

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, DECEMBER 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 December 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  
Robert Melillo, Assistant Building Inspector

5 AM 8:38

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. The next meeting is scheduled for Thursday, January 6, 2011. Chairman Neufeld noted for the record that Mr. Weprin would be slightly delayed.

**1. Adjourned Application #41A-2010, JOSEPH CARILLO & Adjourned Application #18SP-2010, JOSEPH CARILLO**

Martha McCarty appeared on behalf of the applicant. She stated that she was representing this matter in place of Paul Noto, who was tied up at another meeting. Ms. McCarty also noted that she shares office space with the current Village Attorney Christie Derrico, but that there is no conflict. The engineer, Mr. Pennella, was also present.

Chairman Neufeld reminded everyone that side yards and parking were the issues at last month's meeting. Ms. McCarty stated that there is 15 feet from the curb line to the property line, a 60 foot right of way and a 15 foot travel line. Discussion arose as to where the right of way is located. Mr. Melillo stated that the Building Department went out with the engineer and measured. It is perfectly fine and there is no need for another variance. The applicant has the buffer that is required. He has the 10 foot buffer and it is more than enough.

As for parking, Ms. McCarty stated that the parking had been reconfigured. There are four stacked spaces outside with a drive-through in the middle. There are four employee spaces. There are 8 spaces where 10 spaces are required per the code. The question regarding Wish Auto came up. Mr. Carillo's application is for an auto body repair shop. Wish does not perform body work, but does do repairs. This applicant will only perform body work.

Discussion arose regarding the parking spaces for the employees. The way the spaces are designed, the cars will need to be shuffled around in order to get out. The spaces are undersized stalls. A regular stall is 9 feet by 19 feet. It was noted that parking spaces for employees are allowed a reduction in this size. Mr. Neuringer stated that if one of the four employee parking stalls is used for customer parking, it will need to be a larger size. Mr. Pennella stated that he can change the size of the fourth parking stall.

Ms. McCarty said that employee parking is designated in the interior portion of the lot. The applicant can make stall number 5 a visitor parking stall. The object is to not have people driving right up and into the garage.

Chairman Neufeld asked if anyone wished to address the Board.

Tony Castro, Esq. addressed the Board. He noted for the record that he is representing the owner at 517 Waverly Avenue. Mr. Castro said the special permit Mr. Carillo is applying for is to relocate an existing auto body repair shop. The space at 517 Waverly Avenue will continue to operate as a repair shop. It has done so since the 1970's.

Ms. Kramer stated that Mr. Carillo is operating a body shop. 517 Waverly Avenue has a license to operate a repair shop. The repair shop will continue to operate as a repair shop. If the location has a special permit to operate a repair shop, it can still operate as a repair shop.

Mr. Neuringer asked Mr. Castro to state his concern. Mr. Castro stated that he was concerned with Mr. Weprin's comments at the last meeting. Chairman Neufeld stated that Mr. Castro's client has a special permit to operate a repair shop. If the special permit has requirements of compliance, then that is another issue. Mr. Castro stated that he wants assurances from the Board that the granting of Mr. Carillo's special permit will not negatively impact his client's business. Mr. Neuringer stated that this Board can't make any assurances.

Ms. McCarty stated that her client would like a decision to be made tonight, so that Mr. Carillo can go to the Planning Board. Additionally, Mr. Carillo needs to vacate the current building.

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

William Blockton addressed the Board. He noted that he was impressed with the fairness of the Board and would like to have this matter resolved. He stated that Mr. Carillo is an honest businessman. He thanked the Board for their time.

Ms. Kramer asked, with respect to parking, is there still adequate room inside to run the business and Mr. Pennella stated that there is enough space. The most cars Mr. Carillo has worked on at one time are five cars.

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

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

## **2. Adjourned Application #39A-2010, FRANCISCO NOVELLO**

Costantino Fragale, Esq. appeared on behalf of the applicant. Mr. Fragale noted that he is stepping in for Paul Noto, Esq. who is currently at another meeting. He stated that the issue was raised at last month's meeting whether or not this is a use variance. He noted for the record that he does not feel this is a use variance. This is an area variance.

