

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON WEDNESDAY, SEPTEMBER 3, 2009 AT 7:00 P.M. IN THE COURTROOM AT 169 MT. PLEASANT AVENUE, MAMARONECK, NEW YORK.

These are intended to be "Action Minutes" which primarily record the actions voted on by the Zoning Board at the meeting held September 3, 2009. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board's Records.

RECEIVED
CLERK'S OFFICE
2009 NOV -6 AM 9:49
VILLAGE OF MAMARONECK
NEW YORK

PRESENT: Chairman Neuringer, Chairman
George Mgrditchian, Secretary
Robin Kramer, Board Member
Gregory Sullivan, Board Member
Steven Silverberg Counsel to Board
John Winter, Director of Buildings
Robert Melillo, Building Department

ABSENT: Barry Weprin, Board Member

The Court Reporter was present at the meeting to take the stenographic minutes, which will not be transcribed unless specifically requested.

CALL TO ORDER

The meeting was called to Order by Chairman Neuringer at 7:08 p.m. and he detailed the procedures for the meeting. The next meeting is scheduled for Thursday, October 1, 2009. Chairman Neuringer asked that all present take note of the exit doors in case of emergency. Chairman Neuringer indicated that any materials for the ZBA meeting had to be presented to the ZBA Office five days before the meeting.

Chairman Neuringer also noted that there was not a full Board due to the absence of Mr. Weprin.

Martha Sokol-McCarty, Esq., counsel for Mr. & Mrs. Joseph Urbinati, requested an adjournment to October 1, 2009.

Chairman Neuringer stated that a request from Nora Lucas (Application #2I-2008) be adjourned until November 5, 2009. People's United Bank (Application #31A-2009) had requested an adjournment to October 1, 2009. And, DiBenedetto/Fabiano (Application #14A-2009) did not comply with mailing and signage requirements for the meeting and were being adjourned to October 1, 2009.

Chairperson Neuringer began with the agenda.

- 1. Adjourned Application #10SP-2009, JUAREZ MEXICAN RESTAURANT CORP**

Mario Juarez, owner, approached the Board. He stated that he is asking to amend a special permit to include the sale of beer and wine because his client base has expanded. A liquor license is in the process of being obtained. Mr. Juarez indicated that the hours of operation have been from 6:00 a.m. to 10:00 p.m., in the past and is now 10:30 a.m. to 10:00 p.m. Sunday through Thursday and 10:30 a.m. to 11:00 p.m. Friday and Saturday. Ms. Kramer asked if Mr. Juarez was asking to change his hours of operation and he indicated that the special permit was exclusively for the wine and beer. Chairman Neuringer indicated that the applicant must make a request to change hours. Mr. Silverberg, counsel to the Board, made a suggestion that instead of making another application, the Board adjourn until next month and in the mean time, change the application and notice to present time change and the sale of beer and wine. It was further discussed that if Mr. Juarez receives his license soon, then it may make sense to have two applications. Mr. Mgrditchian asked if the establishment would have live entertainment and the applicant indicated that at the present time it would not. Mr. Mgrditchian asked if there were any current violations with regard to the Building Department or Police Department and Mr. Juarez indicated that there was not.

Chairman Neuringer asked if anyone wished to address the Board. None did.

A motion to close the public hearing was made by Ms. Kramer, seconded by Mr. Sullivan.

2. Application #5SP-2003, VERACRUZ, INC.

Larry Delgado appeared for his client. He indicated that he is applying for an extension of an initial permit and that he is here for another renewal. The only difference is that he is adding twenty-four (24) seats for a total of thirty-two (32) seats. He indicated that there were no violations for the establishment. Mr. Delgado also stated that the hours of operation would remain the same, 6:00 a.m. to 9:00 p.m. Mr. Mgrditchian asked if there would be any entertainment and Mr. Delgado indicated that there would not be. Ms. Kramer asked what the applicant was seeking and Mr. Delgado explained that he is seeking an extension on his special permit to allow for the 32 seats.

Chairman Neuringer asked if anyone wished to address the Board. None did.

A motion to close the public hearing subject to having the materials attached for a complete file in amending the 2008 application was made by Mr. Mgrditchian, seconded by Mr. Sullivan.

3. Application #8SP-1997, LIBERTY MONTESSORI SCHOOL

Jeff Megan, Esq. appeared on behalf of the applicant. He indicated that the first approval was in 1997 and that the applicant was before the Board for the fourth renewal of a special permit. He stated that there are no requested changes to the special permit and there are no complaints regarding the school. Mr. Mgrditchian indicated that he was an adjacent property owner and had received the notice. He asked if the applicant had any objections to him hearing the matter and Mr. Megan replied that he did not. Ms. Kramer asked if everything regarding the special permit was the same and Mr. Megan answered that it was.

