

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, JANUARY 7, 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 January 7, 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
Barry Weprin, Board Member
Steve Silverberg, Counsel to Board
John Winter, Inspector of Buildings
Robert Melillo, Building Department

Lisa Casey, 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 7:09 p.m. and he introduced everyone and detailed the procedures for the meeting. The next meeting is scheduled for Thursday, February 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 the agenda.

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

Paul Noto, Esq. appeared on behalf of the applicant. He reviewed the history and introduced partners Mike Stevens and Justin Koehler. Mr. Noto indicated that the applicants are proposing a restaurant with a bar, and employing 2 to 3 individuals. Mr. Noto added that his clients are prepared to make the commitment of having one of the two partners at the restaurant at all times due to the previous issues. The hours of operation will be 11:00 a.m. to midnight, Sunday through Thursday and 11:00 a.m. to 1:00 a.m., Friday and Saturday. There will be seating for 50 people and no work needs to be performed except for cosmetic alterations. Mr. Noto submitted a letter to the Board from the owner of the property supporting the application and he also submitted a sample menu.

Discussion arose as to the size of the bar area in relation to the dining area. Mike Stevens indicated that there will be a full menu with waiters and waitresses serving. There will be no entertainment.

Chairman Neufeld asked if anyone wished to approach the Board.

Michael Sedano, a resident of Melbourne Avenue, addressed the Board. He stated that there had been many restaurants at the proposed location and that there were always issues with bar patrons. He indicated that he does not believe people will go to the restaurant to eat and that this will turn into another bar with traffic and crowding issues. He does not wish to see any restaurants in this location.

A question arose regarding the parking lot and Mr. Noto indicated that the parking lot is not the applicant's lot.

Carlos De La Cruz, a resident of Melbourne Avenue, addressed the Board. He expressed opposition to the granting of the special permit. He indicated that in the past, the establishments had been a determinant to the area. He stated that police had been called numerous times in the past for drunkenness and speeding. Mr. De La Cruz also discussed the fact that the neighborhood has many children and the situation causes an unsafe condition in the neighborhood. He noted that when management became aware of the situation, they did nothing to rectify the problems. Mr. De La Cruz also wishes not to have a bar at this location.

Kim Tracey, a resident of Melbourne Avenue, addressed the Board. She stated that the history of establishments at this location were very poor. She has young children and there are many young children in the neighborhood that play in the street. She witnessed situations where individuals had been over served at the bar and would get in their cars and drive. She also indicated that there was trash all over the area and patrons hanging out and smoking. She suggested having hours more suitable for a restaurant, such as closing at 10:00 p.m.

Mr. Neuringer pointed out that many of the concerns people have voiced are addressed in the Village and Zoning codes.

Ms. Tracey went out to say that an early closing time would be better, proper disposal of trash and proper storage would be helpful and changing the set up of the restaurant to make it more conducive to dining as opposed to drinking.

Mr. Weprin asked if the applicants have met with the neighbors. Mr. Noto indicated that they had not, but would be willing to meet.

Frank Mioli, a resident of Melbourne Avenue, addressed the Board. He indicated that there was code violations in the past and neighbors did call and complain, but those complaints went unanswered. He also noted that concerns were not resolved in a timely fashion. Mr. Mioli stated that the police had been called in the past, and that the neighbors should not have to come before a Board to have the issues rectified.

Chairman Neufeld requested a survey and plan from the applicants to demonstrate how everything is laid out with respect to the location of the neighbors.

Discussion arose as to how the trash will be maintained. Mr. Stevens indicated that the trash will be stored indoors and taken out multiple days during the week for pick up. Everything consumed, except for coffee in take-out containers, will be consumed inside the establishment.

With reference to a survey, Mr. Noto stated that this is a pre-existing commercial building, so a survey is not needed. Steve Silverberg, counsel to the Board, stated that the survey can be an existing one with an affidavit.

Mr. Noto addressed public comments. He stated that he agreed with the neighbors that enforcement is important and that his clients have no desire to antagonize or alienate the neighbors. He went on to state that he understands the history and how bad the past experiences were. Mr. Noto also indicated that other restaurants are open until 1:00 a.m. and he would expect the same courtesy.

Michelle Jackson addressed the Board. She indicated that she supported the comments that all the neighbors made. She had several questions relating to the plan. She also wanted to get a feel as to whether the focus was on eating or serving alcohol.

