

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, DECEMBER 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 December 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.

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

ABSENT:

Lisa Mango, 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 7:12 p.m. and he detailed the procedures for the meeting. The next meeting is scheduled for Thursday, January 7, 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 have to be presented to the ZBA Office five days before the meeting.

Chairperson Neuringer began with the agenda. He indicated that Application #16SP-2009 (Mamaroneck Beach & Yacht Club) will be heard toward the end of the agenda based on a request from the applicant’s attorney. Application #19SP-2010 (S&J Restaurants LLC) is adjourned to January 7, 2010 due to the fact that the applicant did not notify surrounding neighbors. Application #29A-2010 (Michael Fasano) is withdrawn per the request from the applicant’s attorney. Application #37A-2009 (Gussman De La Cruz) is adjourned to January 7, 2010. Application #48A-2009 (Edward Parisen) is adjourned to January 7, 2010.

1. Adjourned Application #26SP-2006, ORIENTA BEACH CLUB

William Boulay, Manager, appeared before the Board indicating that the club is requesting approval for non-member events. Mr. Boulay indicated that the requested tax documents were provided to the ZBA Office. Ms. Powers indicated that a copy was given to the Clerk-Treasurer’s Office and a copy was placed in the applicants file.

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

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

2. Application #18SP-2009, LUCIANO SAVONE

Carolina Savone appeared before the Board. Applicant wishes to amend the existing special permit to expand into an empty store next door. Mr. Mgrditchian asked if the applicant is adding additional square footage and expanding seating. Ms. Savone stated she is expanding 1,000 square feet to have more seating for patrons. Mr. Mgrditchian asked if the applicant will have sprinklers and Ms. Savone answered in the affirmative. Ms. Savone reiterated that she will be expanding the restaurant only for the purpose of seating more patrons.

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 Mr. Weprin.

3. Application #20SP-2009, ORIGINAL EMILIO'S CORP.

Wayne Martell, Esq. appeared on behalf of the applicant. He stated that the applicant is requesting a special permit to operate an existing pizza restaurant under new management. Mr. Martell indicated that the Board had, in the past, approved two special permits for this location (#14SP-2006 and #8SP-2009). He went on to say that this will be a family run restaurant and feels that the application conforms to the requirements of the special permit. The hours of operation are stated in the application as 10:30 a.m. to 10:00 p.m. Ms. Kramer asked if liquor will be served and Mr. Martell indicated that it would not at this time, but the applicant may want to serve liquor in the future and would apply accordingly. Discussion arose regarding seating and code requirements. It was determined that the applicant will adhere to code and Building Department requirements.

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

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

4. Application #21SP-2009, DBJC, INC.

Dean Bellantoni appeared before the Board. He stated that he wishes to modify an existing special use permit for fight nights. Chairman Neuringer asked what will be the expected population at the events and Mr. Bellantoni answered approximately 200 people. Chairman Neuringer indicated that applicants usually provide documentation demonstrating how an event will be run and that type of documentation needs to be in the file. He also asked how the premises will be able to seat that number of people. Ms. Kramer asked about food and vendors. Mr. Bellantoni stated that food would be set up and served inside. Mr. Mgrditchian asked if liquor would be served and Mr. Bellantoni indicated that liquor would be provided through the caterer. Mr. Mgrditchian stated that he had concerns about both alcohol and parking. The Board needs a plan that shows how this event will work and not get out of hand. Discussion arose as to whether the proposed use was admissible in an M-1 district and whether this was a principle use or accessory use. Ms. Kramer indicated that the applicant needs to show the Board: 1) how parking will be laid out, 2) written agreement with landlord to use parking, 3) show where vendors will be located, where the ring will

be set up and where the attendees will be located. Mr. Mgrditchian also added valet service and directing of traffic should be included in the documentation.

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

The matter is adjourned until January 7, 2010.

5. Adjourned Application #40A-2009, EAST COAST NORTH PROPERTIES, LLC

The applicant was called, however no one appeared. Chairman Neuringer asked Ann Powers to contact the applicant to determine why the applicant was not at the hearing. The matter is adjourned until January 7, 2010.

6. Application #49A-2009 PALMER TERRACE/STILLMAN MANAGEMENT

Steve Kuller, Board President, and Ronald Sher, Esq. appeared before the Board. He indicated that the security of the residents is of the most importance to Palmer Terrace. A picture was submitted to the Board showing a fence in disrepair. Mr. Mgrditchian asked if the fence will be level and Mr. Kuller indicated that it will be level. Mr. Mgrditchian asked what the purpose of an 8 foot fence is. Mr. Sher indicated that it would be harder for people to climb over it and onto the tracks. Discussion arose regarding the difficulty of climbing a 6 foot fence. A 6 foot fence could deter people from climbing the fence and Mr. Kuller agreed. Mr. Kuller indicated that there are several reasons for the 8 foot fence: 1) safety 2) visual barrier to unsightly area 3) reduce noise coming from the trains. Discussion arose regarding the second floor of the building still being able to see over the fence. Chairman Neuringer stated that there is no rationale going from a 6 foot fence to an 8 foot fence and an 8 foot fence is a substantial structure. He went on to say that the Board needs to be convinced that the applicant requires 8 feet. Mr. Sher stated that he felt there would not be a negative impact on the neighboring property.

