

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, MARCH 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 March 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
Barry Weprin, Board Member
Robin Kramer, Board Member
Kathy Zalantis, Counsel to Board
John Winter, Inspector of Buildings
Robert Melillo, Building Department

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2010 MAY -7 AM 11:44
VILLAGE OF MAMARONECK
NEW YORK

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 7:12 p.m. and he introduced everyone and detailed the procedures for the meeting. The next meeting is scheduled for Thursday, April 1, 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 #48A-2009, EDWARD PARISEN

Edward Parisen appeared. Per the Board's request, he submitted an updated survey. He indicated that he added four feet of concrete to the concrete pad.

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

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

2. Adjourned Application #4A-2010, GLORIA BETANCOURT

Gloria Betancourt appeared. She asked to be pushed back on the agenda because her attorney was tied up in traffic.

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

Paul Noto, Esq. appeared on behalf of the applicant. He indicated that the engineer was tied up in traffic and asked to be heard later in the evening.

4. Adjourned Application #1SP-2010, ENDURANCE FITNESS

Paul Noto, Esq. appeared on behalf of the applicant. He requested an adjournment to the April 1st meeting due to the fact that the Board of Trustees is in the process of changing the code as it relates to this matter.

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

The applicant was required to re-notice the hearing because the change in the variance originally requested was lesser. The applicant re-noticed for the April 1st meeting.

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

Chairman Neufeld indicated that supplemental information was submitted by Mr. Neuringer. The applicants were not in attendance when called. The application was held over until later in the evening.

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

Paul Noto, Esq. appeared on behalf of the applicant. He indicated that there were questions at the last meeting relating to seating and had provided the Board with an updated survey. After reviewing the memo from the Planning Board, Mr. Noto stated that the Planning Board is consistent with the applicant's view. The numbers (for seating) in the Planning Board memo make sense and his client does not take issue with them. Victor Carosi, Engineer, addressed the Board and stated that with respect to seating, the New York State Building Code requires 15 square feet per person. The Planning Board's number is 36. He indicated that he does not agree with that number. The number should be determined by calculating the restaurant and bar (638 sq. ft.) and not the kitchen, bathrooms, etc.

Discussion arose as to the correct number taking into account the 638 sq. ft. Looking at the total net square footage, the area within the walls, the seating comes to 42. John Winter indicated that the Fire Marshall discounted the area around the bar because he considers that area as standing space. He stated that approximately three feet around the bar was taken away when calculating. He went on to say that none of the plans previously handed out were correct. Forty-two for seating is based on the March 4, 2010 survey. Mr. Winter stated that the seating based on the Village Fire Code is 36 and that seating for the bar should be 8, not 10. Discussion arose regarding leaving the bar intact as is and reducing the seats to 8.

Ms. Kramer stated that from the Village Code perspective, there could be an unlimited number of people standing at the bar. Mr. Sullivan mentioned that he does not recall the Board ever going into lengthy discussions on occupancy. Chairman Neufeld stated that it is important in order to determine the impact of the special permit due to neighbor concerns. Mr. Noto indicated that the

number will come from the Fire Inspector. Mr. Neuringer asked what the number of people allowed was and Mr. Winter answered 44.

Mr. Noto stated that he understood the concerns of the neighbors and that there has been a restaurant or other establishment at that location for the last 50 years. He went on to say that the applicant delivered letters to all the neighbors and it is in the best interest of the applicant to be a good neighbor. Mr. Noto indicated that the special permit has a timeframe. Ms. Kramer asked if the applicant would be willing to shorten their business hours and Mr. Noto answered that they would not.

Chairman Neufeld asked if anyone wished to approach the Board.

Michael Sadano addressed the Board. He indicated that he had been to the last two hearings. He stated that the Planning Board said the Fire Marshall's seating number was 35 including employees. Mr. Sadano suggested changing the hours to make it more of a restaurant. If not, it will simply turn into a bar. He went on to say that other establishments are in more commercial areas with metered parking. This area is more residential and cars will park in front of neighbors' homes. He concluded by stating he does not want a bar in this neighborhood.

Carlos De La Cruz addressed the Board. He stated that he feels the applicants are basing their presentation on lies. He is concerned about his neighbors and their children and he does not want to live the way they all lived with the prior bar. Mr. De La Cruz said that he wants a quiet environment and that the neighbors will appeal if necessary.

Arthur McNiff addressed the Board. He asked if anything had been straightened out. Chairman Neufeld stated that the Board takes input first and then deliberates. Mr. McNiff stated that he was confused about the occupancy issue. He said every Friday and Saturday night will be an issue. He suggested that the Board go and see the bar.

Samir Katen addressed the Board. He is glad that the previous bar has been closed down for 2 years. He indicated that bottles were strewn around everywhere and there was a lot of noise.

Mr. Winter provided the Chairman with a history of how the previous restaurant's special permit was revoked. Mr. Winter indicated that there is no change in use. This has always been a permitted use. Mr. Noto reiterated that this is a permitted use in a commercial district. The Board can attach conditions to the special permit.

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

Mr. Neuringer recused himself from the proceeding because he is a neighbor of the applicants. Ms. Hamer and Mr. Gewehr appeared. The applicant submitted the same survey as was provided to the

Board last month. The surveyor measured the areas requested by the Board. The Board presented to the applicants Mr. Neuringer's submissions to the Board. Ms. Hamer indicated that to remove the 3.2 feet would be financially prohibitive. The estimates received have been \$5,000 to \$7,000. Eliminating the two car parking would necessitate parking on the street. Parking on the driveway would be more preferable to parking on the street as far as the neighbors are concerned. She noted that the property next door is also non-compliant. The neighbors have planted bushes which have thrived and provide good screening.