Chairman Neufeld referred to the Scarsdale Shopping Center case Mr. Noto raised at the last meeting. He said that in this matter, it was a fact-finding because the resolution had been destroyed and was not available. There were no conditions. In this matter, there are conditions.

Mr. Fragale stated that while a use variance is not necessary, an area variance and site plan may be needed. Discussion arose as to whether there conditions in the Scarsdale matter.

Ms. Kramer noted that an important point had been missed. There is no evidence that in the Scarsdale matter they were looking to expand, only to build. In this instance, the applicant is changing a use. That is not the same. Mr. Novello is asking for a completely different use. Ms. Kramer noted that if an applicant is changing the use, he or she requires a use variance.

Chairman Neufeld stated that in the original variance, the Board placed conditions on the variance. It is too late to change the variance. This Board can't change what another Board felt was appropriate.

Mr. Fragale stated that as the resolution is written currently, the applicant can't have passenger or commercial vehicles parked after hours and no commercial vehicles parked during business hours. The resolution can be expanded to the owner being able to park. It shouldn't matter if it is day or night or whether it is a commercial vehicle.

Mr. Neuringer asked Mr. Fragale what he would like to see. Mr. Fragale stated that he wants to be able to park vehicles without restrictions. Mr. Neuringer asked about storing vehicles. Mr. Fragale stated that perhaps a limit can be placed on that. Mr. Neuringer referenced the minutes to the original meeting in 1986. The minutes specifically indicate cars were to move in and out and not be a place for storage. Mr. Fragale stated that there is nothing in the application limiting parking. Mr. Neuringer stated that there are inherent built in limitations to what was granted in the original variance. The intent originally was for in and out parking, not for storage or construction vehicles.

Chairman Neufeld stated that the resolution was received many years ago with conditions. If the conditions were not to the applicant's liking, it could have been appealed within the thirty days of the original variance. It's too late to come back before the Board to request a change.

Discussion arose as to whether the applicant wishes for more time to submit additional materials. Mr. Weprin stated that the resolution stated specific parking for Tri-City Auto and the bakery. With respect to case law, it could be viewed as an area variance with the change of businesses. Chairman Neufeld stated that if the applicant wishes to provide legal authority that is fine with the

Board. Mr. Fragale stated that he would like to speak with Mr. Noto. Ms. Kramer asked if citations could be provided with the case law and Mr. Fragale stated that it could.

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. Neufeld.

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

Mr. Sullivan mentioned that this in all likelihood his last meeting and at the next meeting there will only be four members who have the history of this matter. Does Mr. Fragale want to keep the matter open and Mr. Fragale stated that, no, it is not necessary.

### **3. Application #42A-2010, MERCEDES LAZZARA**

Giovanni Zapata, the architect, appeared on behalf of the applicant. He stated that this is a two-family and a non-conforming use. The owner would like to have her own bathroom. She is elderly and would like a bathroom in her master bedroom. There will be no enlargement or extension.

Chairman Neufeld asked is this is an attempt to create another rental and Mr. Zapata stated that it was not. It will be for her use. Mr. Neuringer asked if the owner was ambulatory. Mr. Zapata stated that at this moment she does not need any handicap accoutrements. The other bathroom in the house has a tub and Ms. Lazzara's bathroom has a shower only. Mr. Neuringer asked why not put the shower in the other bathroom. Mr. Zapata answered that the bathroom is too small. Ms. Lazzara would like a bathroom for her own privacy. Ms. Kramer inquired about the other bathroom which is being worked on also. Mr. Melillo stated that for health and safety, the Building Department can issue a permit.

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. Sullivan, seconded by Mr. Weprin.

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

### **4. Application #43A-2010, BERNARD & DAWN SILVERSTEIN**

Dawn Silverstein addressed the Board. She indicated that she and her husband inherited an open permit on an existing deck. The deck has been in existence for thirty years. They are in the process of trying to sell their house and need to close out this permit in order to do so. There are no objections from either neighbor with respect to the deck.

