

Town of Ballston
Zoning Board of Appeals

**TOWN OF BALLSTON
ZONING BOARD OF APPEALS**

Regular Monthly Meeting: July 2, 2014

ATTENDEES: Michael Lesniak, Chairman
Marilyn Bell, Vice Chairman
Ellen Brown
Robin Kane
Fred Rogner
Daniel Russell
Stephen Merchant, 1st Alternate
Daniel Mertzluft, 2nd Alternate
Peter Reilly, Attorney
Thomas Johnson, Building Inspector
Members of the General Public

Chairman Lesniak called the July 2, 2014 meeting at 7:30pm and Ms. Kane led the Pledge of Allegiance. The chairman asked for corrections to the May 7, 2014 minutes.

Very minor grammatical corrections.

MOTION: Ms. Kane made a motion to accept the June 4, 2014 minutes as amended. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

OLD BUSINESS:

Dolomite Products, Inc - Interpretation of 4/2/14 letter from Peter Reilly, Deputy Town Attorney. Adam Schultz, Esq. with Couch White, LLP, Michelle Piasecki, Esq. and Danielle Quinn, Intern were present.

Dolomite Products, Co., Inc. hereby appeals to the Town of Ballston Zoning Board of Appeals for an interpretation of the determination of the Planning Board to process Dolomite's Site Plan Application ceased upon the filing of Local Law 3-2013.

Mr. Schultz said Dolomite has had an application for site plan approval pending with the Planning Board since June 6, 2011. A revised Draft Environmental Impact Statement (DEIS) was submitted to the Planning Board and despite SEQRA's requirement the Planning Board to

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determine the adequacy of the DEIS within 30 days has yet to notify Dolomite of the status of the revised application.

Mr. Schultz said the Planning Board's response to Dolomite's September 24, 2013 submission remains outstanding - 275 days to date, with no response.

The town's letter dated April 2, 2014 "that the Planning Board was under and is under a continuing obligation to process Dolomite's Application." The Board's jurisdiction to process such application ceased upon the filing of Local Law 3-2013 with the New York State Secretary of State on October 24, 2013. Local Law removed Dolomite's intended use as one that is permitted in the Industrial Zoning District.

The town's letter dated April 5, 2012 "It's the Town's position, that the Town's zoning ordinance does not require subdivision approval for the various improvements that are located within the Curtis Industrial Park (CIP).

The town's interpretation of the term "use" contained in the Ordinance. In pertinent part, §138-3 of the Ordinance defines "Use" as "this term is employed in referring to the purpose of which any buildings, other structures or land may be arranged, designed, intended, maintained or occupied."

The letter from Caffry & Flower dated March 27, 2013 alleges the Curtis Industrial Park (CIP) is currently in violation of the Town's Zoning Code, and a subdivision application must be filed - only one principal use be allowed pursuant to §138-113. Furthermore, numerous uses exist within the Curtis Industrial Park (CIP).

A request for a written determination for interpretation of the following issues:

1. Whether the entire Curtis Industrial Park (CIP) must be subdivided; and
2. Whether, from this point, additional new uses within the Curtis Industrial Park (CIP), including the proposed HMA plant, require subdivision before such a new use commences.

The assertion, based on the interpretation of Mr. Johnson's letter of April 5, 2012 to Claudia Braymer with Caffry & Flower that Dolomite's project need not be a permitted use within the Curtis Industrial Park (CIP) however, consistent with all other projects, the intended use of the property must be one that is permitted within the Industrial Zoning District.

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Mr. Schultz stated that a letter dated April 2, 2014 by Mr. Reilly, attorney the board is in conflict with the letter written April 5, 2012.

Chairman Lesniak said the Curtis Industrial Park is zoned Light Industrial District and is a single parcel.

1. Use - Light Industrial Park (CIP)
2. Light Industrial Park consists of tenants and operations within the Light Industrial Park.

Chairman Lesniak polled the board - the board concurred.

Chairman Lesniak said the number of uses predated zoning - permitted uses are ("grandfathered").

Chairman Lesniak said Local Law 3-2013 filed with the New York State Secretary of State on October 24, 2013 removed Dolomite's intended use as one that is permitted in the Industrial Zoning District.

