

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, FEBRUARY 4, 2010 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 February 4, 2010. 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: David Neufeld, Chairman
Gregory Sullivan, Secretary
Clark Neuringer, Board Member
Robin Kramer, Board Member
Steve Silverberg, Counsel to Board
John Winter, Inspector of Buildings
Robert Melillo, Building Department

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VILLAGE OF MAMARONECK
NEW YORK

ABSENT: Barry Weprin, Board Member

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 Neufeld at 7:11 p.m. and he introduced everyone and detailed the procedures for the meeting. He indicated that Mr. Weprin was not in attendance and any applicant wishing to be heard by the full Board could be adjourned until the March meeting. The next meeting is scheduled for Thursday, March 4, 2010. Chairman Neufeld indicated that any materials for the ZBA meeting must be presented to the ZBA Office no later than five days before the meeting.

Chairman Neufeld began with housekeeping matters:

Application #48A-2009 - Edward Parisen was informed that due to the fact that his sign was not updated with the correct meeting date, his application is adjourned until March 4th and he will be placed at the top of the agenda.

Application #4A-2010 – Gloria Betancourt was informed that due to the fact that her sign was not updated with the correct meeting date, her application is adjourned until March 4th.

Chairman Neufeld began with the agenda.

1. Adjourned Application #19SP-2009, S&J RESTAURANTS LLC.

Paul Noto, Esq. appeared on behalf of the applicant. He noted for the record that the Board has been given the requested new survey and floor plan. Mr. Noto stated that the number of seats will not change, but the configuration of the seating may based on safety concerns or service reasons.

Chairman Neufeld noted that the floor plan was sent to the Planning Board for them to review the configuration, as this is their expertise. Chairman Neufeld asked if the applicant had anything additional to add regarding 1) table layout, 2) the concerns of the neighbors and 3) hours of operations. Mr. Noto stated that the layout was what the applicants felt would work best, but they are open to suggestions. Mr. Noto indicated that the applicants met with the neighbors after the January meeting and stated that he felt there was a sense that the meeting went well. The applicants are willing to meet with the neighbors on a regular basis if the neighbors wish. As for the hours of operation, Mr. Noto stated that the current hours on the application are the hours the applicants are proposing, which best fits their business model (11:00 a.m. – 12:00 a.m. Sunday through Thursday and 11:00 a.m. to 1:00 a.m. on weekends). Mr. Noto went on to say that the hours are not unreasonable given the commercial district the restaurant would be located in. He stated that the kitchen will be open until closing, serving food the entire time and there will be waiter/waitress service at all tables. This will distinguish it from a bar.

Chairman Neufeld indicated that there were no comments from the Planning Board as of yet. His concerns relate to the tables and seating, specifically how everything will fit in the designated area. Chairman Neufeld continued by stating that the plan does not seem to work. Mr. Noto indicated that restaurants move tables around all the time. Mr. Neuringer stated that the issue is one of occupancy and asked how the applicants came up with the 50 seats. Mr. Noto indicated that number works because that is the number of people that can be served at one time, keeping the size of the establishment in mind. Mr. Neuringer continued stating that he did a calculation of the State code requirements – 15 sq. ft. per person – would make it 30 people, plus ten around the bar. This would total 40, not 50. Mr. Noto indicated that based on the plan presented, a maximum of 50 is appropriate. Mr. Neuringer stated that granting a special permit is also granting intensity of use. Mr. Sullivan indicated that the former owner was present and he stated that the number of seats is 38. Ms. Kramer noted that the State code overrides anything the Zoning Board might stipulate. Mr. Neuringer stated that his concern is further down the line, if the establishment becomes a successful drinking hangout, the applicants can close the kitchen if there is not much business and the Zoning Board could not do anything about it. Mr. Noto stated that was incorrect. Special permits have term limits and this Board has revoked permits in the past at this location. Mr. Winter, Building Inspector, added that the applicant will also be required to go to the Fire Marshall. Ms. Kramer asked if other restaurants in the area serve food as late as midnight or 1:00 a.m. Mr. Noto stated that Molly Spillane's serves until 12:30 a.m. Mr. Sullivan indicated that in previous resolutions, the Board has stipulated a specific number of seats for restaurants. Mr. Sullivan said that if the correct occupancy number is established, the Board can move the application along and include the seating in the resolution.

