

Town of Milton Zoning Board of Appeals January 27, 2011

Attendance: Mary Lou Festa (Chair), Brian Companion, Fred Harris, Kim Weaver, Ken Buhrmaster, Jim Cook (Alternate), Wayne Howe (Zoning Official), Martin Pozefsky (Attorney)

In absence of Secretary Sue Talmadge, Mr. Pozefsky indicated he would take meeting notes.

The meeting was opened with the Pledge to the Flag.

The meeting minutes of November 18, 2010 were approved as written with a motion by Buhrmaster, a second by Companion and all members voted in favor of the motion.

Public hearing – 262 Greenfield Avenue Tax ID No. 190.17-2-11 Kingra – Use Variance.

Mr. Kingra was in attendance to represent his application.

Howe indicated the following in regards to the property:

It is located in the R1 zoning district.

It has an active duplex with a Special Permit for that use.

Relief to operate a contractor yard to house a paving company is being requested.

A contractor yard is not permitted in the R1 zoning district.

Pre-existing contractor yards do exist in the town and if the use ceases for more than one year then a variance is needed to re-establish the use.

Mr. Kingra indicated the following in regards to the property:

It was originally a junk yard that has been cleaned up.

The business use (auto repair) on the property has been closed.

There is no pollution.

The property is sandy soil. There are recent financial problems that lead to the need for the income. The property has a mortgage.

The contractor's come in at AM and later at night to retrieve their vehicles.

The garages are rented for storage of paving machines.

Willing to put up a fence closest to the driveway.

The property has dump trucks stored as well as paver and some rollers.

Festa referred to the use variance criteria that must be met- reasonable return, unique hardship, not alter character, hardship not self created – all criteria must be met.

Kingra indicated the rent received is \$350 and he just wants to pay the mortgage.

Howe indicated the duplex is currently a legal use with a Special Permit. There is no blacktop or materials stored – there are some gravel and paver stones.

Kingra confirmed there has been no business use on the property for more than 10 years.

Kingra indicated had no job for 2 years and now is temporary at the post office – he is barely making it financially.

Buhrmaster inquired what else he could do with the space and Mr. Kingra indicated there is nothing else.

Festa inquired about fuel and Kingra indicated there is no fuel stored on site.

Buhrmaster inquired about financial objectives for the property prior to the paving company.

Kingra explained the apartments are not paying rent and he has been able to pay the mortgage but lost his full time job.

Buhrmaster indicated Mr. Kingra may be trying to get back to where he was before with the property and the applicant indicated yes.

Buhrmaster inquired if Mr. Kingra is in violation of zoning.

Howe indicated the activity has ceased upon the notification of violation. The public garage (commercial) also ceased – not permitted because doing for profit, both pre-existing nonconforming ceased over one year so lost. Duplex needed the 2 acres for well and septic – one acre per unit.

Pozefsky advised the SEQRA would need to be addressed.

A negative SEQR motion was made by Harris, Seconded by Weaver, All voted in favor.

The public hearing was opened.

Karl Carrig - 260 Greenfield Avenue – is a neighbor, objected to dump trucks coming and going on property – hours of operation are sporadic.

Calvin Cline – 112 Citation Way – lives one house away from the site – concerns about change in the single family use zoning district, feels encroachment on permitted uses, not in best interest of the town, it is used as a 2 family and the property is completely utilized for that use, adding another use violates the zoning use, the kind of use is detrimental to character of neighborhood which is single family, commercial use has equipment stored next to single family homes, it is an obnoxious use, petroleum solvents are used to clean the asphalt trucks, it is an environmental harm to the soil, and the odor from

processed asphalt, there is currently open burning of garbage on the property, financials – difficulty paying the mortgage is a hardship but he admits renting for less than the worth – it is self imposed hardship – he could change the market rates – financial hardship applies to current use, not shown here. Mr. Cline suggested the SEQR motion should be rescinded.

Mike Penfold - 105 Citation Way – this is the 3rd commercial use on the property – the trucks enter late at night – do not want to look at a paving company – odors, safety, kids, home values will be affected.

Pat Quartez – 103 Citation Way – there is a preexisting paving company – Cornell Paving. There are noisy trucks, early in and out, exhaust fumes, and odors from blacktop, if variance granted it could expand the use – truck cleaning is an environmental problem, the neighborhood would change.

Mr. Kingra addressed the public concerns – Citation Way was built prior to the business being closed, they knew the junkyard was there, the tires were cleaned up in the back, groundwater was cleaned with biodegradable materials, the air pollution is from other junk yards, the tenants have stopped burning, it is 200-300 feet to the back property line, the hours of operation could be regulated.

There were no other public comments. Everyone had an opportunity to speak. The public hearing was closed.

Buhrmaster made a motion to deny the use variance request because the applicant failed all four criteria:

1. No proofs not realize a reasonable return with the permitted use.
2. Nothing unique about the hardship to the property.
3. Variance would alter the single family nature of the neighborhood.
4. The hardship is self created.

Harris made a second to the motion. All members voted in favor.

There was no other business and the meeting was adjourned with a motion by Harris, a second by Weaver and all members in favor.