

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, SEPTEMBER 2, 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 September 2, 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  
Barry Weprin, Board Member  
Robin Kramer, Board Member  
Kathy Zalantis, Counsel to Board  
John Winter, Building Inspector  
Robert Melillo, Assistant Building Inspector

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VILLAGE OF MAMARONECK  
NEW YORK

Kathleen McSherry, 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 7:06 p.m. and he introduced everyone and detailed the procedures for the meeting. The next meeting is scheduled for Thursday, October 7, 2010.

**1. Adjourned Application #14SP-1997, CCG HOLDINGS, INC. (CLEARVIEW CINEMAS)**

Chairman Neufeld noted for the record that CCG Holdings, Inc. has requested an adjournment to the October 7<sup>th</sup> meeting.

**2. Adjourned Application #11A-2010, ROBERT & SHERRY WIENER**

Russ Jellinick, Esq. appeared on behalf of the applicants as well as Daniel Natchez. Mr. Jellinick noted that an additional survey was submitted to the Building Department. He noted that additional research was performed and that the applicant has worked closely with the Building Department. There are no violations with the rear yard setback and that the applicant is now applying for the side yard setback variances only.

Discussion arose regarding the new survey, which indicates the underwater grant. Originally, the Board's concern was that the applicant was building onto property owned by the state. The grant is a conditional grant which does not allow one to build on it. Mr. Jellinick stated that the Building Department is now satisfied that there is no violation with the rear yard setback.

Discussion arose whether to withdraw the application entirely or to remove the rear yard setback variance request. Mr. Winter stated that he was of the impression that the variance could be withdrawn. Land grants have always been treated as an extension in the past. Mr. Neuringer asked for clarification as to whether Mr. Winter would have cited the rear yard setback had he had this additional information and Mr. Winter indicated that he would not have. Ms. Zalantis stated that there is nothing in the chain of ownership to the current owner. Chairman Neufeld inquired about the title report which he had requested from the applicants' attorney. Mr. Jellinick showed Ms. Zalantis the deed to the property.

Discussion arose regarding the patios and whether they constitute a structure. Chairman Neufeld stated that the Board understands the applicants' position and the Building Departments position. Ms. Zalantis stated that the deed is an important piece for her; it cleared some issues for her.

Mr. Natchez addressed the Board. He noted that the issue of the rear yard variance is no longer required. The applicants own the land under water. If the Board wishes to grant the variance, that is fine. If the Board goes along with what the Building Inspector says, that is fine as well. He also noted that since the applicants are using concrete instead of stone dust, which is why the applicants are before this Board. Had the applicants chosen to use stone dust instead, they would not be before the Board. Mr. Natchez stated that the Board, in the past, has consistently approved variances for these types of applications. The land grant is recognized by the state.

Chairman Neufeld asked if anyone else in the audience wished to address 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, Weprin  
Nays: None

### **3. Application #9SP-2000, NANA'S KIDS, 615 Mamaroneck Avenue**

Marney Ranani addressed the Board. She stated that she is seeking a renewal of a special permit to operate a daycare facility. The conditions of the operation remain the same. There are no changes. Chairman Neufeld asked if all the conditions of the 2007 resolution have been complied with and Ms. Ranani indicated that they had. There have been no changes to the facility and no violations.

Chairman Neufeld asked if anyone in the audience wished to address the Board. None did.

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

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

**4. Application #16SP-2010, JUMANA HAMDAN, 441 Mamaroneck Avenue**

Jumana Hamdan addressed the Board. He noted that he was before the Board in July for a special permit to operate a restaurant. A mistake had been made in the application regarding hours of operation and that is why they were before the Board again. The correct hours of operation should be from 7:00 a.m. to 11:00 p.m. with employees starting at 6:00 a.m. Chairman Neufeld stated that the applicant will need to apply for a cabaret license through the Village Manager's office for belly dancing/music.

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

Brian Ruillan addressed the Board. He indicated that his house is directly behind the location of the restaurant. He noted that he is in support of the application; however, he is requesting that the owner put air conditioned units toward the front of the building. He also requested that the filtration system is vented towards the front of the building as well. Additionally, he asked that any refrigeration bins be kept in the basement. Mr. Ruillan referenced Ginban and stated that everything the owners of that establishment did was satisfactory to the neighbors. Ginban did everything that was asked of them and they were very cooperative.

Mr. Hamdan stated that with regard to the refrigeration request, it will not be in the backyard. Mr. Neuringer stated that it would not be inappropriate to add what was discussed in the Ginban resolution to this resolution. Ms. Kramer stated that the survey shows a one story building and then an open area. Mr. Hamdan said that he is leasing the building only; not the property behind it. He also stated that he will be using two mushroom head vents on the roof.

