

Official Minutes of the Public Hearing of April 16, 2024 for the purpose of receiving comments on the proposed introductory Local Law Amending the Zoning Code to Provide a Definition for “Warehouse”



THE CITY OF POUGHKEEPSIE
NEW YORK

PUBLIC HEARING

Tuesday, April 16, 2024 5:30 pm

Common Council Chambers

Welcome to the scheduled Public Hearing in the City of Poughkeepsie. The date is April 16, 2024, and the time is 5:30 pm.

This Hearing is for the purpose of receiving comments on the proposed introductory Local Law Amending the Zoning Code of the City of Poughkeepsie to Provide a Definition for “warehouse”

I. WELCOME

II. ROLL CALL: 6 present, 3 absent (*Councilmembers Deichler, Grant & Brown arrived minutes after roll call was taken*)

III. PUBLIC PARTICIPATION: Five (5) minutes per person public comment.

1. Joshua Mackey – Mill Street/Mackey, Butts & Whalen, LLP *

*Submitted written statement

IV. ADJOURNMENT:

Chairman Wilson closed the Public Hearing at 5:45pm as there were no other speakers.

Dated: April 20, 2024

I hereby certify that this is a true and correct copy of the Minutes of the Common Council Public Hearing held on Tuesday, April 16, 2024.

Respectfully submitted,
Donna M. DeLuca
Deputy City Chamberlain

MACKEY BUTTS & WHALEN LLP

ATTORNEYS AT LAW

April 16, 2024

Robert R. Butts
Robert B. Dietz
Joshua E. Mackey
Ian S. MacDonald
Cara A. Whalen

Christina A. Mazzarella
Alexander D. Salvato

Emily Abrahams
Tyrone Brown
R. Keith Salisbury

Via Hand Delivery

City of Poughkeepsie Common Council
Attn.: Ms. Donna M. DeLuca
62 Civic Center Plaza – 3rd Floor
Poughkeepsie, New York 12601

**RE: Proposed Local Law Amending Zoning Code to Define
Warehouse Use/Piedmont Properties, LLC 504 – 512 Main St.
Our File No.: 1274.0001**

Dear Ms. DeLuca:

We represent Piedmont Properties, LLC (“Piedmont”), the owner of vacant parcels located at 504 – 512 Main Street, Poughkeepsie, New York 12601 (“Property”). These properties are located in the C3 Zoning District which allows warehouse uses, including self-storage facilities. I respectfully request that this correspondence be made part of the record for the public hearing scheduled on April 16, 2024.

On January 9, 2024, the City of Poughkeepsie Zoning Board of Appeals (the “ZBA”) approved Piedmont’s proposed use under the City of Poughkeepsie Zoning Code (“Code”). The ZBA determined that Piedmont’s proposed use of the Property as a self-storage warehouse is allowed, subject to site plan approval by the City of Poughkeepsie Planning Board (“Planning Board”). A copy of the ZBA’s decision is enclosed.

I am sure that you have reviewed the minutes of the ZBA meetings on Piedmont’s application which memorialize discussion regarding the use and design of the proposed self-storage warehouse. It should be clear that from all points of view, the proposed self-storage warehouse is the visual and functional equivalent of a warehouse – only better. It is modernized, well lit, secure aesthetically attractive.

Reply to:

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Millbrook, NY 12545
P 845.677.6700
F 845.677.2202

☐ 319 Mill Street
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☐ 81 Main Street
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For the following reasons, we respectfully submit that the proposed Local Law must at the very least be reevaluated:

1. Piedmont has spent considerable time and funds in seeking its municipal approvals. Piedmont's commitment to the project is irrefutable. The ZBA favorably interpreted the Code to allow for Piedmont's use. In reliance upon the ZBA's determination, Piedmont prepared a design sketch which has been submitted to the Planning Board. These efforts and expenditures were made in reliance upon the ZBA's interpretation. Accordingly, Piedmont has a vested right in its plan to construct a self-storage warehouse. *See People v. Miller*, 304 N.Y.105 (1952).
2. The proposed Local Law is vague and leaves the door open to further ZBA applications and litigation. Clearly, Piedmont's proposal is not a "mini-warehouse." The reference in the Local Law to an existing definition of a "mini-warehouse" as defined in Code §19-2.2 is thus misplaced. Similarly, the reference to a "self-storage facility," as defined in §19-3.25 is misguided. That definition is so broad that it would essentially prohibit all warehouse uses within the City of Poughkeepsie. This overly restrictive result certainly cannot be the intent of the legislation.
3. Additionally, the proposed Local Law fails to state which zoning district(s) are subject to the new wording. Again, as it now stands, the Local Law would appear to prohibit all warehouses. The business of storage, manufacturing and distribution would be all but eliminated from substantial portions of the City were this Local Law to be adopted. This negative economic impact surely cannot be the intent of the Local Law.
4. Furthermore, the Local Law fails to mention its purpose and aim. It takes the path of least resistance to achieve a result by reference to existing "definitions" in the Code that fail to consider nuances of modern self-storage facility design. Piedmont's proposal calls for a single building with limited access. The design is in keeping with the character of the neighborhood where numerous warehouses currently exist. Further, the Planning Board will provide input on the design which we note is very flexible. There is no stated objection anywhere on the record to Piedmont's proposal. The Local Law therefore appears to be nothing more than *ad hoc* zoning legislation which is prohibited under the law. *See Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668 (1996).
5. The Local Law fails also to recite a rationale for its introduction. Conspicuously absent from the wording is any reference to data, studies, planning recommendations or similar materials which cite a basis for the introduction of the Local Law. The Local Law has been introduced to

