

# TOWN OF KIRKWOOD ZONING BOARD OF APPEALS

June 21, 2021

A Zoning Board of Appeals meeting was held on June 21, 2021 at 7:00 p.m. at the Joseph A. Griffin Town Hall and via Zoom Video Conference on the application of Kevin R. Hope regarding property located at 1355 US Route 11 in the Town of Kirkwood known as Tax Map No. 179.03-4-38 and located in a Residence Multi District, for a Special Use Permit to operate a counseling office.

Present: Duane Travis, Chairman  
Ed Egan, Member  
Marc Latini, Associate Member  
Bruce Nemcek, Member  
Mike Maciak, Member

Other Present: Chad Moran, Building & Code Inspector  
Keegan Coughlin, Attorney

Absent: Cyndi French, Member

Chairman Travis called the meeting to order at 7:00 pm.

## **APPROVAL OF MINUTES:**

Motion by Mike Maciak and seconded by Ed Egan to approve the minutes of the May 17, 2021 meeting as submitted. All voted in favor. Motion carried.

## **PUBLIC HEARING:**

Chairman Travis read the notice of public hearing and commented that we have the affidavits of posting by the Town Clerk on the sign board, the affidavits of publication in the Press & Sun Bulletin and the Country Courier, and affidavits of service by mail to property owners within 500 feet. A Broome County Planning Department 239 m was filed.

Chairman Travis read the following into the record: The Broome County Department of Planning and Economic Development has received your request for review of the below captioned matter. The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impacts associated with the proposed project. However, we have the following comments: We recommend that the Town Zoning Board of Appeals consider the enclosed comments from the Binghamton Metropolitan Transportation Study. The applicant can request New York State Department of Transportation to install a pedestrian crossing warning sign and NYSDOT can investigate the need. The submittal should address accessibility, hours of operation, anticipated number of vehicles, scenario of clients and employees crossing the street from the parking lot to the building, the need to install exterior lighting on the church property and in the parking lot, and the feasibility of installing parking spaces on the church property to accommodate the project. The case file was routed to the Binghamton Metropolitan Transportation Study, New York State DOT, and Broome County Department of Health. Enclosed are comments from the BMTS and NYSDOT that need to be addressed. Broome County Health Department had no comments.

Chairman Travis read the following into the record from NYSDOT: We have reviewed the materials for the above-referenced proposal. Please note the following comments: Nothing may be placed within the State right-of-way, including signage or parking. If any work is to be conducted within the State right-of-way, the applicant will require a Highway Work Permit from NYSDOT. The applicant may contact the NYSDOT Broome Residency at 607-775-0522 for more information.

Chairman Travis read the following into the record from Binghamton Metropolitan Transportation Study: There is a potential safety impact to pedestrians associated with this project since the parking lot is across the street from the building. I believe the speed limit along with segment of Route 11 is 55 mph.

Chairman Travis stated a Short EAF has been filed. The Board had no comments regarding Part 1 that was filled out by the applicant. Chairman Travis reviewed Part 2 with the Board Members and the Members answered no to all questions. Chairman Travis stated in Part 3 the second box should be checked. A copy of the complete Short EAF is included in the file.

Motion by Mike Maciak and Ed Egan to issue a Negative Declaration for all purpose of SEQR.

Roll Call Vote:	Mike Maciak	Yes
	Ed Egan	Yes
	Marc Latini	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion carried.

Chairman Travis opened the Public Hearing at 7:14 PM.

Kevin Hope was present. Mr. Hope explained that he is a licensed mental health counselor with the State of New York. He currently has an office in Conklin on Route 7, which he started in 2019. The issue now is the three rooms in the tiny building isn't enough anymore. The First Christian Church has decided to sell their building at a very fair price. That is the reason for getting the Special Use Permit. They want to move to a facility that can accommodate their clients now. He would appreciate this very much.

Mike Maciak asked what are the hours and Mr. Hope explained he has multiple therapists and the first one comes in around 10 AM and the last one leaves around 8 PM, possibly a bit later if the session goes over. On weekends it will be around 11 AM to 5-6 PM.

Ed Egan asked what is the total number of staff and Mr. Hope explained there are now ten therapists that work there, most working part time. There are only two working full-time.

Bruce Nemcek asked if all the clients drive themselves and Mr. Hope stated yes, except for the minors must come with a parent. There is no public transportation needed at all.

Hearing no other comments, the Public Hearing was closed at 7:17 PM.

Chairman Travis asked if he owned both pieces of property and Mr. Hope stated he is intending to. Mr. Coughlin asked how many parking spots there were and Mr. Hope stated 50 spaces. Chad Moran commented it is freshly painted and lined.