Samir Alejilat addressed the Board and indicated that he had no issue with the original hours of operation, however now the applicant will be serving breakfast which will impact his business.

Discussion arose regarding restrictions of fast food establishments and the distance they need to be from each other to avoid a proliferation of these establishments. Mr. Hamdan stated that this will be a sit-down restaurant. Everything is made to order. There is no stand up service. Meals will include breakfast.

Chairman Neufeld addressed Mr. Alejilat's concern by stating that he did not believe the Board can address whether an application affects other businesses in a commercial district. This is not a fast food restaurant. This is a seating restaurant with waiter and waitress service.

Mr. Sullivan suggested that the applicant review the Ginban file in and also provide a copy of the resolution to the Board. Ms. Kramer noted that the applicant can open the restaurant now with the hours which were approved at the July meeting. She also stated that looking at the Ginban plans may give us guidance, but some conditions may not work for this application.

The application was adjourned to October so that the applicant can provide a plan to mitigate noise and odor.

**5. Application #30A-2010, GREG LYON, 907 Stuart Avenue**

Eric Jacobsen, the architect, appeared on behalf of the applicant. He stated that he is extending an existing non-conformity. The applicant is not increasing the footprint, but extending upward a total of sixteen inches higher from the roof line to the proposed roof.

Mr. Neuringer noted that if it wasn't for the garage, the applicant wouldn't be before the Board. Ms. Kramer stated that the house does not violate the setback. Mr. Neuringer stated that the accessory structure (the garage) is creating a non-conformity for the existing structure.

Chairman Neufeld asked if anyone in the audience wished to address the Board. None did.

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

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

**6. Application #31A-2010, BARBARA GALERNE, 1325 Sherman Avenue**

Barbara Galerne, the applicant, addressed the Board. She indicated that the shed was built fifteen years ago. The violation was brought to her attention when she had a driveway put in; the Building Department notified her that the shed was in violation of the code. Ms. Galerne stated that she took down the old shed and replaced it with a new shed. The new shed created a combined side yard setback of eight feet where fourteen feet is required. To place the shed in the correct location would place it in the middle of the yard. Ms. Galerne said that the shed houses a pool table and is a playroom for her children.

Mr. Neuringer asked if moving the shed six feet would create a hardship for the applicant and Ms. Galerne stated that it would. Discussion arose about moving the swing set.

Chairman Neufeld asked if anyone in the audience wished to address the Board. None did.

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

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

**7. Application #32A-2010, KEVIN AND ERIN FLEMING**

Kevin Fleming and Erin Fleming, the applicants, addressed the Board. Mr. Fleming stated that they are before the Board for a variance to install a six foot fence on a retaining wall where only four feet are allowed. He went on to say that he did not believe his property is a true corner lot. The other corner is a driveway that is shared. The purpose of the fence is to enclose the back yard. Mr. Fleming stated that they wish to replace the existing fence with a PVC lattice fence.

Mr. Neuringer asked the applicant why they need a six foot fence because they are already above the street. Why not a five or four foot fence? What does a six foot fence provide the applicant? Mr. Fleming stated that a six foot fence would provide more security for his two children. Chairman Neufeld asked if anyone wished to approach the Board. None did.

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

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

#### **8. Application #33A-2010, JOHN P. CROSBY**

Martha McCarty, Esq., appeared on behalf of the applicant. She noted that there had been a massive error by a now deceased architect. The applicant put a lot of work into the house, but never closed out the permits. Mr. Crosby never paid to close the permits. The Building Department asked to re-inspect the property and there were a few minor issues. Mr. Melillo, Deputy Building Inspector, looked at the plans and said there was a problem. The architect flipped the plans which brought the side yard of the property to 1.6 feet. Ms. McCarty noted that the applicant does not have neighbors. His house sits next to the nature conservancy. Only non-conforming issue is the garage. She stated that the applicant is under contract to sell his house. Not being able to close the permits out is delaying the closing. Ms. McCarty stated that there was currently no Certificate of Occupancy for the house.

Discussion arose regarding frontage on the street. Ms. McCarty noted that the property has frontage on the paper road. The applicant has a permanent easement over the nature conservancy land. Chairman Neufeld asked if there had been any concerns over the years from any neighbors. Ms. McCarty stated that the property is so isolated that there hasn't been an issue that she is aware of.

Discussion arose regarding the easement with the conservancy and how the land is utilized. Chairman Neufeld stated that the easement is the right to use conservancy property; does the conservancy have one for the applicant's property? Ms. McCarty answered no.