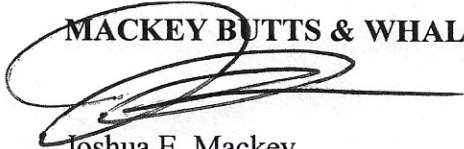
specifically prevent Piedmont's proposal and the "Legislative Intent" actually says this. The Local Law is thus clearing discriminatory. Such targeting amounts to reverse spot zoning and will not withstand legal scrutiny. *See C/S 12th Ave. LLC v. City of New York*, 815 N.Y.S.2d 516 (2006 N.Y. Slip Op. 04172).

6. Moreover, the proposed Local Law is inconsistent with the 2022 PK4Keeps Comprehensive Plan ("Plan"). A stated goal of the Plan is to "improve residential quality of life." It is well known that new apartments in the City have brought more residents in. These residents need storage. Prohibiting self-storage undermines the goal of improving residential quality of life. Similarly, the Plan also aims to "strengthen civic life and commercial vitality." As stated above, the proposed Local Law is so restrictive that it not only eliminates self-storage but also traditional warehouse uses in many areas. There will be a disparate impact upon entrepreneurs, small business owners, artists and makers with the Local Law. It clearly contradicts the Plan. The Local Law must be consistent with the Plan and because it is not it will not pass legal muster. *See Udell v. Haas* 21 N.Y.2d 463 (1968).
7. Finally, the proposed Local Law is subject to scrutiny under the State Environmental Quality Review Act ("SEQRA"). Before any Local Law can be adopted the Council must make the requisite "hard look" at environmental impacts as defined under SEQRA. A zoning amendment such as this is a "Type I" action under SEQRA. *See Riverhead Business Improvement District Management Association, Inc. v. Stark*, 677 N.Y.S.2d 752 (1998). We see no mention in any meeting minutes or the Local Law itself of a SEQRA review being planned. The Local Law must be reviewed under SEQRA. *See 61 Crown Street, LLC v. City of Kingston*, 192 N.Y.S.3d 270 (2023).

On the basis of the foregoing we strongly caution the Council against introducing the proposed Local Law.

Very truly yours,

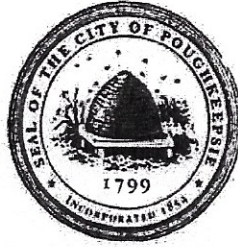
MACKEY BUTTS & WHALEN, LLP



Joshua E. Mackey

Enclosure

cc: Piedmont Properties, LLC (via email)



CITY OF POUGHKEEPSIE
CITY CHAMBERLAIN
2024 JAN 10 AM 11:24

**THE CITY OF POUGHKEEPSIE
ZONING BOARD OF APPEALS
RESOLUTION OF APPROVAL
JANUARY 9, 2024
504-512 MAIN STREET**

Present

Scott Parker, Chair
Jessica Vinall, Vice Chair
Thomas Klug
James Patterson
Justin Phillips

In the matter of the request for interpretation of Piedmont Properties of Dutchess, LLC, regarding the property at 504-512 Main Street, Poughkeepsie, New York:

At a Regular Meeting of the Zoning Board of Appeals held in the Common Council Chambers, 3rd Floor, City Hall, 62 Civic Center Plaza, on the 9th day of January 2024, at 6:00pm:

WHEREAS, the Zoning Board of Appeals has received an application from Piedmont Properties of Dutchess, LLC, relative to the proposed construction on the property of a self-storage facility; and

WHEREAS, the property is located in the C-3 zoning district; and

WHEREAS, this application is considered to be a Type 2 Action under SEQRA requiring no further environmental review; and,

WHEREAS, a public hearing was held on 12/12/2023; and,

NOW, THEREFORE, BE IT RESOLVED, as follows:

The Deputy Zoning Administrator determined that the proposed use satisfied the definition of "mini-warehouses," a use permitted only in the I-1 zoning district.