Mr. Coughlin explained that based on Broome County's comments with the concerns with the pedestrians crossing, particularly with activity in the evening and during the winter time when it is dark early, we should see some plans for lighting. Mr. Coughlin asked if he had any ideas on what he was going to do for lighting outside the church and Mr. Hope stated his understanding was that any lighting would have to be approved by the Town. It benefits everyone to light up that parking lot, if I get permission to do it. His understanding is he can't do anything without permission. He has no issue investing in either lighting the building or lighting the parking lot. He needs his clients to be safe, not just from traffic, just safe. Mike Maciak commented with it being so close to the road and the snow plows come through, they throw out a lot of snow. If someone is standing right in front of the building you have to be careful. Mr. Hope explained in an attempt to cross the road he understands but nobody hangs outside the building. It isn't that kind of operation. Mike Maciak asked if he had any handicapped patients and Mr. Hope stated at this point he has zero. Chad Moran explained there is a driveway on the right and on the left-hand side there is a chair lift for handicap accessibility. Mr. Hope stated there is handicap parking outside the building. They will make that a priority.

Chairman Travis commented he thinks the lighting situation can be worked out with Chad. Chad Moran commented down facing, LED, and dusk till dawn. Chairman Travis commented Mr. Hope will need to contact the NYS Department of Transportation and ask them to evaluate that crossing. They may want to put a cross walk in. Bruce Nemcek commented that is the main issue, he has plenty of parking. Mike Maciak stated he didn't think they ever had a problem with the church there but that was always on a Sunday or Saturday.

Mr. Coughlin asked if it was on town water and town sewer and Chad Moran stated it is a private well and the sewer system.

Mr. Coughlin explained that based on the County's comments and based on what the Board has said some suggested conditions that the Board can consider would be to investigate a potential crosswalk with DOT and work with the Code Department or Highway, if needed, submitting a lighting plan and submitting a landscaping plan. Chad Moran commented that the landscaping would be tough because the building is pretty much the size of the property. Chairman Travis stated it does have some existing landscaping. Mr. Coughlin stated those are the main things and the question the Board has to ask is if you are comfortable with approving the application on the investigation of the DOT crosswalk or do you think it would be a requirement, which is really out of his control or potentially anyone who uses that property. Mike Maciak commented once you put the State on notice then the State is on notice. That is the key and it is up to them to make sure the signs go in to protect people. Mr. Coughlin asked the Board they want a lighting plan for the church and the parking lot and the Board agreed both.

Mr. Coughlin reviewed with the Board the Special Use Permit criteria as follows:

1. The applicable provisions prescribed for each special use permit have been met. Not relevant here because we don't have a separate special use permit like we do for cell towers or solar.
2. Whether it conforms with all applicable zoning regulations. It didn't require a variance because it is a pre-existing building. He is not changing the building.
3. Whether the activity and land use are located and operated so as to protect the public health, safety, and welfare. We have addressed those with the lighting and the crosswalk investigation.
4. Whether the land use or activity will encourage or promote a suitable and safe environment for the surrounding neighborhood and will not cause substantial injury to the value of other property in the neighborhood. That is similar to the area variance that it will not negatively impact the character or the community and it is an existing building and the use is not in conflict with that.

- 5. The land use or activity will be compatible with existing adjoining development and will not adversely change the established character or appearance of the neighborhood. The building is there.

Ed Egan asked if this is approved when does he expect to move in and Mr. Hope stated he didn't know but hoped as soon as possible. The church has to go through a process. Mr. Coughlin explained that if non-profits, specifically churches, are selling property, depending on the churches organizational structure they need Attorney General approval and sometimes the higher governing body of the church to approve it as well. That is the process that Mr. Hope gets to go through.

Mr. Coughlin commented that other things that need to be consider because site plan review is not required are:

- 1. Ingress and egress to parking is sufficient. The parking lot size has been talked about and is up to code.
- 2. No plan site development. They will use the same infrastructure.
- 3. Existing streets and utilities servicing the project are adequate. The utilities are fine.
- 4. Significant existing vegetation is preserved to the extent practicable. Not practicable given the size of the lot.
- 5. Adequate lighting of the site and parking areas. A lighting plan is required and will minimize glare on adjacent streets and properties.
- 6. Drainage plans. A SWPPP is not needed.
- 7. Reasonable conditions can be imposed.

Motion by Ed Egan and seconded by Bruce Nemcek to grant the Special Use Permit with the following conditions:

- 1. Applicant investigate with NYSDOT the potential implementation of a crosswalk.
- 2. A lighting plan be approved by the Code Enforcement Officer.
- 3. A landscaping plan be approved by the Code Enforcement Officer.
- 4. If any signs are put up a sign permitted is needed.
- 5. Any internal work may require a building permit.

Roll Call Vote:	Mike Maciak	Yes
	Ed Egan	Yes
	Marc Latini	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion carried.

Motion by Marc Latini and seconded by Mike Maciak to adjourn the meeting. The meeting was adjourned at 7:32 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary  
Zoning Board of Appeals