

ZONING BOARD OF APPEALS

A hearing before the Hudson Falls Zoning Board of Appeals was held on Monday, November 20, in the Village Hall Board Room.

Present: Robert Durkee, Chairperson
Louis Cantiello, Board Member
Edward Mahan, Board Member
Mary Alice Murphy, Alt. Board Member
William Nikas, Village Attorney
Absent: Tammy Mullen, Board Member
Michael Willig, Board Member
Public Present : 10 Members of the Public.

Chairman Durkee called the meeting to order at 6:03pm.

Upon motion by Board Member Mahan, seconded by Board Member Murphy and carried, the minutes of the September 18, 2023 Zoning Board of Appeals meeting were approved as submitted.

The next item on the agenda was to determine by Board interpretation whether a car wash and laundromat, as requested by applicant Bove Realty to be located at 23 Main St. Hudson Falls, NY, is allowed in the mixed use zone.

Chairman Durkee introduced the board and opened the floor to the applicant to discuss their request.

Mr. Mark Schachner from Miller, Mannix, Schachner & Hafner LLC, attorney for Bove Realty addressed the board. Attorney Schachner reviewed the application of Bove Realty to build a car wash and laundromat at 23 Main Street, and the issue of whether a car wash is a permitted use in a mixed-use zone. The application seeks the Board's interpretation.

He believes that a car wash is an allowed use in a mixed zone for the following reasons: First, the car wash falls under the definition of a "retail business" since it offers a "service" to the general public. One question raised by the opposition is whether a car wash should instead be categorized as "automotive sales and/or service" as defined in the zoning law, and therefore excluded from the mixed use zone as a "commercial use". However, attorney Schachner states that the proposed use does not involve automobile sales. A discussion ensued regarding the definition of a retail business in a mixed-use zone.

Attorney Schachner then discussed the letter in opposition submitted by Martha Wheeler's attorney, Stephanie Bitter of Bartlett, Pontiff, Stewart & Rhodes, P.C. Ms. Wheeler is the neighboring property owner. The letter submitted to the Board by Attorney Bitter argues that "commercial uses" are not allowed in mixed-use zones, and a car wash is a commercial use. However, attorney Schachner points out that the zoning Table, "Illustration of Uses", lists several "Retail" uses that are clearly commercial in nature and allowed in the mixed-use zone under the definition of "retail business". Therefore, he argues that a car wash qualifies since it is a "retail business".

Attorney Bitter then addressed the board to clarify the statements made by Attorney Schachner. When the applicant argues that a car wash is not considered an excluded commercial use, she notes that the "Table" the applicant is referring to lists examples of certain commercial uses that are allowed in the mixed-use zones, but, car wash is not specifically included in the list. Further, she points out that the code section defining "commercial use" includes certain automotive uses, i.e., equipment storage and sales, gasoline stations, lumberyards, etc. which are not allowed in the mixed use zones. She argues that a car wash falls under the "commercial" definitions of "commercial garage" or "gasoline station" because those definitions include the word "washing" as one of the services that could be offered at a garage or gasoline station. Therefore, she argues that a car wash is not permitted in a mixed-use zone.

Attorney Schachner reviewed and disagreed with the interpretations by Attorney Bitter. He believes it is a very strained argument to try to label a car wash as a commercial garage or a gasoline station.

Attorney Schachner informed the board they could verify with our village attorney that if there is a substantial gray area in the code, New York law is pretty clear that the tie goes to the runner, to use a baseball analogy. That is, zoning regulations are considered in derogation of private property rights, and that a board interpreting the zoning laws is supposed to favor private property developmental interests over other interests.

Chairman Durkee opened the meeting to public hearing.

Jeff Wheeler, 1 Dalton Ave, Hudson Falls, NY is a neighbor of the proposed car wash on the back side. He does not understand what they are saying is allowed in the village. Chairman Durkee explained certain areas are zoned differently throughout the village and have different allowed uses. Mr. Wheeler stated he is in favor of the car wash. He feels if someone is willing to invest in our village and put a nice business there, that is better than having people hide out in the woods doing drugs or other activities.

