



Environmental, Planning, and Engineering Consultants

34 South Broadway
Suite 300
White Plains, NY 10601
tel: 914 949-7336
fax: 914 949-7559
www.akrf.com

Memorandum

To: Town of Washington Planning Board

From: Aaron Werner, AICP;
Alicia Moore, JD, MUP

Date: May 30, 2024

Re: Gonsalves Special Permit – 3707 Route 44

cc: Ray Gonsalves, Allan Rappleyea (Applicant)
Joseph Eriole (PB Attorney)
Jonathan Ialongo (Town Building Inspector)

AKRF, Inc. (AKRF) has reviewed the following documents and plans for the above referenced application:

- Site Plan and Narrative, dated 4/7/24.
- Photos (7) of Project Site.
- Consent to Inspection and Agricultural Data Statement submitted on 5/6/24
- Dutchess County GML-239 referral response dated 5/29/24

PROJECT DESCRIPTION

The Applicant, Ray Gonsalves, is requesting approval of a special use permit to facilitate the relocation of an existing business and related change in occupancy of an existing commercial building in the Town's Hamlet Mixed Use (HM) zoning district. The subject property is located at 3707 Rt 44 (tax parcel 135889-6865-03-393396-0000), is approximately 1-acre in size and contains a two-story commercial structure (most recently utilized as an auto repair garage), an accessory shed, and parking area. According to the application, the 2nd floor of the existing commercial building contains an apartment. The Applicant is the owner of Ray's Custom Training (a fitness gym meeting the definition of a "service business" per the Town Zoning Code) which is an existing business currently located at 3700 Route 44 (approximately 150 feet to the west of the subject property). The Applicant is proposing to relocate the training business from 3700 Route 44 to the subject property. According to the Town's Zoning Code, a service business use is permitted by special permit in the HM zone. While the most recent use of the subject property (auto repair garage) is also defined as a service business and no building expansion appears to be proposed, the Town's Building Inspector has instructed the Applicant that approval of a special permit will be required since the nature of the use will be different, and any interior work required to comply with New York State Building Code will require an inspection by the Building Department prior to a Certificate of Occupancy being obtained.

COMMENTS

Previous comments from memoranda dated March 29, 2024 and May 3, 2024 are shown in *italics*, new and follow-up comments are in **bold**.

APPLICATION COMPLETENESS

1. *3/29/24: The subject property is within 500 feet of an agricultural district (AD 21). The Applicant should complete and submit the required Agricultural Data Statement for the Town's files.*

5/3/24: Comment remains applicable and these materials have been requested from the Applicant.

5/30/24: Comment addressed.

2. *3/29/24: The Consent to Inspection form was not included in the application materials. The Applicant should complete and submit this form for the Town's files.*

5/3/24: Comment remains applicable and these materials have been requested from the Applicant.

5/30/24: Comment addressed.

CODE COMPLIANCE

3. *3/29/24: A "service business" is permitted with a special permit in the HM district per Zoning Code Appendix A. The Zoning Code defines "service business" as:*

*SERVICE BUSINESS: A business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to arts instruction or studio, building, electrical, plumbing, and landscape contracting, business and educational services, catering, **health club**, house cleaning services, lock smith, photocopying, repair and restoration services, tailoring, typing, and word processing.*

As the proposed use is similar to a health club offering personal training services (by appointment), AKRF concurs with this use classification.

5/3/24: No further comment.

4. *3/29/24: A public hearing is required for all special permit applications per Zoning Code Section 475.*

5/3/24: The Planning Board may open the public hearing if prepared to do so. Since the County Planning referral has not yet been sent, AKRF advises that the Planning Board keep the public hearing open to the June meeting to receive the County's response.

5/30/24: The public hearing was continued to June 4, 2024 as recommended. The application was referred to Dutchess County Planning pursuant to GML 239-m on May 8, 2024. The County responded on May 28, 2024 indicating that the application is a "matter of local concern." If prepared to do so, the Planning Board can close the public hearing on June 4, 2024.

5. *3/29/24: Per Zoning Code Section 472:*

"[a]n application for a special permit shall be accompanied by plans and other descriptive matter sufficient to clearly portray the intentions of the applicant. Such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that may be necessary to determine whether or not the proposed special use meets the requirements of this Local Law."

