

ZONING BOARD OF APPEALS
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TOWN OF WAPPINGER



ZONING BOARD OF APPEALS

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May 3, 2018

To: Joseph Paoloni
Town Clerk

From: Bea Ogunti, Secretary
Town of Wappinger Zoning Board of Appeals

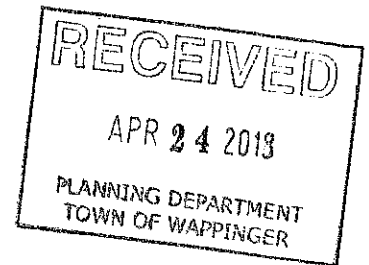
Re: M&C of Dutchess, Inc. Decision
Appeal No. 18-7637

Attached you will find the original Application/Decision & Order For 20 MacFarland Road, Wappingers Falls, NY 12590, Tax Grid No. 6157-04-720271. I would appreciate it if you would file these documents.

Attachments

cc: M&C of Dutchess, Inc.
Town File
Building File
Town Attorney

**TOWN OF WAPPINGER
ZONING BOARD OF APPEALS**



**APPLICATION FOR A USE VARIANCE
FINDINGS & DECISION**

Appeal No.	18-7637
Application Date:	December 20, 2017
Applicant	M&C of Dutchess, Inc.
Premises Located at:	20 Mac Farlane Road
Tax Grid No.:	6157-04-720271
Zoning District(s):	R-20
Record Owner of Property:	M&C of Dutchess, Inc.
Variance of Code Sections:	§ 240-37 (District Regulations for Use)

Description of the Premises & Proposed Variance

The premises that are the subject of this application is a 2.275-acre lot located at 20 Mac Farlane Road in the R/20 Zoning District. According to parcel access, the principal structure on the premises is a 2,520 square foot garage constructed of concrete block. An accessory shed is also located on the property.

The applicant seeks to obtain a Use Variance to permit a warehouse (not self-storage) or a contractor's office and storage of construction materials, supplies and equipment, including plumbing and electrical provided that any outdoor storage is suitably screened.

Evidence Presented

An application dated December 20, 2017.

Letter of Neil J. Alexander, Esq. dated February 5, 2018 with attachments A-K.

Historical Uses of the Premises

According to the records of the Town Assessor, a garage was constructed in 1950 by then owner John T. Sloper. A garage appears in the 1955 Aerial Access photograph from Dutchess County GIS. On September 22, 1966, the Town issued a building permit for an addition to the existing ambulance garage that was approved by resolution of the Planning Board on September 19, 1966. See Exhibit A to Alexander Letter. A note on the permit indicates, that the permit was voided when the building was demolished with a demolition permit issued in June of 1996. On September 20, 1984, a Two Bay Garage 27' x 36' addition was granted a Certificate of Occupancy. The present garage is approximately 2,500 square feet as shown on Parcel Access.

From approximately 1950 to 2003, the premises were used as an ambulance garage and office. In 2003, the ambulance service was moved to the Town Emergency Service Building at 16 Middlebush Road and the property was sold by Sloper Willen Community Ambulance Service to Patrick Van Tassell and the deed was recorded on January 5, 2004. Brian Darcy acquired the premises in a deed recorded on December 30, 2004.

From 2004 to 2017, the property was operated as an automobile repair garage, a car storage facility and other uses by Darcy and his tenants.

M&C Dutchess obtained the property by a deed in lieu of foreclosure dated November 21, 2017. M&C Dutchess cleaned up the property after taking title and now seeks this use variance.

Public Hearing

A public hearing on the application was held on March 27, 2018. The Applicant's Attorney Neil J. Alexander, Esq. spoke on behalf of the applicant. There were no other speakers.

The public hearing was closed on March 27, 2018

Review of Use Variance

The determination of the ZBA in granting a use variance is guided by Town Law §267-b(2)(b) which states:

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.

The ZBA determines that the evidence presented result in the following determinations regarding the above noted factors.