A request was made by Chairman Neufeld that the applicant place seats around the tables when they redo the plan.

The application is adjourned until February 4, 2010.

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

The applicant was not in attendance. Chairman Neufeld indicated that perhaps the applicant was not ready to present more information this evening and was given either January or February at the last meeting to present additional material. The application is adjourned until February 4, 2010.

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

Applicant has requested an adjournment to the February meeting due to health issues. Discussion arose regarding lead agency. There was some discussion as to whether the Planning Board had already declared itself lead agency. John Winter was under the impression that the Planning Board had declared lead agency. Due to the number of variances, Mr. Neuringer indicated he felt the Zoning Board should declare lead agency. There was some discussion as to whether this should be done formally or informally with the Planning Board.

A motion to declare lead agency was made by Mr. Sullivan, seconded by Mr. Weprin.

Ayes: Neufeld, Neuringer, Kramer, Weprin, Sullivan

Nays: None

The application is adjourned to February 4, 2010.

4. Adjourned Application #37A-2009, JOAN GUSSMAN DE LA CRUZ

Donald Mazin, Esq., appeared on behalf of the applicant. He reviewed the current application before the Board. He indicated that Section 100-1 allows the applicant to erect an antenna if he receives a permit and has a setback, which the applicant has both. He went on to say that the height limitation of 15 feet would be detrimental given the trees, buildings, etc. Antenna's that rise above obstructions would make it a better functioning piece of equipment. Mr. Mazin submitted Kleinhaus v. ZBA, Cortlandt, NY for the Board's review and he also submitted a petition signed by neighbors supporting the antenna. Mr. Mazin asked that the Board approve his client's variance request.

Discussion arose as to whether the applicant can and has demonstrated a need for 50 feet, since the antenna can and does operate at a lower height. Mr. De La Cruz stated that the antenna needs a clear view and that the height is essential for the antenna to operate accurately above ground. He maintains that 50 feet is the minimum.

Discussion arose regarding the varying heights of the antenna and the types of frequencies used. Mr. De La Cruz stated that the lower height will not work with his frequency of 14 MHz and that the minimum height is the height he is requesting. He also stated that he does not wish nor have a need to go any higher. Mr. De La Cruz also explained that the antenna is mounted in such a way for safety reasons.

Steve Silverberg stated that the case cited by Mr. Mazin does provide that it is necessary that the Board permit a tower that reasonably accommodates the applicant, but the Board is not required to provide whatever the applicant wants. The applicant must demonstrate it is the minimum required. The Board can take into account visual effects and consider screening requirements, if appropriate.

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

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

5. Adjourned Application #49A-2009 PALMER TERRACE/STILLMAN MGT.

Ronald Sher, Esq. appeared on behalf of the applicant. He indicated that the applicant is seeking an area variance to install an 8 foot fence along the Metro North property line. He submitted a proposal from Future Fence to the Board. Steve Koller, Board President, discussed the planting and growth of the shrubbery. He also showed a sample of the proposed fencing. Discussion arose as to whether there would be a need for an 8 foot fence if the shrubbery grows and thickens. Mr. Neuringer stated that the applicant had not demonstrated the need for an 8 foot fence instead of a 6 foot fence. Ronald Sinclair, Property Manager, indicated that there have been some circumstances where people have come over from the Metro North side and vandalized cars and he stated that their situation was a unique one.

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

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

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

6. Adjourned Application #48A-2009, EDWARD PARISEN

Edward Parisen appeared before the Board. He stated that he built the new stairs because his wife is handicapped and the new stairs make it easier for her. He went on to say that the old stairs were not up to code and the new stairs are up to code. Denis Kraljevic, Contractor, indicated that the stairs protrude 2 ½ feet further than the original stairs. Discussion arose among the Board members regarding the survey. Mr. Kraljevic pointed the location of the stairs on the survey. The steps are 6 to 7 feet from the sidewalk. Mr. Neuringer stated that the variance needs to be in dimensions. It was determined that the Building Inspector will go out to the property and determine what the appropriate type of variance this is. Mr. Kraljevic indicated that the applicant does not wish to incur additional costs. The Building Inspector and the applicant arranged a time to meet so that the applicant can come back before the Board next month.

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

The application is adjourned until February 4, 2010.