Chairman Neufeld asked if anyone in the audience wished to address the Board.

Marla Schneider, a resident of Melbourne Avenue, addressed the Board. She indicated that she was one of the neighbors who spoke with the owners at the end of last month's meeting, but had not heard from them since or how to get in touch with them.

Juan De La Cruz, a resident of Melbourne Avenue, addressed the Board. He asked the applicants to remind him of where the garbage will be located. He indicated that the utility room where the applicants have proposed to store the garbage until it is collected houses the boiler as well as

electrical panels. Mr. De La Cruz stated that the fire department does not allow any obstruction in the utility room because it would be a potential fire hazard. Mr. De La Cruz concluded by stating that he had not been contacted by the applicants after the January meeting.

Arthur McNiff, a resident of Melbourne Avenue, addressed the Board. He indicated that having this restaurant open will be a disaster and that Mamaroneck Avenue is the place for bars, not Melbourne Avenue or Halstead Avenue. He went on to say there is a large darkened area behind the bar and this will encourage people during nice weather to loiter. His concern is that if the establishment becomes successful, it will bring a lot of congestion to the neighborhood. Mr. McNiff stated that there are ten children under the age of 6th graders within 200 yards of the proposed establishment. He does not want see this bar at this location.

Kim Tracey, a resident of Melbourne Avenue, addressed the Board. She questioned how the parking would accommodate all the patrons. Chairman Neufeld indicated that the Board does not make the Zoning laws, the Board of Trustees does. He also stated that there are no parking requirements. Ms. Tracey asked what a special permit is. Chairman Neufeld explained what a special permit is and why applicants are required to obtain them.

Ms. Kramer asked if the applicants had permission to use the utility room. Mike Stevens, the applicant, indicated that they will be putting out the trash constantly, four or five days a week for pick up. He stated that they do have access and are allowed to use the utility room.

Mr. Noto stated that he did hand out cards and email information at the last meeting. He said he could certainly be contacted and that he is happy to arrange a meeting between the applicants and the residents. He also stated that no one affiliated with the prior restaurant is affiliated with this application.

Discussion arose as to whether the Planning Board should be involved in reviewing this application. Mr. Silverberg, counsel to the Board, stated that if new information is presented, the application should be adjourned unless Mr. Noto has no objection. Mr. Neuringer asked the applicants to provide an occupancy analysis. Mr. Noto indicated that time is of great concern and if his clients are limited in occupancy, they accept this. He went on to say that the Planning Board should not be reviewing this application and that the applicants are zoning compliant. His clients are requesting a special permit. Mr. Noto stated that the applicants will comply with the State Building Code. Mr. Noto also indicated that the applicants are in danger of being out of their lease and he would like a vote tonight if at all possible. He went on to say that his clients submitted materials in November for the December meeting and now it looks like there won't be a vote until March. Mr. Silverberg asked if Mr. Noto has any objection to closing the hearing and having the Planning Board supply feedback. Mr. Noto stated that he has no objection to closing the hearing and having the Zoning Board speak with the Planning Board. More discussion arose regarding closing versus adjourning the application. The Board decided to adjourn the hearing.

A motion to adjourn the hearing was made by Mr. Neuringer, seconded by Mr. Neufeld.

Ayes: Neufeld, Neuringer, Kramer
Nays: Sullivan

Absent: Weprin

The Board will receive an occupancy analysis from the applicant. Chairman Neufeld reiterated an earlier statement that the former owner indicated the maximum occupancy to be 38.

The application is adjourned until March 4, 2010.

2. Adjourned Application #21SP-2009, DBJC, INC.

The Board received notification from the Building Department indicating the applicant has withdrawn his application for a special permit.