Chairman Lesniak polled the board;

Ms. Kane said it has been an Industrial Park for 20± years and not and allowed use due to Local Law 3-2013.

Mr. Merchant said the use does not fit.

Ms. Brown said it is not a permitted use.

Mr. Russell said he agrees with board's comments.

Ms. Bell said this would have been an approved use in 2013.

Mr. Rogner said it is not a permitted use.

Chairman Lesniak said it is not a permitted use.

Chairman Lesniak stated existing tenants at the Curtis Industrial Park (CIP) predate present zoning.

Curtis Industrial Park is owned by one entity with several tenants and businesses located within the park.

Mr. Schultz distributed a list of approved uses within the Curtis Industrial Park (CIP) - showing multiple uses - All one lot; not subdivided. Uses to be properly established.

Mr. Schultz stated, subdivision regulations should apply.

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Mr. Schultz distributed a list of uses not permitted in the Curtis Industrial Park (CIP) - "Industrial Park themselves not permitted in Industrial Zone."

Chairman Lesniak stated findings and a decision on interpretation will be submitted at next meeting.

The board concurs.

Mr. Reilly said findings should include input from members of the board.

Mr. Russell requested a copy of minutes from stenographer for input of the interpretation.

MOTION: Ms. Bell made a motion to table. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

NEW BUISNESS:

Mark Katz, 426 Devil's Lane, Ballston Spa, NY 12020 - Area Variance pursuant to § 138-10.1 (Proposed single-family dwelling) Duane Rabideau with VanGuilder and Associates was present on behalf of the applicant

Chairman Lesniak read the narrative, "The applicant, Mark Katz is proposing to remove the existing house and construct a new single family home, A new well and septic system will be designed by a NYS Professional Engineer. The current lot size is 49,360 ± sf. and the minimum lot size in the rural zone is 80,000 sf. resulting in a 39,640 sf. variance being required. The current lot is substandard and there is no way to increase the size of the lot. All other current zoning requirements for rural zone will be met."

Mr. Rogner asked if the shed will be removed. Mr. Katz said the shed to remain. The placement of shed preexists the zoning setback requirements.

Mr. Russell asked if the existing oil tank will be remain. Mr. Katz said the oil tank to be removed.

Mr. Katz said stockade fence to remain.

The proposed septic to be conventional; deep hole tests and perc tests have been performed - soil - "loamy gravel."

Mr. Russell asked if the setback is adequate for the adjoining property owners.

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A further discussion was held on the location of the proposed septic system.

Ms. Bell asked about parcel #1 and parcel #2 as depicted on plot plan.

Ms. Kane asked, "could applicant purchase adjoining land to alleviate the request for a variance." Mr. Katz replied no - the proposal is to raze the existing dwelling due to the existing mold conditions - rehabilitating the existing building would not be cost effective.

Chairman Lesniak opened the public hearing at 8:18 p.m.

Holly Vroman, 434 Devil's Lane said her property borders both the north and west sides of the property and has a concern that a larger footprint is being proposed and concerned of a "multi-family."

There are concerns of adding another drilled well to the 14 wells that were drilled to the south, which could cause a "bigger drain of water" to property owners.

Ms. Vroman asked why the proposed footprint needs to be larger than what is existing . That house has had several of families live there in the past years.

Chairman Lesniak said before the current zoning the minimum lot size was 40,000 sf. in the rural district, which has increased to 80,000 sf.

Gail Gazzillo, 422 Devil's Lane has had drainage concerns for seven years from "across the street." Since that subdivision was built, has had water in her basement and it changed the landscape adding more water to her property and lost water pressure.

Peter Gazzillo, 422 Devil's Lane said the well on their property is a shallow dug well. The run-off from the subdivision on the south side of the road has caused run-off to their property, water in basement, quality of water has decreased, less water pressure.

A further discussion was held on the drainage and proposed septic system.

Chairman Lesniak closed the public hearing at 8:35 p.m.

Ms. Bell asked, "Are wetlands located on this property." Mr. Rabideau replied, no.

A further discussion was held on drainage.