Chairman Mahan asked if this particular property has always been a mixed use. Attorney Nikas replied that it was.

At the request of the Board, Attorney Nikas then reviewed the application and noted that Code Officer William Celeste has rendered his opinion that a car wash is a permitted use on that property. Mr. Celeste has asked Village Attorney Nikas to evaluate his decision and to review what has been submitted this evening.

Mr. Nikas reviewed with the board the meaning of the word "commercial" as defined in our zoning code, as well as the differences between a "commercial garage", a "gasoline station" and a car wash. Both "commercial garage" and "gasoline station" uses (which are not allowed in the mixed use zone) include "washing" as one of the many services that a garage can offer per our code's definition. But, in attorney Nikas' opinion (subject to the ultimate decision of the Board), the minor and incidental reference to "washing" does not serve to equate a "garage or gasoline station" with a "car wash". Contrary to the argument of attorney Bitter, the two uses are fundamentally different, even though both involve a "commercial" element.

He went on to explain the definition of mixed use in connection with the term "retail business". The retail business use generally is an allowed use in a mixed-use zone. Attorney Nikas further explained the code's definition of the phrase "retail business", and advised that a car wash satisfies that part of the definition which includes the sale of services to the general public.

He then drew attention to the section of "retail business" which excludes certain uses from the definition of "retail business". The "exclusion" portion of the retail business definition refers to "uses where the outdoor display of goods is a principal means of display of merchandise or services". Examples listed include "motor vehicle sales and services" and sales of such items as boats, mobile homes, and farm equipment. Attorney Nikas pointed out that a car wash does not involve the outdoor display of merchandise or services and, in his opinion, is therefore not a use that is excluded from the definition of a retail business. He further points out that the definition of "automobile sales and services" does not include a car wash, but instead refers to a use which primarily involves the sale of motor vehicles, and which also may or may not incidentally include "auto body repair services".

So in reviewing all the information and code definitions, Attorney Nikas feels that Code Enforcement Officer Celeste's interpretation of the code that a car wash is permitted in a mixed-use zone would also support the Board finding that it is a permitted use. That is the only decision the Zoning board needs to be concerned with. All other decisions concerning this property and its uses would be directed to the Planning Board for site plan review.

No further comments were made from the public.

Chairman Durkee asked the board if they had any questions. There were no questions from the board.

Upon motion made by Board Member Mahan, seconded by Board Member Cantiello, and carried unanimously, it was

RESOLVED, that the Zoning Board finds that a car wash and laundromat are permitted uses in a mixed use zone, which includes the property known as 23 Main Street, Hudson Falls, NY 12839.

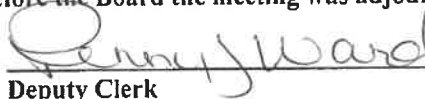
Duly adopted this 20th day of November, 2023, by the following vote:

AYES : Chairman Durkee, Board Members, Mahan and Cantiello

NOES : None

ABSTAIN: Alternate Member Murphy

There being no further business to come before the Board the meeting was adjourned at 6:28 pm.


Deputy Clerk

JOHN E. BARTON
MAYOR

CASSANDRA ALLEN
CLERK TREASURER

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WILLIAM L. NIKAS
VILLAGE ATTORNEY

NOTICE OF FINAL DECISION


The Village of Hudson Falls Zoning Board met on November 20, 2023, and made a determination of zoning for the property located at 23 Main Street, Hudson Falls, NY 12839:

Upon motion made by Board Member Mahan, seconded by Board Member Cantiello and carried,

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board finds that a car wash and laundromat are permitted uses in a mixed-use zone, which includes the property known as 23 Main Street, Hudson Falls, NY 12839.

Duly adopted this 20th day of November 2023, by the following vote:

AYES : Chairman Durkee, Board Members Mahan and Cantiello
NOES : N/A
ABSENT: Board Member Mullen and Willig
ABSTAIN : Alternate Member Murphy



Signature of Local Official

11/20/2023

Meeting Date
12/4/2023

Date Signed