The following uses are permitted within the C-3 zoning district: Wholesale businesses, warehouses and building material storage and sale, but excluding storage of coal, coke, fuel oil or junk. [Section 19-3.24(2)(a)(2)]. The City's code does not define the term "warehouse," therefore, the ordinary meaning is applied. ("Words not specifically defined shall have their ordinary dictionary meaning as in Webster's New International Dictionary; construction and building terms shall use New York State Building Code definitions." Section 19-2.1).

Webster's Dictionary defines "warehouse" as "a structure or room for the storage of merchandise or



commodities.”¹ The applicant has demonstrated their proposed use of the property as a self-storage facility is to store items for customers in access stalls.

The fact the use may also satisfy the definition of “miniwarehouse” does not exclude the use from qualifying under one of the many other uses permitted in the Code. “It is well settled that zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality and in favor of the property owner.” FGL&L Property Corp. v. Rye, 66 N.Y.2d 111, 115 (1985); Baker v. Town of Islip Zoning Bd. of Appeals, 20 A.D.3d 522, 523 (2005). If the Common Council did not intend for such uses to be included within the broad category of “warehouse,” then it is for the Common Council to clarify its intention by amending the code to address this issue.

NOW THEREFORE BE IT FURTHER RESOLVED that the City of Poughkeepsie Zoning Board of Appeals hereby approves the applicant’s proposed use of the property.

Motion: Scott Parker
Second: Justin Phillips
Carried: 5:0:0

Lori L. Garcia
Lori Garcia
Municipal Administrative Assistant
Date: 1/9/2024

¹ <https://www.merriam-webster.com/dictionary/warehouse>

**RESOLUTION
(R 24-28)**

**RESOLUTION INTRODUCING A LOCAL LAW AMENDING THE ZONING CODE
TO PROVIDE A DEFINITION FOR “WAREHOUSE”**

INTRODUCED BY COUNCILMEMBER GRANT :

BE IT RESOLVED that an introductory Local Law amending the Zoning Code to provide for a definition for “Warehouse” be and hereby is introduced before the Common Council of the City of Poughkeepsie in the County of Dutchess and State of New York; and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed local law are laid upon the desk of each member of the Council; and

BE IT FURTHER RESOLVED that the Council shall hold a public hearing on said proposed local law to receive comment from the public on Tuesday, **April 16, 2024 at 5:30 pm** in the Common Council Chambers, Third Floor, City Hall, 62 Civic Center Plaza, Poughkeepsie, New York;

BE IT FURTHER RESOLVED that the Clerk publish or cause to be published a public notice in the official newspaper of the City of Poughkeepsie of said public hearing at least five (5) days prior thereto.

SECONDED BY COUNCILMEMBER _____ .

(LL 24-XX)

**A LOCAL LAW AMENDING THE ZONING CODE TO
PROVIDE A DEFINITION FOR “WAREHOUSE”**

SPONSOR: COUNCILMEMBER GRANT

BE IT ENACTED, by the Common Council of the City of Poughkeepsie as follows:

~~STRIKETHROUGH INDICATES DELETION~~
BOLD and UNDERLINE INDICATES ADDED LANGUAGE

SECTION 1: LEGISLATIVE INTENT

A recent interpretation request before the Zoning Board of Appeals brought light to the fact that the City’s code permits “Warehouses” in various zoning districts but does not provide a definition for that use. To clarify the legislative intent of this Common Council as to what qualifies as a “warehouse,” the Common Council hereby adds a definition to the Code.

SECTION 2: A new definition is added to the Code for “warehouse” as follows:

WAREHOUSE: A building used primarily for the storage of goods and materials. However, for purposes of the zoning code, specifically excluded from this definition is a “self-storage facility,” as defined in Section 19-3.25, and a “miniwarehouse,” as defined in 19-2.2.

SECTION 2. This Local Law shall take effect immediately upon filing with the New York State Secretary of State.

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Local Law be laid upon the desk of each council member; and

BE IT FURTHER RESOLVED, that the Common Council shall hold a public hearing on said proposed Local Law and that the City Clerk shall publish or cause to be published a public notice in the official newspaper of the City of Poughkeepsie of said public hearing at least five (5) days prior thereto.

SECONDED BY COUNCILMEMBER _____ :