Ms. Bell read through the five criteria for an area variance:

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- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. The Board replied "Yes"
- 2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. The Board replied "No" - Applicant cannot acquire additional land.
- 3) Whether the requested area variance is substantial. The Board replied "Yes." - Pre-existing non conforming.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. The Board replied "No."
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. The Board replied "No."

Mr. Reilly said the applicant purchased the property after the zoning change - self created.

The board suggested site plan review to review drainage.

The Zoning Board of Appeals can refer the applicant to the Planning Board for Site Plan Review.

MOTION: Ms. Bell made a motion that this is a Type II Action and exempt from further review. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. Rogner made a motion to grant an area variance pursuant to §138-10.1 for 426 Devil's Lane for the construction of a single-family dwelling - a 39,640 sf. lot area variance and applicant to apply to planning board for site plan review for drainage.

Ms. Bell voted YES

Mr. Russell voted NO

Ms. Brown voted YES

Mr. Merchant voted YES

Ms. Kane voted YES

Mr. Rogner voted YES

Mr. Lesniak voted YES

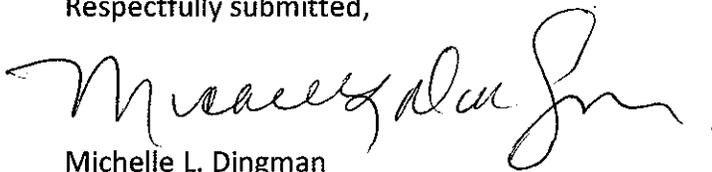
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Ms. Kane seconded the motion. **CARRIED.**

MOTION: Ms. Kane made a motion to adjourn. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 8:47 p. m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle L. Dingman". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michelle L. Dingman
Zoning Board Secretary

Enclosures

Peter E. Reilly, Esq.
9 Cardinal Court
Clifton Park, NY 12065

PHONE: (518) 423-8202
E-MAIL: preilly52@gmail.com

April 2, 2014

Adam J. Schultz, Esq.
Couch White, L.L.P.
540 Broadway
P.O. Box 22222
Albany, NY 12301-2222

RE: Dolomite Products Company, Inc.
Site Plan Application
Town of Ballston

Dear Mr. Schultz:

Your letter of March 24, 2014 to Chairman Doyle, relative to the above-referenced matter, has been referred to me for response.

Contrary to the assertion "that the Planning Board ("Board") was and is under a continuing obligation to process Dolomite's Application", the Board's jurisdiction to process such application ceased upon the Ballston Town Council's filing of Local Law 3-2013 with the New York State Secretary of State on October 24, 2013. As you know, such Local Law removed Dolomite's intended use as one that is permitted in the Industrial Zoning District.

It is my understanding Local Law 3-2013 is still in full force and effect. Accordingly, the Board's lack of jurisdiction to process the application continues.

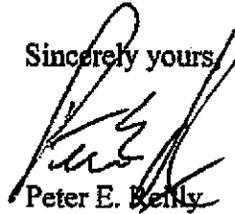
The assertion, based on your interpretation of Mr. Johnson's letter of April 5, 2012 to Claudia Braymer, that Dolomite's project need not be a permitted use within the Curtis Industrial Park ("CIP") is also incorrect. Mr. Johnson's letter spoke only to the issue of subdivision approval. Consistent with all other applications for projects within the CIP, Dolomite's application did not require subdivision approval. However, also consistent with all other projects, the intended use of the property must be one that is permitted within the Industrial Zoning District.

Adam J. Schultz, Esq.
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Dolomite may, of course, refile its application with the building department. As the project is not an allowed use, the application would be denied by the building department, giving Dolomite standing to apply the Town of Ballston Zoning Board of Appeals for the necessary use variance

Sincerely yours,



Peter E. Kelly
Planning Board Attorney

PER/slf

Cc: Richard Doyle, Chairman, Town of Ballston Planning Board

TOWN OF BALLSTON
Building Department
PO Box 67
Burnt Hills, NY 12027

Tele: (518) 885-8564 Ext. 14

April 5, 2012

Claudia K. Braymer, Esq.
Caffry & Flower
Glens Falls, NY 12020

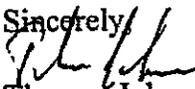
RE: Curtis Industrial Park

Dear Ms. Braymer:

In response to your letter of March 27, it has been the Town of Ballston's (the "Town") position, prior to my tenure as building inspector, and continues to be the Town's position, that the Town's zoning ordinance (the "Ordinance") does not require subdivision approval for the various improvements that are located within the Curtis Industrial Park (the "Park").

