

TOWN OF KIRKWOOD
ZONING BOARD OF APPEALS
December 16, 2019

Present: Duane Travis, Chairman
Mike Maciak, Member
Ed Egan, Member
Cyndi French, Member
Bruce Nemcek, Member

Other Present: Keegan Coughlin, Attorney
Chad Moran, Code Enforcement Officer

Absent: Marc Latini, Associate Member

Chairman Travis called the meeting to order at 7:00 pm.

TOWN SUPERVISOR – GORDI KNIFFEN:

Gordi Kniffen spoke to the Board telling them how much the Town appreciates what they do. He wished them good luck and Merry Christmas.

APPROVAL OF MINUTES:

Motion by Mike Maciak and second by Bruce Nemcek to approve the minutes of the November 18, 2019 meeting as submitted. All voted in favor. Motion carried.

PUBLIC HEARING - T.J. MADISON CONSTRUCTION FOR A.L. GEORGE :

A Public Hearing was held on December 16, 2019 at 7:00 p.m. at the Joseph A. Griffin Town Hall, 70 Crescent Drive, Kirkwood, NY on the application of T.J. Madison Construction regarding property owned by A.L. George, located at 1 Link Drive in the Town of Kirkwood known as Tax Map No. 162.01-1-6 and located in an Industrial Development District, for the installation of an emergency generator.

Chairman Travis read the notice of public hearing and commented that we have the affidavit of posting by the Town Clerk on the sign board, the affidavit of publication in the Press & Sun Bulletin and the Country Courier, and affidavit of service by mail to property owners within 500 feet. The Broome County Planning Department 239 was prepared and comments were received. Chairman Travis read the following into the record: The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impacts associated with the proposed project. The case file was routed to the following agencies for review: New York State Department of Transportation, Broome County Department of Public Works and the Broome County Health Department. None of those agencies had any comments. Chairman Travis stated this is a Type II so we do not need a Short EAF.

Chairman Travis opened the public hearing at 7:04 pm.

Mr. Bob McCain, Operations Manager for A.L. George was present. Mr. McCain explained they have been going a lot of work on their facility, upgrades. Their facility runs 24/7 Monday through Friday. They have had a lot of issues with power outages, which is very detrimental to their business. During a recent storm they lost power for over 3 hours, sending the office people home. Product comes in overnight and is transferred to their trucks and is sent out in the morning. Because of that they decided to put in an emergency generator. They

have never had one before. They try to follow protocol but this permit application was missed, which he apologized for. T.J. Madison has done a great for them. They are requesting that it be approved. The site that it was actually placed at was per NYSEG because of where the power comes to their building from the pole. It is on the corner and there are two other boxes mounted on the telephone pole, which are much more unsightly than the one they put there. They will be more than happy to plant shrubbery around there when the weather permits to make it more appealing. He went on to say they do a good job keeping their lot nice looking. It is a corner lot and is very visual.

Hearing no other comments Chairman Travis closed the public hearing at 7:06 pm.

Chairman Travis explained that the reason it is before the Board is because the general is an accessory use and it has been placed in front of the building. They explained NYSEG dictated where it had to be placed. It is set within the setback rules. The setback rules are 20 feet front and side. Mr. McCain stated from the street it is 30 feet both ways.

Mike Maciak asked if it was a gas generator and Mr. McCain stated yes. Mike asked if it is hooked into the gas line right there and they agreed. Mr. McCain stated the owner would have liked it behind the building but NYSEG dictated where it would go.

Ed Egan asked if the generator would be big enough to run the entire building and Mr. McCain stated everything except the coolers. It will run their power needs for functioning and heat for the office area. It won't run the two big coolers.

Mike Maciak commented they were going to plant shrubs around it. Cyndi French asked if it was protected so no one could hit it with a car and Mr. McCain stated it sits on top of the hill. They will be planting shrubbery in the spring time.

Chairman Travis reviewed the Special Use Permit criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: No. NYSEG dictated.
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: No.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: No.

Motion by Cyndi French and second by Mike Maciak to grant the Special Use Permit with the condition that they put the shrubs in around it on the visible sides to the street in the spring.

Chad Moran explained that because it is an accessory use they were supposed to do the ZBA and the Planning Board. However, in the Code Book you are able to do the Planning Board application here. So by them agreeing to do the shrubs, they can withdraw their application to the Planning Board. The Board agreed to do that.

Roll Call Vote:	Mike Maciak	Yes
	Ed Egan	Yes
	Cyndi French	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion carried.

Mr. Coughlin commented as a procedural correction this was a Special Use Permit approval, not an Area Variance approval. The questions the Board reviewed are the same for the Area Variance and the Special Use Permit. The motion was corrected to reflect that change.

PUBLIC HEARING – JOSEPH MORGAN:

A Public Hearing was held on December 16, 2019 at 7:00 p.m. at the Joseph A. Griffin Town Hall, 70 Crescent Drive, Kirkwood, NY on the application of Joseph Morgan regarding property owned by 5 Irving Avenue, LLC, located at 5 Irving Avenue in the Town of Kirkwood known as Tax Map No. 162.15-2-9.11 and located in a Planned Unit Development District for a Use Variance to operate a marine business, including service, sales and storage.