However, based on the nature of the planned use and work to be completed at the property, the Planning Board can waive site plan review requirements for this application, pursuant to Section 472 of the Code, which states the following:

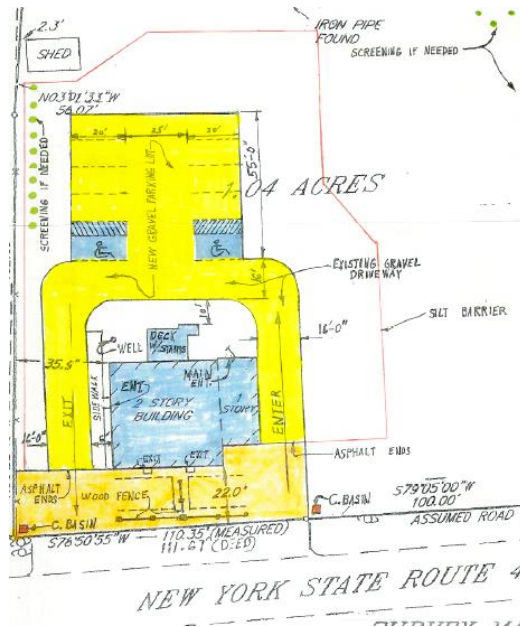
"The special permit plan shall also meet the requirements for site plans as stated in Section 483 of this Local Law unless in the discretion of the Planning Board or Zoning Board of Appeals, as the

case may be, selected site plan requirements shall not be required for certain types of special permit use applications.”

While Section 472 also requires that the special permit site plan meet the requirements for site plan approval under Section 483, Section 483 also grants the Planning Board discretion to waive certain site plan requirements for proposals that will have a minimal impact on surrounding properties.

The Planning Board should discuss the applicability of formal site plan review on this application.

5/3/24: At the previous Planning Board meeting (4/2/24), the Planning Board requested that the Applicant provide a site plan showing the proposed parking, soil and erosion control, and landscaping. The Applicant has provided the requested site plan, accompanying narrative, and photos. As shown on the plan (snapshot below), a total of 12 parking spaces are proposed – 10 in the back, and 2 in the front. The plan would shift most of the parking from the front to the rear. The front spaces would be oriented to eliminate the need to back out onto Route 44 from those spaces. To improve onsite traffic flow, the plan proposes to add a new driveway on the west side of the building, which would be used to exit the parking area to Route 44, while the existing driveway on the east side would be used to enter the parking area.



If the submitted site plan is to be considered with the requested special permit, it should include the appropriate signature blocks for the owner and Planning Board, provided below.

TOWN OF WASHINGTON PLANNING BOARD
OWNER/ APPLICANT SIGNATURES

The undersigned applicant(s) for the property and the undersigned owner(s) of the property shown herein certify that they are familiar with this map and its notes and its contents as stated hereon including all conditions of approval. The applicant and the owner understand their obligation to the Town to keep the premises as per plan approval by the Planning Board until a new or revised plan for development or use of the site is approved by the Planning Board. This applicant and the owner understand their obligation to the town not to occupy the premises before a Certificate of Occupancy is issued by the Town for the occupancy as approved hereon.

Owner: _____

Date: _____

Applicant: _____

Date: _____

TOWN OF WASHINGTON PLANNING BOARD APPROVAL

The plan of development for the property as depicted hereon was approved by a majority of the members of the Town of Washington Planning Board at a meeting held on _____, and the conditions of Site Plan Approval have been satisfied or arrangements have been made to ensure the completion of any outstanding or incomplete conditions.

Chairperson: _____

Date: _____

5/30/24: The Planning Board has agreed that the submitted site plan be considered with the special permit. The required signature blocks should be provided on a final version of the site plan to be signed by the Applicant and the Planning Board Chair.

- 6. *3/29/24: According to the Applicant, the existing building will remain, and no expansion is proposed. The 2nd floor apartment will either remain or be converted for additional training space. While the frontage of the subject property contains a parking lot, the Applicant is exploring adding a similarly sized gravel parking area to the rear of the building, and requiring parking in the rear, primarily for safety purposes. Since the area behind the building is currently lawn, some site disturbance appears to be necessary to relocate the parking area. Unless this work has already been completed, Section 335.1 of the Zoning Code would be applicable, which states that "a separate soil erosion and sediment control plan shall be submitted to the Planning Board with any application for a site plan approval when the disturbed area is cumulatively more than one-half acre, or within any application to strip topsoil, regardless of acreage." The Planning Board has the option to approve any proposed erosion and sediment control measures as part of this application, rather than having the Applicant return to the Planning Board for a separate erosion/sediment control approval. The submitted application does not include a separate soil erosion and sediment control plan. However, an area of disturbance (including approximate size, number of parking spaces it will provide) and notes on proposed erosion/sediment controls during construction (silt fences, etc.) can be added to the survey/special permit plan drawing to satisfy this requirement and the Planning Board's responsibilities. It is recommended that the Applicant submit this information to the board for review.*

5/3/24: See above. The Applicant has submitted a site plan showing soil erosion and sediment control. The site plan shows a silt fence, which appears sufficient to mitigate potential runoff during construction.