3. Application #1SP-2010, ENDURANCE FITNESS (THOMAS FALCO)

Paul Noto, Esq. appeared on behalf of the applicant. He indicated that this is an amended application and that his former partner is no longer with him. It is now a fitness club. He stated that this is retail because Mr. Falco is selling memberships. Mr. Noto stated that the applicant received preliminary approval from the Planning Board and is waiting for this Board to make a determination. Mr. Noto distributed additional material requested by the Board at the last meeting. Mr. Noto went into the history of LA Boxing and how they received their special permit. He indicated that the Building Department is taking the position that a special permit is required. Chairman Neufeld stated that he does not agree with the previous decision and that he feels it undermines the code. Ms. Kramer asked why the baseball business is allowed and Mr. Winter answered that it is not allowed; it is in violation. Chairman Neufeld stated that this could be a use variance. Mr. Noto said that his client will not be applying for a use variance. Mr. Silverberg asked if it the Building Department's opinion is that this is a retail establishment. Mr. Winter answered that based on LA Boxing, he did not see a difference between the two. Mr. Silverberg indicated that since the Building Department sees this as a permitted use, then the Zoning Board does not have jurisdiction. The issue of charging tax was also discussed. Mr. Silverberg reiterated that, if in fact, retail is a permitted use and the Building Department sees this application as retail, then the Board has no jurisdiction. Ms. Kramer stated that the applicant is here for either nothing or an interpretation, but not a special permit. Ms. Kramer asked Mr. Winter if he felt this was a retail use based on LA Boxing and Mr. Winter indicated that he did.

Chairman Neufeld asked if anyone wished to approach the Board.

George Mgrditchian addressed the Board. He indicated that he was on the Zoning Board when LA Boxing was before the Board. Mr. Mgrditchian's understanding of a determination for a special permit was: 1) The Building Department determined it required a special permit even though it was a retail use operation and 2) The special permit would govern and control the applicant for the first three years on how the operation would run. He stated that since this was something new and the Board wanted to monitor it closely. Mr. Mgrditchian went on to say that the former Building Inspector had put that forth under those guidelines. The size of LA Boxing being over 3,000 square feet also came into play.

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

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

4. Application #40A-2009, EAST COST NORTH PROPERTIES

Sean and Chris Murphy appeared before the Board. Chairman Neufeld brought everyone up to date on the application. He stated that the Board had voted at the last meeting to declare itself lead agency. Chairman Neufeld said that this is a Type I action because it is in the flood plain. He indicated that the applicants need to provide the Board with a complete EAF form and any other materials necessary. Ms. Kramer indicated that the form was complete. Chairman Neufeld requested that the form include the contact names of the agencies to make certain that all agencies are notified. Also, the applicants are to provide to Ann Powers all contact information regarding the application (engineers, etc.) within two weeks. Chairman Neufeld stated that he was informed that the applicants wished to adjourn until the end of March. He indicated that the Board would convene a work session at the March meeting to discuss the application and the applicants would come back in April.

5. Application #4SP-2004, EQUINOX MAMARONECK, INC.

Paul Noto, Esq. appeared on behalf of the applicant. He indicated that the applicant is here to renew a special permit. There are no violations and the operation of the facility is uneventful. Questions arose regarding the issue of cars stopping in the fire zone. Mr. Noto stated that employees go outside during peak times to make sure no one parks in the fire zone. Mr. Neuringer asked if there were any changes regarding hours of operation and Mr. Noto answered that there were no changes.

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

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

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

6. Applications #5SP-2010 FAISAL LIADAT (DOMINO'S PIZZA)

Chairman Neufeld indicated that this is an unlisted action by the Planning Board and that the Planning Board has declared lead agency. The Zoning Board agreed. Chairman Neufeld indicated that the application was incomplete due to SEQRA and noticing.

The application was adjourned to April 1, 2010.

7. Application #6SP-2010 & Application # 8SP-2010, HECTOR VASQUEZ

Hector Vasquez appeared before the Board. With respect to the #6SP-2010 application, Mr. Vasquez is requesting a special permit to continue operating an existing deli under new ownership. He stated that everything is the same, hours of operation, etc.

Chairman Neufeld asked if anyone wished to approach the Board. None did.
A motion to close the public hearing was made by Mr. Sullivan, seconded by Ms. Kramer.

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

Regarding the #8SP-2010, Mr. Vasquez indicated that he would like to sell beer and wine at the luncheonette. Mr. Neuringer stated that one of the questions Mr. Vasquez was asked when he came before the Board last year for a special permit renewal was whether he intended to serve beer and wine. At that time, Mr. Vasquez had indicated that he had no desire to sell beer and wine. Mr. Vasquez stated that he is trying to compete with other restaurants that do serve alcohol for dinner. His hours will remain the same except for the weekends he plans to be open until 1:00 a.m.