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 Ms. Kramer, seconded by Mr. Neuringer.

Ayes: Neufeld, Neuringer, Kramer, Sullivan, Weprin

Nays: None

**5. Application #40A-2010, PAUL DERECKTOR**

Before this application was heard, Mr. Neuringer indicated that he had a prior involvement with the owner of the property. He noted for the record that he wished to recuse himself from this matter. He was previously hired to file an application to the Building Department. The Building Inspector indicated there would not be a need for a variance. Once Mr. Neuringer made the application, the Building Inspector determined a variance was needed.

Chairman Neufeld asked if Mr. Neuringer is currently still working with the owner. Mr. Neuringer answered that he performed the work and as far as he knows, he is no longer involved. Chairman Neufeld indicated that the applicant is down to possibly three members of the Board able to vote and three approving votes are required for a variance. The Board indicated that they could vote tonight, but if the application is closed and the Board doesn't vote, there could be a possibility of only three members next month able to vote on the application.

Jeff Meighan addressed the Board. He indicated that this is a non-conforming building and according to the code, if anything work is performed on the building, an application must be made to the Zoning Board of Appeals. The building is currently a three-story six-family dwelling. There is one bedroom for each apartment. The applicant is in the process of cleaning up the property and has done extensive work on the basement. The applicant wishes to turn the top floor into one apartment for his nephew. The non-conformity is being decreased as well as altered.

Chairman Neufeld asked if this will continue in its current rental use. And Mr. Meighan indicated in the affirmative. There will be no change to the dimension or footprint. Mr. Melillo noted that the application should be modified to include the moving of walls. He originally wrote the notice for a family change, not a construction change. Ms. Kramer felt that it was implicit in the application that walls will be removed.

The Board deferred the matter, without closing it, until after the public hearings and Mr. Meighan consented. The matter was adjourned until later in the evening.

Mr. Neuringer returned to the dais.

**6. Application #44A-2010, MR. AND MRS. JOSEPH URBINATI**

Martha McCarty, Esq. appeared on behalf of the applicant. She indicated that she was substituting for Paul Noto, although the Urbinati's are his client as well. The applicants are before the Zoning Board for an area variance to build and legalize a cabana. She stated that the applicant was before the Board last year, but withdrew their application because they needed a State Building Code variance and a Planning Board Flood Plain variance. Ms. McCarty stated that the applicant went before the Planning Board in September and received the necessary approvals.

The new cabana is being built in the exact footprint as the original. Ms. McCarty distributed photos to the Board. The roof line is similar to the original roof line. This is a permitted use. Ms. Kramer asked if the original cabana was legal. Ms. McCarty stated that she doesn't know if the conditions were legal or not at that time. She does not believe the applicant is increasing the non-conformity. They are maintaining the non-conformity. The fence effectively shields the cabana.

Mr. Neuringer stated that the original cabana had a flat roof and that the drawing shows the new roof is pitched. John Cotugno, the architect, stated that the roof is slightly pitched and that he tried to make the roof as low as possible. Mr. Neuringer stated that the proposed cabana takes away the four or five feet of length, but he square footage is greater. The representation that this is the same footprint is not accurate. Mr. Neuringer went on to say that originally this was a ten foot cabana and now it is a twelve foot cabana. At the last meeting Mr. Noto stated a minor increase in square footage, but this is an 18% or 19% increase. Ms. McCarty stated that the space was taken up by the overhang. The chairs were under the overhang and were, in essence, taking up square footage.

There is no heating in the cabana; there is a bathroom. Mr. Neuringer stated that if the degree of non-conformity is changing, that is an issue. Mr. Melillo said he wrote the denial based on what was proposed and built.