Chairman Travis read the notice of public hearing and commented that we have the affidavit of posting by the Town Clerk on the sign board, the affidavit of publication in the Press & Sun Bulletin and the Country Courier, and affidavit of service by mail to property owners within 500 feet. A Broome County 239 was filed. Chairman Travis read the following into the record: The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impact associated with the proposed project. However, they have enclosed some comments from May 2017. The Broome County Health Department stated as we have discussed previously, in buildings where motor vehicle repairs take place floor drains leading to dry wells of any type are regulated by the USEPA. If floor drains are present in the project building, they will need to be closed or a USEPA permit obtained. Also chemicals and petroleum products should be stored inside to prevent accidental spills from contaminating soils and groundwater. Outside chemical/fuel storage should be only done with secondary containment or over an impervious surface. From an email to Chad Moran from Lora Zier the following was read into the record: Please send a site plan that shows the entire tax map and location of the 4,000 SF building, parking spaces, auto and/or boat storage area, right-of-way, repair area, and existing and proposed structures and use for the entire area. What will take place in the other buildings located on the site? Is the applicant purchasing the entire 5.22 acre parcel? Does this project require an area variance for parking? The attached page 14 site plan states – needs more parking spaces.

Chairman Travis asked Chad Moran if we received a site plan after that and Chad stated no the original people that went before the Planning Board decided to scrap it. So Joe Morgan came in under the same guise, doing the boat repair. Chairman Travis asked if it was a different person at the time and Chad stated yes.

Chairman Travis opened the public hearing 7:19 pm.

Mr. Joe Morgan was present.

Mr. Morgan explained that they had owned a marine business in Campville, NY called Hanifin Marine. They had been in the Marine business for over 30 years. The family has been in the business for almost 100 years. He lost his father last year and their previous business had to be shut down and sold off. Now he is starting over. He was unable to use the previous location. He had the opportunity to set up here in Kirkwood and the property does provide ample space for what they want to do. The first part of the business has been service and storage and he plans on pushing forward with sales, selling boats, motors and trailers, selling individually and as packages.

Mr. Morgan went on to say that Chad came up and brought him the packet which included minutes from the previous meetings when Dan McAvoy was going to set up shop there for auto and boat repair. Mr. Morgan said he was not going to do any automotive repair, only their own vehicles that they have. It is just boat, trailers, and motors. He is leasing the property, he doesn't own it. He would like to buy the property if the opportunity is there.

Mr. Coughlin explained in looking at the application there is a chance the Board may ask for more information so you may want to leave the public hearing open in case there is more information you need. If not, it can be closed.

Chairman Travis asked if he was leasing the property and Mr. Morgan stated yes. Cyndi French asked if he had boats stored there now and Mr. Morgan stated yes. Ed Egan asked inside the building and Mr. Morgan stated some are in the building and the stuff that gets put outside the building is shrink wrapped. There is approximately 25-30 boats there total between what is in the building and what is outside. Some you can't see as they are behind the building. Mr. Morgan explained one lot he is not using, he only has access to the bigger lot that was graded down. Cyndi French asked if he was paying for the whole lot; you say you want to expand it but do you pay rent at the moment and Mr. Morgan stated yes. He has everything but the apartment building that is next door and owned by the same individual. He has access to the main building, the 4000 SF building that is fenced in partially in the front, and directly across the street, the bigger one, to the left is what he has access to. When he does get to the point of expanding or having more customers he does have access to the next one.

Mike Maciak asked if they had fenced that in and Mr. Morgan explained one piece across the front is fenced to the main building. There is fencing that goes down the big lot, about $\frac{3}{4}$ fenced in but to the road it is open. Mike Maciak asked if they were going to put a light in the area where the boats are and Mr. Morgan explained there is a light on the side that was just replaced and they have a new light but are waiting for a lift to get up and do the front. He is going to contact NYSEG to see if it is possible to have an additional light put on the pole to look over the lot with the boats. Mike Maciak commented behind that is the auto place, Batzels. Cyndi French stated yes, and he is below it.

Mr. Morgan explained that there are some before and after photos, the place was pretty overgrown. They painted the building, which is $\frac{3}{4}$ painted now. It needed a good facelift. There is more work to be done in the spring. Mike Maciak asked if the storage was for 6 months only and Mr. Morgan stated yes.

Chairman Travis asked Chad Moran if the building was vacant for a period of time and Chad stated yes. He explained that the Planning Board approved everything he wanted to do except for the storage of the boats. He is here now about storing the boats temporarily in the fenced lot. Mike Maciak stated it was vacant but they still had stuff in there storing until they sold the building. Chad Moran agreed and stated fire inspections were still being done. Mike Maciak stated they weren't doing business out of there.

Cyndi French asked we are here for a use variance on the property for storing outside, not the business, the business is ok and Mr. Morgan stated the way he understands it, it was to make sure it is ok to keep those boats for storage outside for 6 months. Mr. Coughlin asked to potentially start selling too and Mr. Morgan stated we haven't gotten that far yet. Chad Moran stated this is just for the storage. He will have to go back to the Planning Board if he wants to sell boats. Mr. Coughlin asked if sales was allowed under the code and Chairman Travis stated this property is zoned PUD Multi Residential and was done that way because of the apartment building. That being said that building that is there is under a multi-residential and is a non-conforming use.

