

# TOWN OF KIRKWOOD ZONING BOARD OF APPEALS

June 15, 2020

A Zoning Board of Appeals meeting was held on June 15, 2020 at 7:00 p.m. via Zoom Video Conference on the application of Francis T. French regarding property located at 374 Foley Road in the Town of Kirkwood known as Tax Map No. 163.02-1-22 and located in a Residence R1 District, for a use variance for three 48 ft. X 8.5 ft. trailers located on the property that are licensed with no truck to haul them. Continued from the May 18, 2020 meeting

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.

## **APPROVAL OF MINUTES:**

Motion by Mike Maciak and second by Ed Egan to approve the minutes of the May 18, 2020 meeting as submitted. All voted in favor. Motion carried.

## **PUBLIC HEARING (Continued):**

Chairman Travis explained this was held over from last month so that Mr. French could have a chance to address the Board with his concerns. Mr. French was present and stated he didn't have any concerns. The trailers are parked there and he has a CDL license. He could rent a truck and move them but right now he is disabled so he can't do that. He says he plans on going back to that.

Chairman Travis asked if a Short EAF needed to be done and Mr. Coughlin stated yes, it is an Unlisted Action under SEQR. Mr. Coughlin reviewed Part 2 of the Short EAF with the Board and their answers are included in the file. The question for the Board now is whether or not the two moderate to large impacts result in a positive impact to the environment for the purposes of SEQR. That would require an environmental assessment to be done. The Long Form Environmental Study, which talks about the impacts of this change or whether or not those moderate to large impacts are there because of the community and the chief difference in the land use plan but for the purpose of SEQR the result is still a negative declaration. It is an 8.5-acre parcel and the use is limited to a certain area of it and it is not in the middle of town. Things like that would be part of the Part 3 explanation in the event that a Negative Declaration was issued. Chairman Travis stated he doesn't think we need a full investigation over this. Mr. Coughlin stated this is just the environmental impact, not the approval of the use variance. One of the things in the SEQR handbook when it comes to use variances obviously the answer to question #1 and #3 are going to be at least some impact. The impact on the character of the community is not the same level in the use variance test as in the SEQR test. Under SEQR it is a higher standard because it is talking about the entire environmental impact of it where in the use variance gets down to the actual character and quality of the community. If this was an amusement park we would be talking about something different but the impact here is probably a lesser extent than the SEQR prospective. Chairman

Travis stated in Part 3 the second box should be checked. A copy of the complete Short EAF is included in the file.

Motion by Ed Egan and second by Bruce Nemcek to declare a Negative Declaration for the purposes of SEQR.

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

Motion Carried.

Hearing no other comments, Chairman Travis closed the public hearing at 7:17 pm.

Chairman Travis, addressing the Board, stated there is nothing in our zoning laws, in any of our districts, that would allow trailers to be used as storage. The Zoning Local Law that we do have is Article 5 – Supplementary Standards, Section 508, Use of Motor Vehicles and Trailers for Storage stated as follows: The following regulations shall apply on properties within a “R”, “R-1”, or “A/R-R” District and in Business 1 (B-1) and Business 2 (B-2) Districts where there are presently residential non-conforming uses. Items whose original purpose is not intended for storage, including but not limited to motor vehicles, mobile homes, travel trailers or semi-trailers shall not be used as storage facilities. However, licensed trailers located on the site of a work project used for the temporary storage of construction materials in connection with the work project shall be allowed during the period that construction is taking place in any zoning district of the Town pursuant to a building permit in full force and effect issued by the Town Code Enforcement Officer pursuant to A Local Law Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code.

Mike Maciak asked if this did get approved it would be spot zoning and Chairman Travis stated it is creating a non-conforming use. Mr. French stated he is not using them for storage. One is used for hay. Chad Moran stated to Mr. French you told me they were used for storage for things that came out of the house after the floods and Mr. French stated one is, part of it, and he has it almost emptied out. When that is empty he will use it for another hay trailer.

Lew Grubham asked what the zoning is and Chairman Travis stated R1. Lew Grubham asked doesn't the zoning say you still can't have the trailer there but you can have the tractor there and Chairman Travis agreed. Chairman Travis stated under Accessory Uses in residential, Article 3, Section 301.1, Paragraph G., #3 reads: Overnight parking of Semi-Trucks of a gross vehicle weight of 10,000 lbs. or more on either public highways or private property is prohibited, except the registered owner of such Semi-Truck without Semi-Trailer may park not more than one such vehicles on property which is his/her principal residence or on adjacent property with the written consent of the owner of such adjacent property. This written consent must be submitted to the Town of Kirkwood. For purposes of this section, such Semi-Truck may be registered to (1) a corporation of which the property resident is the majority owner of the stock of said corporation, or (2) a limited liability company of which the resident is a member of said company owning a majority interest therein. Chairman Travis stated under Article 3 you are allowed to park a semi-truck there overnight but no trailers.

Mr. French asked if he had a truck could he have a trailer hooked to it and Chairman Travis stated no. Mr. French stated then he better get a variance and Chairman Travis stated there is no variance. There is no place in

this town, any district in this town that will grant a variance for that semi-trailer to be parked on the residence. Mr. French stated now he would have to pay some one to store them for him and Chairman Travis stated yes. Mr. French stated in a business of driving a truck and you are telling me I can't leave the trailer there and Chairman Travis no, you can't leave the trailer there, that is what the zoning laws say. Mr. French asked if he could apply for a variance to get that changed for his property and Chairman Travis stated you can apply for a variance but we would still follow the zoning laws that are here. Chairman Travis stated you can petition the Town Board for a Special Use Permit to do that. That is the next course of action after this Board. We haven't voted on this yet, he is only telling the board members what our laws say. We still have to formally vote on whether we would grant a use variance or not.

Chairman Travis reviewed the use variance criteria with the Board:

1. Cannot realize a reasonable return, substantial as shown by competent financial evidence. Board: No financial evidence to evaluate at this time.
2. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood. Board: Yes, it is unique to the district.
3. Requested variance will not alter the characteristics of the neighborhood. Board: Yes, it will alter the neighborhood.
4. Alleged hardship has not been self-created. Board: Yes, it was self-created.

Bruce Nemcek commented that one of his neighbors is a tractor-trailer driver and he tried bringing his rigged trailer up to his house and the Town stopped him. He had to disconnect his trailer and bring the tractor home. That happened within the past few years. You can't bring the trailer home, just the tractor.

Motion by Mike Maciak and second by Ed Egan to deny the use variance.

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

Motion carried.

Mr. Coughlin explained to Mr. French he would have to request a new legislative change to allow a special permit for this or make this type of storage allowed in the Town. Mr. French stated trailers are all over town. He went on to say he would have to rent space and that would be a hardship. He didn't think it was a problem in the town. Chairman Travis explained this Board interprets the town laws and makes determinations based on what the town laws are. The next town board is June 30<sup>th</sup> at 6 PM. Mr. French asked there is a garage on that property and if he makes that a commercial garage for his business would he be able to leave the trailer there and Chad Moran stated that would be spot zoning. It has to be a residential garage and a residential house.

Motion by Mike Maciak and second by Ed Egan to adjourn the meeting. The meeting was adjourned at 7:38 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary  
Zoning Board of Appeals