A discussion arose that the new Board of Trustees will be raising the fence height from 5 feet to 6 feet and this Board does not want applicants asking for more than 6 feet once the code is changed. Further discussion arose regarding chain link fencing and wooden fencing. Ms. Kramer asked why the issue of the fence has come up now. Mr. Kuller indicated that the demographics of their community have changed. There are more children. Jason Jones, Board Director, stated that he lives on the second floor and his issue is safety as well as noise control. He works the night tour and Metro North works on the tracks in the morning on Saturdays and Sundays. He went on to say that hopefully the fence would eliminate the sound. Mr. Sher stated that he believed his client's location to the train tracks makes his request unique. Mr. Mgrditchian stated that the Board has to look at how it makes determinations down the line. Mr. Sher reiterated that he feels his client's application is minimal. Mr. Sullivan stated that this particular site allows access to the tracks. This could definitely be a distinguishing factor in this case. Mr. Weprin stated that the Board needs more specifics relating to this application and the fence itself. Mr. Sher stated that he would provide the Board with more specific information.

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

The application is adjourned until January 7, 2009.

7. Application #41A-2009, ORIENTA GARDENS/STILLMAN MANAGEMENT

Frank Crapano, Property Manager, appeared before the Board. He indicated that the existing fence has been up since May 2009. Mr. Weprin asked how this was brought to the Building Department's attention. Ms. Kramer stated that Code Enforcement Inspectors patrol the Village. Mr. Crapano stated that the property is used as a cut through to other areas. Discussion arose regarding the fencing around the pool. Ms. Kramer stated that the Board has had numerous applicants who are happy with 6 foot fences and why does this applicant need an 8 foot fence. Mr. Crapano stated that women at the pool have had to deal with truck drivers ogling them. He also indicated that the request for an 8 foot fence is to create a separation between the commercial areas that surround the property. Ms. Kramer stated that the applicant can plant deciduous trees to provide a covering. Mr. Crapano indicated that the planting of shrubbery would not be affective. He went on to say that he would not have a problem lowering a portion of the fence to six feet in some sections. Mr. Mgrditchian asked if the applicant had ever spoken to the neighbors regarding the issue of the truck drivers and Mr. Crapano stated that the fence had been knocked down several times and the neighbors never offered to fix it. The neighbors were not helpful.

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 Mr. Weprin.

8. Application #47A-2009, FRANK D. MARESCA, JR.

Frank Maresca appeared. He indicated that he is asking for a six foot fence with 1 foot see through lattice top. Ms. Kramer asked why he was seeking the variance. Mr. Maresca stated that he has a German shepherd who can jump a five foot fence. The higher fence would prevent his dog from jumping over the fence and running through the neighborhood.

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 Mr. Sullivan.

9. Application #50A-2009, TRACY STRAYER

Vincenzo Leto, the Builder, Tracy Strayer, the applicant and Anthony Pisari, the Engineer, appeared before the Board. A question arose regarding whether the applicant had submitted a site plan. The Board did not have a copy of the site plan in their file. Mr. Winter, Inspector of Buildings, obtained copies of the site plan and distributed to the Board. The architect reviewed the site plan with the Board. He indicated that the property is a legal non-conforming. Chairman Neuringer stated that this is a 5,000 square foot lot and it is 35% larger than other lots in the district. Chairman Neuringer stated that if the applicant respected the front yard setback, she would be in compliance. Mr. Leto stated that the house would look like a bowling alley if they did that. He went on to say that the builder, the applicant and he had worked for a year to come up with this plan. Mr. Mgrditchian stated that if the applicant took five feet off in any area, it would

be substandard. Chairman Neuringer asked if the foundation will be 100% new and Mr. Pasari indicated that the existing foundation will be completely removed and replaced with a new foundation. Ms. Strayer chronicled her family's experience during the flood of 2007. She recited hardships her family had undergone during that time. Her biggest issue is the mold that continues to be a problem even when so much has been done to have it removed.

Chairman Neuringer asked if anyone wished to approach the Board. Mr. Wong, the applicant's husband, approached the Board. He stated that he had a letter from a neighbor supporting the project. Ms. Kramer asked why the applicants were building again at the same location. Ms. Strayer stated that the foundation is old and they are building a drainage system that will support heavy rains.