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

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

8. Application #8A-2010, BEACH POINT CLUB

Randy Ruder, Manager of Beach Point Club, appeared before the Board. He distributed photos of the area. He indicated that the club had received a variance for the tennis paddle facility. With regard to the setback, it was built 8 feet instead of the required 13 feet. Discussion arose regarding scaled dimensions on the survey. Ms. Kramer asked that the surveyor put dimensions on the survey. Mr. Silverberg made the point that if the applicant needs a larger variance, it must be re-noticed.

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

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

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

9. Application #9A-2010, BLYTHE HAMER AND BRAD GEWEHR

Ms. Hamer and Mr. Gewehr appeared before the Board. Mr. Neuringer indicated that he was recusing himself from the hearing because he is the applicants' neighbor. Chairman Neufeld made mention that one of the Board members, Barry Weprin, was not in attendance tonight and that the Board would likely not close the hearing so that he could watch the dvd and read the minutes. He asked if the applicants wished to continue and they indicated that they did. Ms. Hamer stated that the driveway was widened 20 years ago and that they moved in approximately a year and a half ago. She indicated that a neighbor had filed a complaint after they had signed the contract. Ms. Hamer stated that they had no idea there was a problem until three weeks before the closing.

Discussion arose regarding the correct dimension of the survey and what had been stated on the disapproval notice. Rob Melillo indicated that the disapproval notice had a type-o. Chairman Neufeld stated that the Board needs to know the actual number because the requirement is five feet. Ms. Kramer suggested having the surveyor update the survey and Chairman Neufeld asked that the surveyor indicate the width of the driveway.

Chairman Neufeld asked if anyone wished to approach the Board.

Clark Neuringer appeared before the Board. He indicated that he lives immediately north of the property. Mr. Silverberg noted for the record that Mr. Neuringer is a member of the Zoning Board, has recused himself from this hearing and is speaking as an individual property owner. Mr. Neuringer confirmed that statement. Mr. Neuringer read from prepared materials which he submitted to the Board.

Chairman Neufeld requested to see the entire resolution from 1987 (#5A-1987). Mr. Sullivan asked if the 2006 survey was incorrect and Mr. Neuringer stated that it appears to represent conditions as they currently appear.

Esther Neuringer appeared before the Board. Discussion arose regarding placement of gravel and asphalt as well as the 2006 survey and the 1966 survey. The gravel appeared around 1987. Chairman Neufeld asked that the record reflect the Mr. Neuringer provided a red and blue diagram of exhibits F & G to show the area of the houses in the exhibits. Mr. Neuringer showed both surveys from 1966 and 2006 and demonstrated how 2 cars would be able to park side by side.

Ms. Kramer asked what the problem was to having the driveway expanded. Ms. Neuringer stated that the driveway expansion made the cars parked there too close to her home. There are noise issues. Plants had to be removed from that area. Mr. Neuringer indicated that if he were to erect a fence, which he is permitted to do, the neighbors would not be able to open their car doors. Ms. Neuringer stated that if this is allowed, there will be large parking pads with smaller homes. Mr. Neuringer stated that the use of the area as a driveway was their concern.

Ms. Hamer stated that there is some confusion as to when the driveway was expanded. But, to reduce the size of the driveway would be a financial hardship for her.

The matter is adjourned until March.

The Board recessed at 10:00 p.m. and the meeting resumed at 10:12 p.m.

10. Application #12A-2010, RAYMOND DIAZ

Mr. Diaz stated that he wanted to have a pool for his grandchildren. He measured the area himself. He stated that he had both the pool and the electrical work done professionally. When Mr. Diaz wanted to refinance, it was brought to his attention that there was an outstanding building permit that needed to be closed. The Building Department came out to his property and it was determined that there was a setback issue. Mr. Diaz had a survey performed. He indicated that the pool has been there for three years and he has not received any complaints from any of his neighbors. Discussion arose as to the how the setback measurements were determined. Ms. Kramer asked if the pool needed a fence around it and Mr. Winter indicated not for above ground pools. Chairman Neufeld indicated that the Board needs a copy of the original variance.