7. Application #1SP-2010, THOMAS FALCO

Thomas Falco and Justin Garcia appeared before the Board. Mr. Falco stated that the two partners are applying together to operate a family martial arts academy and that all paperwork was submitted. Chairman Neufeld asked who will operate the business and Mr. Falco answered Jungle Gym Martial Arts Mamaroneck, LLC. A recommendation was made to amend the application so that the name of the business is reflected as opposed to the individuals. Discussion arose as to whether the application should be for a special permit or variance.

Mr. Garcia stated that they plan to operate a traditional Brazilian martial arts family/children oriented program. The intent is to have regular classes with ongoing memberships. Payments will be scheduled monthly and patrons will follow a structured class schedule. Mr. Garcia stated that this would not be run like a typical gym.

Lengthy discussion arose regarding the fact that this business is in a retail area and whether an interpretation or use variance might be more appropriate. Chairman Neufeld indicated that in order to grant a special permit, the business needs to a permitted use and the Board needs to determine the permitted use. Ms. Kramer indicated that there needs to be an interpretation to determine permitted use. The history of LA Boxing, as well as their resolution, was also discussed.

Steve Silverberg stated that assuming the Building Inspector made a determination that this was a retail business; the applicant would not need a special permit. John Winter, Building Inspector, mentioned that he was uncomfortable with calling this retail; that is why he sent it to the Board.

Mr. Silverberg did not see any reason why the Board cannot make the name change on the application and the interpretation this evening. He asked the applicants how much of the business is retail driven. Mr. Garcia answered approximately 40% to 60%. Discussion arose as to how much revenue is generated and whether the business is an academy or retail store.

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

A motion to modify the application in terms of the name and for an interpretation was made by Mr. Sullivan, seconded by Ms. Kramer.

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

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

Ayes: Neufeld, Neuringer, Kramer, Sullivan
Nays: Weprin

Chairman Neufeld advised the applicant to submit more documentation to the Board for review.

The Board recessed at 9:55 p.m. and the meeting resumed at 10:05 p.m.

8. Application #1A-2010, FRENCH AMERICAN SCHOOL

Carmen Arminio appeared before the Board. Chairman Neufeld indicated that the Zoning Board cannot determine variances for Section 200. Approval would have to be by the Planning Board. Mr. Silverberg indicated that pursuant to State Village Law 7-12A, this Board can review this matter. The Zoning code states a structure cannot be placed in a front yard. The applicant will also have to go to the Planning Board. Discussion arose as to the variance that can be granted or whether this should be addressed as an interpretation. Ms. Kramer stated that first the Board needs to determine if the enclosure is a structure.

Ms. Arminio illustrated the various locations the dumpster could be placed and noted the requested area is the best and most logical place so as to maintain safety and not disturb neighbors. Ms. Arminio indicated that he structure has been at the same location for fifteen years.

Ms. Kramer noted the transmittal comments from the Traffic Commission and Planning Board. Mr. Sullivan stated that he does not see how the dumpster impairs driver visibility where it is currently located and that the only way traffic would be obstructed is if someone was driving in the wrong direction.

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. Weprin.

9. Application #4A-2010, GLORIA BETANCOURT

Morris Cueva, Engineer, appeared on behalf of the applicant. He indicated that the applicant was cited by the Building Department as illegal. Ms. Betancourt purchased the house with the basement finished. She did not do additional work. She was occupying the basement as living space. Mr. Cueva stated the Ms. Betancourt's attorney contacted the Building Department and was told that no permits were open and everything was legal. He indicated that there is no Certificate of Occupancy for the house as having a finished basement. When Ms. Betancourt found out it was illegal, she hired Mr. Cueva to legalize the basement. He indicated that for Ms. Betancourt to remove the finished basement would be financially prohibitive and create economic hardship for her. On good faith she purchased the house and went to the Building Department to see if there were any open violations. Mr. Cueva stated that the house is a legal two-family.

Mr. Melillo indicated that the issue is that this is a non-conforming use; a legal non-conforming use. Jessica Granda stated that the applicant occupies the house as a three-family and pays taxes on a three-family home. Mr. Weprin stated that the issue is that the Building Department records indicated this is a two-family dwelling and the applicant is using it as a three-family dwelling.