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

10. Adjourned Application #16SP-2009, MAMARONECK BEACH & YACHT CLUB

Paul Noto, Esq. appeared before the Board. He indicated that the applicant had been in business for over 50 years. The club holds some non-member events which amount to less than 20%. Ms. Kramer asked what non-member events involve. Mr. Noto stated that in 2000 or 2001, a special permit for non-member events was instituted. He went on to say that the club has not had any complaints regarding noise, traffic, etc. Mr. Noto stated that fire codes dictate how many people can be assembled at the location. Some events are small and others are larger. He stated that there is a lot of parking, so that is not an issue. Mr. Silverberg asked what Mr. Noto's basis for indicating that the non-member events were under 20% in the past and stated that the Board had nothing empirical to consider. Discussion arose as to what the consequences would be to going over 20% for non-member events. Mr. Silverberg detailed the history of the 20% cap by stating that there was a concern by the Board of Trustees that the zoning although the zoning was for membership events, clubs were running non-member events. An analysis was done and the 20% cap was found to be agreeable. Chairman Neuringer stated that this special permit is to be monitored and enforced. Discussion arose as to what the definition of a non-member event is. Ms. Kramer stated that one reason for setting a limit is to keep facilities from becoming catering halls.

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 Mr. Weprin.

APPLICATIONS CLOSED

1. Application #50A-2009, TRACY STRAYER

Discussion arose regarding how the applicant presented information and demonstrated their hardship. Ms. Kramer commented that people do use side yards as rear yards. She indicated that the lot is too narrow. Chairman Neuringer stated the applicant was dealing with the hand they were dealt and that this is a reasonable request. Mr. Sullivan stated that the applicant demonstrated to the Board that they tried all possible alternatives.

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 Mr. Weprin.

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

2. Adjourned Application #2I-2009 & 34A-2009, GEORGE KROL

Mr. Silverberg reminded the Board that there are two applications before them: 1) an interpretation, and 2) a variance. Chairman Neuringer stated that the property is non-conforming and Mr. Mgrditchian interjected that it is a legal non-conforming. Mr. Silverberg stated that the Board needs to decide what exists legally. Chairman Neuringer stated that he does not have an answer to that and Mr. Mgrditchian indicated that the applicant currently has a five-family structure, but would be open to making it a four-family dwelling. Ms. Kramer stated that if it is a legal non-conforming use and the applicant expands it, he should apply for a use variance. Discussion arose as to whether this is a use change. Mr. Silverberg stated that it was a change in use because of permitted uses as one-family, two-family or multi-family. Mr. Mgrditchian stated that the applicant would need a use variance going from four-family to five-family and Mr. Silverberg agreed. Chairman Neuringer stated that the Board needs to make a determination of legal use. Mr. Mgrditchian indicated that prior to 1968, a four-family dwelling would not be legal. Discussion arose regarding the dwelling going from three-family to four-family to five-family. The consensus of the Board was that when the dwelling went from four-family to five-family, it was done illegally. The Building Inspector's letter stating it exists as a five-family does not make it a legal five-family dwelling. Mr. Mgrditchian stated that he would be more convinced that it is a four-family as opposed to a five-family. Ms. Kramer indicated that the property cards establish the fact, but not the legality of whether it is a four-family. The only record indicating it is a legal use is the three-family indicated on the 1941 property card. Discussion arose regarding the Building Inspector's letter indicating the dwelling to be five-family. Agreement was made by the Board that the dwelling was never legally a five-family. Counsel will contact the Village Attorney and Clerk's Office to determine if there is more information (maps) regarding the property. Mr. Weprin wrapped up by stating that the Board knows it is a three-family, there could be some evidence it is a four-family, but it is clearly not a five-family.

The application is adjourned to January 7, 2010.

3. Adjourned Application #26SP-2006, ORIENTA BEACH CLUB

The Board discussed the merits of the application.

The renewal of the special permit is granted with a three year 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 Mr. Weprin.

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

4. Application #18SP-2009, LUCIANO SAVONE

The Board discussed the merits of the application.

The renewal of the special permit is granted with a three year 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 Mr. Weprin.

Ayes: Neuringer, Kramer, Mgrditchian, Sullivan, Weprin

Nays: None

5. Application #20SP-2009, ORIGINAL EMILIO'S CORP.

The Board discussed the merits of the application.

The renewal of the special permit is granted with a three year 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 Mr. Sullivan.

Ayes: Neuringer, Kramer, Mgrditchian, Sullivan, Weprin

Nays: None

6. Application #47A-2009, FRANK D. MARESCA, JR.

The Board discussed the merits of the application.

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

Ayes: Neuringer, Kramer, Mgrditchian, Sullivan, Weprin

Nays: None

7. Adjourned Application #16SP-2009, MAMARONECK BEACH & YACHT CLUB

The Board discussed the merits of the application.

Applicant is to provide most recent returns to the Zoning Office within 60 days of the resolution.

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, Weprin

Nays: None

Steve Silverberg, Counsel to the Board, noted for the record that at the last Board meeting held on November 5th, the Board went into executive session regarding the filing of a Notice of Appeal in the matter of Lucas v. Benmar and the Board agreed to file the appeal.

ADJOURN

A motion to adjourn the meeting was made by Mr. Weprin, seconded by Ms. Kramer.

Ayes: Neuringer, Mgrditchian, Kramer, Sullivan, Weprin

Nays: None

On motion duly made and carried, the meeting was adjourned at 9:55 p.m.

GEORGE MGRDITCHIAN
Secretary

Prepared by:
Ann P. Powers