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, Weprin  
Nays: None

#### **9. Application #35A-2010, TOREY RISO**

Giuseppe Brusca, the architect, appeared on behalf of the applicant. Torey Riso also addressed the Board. Mr. Brusca stated that the applicant was before the Board for an area variance to build a deck. Except for the deck, all other areas are in compliance or over-compliant. The garage is the issue.

Ms. Kramer noted that the application indicates a legalization of the garage and the violation indicates that the deck violates the code; she wants to be certain the proper variance is granted for the deck and not the garage. Chairman Neufeld stated that the issue is the signage, not the application. The mailing to notify the neighbors indicated what was on the application and was correct.

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.

Ayes: Neufeld, Neuringer, Kramer, Sullivan, Weprin

Nays: None

### **APPLICATIONS CLOSED**

#### **1. Application #2SP-1998, MAMARONECK AUTO COLLISION, INC.**

The Board discussed the merits of the application. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA). The conditions of the prior resolution remain in full force and affect, except the Saturday hours of operation will be until 2:00 p.m. instead of 1:00 p.m. The special permit is granted without a term limit.

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

Ayes: Neufeld, Neuringer, Kramer, Weprin, Sullivan

Nays: None

#### **2. Application #23A-2010, ANGELO'S SERVICE STATION**

The Board discussed the merits of the application. Ms. Kramer indicated her concern for parking as well as the building being incredibly close to neighbors. Chairman Neufeld also had concerns with respect to parking. Mr. Neuringer felt that going from a 45 foot side yard setback to a 1.5 foot setback was extremely severe and significant. The Board felt it was a highly congested area and this would increase the congestion.

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

Ayes: Neufeld, Neuringer, Kramer, Sullivan, Weprin

Nays: None

#### **3. Application #12SP-2010, ANGELO'S SERVICE STATION**

The Board denied as moot the special permit application.

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

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

**4. Application #19A-2010, HILMAR REALTY LLC**

The Board discussed the merits of the case. Chairman Neufeld stated that the application exacerbates a non-conformity. Mr. Neuringer stated that this property is open space for the tenants that live in the apartments, and because management does not maintain it, management shouldn't be able to use the area for another purpose. It is taking away a valuable piece of land. Mr. Sullivan reminded the Board that residents came before the Board to say that anything would be an improvement to what is currently at that location. Mr. Sullivan stated that he would be inclined to grant the variance. Mr. Weprin stated that granting the variance improves the area, but doesn't seem to be warranted.

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

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

**5. Application #27A-2010, MR. & MRS. JACK STADLER**

The Board discussed the merits of the case. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

A motion to approve the variance 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, Sullivan, Kramer, Weprin  
Nays: None

**6. Application #28A-2010, MR. & MRS. CHARLES CHMELECKI**

The Board discussed the merits of the case. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA). Ms. Kramer noted that in the past, the Board has denied increasing a non-conformity. Mr. Neuringer stated that the property is a two-family dwelling in a one-family zone. Whether the applicant changes a closet or bathroom has no impact on the neighborhood. It does not increase degree of intensity of use.

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

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

**7. Application #29A-2010, MR. & MRS. CHARLES CHMELECKI**

The Board discussed the merits of the case and reviewed the draft resolution prepared by Chairman Neufeld.

A motion to approve the interpretation 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

**8. Application #9SP-2000, NANA'S KIDS**

The Board discussed the merits of the case. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA). The renewal of the special permit is granted without a term limit.

A motion to approve renewal of 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, Sullivan, Kramer, Weprin  
Nays: None

**9. Application #33A-2010, JOHN P. CROSBY**

The Board discussed the merits of the case. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

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

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

**10. Application #35A-2010, TOREY RISO**

The Board discussed the merits of the application. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

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 Ms. Kramer.



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

**11. Application #30A-2010, GREG LYON**

The Board discussed the merits of the application. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

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 Ms. Kramer.

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

**12. Application #11A-2010, ROBERT & SHERRY WIENER**

The Board discussed the merits of the application. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

A motion to approve the side yard variances and to take no action on the rear yard variance was made by Ms. Kramer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Weprin.

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

**13. Application #31A-2010, BARBARA GALERNE**

The Board discussed the merits of the application. The Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

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. Neuringer.

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

**14. Application #32A-2010, KEVIN AND ERIN FLEMING**

The Board discussed the merits of the application.

A motion to deny the variance was made by Chairman Neufeld for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Neuringer.

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

Chairman Neufeld informed the Board that he will not be at the October 7<sup>th</sup> meeting and that Mr. Sullivan will Chair the meeting.

**ADJOURN**

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

Ayes: Neufeld, Neuringer, Kramer, Sullivan, Weprin

Nays: None

On motion duly made and carried, the meeting was adjourned at 9:50 p.m.

GREGORY SULLIVAN  
Secretary

Prepared by:  
Ann P. Powers