5/30/24: No further comment.

- 7. *3/29/24: Required off-street parking and loading: The proposed use does not fall within any of the categories provided in Appendix C of the Town's Zoning Code (off-street parking and loading schedule). In such cases, per the Code, "reasonable and appropriate off-street parking requirements shall be determined" by the Planning Board, "which shall consider all factors entering into the parking needs of each such case..."*

The proposed use offers personal training services by appointment. According to the Applicant, the existing operation does not experience a demand higher than approximately 8 parking spaces at a time. This includes simultaneous appointments for up to four trainers. If the 2nd floor apartment is to remain, it will require two parking spaces per the Code. The Applicant should therefore demonstrate that parking for up to 10 vehicles can be accommodated on-site. The Planning Board may ask for additional information in order to finalize a determination on parking.

5/3/24: The submitted site plan shows a total of 12 parking spaces – 8 standard spaces and 2 ADA spaces in the rear, and 2 standard spaces in the front.

5/30/24: No further comment on required parking.

8. 3/29/24: According to the Town's wetland map and Dutchess Parcel Access, the subject property does not contain any wetlands, and the planned work would fall beyond 100 feet of any mapped wetlands and areas of hydric soils. No wetland permit should be necessary in connection with this application.

5/3/24: No further comment.

9. 3/29/24: Section 313.2 of the Zoning Code limits new non-residential development in the HM district. However, the Planning Board has previously considered applications for a change in use from one non-residential use to another in the HM zone and has determined, through advice from counsel, that such a change is not considered a "new" use, even if a period of vacancy precedes the latest non-residential use. It is unclear if the space in question was vacant prior to this current application, and for how long. Regardless, Section 313.2 should not apply to this proposal.

5/3/24: The applicability of Section 313.2 has been further reviewed by AKRF, the Planning Board Attorney, and the Applicant. The Town's CAC also provided a comment letter to the Planning Board requesting consideration of Section 313.2.

According to Section 313.2 (Limitation on Non-Residential Development – HM zone):

In order to preserve the mixed-use character of the District, the Planning Board shall limit the proportion of new non-residential development to fifty percent (50%) of the total square footage of floor space of all new residential building construction within the HM District over any two-year period

....

"New non-residential development" shall include interior floor space of new non-residential principal and accessory structures and new non-residential uses in structures converted from residential use after the date of this Local Law.

At the April 2, 2024 meeting, the Planning Board was made aware that the 2nd floor of the building, which contains an apartment, would be modified to accommodate additional personal training space for customers, as well as an office for the applicant. The addition of commercial space to the 2nd floor can be interpreted, in AKRF's opinion, as a new non-residential use in a structure converted from residential use. However, the building itself is not "new," and according to the Applicant, the apartment will not be eliminated but reduced in size, and the Applicant intends to inhabit the modified apartment as a home occupation, which is an accessory use allowed by right in the HM zone.

Pending any difference in interpretation by counsel, the provisions of Section 313.2 should not apply based on the additional information provided by the Applicant.

5/30/24: At the May 7, 2024 meeting, the Planning Board, with assistance from counsel, determined that the provisions of Section 313.2 should not apply to this application. No further comment.

REFERRALS

10. 3/29/24: The subject parcel is within 500 feet of a State road (Route 44), a County Road (N. Mabbettsville Road / CR 98) and a farm operation in an Agricultural District (AD 21). This application is therefore subject to referral under General Municipal Law (GML) 239-m, which requires referral to the Dutchess County Planning Department. Under the terms of the Town's Referral Reduction Agreement with Dutchess County, special permits for nonresidential uses are not exempt from the GML 239-m referral and review process. The County is required to respond within 30 days of receipt.

5/3/24: The Planning Board may authorize the Secretary to refer the latest application materials to Dutchess County Planning pursuant to GML 239-m.

5/30/24: The application was referred to Dutchess County Planning pursuant to GML 239-m on May 8, 2024. The County responded on May 28, 2024 indicating that the application is a “matter of local concern.”

ENVIRONMENTAL REVIEW (SEQRA)

11. 3/29/24: This application is considered a Type II Action under the State Environmental Quality Review Act (SEQRA), which requires no environmental review or submission of an Environmental Assessment Form. The applicable Type II citation is as follows:

“6 NYCRR 617.5(c)(18) – reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part”

5/3/24: No further comment. The application was so classified at the Planning Board meeting of April 2, 2024.

RECOMMENDATION

At the June 4, 2024 Planning Board meeting, AKRF recommends that the Planning Board discuss the application and consultant comments, discuss the Dutchess County Planning response (pursuant to GML 239-m), open the public hearing, close the public hearing (if prepared to do so), and consider a special permit/site plan approval resolution (if prepared to do so).