Chairman Neuringer asked if anyone wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Mgrditchian, seconded by Mr. Sullivan.

4. Adjourned Application #4S-2009, ANGELO SALZILLO

Steve Chester, from Signs Inc., and the applicant appeared. Mr. Chester indicated that the applicant is trying to get a sign where building is not setback enough for a sign. Mr. Chester indicated that the applicant amended application and a photo was distributed. He stated that the reason the applicant is requesting a sign variance is because customers are parking in the Harvest Market parking lot thinking it is the Boston Market parking lot. Chairman Neuringer asked what the size of the proposed size is and Mr. Chester answered five feet to the top. Ms. Kramer asked if the sign would be illuminated and Mr. Chester stated that the preference would be illumination, but whatever the Board agreed to would be fine. Mr. Neuringer asked for clarification that the sign was originally larger and then became smaller. Mr. Chester answered that that was correct. The sign was down to 9 square feet. Discussion arose whether the Board of Architectural Review (BAR) rejected or approved a BAR application. It was determined by documentation that the BAR had denied the BAR application in February of 2009. Ms. Kramer stated that a different sign was denied by the BAR at that time. Discussion arose regarding Boston Market customers parking in the Harvest Market lot and if this had been addressed with Boston Market, which it had been. The applicant noted that Boston Market was not willing to do anything to solve the issue. Chairman Neuringer asked what would happen if the sign is approved and six months down the line, the problem still exists. The applicant is unsure of what other alternative is available. He also indicated that it is a safety issue because cars are backing up into traffic after they realize it is not the Boston Market parking lot.

Chairman Neuringer asked if anyone wished to address the Board.

A motion to close the public hearing was made by Mr. Mgrditchian, seconded by Ms. Kramer.

5. Application #15SP-2009 MANUEL FERREIRA

Mr. Ferriera appeared before the Board. He indicated that his establishment is a small specialized market serving Portuguese foods. Discussion arose regarding the actual address and location of the building. The address is 360B which is the corner spot. It is not to be confused with the car detail center. Ms. Kramer asked if the applicant would be selling pre-packaged foods only and he answered in the affirmative. Mr. Winter interjected that the establishment is still considered a food service establishment. Mr. Ferriera stated that the hours of operation would be from 6:00 a.m. to 7:00 p.m. seven days a week and that there would be no food preparation on premises.

Chairman Neuringer asked if anyone else would like to address the Board. None did.

A motion to close the public hearing was made by Mr. Sullivan, seconded by Mr. Mgrditchian.

6. Adjourned Application #19A-2009 & 1I-2009, FITIM BALAJ

Donald Mazin, Esq. appeared on behalf of the client. He indicated that his client had been before the Board before and made a presentation regarding the application. He stated that Mr. Balaj went to the Building Inspector as directed, but decided not to continue building until this ZBA meeting. He stated that Mr. Balaj decided to put the wall back by the fireplace. Mr. Mazin indicated that it was built in 1920 before the code. He indicated that there will be no changes to the neighborhood. His client is looking for an interpretation as well as a finding that this is not an alteration of a non-conforming use. Mr. Mazin reiterated the history of the application and stated that this case would not set precedence and that nothing has been altered. Walls were taken down that needed to be due to their disrepair. He indicated that Mr. Balaj needed to continue the work on the house so that he could move his family into the house and reduce his current hardships. Mr. Mazin stated that his client followed all the proper procedures and that this Board needs to make the approval. Mr. Mgrditchian stated that his understanding was that the changes performed on the house were primarily health and safety related. He went on to state that the house was gutted, replaced with lumber and the entire basement was excavated. He also indicated that drainage was placed around the house. Mr. Mgrditchian inquired as to whether there is still mold and, if so, where it is. Mr. Mazin answered that all repairs had been made. Mr. Mgrditchian stated that the Board had shown the applicant leniency by asking that everything be put back into existing condition. Mr. Mazin stated that his client didn't proceed because he wanted to make sure everything was done properly. Discussion arose regarding putting the structure back to its original way. Started with a four family and it is still a four family. Started with a particular footprint and will end with same footprint. Ms. Kramer stated that what the Board needs to know is how does the structure look under the current plans with what was originally there. What did it look like then and what does it look like now. Mr. Mazin answered by saying his client is prepared to proceed. The Board is here to work with applicants and his client has been prevented from moving forward. He also stated that the Building Inspector had approved the project, why can't the Board give the inspector authority? Mr. Sullivan asked the Building Inspector if Mr. Mazin's interpretation of the past month accurate and Mr. Winter stated that, yes, it was accurate. However, Mr. Winter stated that his biggest issue is that the addition is gone and he cannot allow it to be put back up. Discussion arose regarding perceived discrepancies in the layout. Mr. Fleming, the architect, stated that he met with the Building Inspector after the last Zoning Board meeting and coordinated with him and showed him a rough draft plan to get a permit for Mr. Balaj to continue to work. Chairman Neuringer stated that it looked to him like the floors were being manipulated, which constituted an alteration. Mr. Sullivan stated that this application was similar to the Barry Avenue application which was denied twice. Mr. Melillo stated that without the removal of the patrician walls, the plans were approved. He went on to state that this plan was not what was represented to him. Mr. Mgrditchian indicated that the dotted lines on the map will be put back. That is what the Board requested last month and that is what the Board is requesting this month. Mr. Balaj addressed the Board. He indicated that he has tried to do everything properly. Mr. Mazin interjected that this Board gave his client the authority to meet with the Building Inspector, which he did. His client didn't want to make changes until he came back to the Board. All parties agreed that the house would be put back to the way it was illustrated in the February 2009 plans. A brief discussion arose regarding the excavation of the basement and it was determined that the basement was not fully excavated. Mr. Fleming stated that the applicant was making that area a crawl space only. Chairman Neuringer summed up by stating that the applicant is asking for permission to restore a rear extension due to severe structured conditions and they wish to put it back exactly the way it was. With respect to the interior, to put it back exactly as the February plan illustrates. Mr.