This position is based on the Town's interpretation of the term "use" contained in the Ordinance. In pertinent part, Section 138-3 of the Ordinance defines "Use" as "this term is employed in referring to the purpose for which any buildings, other structures or land may be arranged, designed, intended, maintained or occupied..." Based on such definition, the "use" that the lot upon which the Park is situated is that of an industrial park. Accordingly, as all improvements that have been constructed on the lot are a component of an industrial park, subdivision of the land upon which the improvements are constructed, is not required. This is particularly true based on the fact that the definition of use contemplates multiple buildings and structures constituting a single use.

It has been the Town's procedure that as additional improvements are proposed within the Park, such improvements must receive site plan approval from the Town's planning board (see Article XXVI of the Ordinance). Under the site plan approval process, among other items, the planning board reviews the proposed improvements to ensure that such improvements are designed and located so that they meet the bulk and area requirements of the Ordinance, including parking, as well as storm water management facilities. However, subdivision approval of the area upon which the proposed improvements are to be located is not required.

Sincerely,

Thomas Johnson
Building Inspector

Cc: Richard Doyle, Chairman, Town of Ballston Planning Board
Peter E. Reilly, Esq.
Curtis Industrial Park, LLC
Stephanie W. Ferradino, Esq. ✓

COUCH WHITE
COUNSELORS AND ATTORNEYS AT LAW

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March 24, 2014

VIA TELECOPIER and U.S. MAIL

Mr. Richard Doyle
Chairman of the Planning Board
Town of Ballston
Ballston Town Hall
323 Charlton Rd.
Ballston Spa, New York 12020

Re: Dolomite Products Company, Inc.
Site Plan Application

Dear Chairman Doyle:

We represent Dolomite Products Company, Inc. ("Dolomite") in the above referenced matter. As you may recall, Dolomite has had an Application for Site Plan approval ("Dolomite Application") pending with the Planning Board of the Town of Ballston ("Planning Board") since June 6, 2011. In response to Planning Board comments, Dolomite, on or about September 24, 2013 submitted a revised Draft Environmental Impact Statement ("DEIS") to the Planning Board. Despite SEQRA's requirement that the Planning Board determine the adequacy of the revised DEIS within thirty (30) days (see, 6 NYCRR 617.9(a)(2)(ii)), the Planning Board has yet to notify Dolomite of the status of its Application.

Although we have not received any communication from the Planning Board since the resubmission of the DEIS, we believe that the Planning Board's failure to act on this matter may be based upon an October 28, 2013 letter the Planning Board received from Theresa Bakner, Esq. of Whiteman Osterman & Hanna, LLP. The October 28, 2013 letter advised that under the then newly adopted Local Law 3-2013, the Planning Board did not have jurisdiction to continue review of Dolomite's application. Notwithstanding that the deadline for a response to Dolomite had passed before the Planning Board received Ms. Bakner's correspondence, the Planning Board to date has failed to notify Dolomite of the Planning Board's position regarding continuing jurisdiction in this matter. As Dolomite's Application had been pending for more than 15 months prior to the adoption of Local Law 3-2013, we maintain that the Planning Board was and is under a continuing obligation to process Dolomite's Application.

March 24, 2014

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In addition, it is now evident that the Ballston Town Board recognizes that Local Law 3-2013 is fatally flawed and will not withstand judicial scrutiny. It appears that the Town is attempting to correct its errors in adopting the law by seeking its re-adoption (see Town Board Resolution 14-057). In our view, given the Town Board's admission that Local Law 3-2013 is defective, any legal opinion concerning the effect of that law on Dolomite's Application is of no force or effect. The Town Board's misplaced efforts to prevent the Planning Board from fulfilling its duty shall be given no credence. The Planning Board was always under a continuing obligation to process Dolomite's Application and there is no reason or excuse for the Planning Board not to proceed forthwith.