Reference was made to the 2005 letter from the Building Inspector which indicated that he inspected the home. Mr. Silverberg clarified that if the letter was inaccurate, it does not legalize something that is illegal and that there is nothing in the Building Department records that indicate it is a legal three-family dwelling. A case could be made for the applicant to apply for a use variance. Mr. Silverberg suggested that the applicant consult with her attorney because a use variance is more difficult and complicated. Mr. Silverberg indicated that the applicant should amend the application and retain an attorney. The applicant will also have to be re-noticed.

Ms. Granda wanted to state that Ms. Betancourt has records from Village Hall that state the house is a three-family dwelling.

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

The application is adjourned until February 4, 2010.

10. Applications #7A-2010 & # 2SP-2010, MOSIA BROTHERS NORTH, INC.

Paul Noto, Esq. appeared on behalf of the applicant. He indicated that there are two applications in front of the Board. One is a variance to open a service center and the other is a special permit to operate a service center. He indicated that the Mosia brothers have been in business with the Village for many years. Their lease expired with Getty at the end of last year. He went on to say that they do not sell gasoline or paint cars. They are solely an auto body business. Mr. Noto presented additional pictures to the Board. He stated that before the law was enacted, there were auto body shops all over the area.

Chairman Neufeld asked if anyone wished to approach the Board.

Lois Broderick addressed the Board. She indicated that the brothers had been her mechanic since the early 1990's. She stated that they are extremely honest and have been especially helpful to her as a single woman.

Bill Irwin addressed the Board. He indicated that he has been a customer for twelve years. They fixed a valve for him which another establishment had told him would be quite expensive and only charged him \$5.00. He concluded by stating that they are very honest and good mechanics.

Glenn Tippett addressed the Board. He stated that he is a customer and lives near the new location. They run a good business and have great service. All of Mr. Tippett's family uses their service. They provide quick turnover with his cars and he is happy to have them two blocks from where he lives.

Tom Murphy addressed the Board. He knows the brothers personally. He indicated that when he was on the Board of Trustees, he received a lot of complaints from the Shore Acres community when the brothers lost their place of business.

Mr. Noto indicated that all work will be performed inside the building and that nothing will be stored outside.

Mr. Neuringer stated that he was appointed years ago on a task force to put in limitations of 200 feet because the Village did not want a single use situation and wanted more mixed use. The intent of Zoning is to limit concentration of similar businesses in one area. The Village wanted to control how the M-1 district would evolve.

Mr. Noto stated that 100% of the work would be mechanical and there would be no body work. Mr. Neuringer asked if the Board could make a condition that 100% of repair work must be done inside and Mr. Noto answered yes.

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

Chairman Neufeld brought up one matter unrelated to the agenda. He stated that an application is before the Planning Board where the Planning Board wants to be lead agency for a wireless telecommunications facility on top of a roof located at 1600 Harrison Avenue. This is not currently an application before the Zoning Board; although there is an indication a special permit may be needed. Chairman Neufeld asked if the Zoning Board wished to be lead agency or leave it with the Planning Board. Mr. Silverberg clarified that the special permit was a Planning Board special permit and the Board agreed that the Planning Board should take lead agency.

APPLICATIONS CLOSED

1. Applications #2I-2009 and #34A-2009, GEORGE KROL

The Board discussed the merits of the application. Discussion surrounded the fact that it is a legal three-family. The Board reviewed the zoning map. The Certificate of Occupancy is for a three-family dwelling.

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

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

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

The Board discussed the merits of the application. It was determined that this property is no different from any other property. It does not present a special circumstance.

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. Neuringer.

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

3. Applications #7A-2010 & # 2SP-2010, MOSIA BROTHERS NORTH, INC.

The Board discussed the merits of the application. The Board felt that this is a unique circumstance because the site lends itself to this type of business.

The special permit is granted with a three year term limit. Hours of operation will be seven days a week from 6:00 a.m. to 8:00 p.m. All work must be performed indoors.

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

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

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

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

MINUTES

A motion to approve the minutes of November 5, 2009 was made by Mr. Weprin, seconded by Ms. Kramer.

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

Abstain: Neufeld

A motion to approve the minutes of December 3, 2009 was made by Mr. Weprin, seconded by Ms. Kramer.

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

ADJOURN

Mr. Sullivan was appointment secretary to the Board.

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

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

On motion duly made and carried, the meeting was adjourned at 11:53 p.m.

GREGORY SULLIVAN
Secretary

Prepared by:
Ann P. Powers