Silverberg asked if there was any need for action by this Board. Mr. Winter answered in the affirmative. Chairman Neuringer added that there was nothing for the Board to act on with respect to the main house, only the extension. Mr. Mazin indicated that if the Board grants it, he would like to proceed as quickly as possible. Chairman Neuringer stated that the Board would give his request due consideration.

Chairman Neuringer asked if anyone wished to approach the Board. None did.

A motion to close the public hearing was made by Mr. Mgrditchian, seconded by Ms. Kramer.

6. Application #29A-2009, MICHAEL FASANO

Paul Noto, Esq., appeared on behalf of the applicant. He stated that in the application he had attached prior decisions by the Board. He stated that his applicant was seeking three variances. In the past, Mr. Fasano was instructed to remove pavers and Mr. Ciraco (Building Department) told him what to do. Mr. Noto stated that he wasn't sure Mr. Ciraco's instructions were consistent with what the Board requested. Chairman Neuringer asked if the applicant was looking for a clarification and two variances and Mr. Noto stated that was correct. Chairman Neuringer explained that it is up to the Building Inspector to clarify since the Board already made a determination. As for the two variances, it would require a rehearing with a full Board. Mr. Noto stated that he felt his client met the requirements for the variance application. Mr. Silverberg noted that he had never seen a clarification on variances. Mr. Noto suggested that he could meet with the Building Inspector. Mr. Silverberg asked if on the second point, the applicant is looking for the same relief as before. Mr. Noto explained that his client suffered a stroke. If the pavers are removed, his client won't be able to get around his property. Also, Mr. Noto indicated that drainage was an issue. Mr. Silverberg suggested to Mr. Noto that he provide the Board with case, as someone's personal issue is not a reason to reverse a variance. Discussion arose regarding previous times and cases that had been reheard by the Board. Ms. Kramer asked if this was an application for a new hearing or for a rehearing. Mr. Noto explained that his client is filing a new application. It was determined that the Board needs more information before it can act. The Board made a determination to adjourn the case until October 1, 2009.

APPLICATIONS CLOSED

1. Application #25A-2009, WILLIAM J. & BARBARA PAONESSA

The Board discussed the merits of the application.

The Board is willing to approve the application subject to removing a portion of the deck at the property line, having adequate screening and come back to the Board with landscaping plan hiding two adjacent properties.

A motion to approve the application was made by Ms. Kramer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Sullivan.

Ayes: Mgrditchian, Sullivan, Kramer

Nays: Neuringer
Absent: Weprin

2. Application #28A-2008, RAUL SILVA

The Board discussed the merits of the application.

Discussion arose regarding the odor of the bin, as well as the rodent issue. It was decided that the current situation was unacceptable.

A motion to deny the application was made by Ms. Kramer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Mgrditchian.

Ayes: Neuringer, Mgrditchian, Kramer, Sullivan
Nays: None
Absent: Weprin

3. Application #16A-2009, SUSAN & GRAHAM COPLEY

The Board discussed the merits of the application.