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

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

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

11. Application #13A-2010, AW OAKWOOD, LLC.

Andrew Weiss appeared before the Board. He distributed photos of the property. Mr. Weiss stated that he had planned to conform to the five foot fence requirement, but the varying slopes on the property made it difficult to stay at five feet. Part of one fence sits on top of a retaining wall and although the fence is four feet high, the retaining wall increases the entire height of the fence. Discussion arose regarding the iron fence, wood fence and aluminum fence. Ms. Kramer asked if the property was in the corporate name and Mr. Weiss stated that it is his house. Mr. Neufeld noted that there is a lot of fencing and not all of it is in compliance and asked how that happened. Mr. Weiss stated that he didn't realize the fencing needed to be measured from the bottom of the retaining wall. Also, there are varying slopes throughout the property. Rob Melillo stated that portions of the fence are raised two inches from grade and other portions are higher. Discussion arose regarding the current code and the proposed new fence height law.

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

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

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

12. Application #14A-2010, JOSE MADERIA

Leonard Brandes, the architect, appeared on behalf of the applicant. Jose Maderia, the applicant, appeared as well. Mr. Brandes started by stating that the addition to go from a one family to a two family dwelling was already approved. He went on to say that the applicant received a front yard variance and was issued a permit. The building was built as approved. Mr. Brandes distributed photos which he said showed that there is plenty of room between the buildings. He went on to say that he was not asked to obtain a side yard variance. Mr. Winter stated that the applicant received a permit to build exactly what he built and that all he needs now is a certificate of occupancy. Discussion arose as to the applicant following the instructions of the previous Building Inspector. Chairman Neufeld stated that although a mistake may have been made by the previous Building Inspector, it is still the applicant's responsibility to follow the code.

Chairman Neufeld 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. Neufeld.

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

13. Application #15A-2010, TARA SLONE GOLDSTEIN

Dan Natchez appeared on behalf of the applicant. He indicated that the applicant is seeking a fence variance from five feet to six feet. He went on to say that the contour of the land makes the fence exceed five feet. He stated that the fence also serves as a pool enclosure fence and that it would make the applicant non-compliant if he lowered it. Mr. Natchez stated that he had letters from every neighbor adjacent to the property not objecting to the variance. Discussion arose as to what type of action this is. Mr. Sullivan asked if HCZM made a determination. Mr. Natchez indicated that he was not sure what the committee typed the application. Mr. Silverberg felt this application was a Type II. Mr. Natchez said he would accept that.

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

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

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

APPLICATIONS CLOSED

Chairman Neufeld discussed the Lucas matter. Mr. Silverberg indicated that he had received a draft memo from Ms. Zalantis, but had not had time to review it before forwarding it to the Board. He would provide the Board with a copy of the memo before the March meeting. Chairman

Neufeld stated that one of the appeals in this matter has an extensive record on it and would involve a great deal of cost. Putting that aside, he stated that the Judge ruled that the failure to take action by the Board resulted in an affirmative result, which Chairman Neufeld stated was incorrect. Due to this setting a serious precedent and being in error, Chairman Neufeld suggested that perhaps it can be appealed. Mr. Silverberg stated that he would have the documentation ready to discuss at the next meeting.

1. Applications #1A-2010, FRENCH AMERICAN SCHOOL

The Board discussed the merits of the application. It was decided that the location is most ideal and does not impinge on neighbors.

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

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

2. Application #12A-2010, RAYMOND DIAZ

The Board discussed the merits of the application. This hardship was created by the error of the Building Department at the time the permit application was submitted. Ms. Kramer indicated that this was not a particularly large variance. There is open space adjacent to the pool and the applicant is not affecting existing homes.

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: Neufeld, Neuringer, Sullivan, Kramer
Nays: None
Absent: Weprin

3. Application #6SP-2010, HECTOR VASQUEZ

The Board discussed the merits of the application.

The special permit is granted with a three year term limit. The special permit is based on the previous resolution for the deli.

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

Ayes: Neufeld, Neuringer, Kramer, Sullivan
Nays: None

Absent: Weprin

4. Application # 8SP-2010, HECTOR VASQUEZ

The Board discussed the merits of the case. This is a modification to special permit #5SP-2009 and therefore the special permit is granted for a two year period to coincide with the expiration of that permit.

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

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

MINUTES

A motion to approve the minutes of January 7, 2010 was made by Mr. Sullivan, seconded by Ms. Kramer.

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

ADJOURN

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

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

On motion duly made and carried, the meeting was adjourned at 11:35 p.m.

GREGORY SULLIVAN
Secretary

Prepared by:
Ann P. Powers