Reasonable Return

In order to obtain a use variance, the Applicant must prove that it cannot realize a reasonable rate of return on its investment if the property is used in conformance with the currently permitted zoning uses as demonstrated by competent financial evidence. The Applicant has provided two cost estimates to construct a single-family residence. The estimate of Stoneykill

Contracting, Inc. states that the cost of clearing the site would be approximately \$147,000 and the cost of constructing a 2,400 square foot single family home is approximately \$252,000 or \$105 per square foot. Dutchess Builders LLC estimates that the construction cost for a 3-bedroom, 2,500 square foot, raised ranch single family residence would be \$305,900.00. These are construction costs and do not include the cost of acquiring the land.

The ZBA finds that these construction cost estimates are competent evidence and are consistent with cost data that the ZBA has received on other recent use variance applications.

The Applicant also provides a Comparative Market Analysis Summary prepared by Debbie Allan of Berkshire Hathaway Hudson Valley Properties that estimates that the Median Sale price of a single-family home would be \$289,900.

The ZBA finds that this sale price analysis is competent evidence for purposes of this application.

Based on the construction cost estimates and the real estate market analysis provided, the construction of a single-family residence would not yield a reasonable return on the property. In fact, the owner would likely suffer a financial loss if forced to construct a single family residence.

Presently, the property is vacant and is not generating any income.

The Premises cannot yield a reasonable rate of return for the applicant.

Hardship to the Property is Unique

The garage on the premises was constructed in or about 1950 which is prior to the adoption of zoning in the Town of Wappinger in 1963. There is unique hardship to this property because there has been a history of the use of the property as a garage as a non-conforming use. The adjacent property to the east is used for storage of sets for a community theater and the property to the rear is undeveloped with a commercial potential.

The hardship to this property is unique compared to other similarly situated properties in the zoning district.

Change in Character of the Neighborhood

The surrounding area has single family residential uses to the west and to the north. The premises are set back from Mac Farlane Road, which is a well-travelled Town highway. The garage is approximately 1,000 feet from Route 9.

As noted, a garage has existed at this location for over sixty years. The Applicant has proposed to use the property as a storage building for contractors with accessory storage. The Applicant has agreed to submit to site plan approval by the Planning Board and appropriately screen the outdoor storage of vehicles, equipment and materials.

The Applicant has cleaned up the premises which makes it more visibly appealing which will result in a positive change in the character of the neighborhood. The proposed use as a contractor

storage facility with accessory office spaces is a less intensive use of the site than what was previously on the site when it was used to store cars.

Granting of the use variance to allow for a contractor storage facility with accessory office spaces will not result in a change in the character of the neighborhood.

Hardship Not Self-Created

The hardship has not been self-created because the garage building was constructed prior to zoning. The applicant did not purchase the property but received it in lieu of foreclosure.

Decision

The applicant has proven unnecessary hardship through the application of four tests required by the state statutes. In finding such hardship, the ZBA grants a variance to allow use of the property as a warehouse (not self-storage) or a contractor's office and storage of construction materials, supplies and equipment, including plumbing and electrical provided that any outdoor storage is suitably screened. This variance is the minimum variance that should be granted to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

This variance shall be granted to Tax Grid Nos.: 6157-04-720271

Conditions

The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

1. Any new use of the property is subject to site plan approval by the Town of Wappinger Planning Board in accordance with Article IX of the Zoning Code. The Planning Board may waive a public hearing on the site plan review if it chooses to do so.
2. No outdoor storage or display is permitted without approval of the Planning Board. Outdoor storage and display areas shall be screened from all streets and residential areas. Such storage/display area shall not encroach on any yard setback, nor be located in any designated landscaping/buffer area set forth on the approved site plan.
3. Cranes, bulldozers, excavators, road graders, steam rollers and other heavy construction equipment may not be stored on the premises. Bobcats, small backhoes, and mini-excavators may be permitted by the Planning Board provided that they are stored indoors or stored outdoors with suitable screening.
4. No retail sales are permitted.
5. The Town shall be permitted to conduct an annual inspection upon 5 business-day notice to the owner or tenant of the property.

6. All prior non-conforming uses are deemed to be terminated and shall not be permitted to continue.

The foregoing is the decision of the ZBA.

VOTE