A motion to approve the application was made by Mr. Sullivan for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Mgrditchian.

Ayes: Neuringer, Kramer, Mgrditchian, Sullivan
Nays: None
Absent: Weprin

4. Application #11SP-2006, 306 FAYETTE AVENUE REALTY

The Board discussed the merits of the application.

The renewal of the special permit is without a term limit. The renewal of the special permit is granted without a term limit.

A motion to approve the application was made by Mr. Mgrditchian for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Mgrditchian, Sullivan
Nays: None
Absent: Weprin

5. Application #22A-2009, SERGIO DANIEL DIAZ

The Board discussed the merits of the application.

The applicant will work with the Building Department to address drainage issues and the applicant will install pavers in lieu of asphalt.

A motion to approve the application was made by Mr. Mgrditchian for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Mgrditchian, Sullivan
Nays: None
Absent: Weprin

6. Application #24A-2009, MARC KRAMER

The Board discussed the merits of the application.

That the shrubbery remains the same and structure is not to be extended.

A motion to approve the application was made by Mr. Mgrditchian for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Sullivan, Mgrditchian
Nays: None
Absent: Weprin

7. Application #19A-2009 & 1I-2009, FITIM BALAJ

The Board discussed the merits of the application. The Board expressed the desire that everything relating to the house be put back to the way it was before the house was purchased and that everything should be exactly as it was before. The rear structure should be put back exactly as before. Mr. Sullivan took issue to how the application was represented to the Board. The Board also discussed how the applicant had successfully demonstrated the poor condition of the house. Discussion arose regarding the fact that the applicant knew what he was doing and avoided proper procedures.

The applicant will stipulate that all work done on the extension will be brought back to the February 2009 plan, based on the fact that the building was in such poor shape that work done on the exterior was needed. The Building Department will monitor to make sure that what is constructed adheres to the February 2009 plan.

A motion to approve the application was made by Chairman Neuringer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer
Nays: Mgrditchian, Sullivan
Absent: Weprin

Mr. Silverberg indicated that a 2-2 vote is considered a denial and that without a majority of the Board, the application is denied. He asked if anyone on the Board wished to make another motion and none did.

8. Application #10SP-2009, JUAREZ MEXICAN RESTAURANT CORP

The Board discussed the merits of the application. The hours of operation will remain the same as previously approved and the applicant will come before the Board in three years for a renewal of the special permit.

A motion to approve the application was made by Ms. Kramer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Sullivan.

Ayes: Neuringer, Kramer, Sullivan, Mgrditchian
Nays: None
Absent: Weprin

9. Application #5SP-2003, VERACRUZ, INC.

The Board discussed the merits of the application. There will be no term limit on this special permit.

A motion to approve the application was made by Mr. Mgrditchian for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Sullivan, Mgrditchian
Nays: None
Absent: Weprin

10. Application #8SP-1997, LIBERTY MONTESSORI SCHOOL

The Board discussed the merits of the application. There will be no term limit on this special permit.

A motion to approve the application was made by Mr. Sullivan for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Mgrditchian.

Ayes: Neuringer, Kramer, Sullivan, Mgrditchian
Nays: None
Absent: Weprin

11. Application #15SP-2009 MANUEL FERREIRA

The Board discussed the merits of the application. The applicant will come before the Board in three years for a renewal of the special permit. The applicant will also follow the Board of Health requirements.

A motion to approve the application was made by Mr. Mgrditchian for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Sullivan, Mgrditchian
Nays: None
Absent: Weprin

MINUTES

A motion to approve the minutes of June 4, 2009 was made by Mr. Mgrditchian, seconded by Ms. Kramer.

Chairman Neuringer was absent for the June 4, 2009 meeting, so he did not vote.

Ayes: Mgrditchian, Kramer, Sullivan
Nays: None
Absent: Weprin

A motion to approve the minutes of July 22, 2009 was made by Ms. Kramer, seconded by Mr. Sullivan.

Ayes: Mgrditchian, Kramer, Sullivan, Neuringer
Nays: None
Absent: Weprin

Ms. Kramer made a suggestion that the Board should review the rules at the next meeting, if time allowed.

ADJOURN

A motion to adjourn the meeting was made by Mr. Mgrditchian, seconded by Mr. Sullivan.

Ayes: Neuringer, Mgrditchian, Kramer, Sullivan, Weprin
Nays: None

On motion duly made and carried, the meeting was adjourned at 10:05 p.m.

GEORGE MGRDITCHIAN
Secretary

Prepared by:
Ann P. Powers