It also has recently come to Dolomite's attention that since at least April 5, 2012, the Town has maintained a position that the Curtis Industrial Park ("CIP") is a single land use; and that the various businesses located within the CIP constitute "improvements" that are components of the CIP rather than separate and distinct "uses" (See April 5, 2012 correspondence, attached). Based upon the Town's position, Dolomite's Application concerns an "improvement" in the CIP that would be unaffected by Local Law 3-2013 (or any subsequent enactment) even if the Town had not abandoned its efforts to defend that erroneous law.

Based upon all the foregoing, Dolomite has been substantially prejudiced by the Planning Board's failure to fulfill its obligations. The Planning Board's response to Dolomite's September 24, 2013 submission remains outstanding and is now six (6) months overdue. We plan to attend the Planning Board's March 26, 2014 meeting and we respectfully request that Dolomite's Application be placed on the agenda for this meeting.

If you have any questions or would like to discuss this matter further, please contact me.

Very truly yours,

COUCH WHITE, LLP

A handwritten signature in black ink, appearing to read "Adam J. Schultz", with a circular stamp containing the initials "AJS" to the right.

Adam J. Schultz

AJS/lst

cc.: Theresa Bakner, Esq.

Peter Reilly, Esq.

Michelle Dingman, Secretary

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Caffry & Flower
ATTORNEYS AT LAW

COPY

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GLENS FALLS, NEW YORK 12801
(518) 792-1582 • FAX: 793-0541

JOHN W. CAFFRY

KRISTINE K. FLOWER

CLAUDIA K. BRAYMER

MELISSA L. BAKER, Paralegal

March 27, 2012

Thomas Johnson
Building Inspector
Town of Ballston
Ballston Town Hall
323 Charlton Road
Ballston Spa, New York 12020

Re: Violation of Zoning Code:
Curtis Industrial Park

Dear Mr. Johnson:

In accordance with your responsibility to enforce the Town of Ballston's Zoning Code,¹ and on behalf of our client, Citizens for a Clean Environment, we respectfully request a written determination from you regarding the applicability of the Zoning Code to the parcel of land known as the Curtis Industrial Park, 831 Route 67, Tax Map #: 228-3-20.111.

The Town Code mandates that "[e]xcept in the Mixed Use Center Districts, Business Highway Districts 1 and 2, TND, or in Planned Development Districts, only one principal use per lot shall be allowed."²

The Curtis Industrial Park is located on one lot within an Industrial District. It is not in a Mixed Use Center District, Business Highway District, TND, or Planned Development District.

Furthermore, numerous uses exist within the Curtis Industrial Park.³

¹ See Town Code § 138-88 and § 138-91.

² Town Code § 138-113.

³ See Letter dated March 9, 2012 from Claudia K. Braymer to Richard Doyle.

Thomas Johnson
Violation of Zoning Code:
Curtis Industrial Park

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March 27, 2012

Therefore, it is our position that the Curtis Industrial Park is currently in violation of the Town's Zoning Code, and a subdivision application must be filed.

In addition, the hot mix asphalt ("HMA") plant proposed by Dolomite Products, Inc. is located on a "lot" within the Curtis Industrial Park, and requires subdivision approval.⁴

At your earliest convenience, please provide a written determination⁵ indicating your interpretation of the following two issues:

1. Whether the entire Curtis Industrial Park must be subdivided; and
2. Whether, from this point in time going forward, additional new uses within the Curtis Industrial Park, including the proposed HMA plant, require subdivision before such a new use commences.

Thank you for your consideration in this matter.

Sincerely,


Claudia K. Braymer
cbraymer@caffrylawoffice.com

CKB/ljs
enc.

cc: Peter Reilly, Planning Board Attorney
Curtis Industrial Park, LLC
Citizens for a Clean Environment
✓Stephanie W. Ferradino, Esq.

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⁴ See Letter dated August 31, 2011 from John W. Caffry to Planning Board Members; Letter dated March 9, 2012 from Claudia K. Braymer to Richard Doyle.

⁵ See Town Code § 138-2.