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

### **APPLICATIONS CLOSED**

#### **1. Application #42A-2010, MERCEDES LAZZARA**

The Board discussed the merits of the application. Ms. Kramer stated that by adding a bathroom, the applicant is clearly upgrading. The Board has denied these variances in the past. Chairman Neufeld said that the code states non-conformities are allowed to continue. Ms. Kramer indicated that the code allows for maintenance of a non-conformity and that this is an improvement. Mr. Neuringer said that it can be debated that by removing closets, it diminishes and doesn't upgrade. Mr. Sullivan stated that this is being done to help the resident. Chairman Neufeld wanted it noted for the record that there be a condition to use in a one or two family.

Discussion arose as to whether this is a special permit or variance application.

The Board, based upon a review of the EAF accompanying the application and all other relevant materials, deemed this as an unlisted action and issues a negative declaration requiring no further action under the State Environmental Quality Review Act (SEQRA).

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. Weprin.

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

**2. Application #43A-2010, BERNARD & DAWN SILVERSTEIN**

The Board discussed the merits of the application. The Board found the within application was 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, Weprin, Sullivan  
Nays: None

**3. Application #40A-2010, PAUL DERECKTOR**

Mr. Neuringer recused himself. The rest of the Board discussed the merits of the application. Ms. Kramer stated that this application is reducing a non-conforming. It shouldn't need a variance. The application is conditioned in accordance with drawings and application submitted and that it is a five-family house and not greater than a five-family house. The Board found the within application was a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

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

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

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

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

**4. Application #38A-2010, MR. & MRS. THIERRY POURCHET**

The Board discussed the merits of the application. Chairman Neufeld indicated that he felt this is a three-story building and the split level makes it reasonable. Mr. Sullivan concurred. Mr. Weprin stated that technically he feels this is a three-story structure, but that Mr. Csenge had a good argument for 2 ½. Brief discussion arose regarding whether the Board should make an interpretation or look at this as a variance.



A motion was made by Mr. Neuringer and seconded by Mr. Neufeld that no variance was required on the basis that the proposed addition was a permitted two-and-a-half stories and not three stories, which motion failed to carry (by a vote of 4-1 with all members (with the exception of Mr. Neuringer) voting against the motion) and in so doing the Board affirmed the Building Inspector's determination the proposed addition is a three-story addition

The Board found the within application was 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. Sullivan for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Neufeld.

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

**5. Application #1S-2010, MEN AT WORK IV LLC.**

The Board discussed the merits of the application. Chairman Neufeld stated that approving the sign will change the area and the Board would be setting precedence if approved. It was noted that a passerby can see Dunkin Donuts from the road. Ms. Kramer noted that the proposed sign is very low to the ground and large. Mr. Neuringer reminded the Board of two previous applications for pole signs which the Board denied.

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

**6. Application #41A-2010, Application #18SP-2010, JOSEPH CARILLO**

The Board discussed the merits of the application. The Board indicated that the parking space closest to the front be extended three feet. The Board, based upon a review of the EAF accompanying the application and all other relevant materials, deemed this as an unlisted action and issued a negative declaration requiring no further action under the State Environmental Quality Review Act (SEQRA). The special permit is granted for a three-year term.

A motion to approve the special permit and variance 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, Weprin, Sullivan  
Nays: None

**7. Application #44A-2010, MR. AND MRS. JOSEPH URBINATI**



The Board discussed the merits of the application. Mr. Weprin inquired as to whether the Board should look at this as a new building or an existing one. The impact is not substantial. The structure can't be seen from the road and no neighbors came out against the application.

Ms. Kramer stated given the fact the cabana has been there for thirty years should not be viewed differently than if it were constructed today. Mr. Neuringer stated that he was less concerned about setbacks and more concerned about square footage. Ms. Kramer stated that she feels this is an enormous variance. It is significant. Discussion arose as to whether the cabana was legal in the 1950's. The Board wanted to review the code, so they adjourned the closed matter until the January meeting.

### **MINUTES**

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

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

### **ADJOURN**

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

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

On motion duly made and carried, the meeting was adjourned at 9:29 p.m.

GREGORY SULLIVAN  
Secretary

Prepared by:  
Ann P. Powers