the background on this.

Chair Cuthell felt in talking to Clark it seemed he looked at it and it was obvious that this was different from what was there and should submit for Site Plan approval.

Chair Cuthell said he is not sure what this Board can debate other than the fact that Clark wrote a letter indicating it needs site plan approval.

Member Javsicas said in theory that if this Board thought Clark's letter was wrong we would be the appropriate body to say that but there is not enough evidence right now to contradict what Clark said. Chair Cuthell said that was his default feeling about it.

Attorney Polidoro said it is on the applicant to make their case that Clark was wrong, and if this Board wants to give more time to put together a case for the Board's review; such as what the old use was, whether it was non-conforming grandfathered, otherwise the Board can close the public hearing and rule now.

Chair Cuthell said the complaint was made and it needed to be looked at and when Clark looked at it after reviewing the files (which this Board does have copies of) he determined a change in use occurred and needed site plan approval.

Chair Cuthell said a towing business/storing lot is not specifically mentioned and he's an independent contractor and that's fine if that's the way the words get interpreted by whomever does the interpreting of the permit application and if there is a problem and you get denied because the planning board reads it one way then I can see we would have something to really hash out here and there is so little information and that is all this Board has to work with and it is straight forward that any change requires site plan approval so he would of thought that the applicant would have went for site plan approval.

Attorney Polidoro indicated she was not giving applicant legal advice but spoke on options being you can continue to appeal that Mr. Kimble is incorrect and it's not a change in use; if you withdraw you run the risk that whatever you are proposing isn't permitted under the new Zoning and advised applicant that she may want to speak with an attorney.

Chair Cuthell said the recourse would be is if planning denies the permit for this use, then we have an action.

Attorney Polidoro advised the way it would work is you would look at whatever use is there now and determine does it fall under one of these permitted uses and if you determine that it doesn't then you determine if it would require a use variance and a use variance is very hard to get because you have to show that there is no other economical use for that property. Attorney Polidoro said right now Mr. Kimble's opinion is that the use of the property has changed.

Member Ou-Yang asked if the applicant could come back. Attorney Polidoro said yes and this Board can adjourn. Chair Cuthell said we could debate and decide if we as a Board if Clark believe Clark was right in flagging this and applicant's next step would be to pursue site plan approval but there is a chance it wouldn't go.

Attorney Polidoro said it sounds like they are deeming the tow truck business falls under salesrooms or shop of a builder, contractor or artisan.

Member Javsicas spoke on the definition of a shop. Chair Cuthell indicated the terms are really vague.

Attorney Polidoro said correct and not defined and Clark would have to make a decision first and if you agree with Clark's decision then this Board would have to interpret it.

Attorney Polidoro advised applicant that there is a Zoning Law and it is in place to make sure that your property is protected and its confusing, but we cannot advise you which way you should be going. Ms. Stehling said she knows.

Chair Cuthell said we are not here to make life hard for you but if we approve or deny something it sets precedence and we are a legal body and once we make a decision it sticks and feel he cannot advise them either and they can withdraw this or this Board can table the application to get council, talk to Clark again and establish a continuing use that has not changed.

Member Reilingh asked what the question was if they elect not to withdraw. Chair Cuthell is the question would be do we agree with Clark's opinion that a permit is required for site approval. Member Reilingh asked if we agree they go to the planning board and if we disagree, they are done.

Attorney Polidoro said if you agree, they go to the Planning Board if what they are proposing is an allowable use.

Chair Cuthell said if they dis-agree we are concluding that our CEO was wrong, and this is done.

Member Reilingh said if we suggest you go to the Planning Board you have a chance of getting it approved there and if it is disapproved you have a chance to get it overruled here.

Chair Cuthell said they would have to appeal the decision of the planning board to deny them a permit. Attorney Polidoro said appeal to the Court.

Attorney Polidoro said the planning board decision's only appeal is to the Supreme Court.

If the planning board denies the site plan for whatever reasons you have to go to court, but if the planning board says we don't know if this an allowable use, Clark will weigh in and Clark's decision can be appealed.

Member Reilingh said whereas if they refuse to withdraw does not mean we cannot enforce this evening.

Attorney Polidoro advised this Board has 62 days from close of public hearing.

Chair Cuthell and Attorney Polidoro discussed the Appeal process.

Chair Cuthell said Clark has not denied anything and his opinion. Attorney Polidoro said the question here is whether this is allowed. The issue before this Board is whether or not this is a change in use.

Member Ou-Yang said for us to make that decision the applicant would have to provide the burden of proof that there was no change in use. Attorney Polidoro said right but for you to overturn Mr. Kimble's determination their burden is to prove that it was wrong.

Chair Cuthell so he cannot advise but certainly seems reasonable that there is information we need for this process. Ms. Stehling said she may a lease from a previous tenant. Attorney Polidoro asked what was there prior to that? Goat farm use was discussed. It may have been that the prior use didn't get approval. Chair Cuthell said unfortunately if that is the case that doesn't excuse this situation.

Attorney Polidoro said it is a change from the last permitted approval and we will need to review that.

Chair Cuthell said he did not feel comfortable making a decision this evening,

Member Javscas said if you were to want to have us make a decision tonight and if the question is that there was not a change in use then there is if there was enough information as to whether you would approve that to us tonight, so our decision is whether she proved to us that Clark was wrong.

Chair Cuthell said that was true.

Chair Cuthell made a motion to continue this meeting and hearing to the next scheduled meeting on May 26, 2022 at 7:00pm.

Chair Cuthell said he needs to speak with Clark and Lara and asked about meeting outside of this Board. Attorney Polidoro felt the Board should discuss this as a whole. Chair Cuthell said he needs to speak with Clark and Lara.

Attorney Polidoro said it is up to the applicant. Ms. Stehling felt Clark could not make that decision which led to this. Attorney Polidoro advised Clark made his decision and that is why you are here, because when you communicated to him that you did not understand his decision, and if you don't agree you go to the Zoning Board. Once Clark received a complaint, he was required to do an investigation and then make a determination so it must have been determined, based on his letter, that there was a change in use. Ms. Stehling said yes.

Attorney Polidoro said again it is about what is the last business record on that site and when was site plan approval permitted.

Member Ou-Yang asked if that could be looked up. Attorney Polidoro said yes records can be looked up.

Attorney Polidoro pulled up parcel access and indicated this was listed a single-family use.

Chair Cuthell said maybe that is what triggered Clark. Attorney Polidoro recommended that Clark attend the next meeting. Chair Cuthell said he asked for that, but it did not happen.

Chair Cuthell said this is a flag lot.

Attorney Polidoro said record lists one structure and asked if other structures were approved, and a lot being unraveled here.

Motion seconded by Member Reilingh. All in favor. Motion approved.

Chair Cuthell

Chair Cuthell made a motion to adjourn the April 28, 2022 ZBA Meeting at 7:43pm. Motion seconded by Member Appenzeller. All in favor. Meeting adjourned.

Meeting minutes transcribed by tape
Secretary Lara Hart
Village of Red Hook ZBA