There was a lengthy discussion regarding the non-conforming use. If they allow more parking area they are expanding a non-conforming use. The parking lot was always used by the people using the building. Mr. Morgan clarified the expansion is expanding his business by putting in the sales. As far as building anything the only thing he could use is an open style building, a pole barn, something for cover. The zoning in that area is PUD but the racetrack is B1 with PUD in the front parking lot. The use variance would go with the entire property. It would make that use an allowed use for the entire property forever.

There was a discussion as to whether the owner of the property is aware of this. Mr. Morgan explained the owner is aware but couldn't be at the meeting. The property owner did not sign the application but Chad has spoken to the owner and does support the project.

Bruce Nemcek asked if there were any people in the apartments and Mr. Morgan stated the apartments have tenants. The neighbors have been supportive. Being off the beaten path he won't be affecting the traffic use. The use of that road is for the tenants in the apartment building and two other houses but those people have another outlet down to Francis Street. Bruce Nemcek asked if the business would be open at night and Mr. Morgan stated no, 6:30 would be the latest at times.

Cyndi French asked if the use variance could be for part of the property and Chairman Travis stated no, entire parcel.

There was a discussion regarding how the property was used with the prior owners. The prior owners built the apartment building and used the lot across the road for storage of equipment. It isn't an overgrown field anymore, it has been cleared.

Cyndi French stated she has an issue with granting the use variance for the entire parcel.

Chairman Travis questioned if the building and the area across the road, which is used for parking now, was being used as a non-conforming use, can it still be used for that and Mr. Coughlin stated if it was vacant for 6 months it would have lost its status as a non-conforming use. If the use that is not conforming is no longer there after 6 months. There was a discussion as to when the business stopped being a business, when the auction was held. The auction was 3-4 years ago but the owners still used the building for storage after that. They were trying to sell the inventory.

Mr. Coughlin explained that in the code it is one year for non-conforming use to lose its status. Dates may become very important. Cyndi French commented if the closing was in the spring of 2019 he doesn't need to be here. Mr. Coughlin stated there is a difference between the business stopped being used and the closing.

Mike Maciak asked what are the options now and Mr. Coughlin explained that one option would be to go through the test to see if you could grant the use variance. Another option would be to hold open the public hearing, not make any decision and get more information to see if he needs the use variance or not. Such information as to when did the business stop being used at 5 Irving, the exact date of that. If the use had stayed and Chad determines the use is a similar use that it would maintain its non-conforming use status then he could continue to do it subject to site plan approval.

Mike Maciak asked Mr. Morgan if he picked up most of the boats or do the people come there to drop them off and Mr. Morgan stated for the boats that are there he picked up about half of them and the other half were dropped off. Mike Maciak asked if he then winterizes them and puts them out for storage and Mr. Morgan stated yes. Cyndi French asked if that was fenced in and Mr. Morgan stated yes. Mr. Morgan stated in the springtime either the customers pick them up or he takes them back to the owners.

Cyndi French stated she is all for tabling it if we find that he doesn't need to do a use variance. Mike Maciak stated he understands tabling it but he wants to understand what they need to do to find a home and feel welcome.

Cyndi French suggested going through the use variance test. Mr. Coughlin stated in the use variance test the most difficult portion of the test is whether or not the property can get a reasonable return on its investment absent the approval. For Mr. Morgan that is true. For the property owner and the property itself it is already making money on the property. Mike Maciak stated he is making money on part of the property and asked why isn't he entitled and Mr. Coughlin stated if it was parceled off this would be a much different conversation.

Chairman Travis reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return, substantial as shown by competent financial evidence. Board: Apartments are making money and the lease is making money for the parcel. For the other part of the parcel it would cost a significant amount of money to bring it to a useable use. It was suggested it could be seasonal storage. Chairman Travis stated he is not seeing any financial evidence that shows that a new use would be financially more advantageous than the current use. Mr. Coughlin added you would have to see that the current parcel with its zoning and any allowed use in that zoning makes it so this parcel cannot return a reasonable amount in its investment for the entire parcel.

Mr. Coughlin commented if the Board holds open the public hearing and tables this until next month then Mr. Morgan would be more than able to contact the property owner for more information. Mr. Morgan stated that the owner couldn't be here tonight. Chairman Travis stated he thinks it should be tabled.

Motion by Ed Egan and second by Mike Maciak to table this for one month so the following information can be obtained:

1. The date the previous business ended.
2. The date that the parcel was purchased.
3. If the parcel is going to be split up in the future.
4. Financial proof as to why the property cannot get a reasonable return on its investment with the current uses allowed.

Roll Call Vote:	Mike Maciak	Yes
	Ed Egan	Yes
	Cyndi French	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion carried.

Motion by Ed Egan and second by Bruce Nemcek to adjourn the meeting. The meeting was adjourned at 8:09 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary
Zoning Board of Appeals