Chairman Neufeld asked if the applicants would be willing to erect a fence. Ms. Hamer stated that a fence would impede the Neuringer's from parking their boat on the property. She also stated that fencing is costly.

Ms. Kramer asked about planting bushes. Ms. Hamer stated that she thought she was applying for a variance, not landscaping. Ms. Kramer noted that the Board can impose conditions when granting variances. Ms. Hamer then stated she would be willing to consider a fence and bushes.

Mr. Weprin asked if the applicants were aware of the violations at the closing. Ms. Hamer stated that they were aware of the violation at the closing, but not when they signed the contract. Mr. Weprin asked if the applicant did anything to address the matter at the closing. Ms. Hamer said they did not.

Chairman Neufeld asked if anyone wished to approach the Board.

Mr. Neuringer stated that 60% to 70% reduction in buffer is not appropriate. Five feet is appropriate. Mr. Neuringer went on to say that in the past, there have been two situations before the Board for requested variances on pre-existing conditions. In those instances, the Board granted the variances, but with conditions. Never has the Board granted a variance with making changes to a pre-existing condition. Mr. Neuringer stated that the goal is to maintain the appearance and character of the neighborhood. Mr. Neuringer said that this is a detriment to him because it prevents him from full enjoyment of his property. There ought to be a buffer zone and the Board should not change the zoning, he said.

Ms. Kramer asked how the widening (3 feet) create an undesirable change to the neighborhood. Mr. Neuringer referred back to his earlier photographs depicting that homes are in keeping with the planning design. He stated that he has demonstrated that this condition does not exist in the area. Ms. Kramer noted that the house on the other side of 626 Stiles does not conform either. Mr. Neuringer answered by stating that the paved area does not extend past the garage on that property.

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

Ayes: Neufeld, Kramer, Sullivan, Weprin

Nays: None

Recused: Neuringer

9. Adjourned Application #4A-2010, GLORIA BETANCOURT

James Monaghan, Esq. appeared on behalf of the applicant. Discussion arose as to whether this was an area variance or use variance. John Winter stated that based on the Building Department's research, this is a three-family, existing non-conforming. Chairman Neufeld stated that it was never determined if it was a legal non-confirming use. Ms. Kramer stated that if it is a two-family, it would require a use variance. If it were a three-family, then it would be an area variance. Mr. Neuringer stated that anything done to increase the non-conformity would require an area variance. Mr. Monaghan stated that his client is trying to bring the basement into compliance. John Winter stated that previous permits indicate that it is a legal non-conforming. Kathy Zalantis, Esq. stated that going from three-family to three-family (342-64A) would make it an area variance.

Mr. Weprin suggested that the applicant apply for an area variance instead of a use variance. Use variances are more difficult to get. Discussion as to whether the applicant should change the application. Ms. Zalantis mentioned that the Building Inspector referenced section 342-64A in the notice and that was sufficient.

Mr. Monaghan detailed the construction that would be needed to be performed to incorporate the basement into the first floor. Mr. Neuringer asked if there was an apartment in the basement. Ms. Betancourt stated not to her knowledge. Mr. Monaghan stated that no modification to the house was made since his client moved in. All the modifications were pre-existing and Ms. Betancourt is trying to bring it into conformity. Mr. Neuringer asked if this was an as-built condition and Mr. Monaghan indicated that it was. Mr. Neuringer asked why the survey indicates "new" for the bathroom in the basement. Mr. Monaghan stated that he did not know why the architect did this because it already exists. Mr. Neuringer asked what the prior use was and Mr. Monaghan stated that it was a playroom.

Discussion arose as to whether anyone from the Building Department had seen the basement. Mr. Melillo stated that since the applicant hasn't received the variance, it's too early to do that. Ms. Kramer noted that it is a three story house, but the survey only show 2 stories. Mr. Melillo said that it is in actuality 2 ½ floors; not quite three floors.

Mr. Weprin asked if the applicant needs to prove it is habitable before the Board grants the variance and Mr. Neuringer answered no. Mr. Winter stated that the Building Department would make that determination once the variance is granted. Chairman Neufeld asked to clarify that the total number of units and Mr. Monaghan stated that there were only three units.

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

The Board determined the applicant should revise the plan and the matter is adjourned to April 1, 2010.

APPLICATIONS CLOSED

- 1. Application #49A-2009, PALMER TERRACE COOPERATIVE/STILLMAN MANAGEMENT, INC.**

The Board discussed the merits of the application. The Board determined that this is a Type II action not subject to SEQRA.

Mr. Sullivan indicated that he does not have an issue granting this variance because this is a unique circumstance. The fence will block the tracks and industrial side of the area. He went on to state that this request is for safety and aesthetic reasons. Ms. Kramer agreed with Mr. Sullivan. Ms. Kramer stated that she does not usually care for fencing, but in this case it is completely appropriate. And, she feels it won't impede on the neighborhood.

Some concern was raised regarding going down the path from five feet to six feet in fence height and that an eight foot fence is very high. Mr. Neuringer said he agreed with granting the variance for this location and that he can understand six feet, but not eight feet.

Chairman Neufeld stated that if the Board grants a seven foot fence and the applicant plants bushes, the bushes will grow quickly in a year or two. A question arose as to whether eight feet of fencing is easier to build than seven feet of fencing. Mr. Neuringer stated that if it was not a hardship for the applicant, he would prefer a seven foot fence instead of the eight foot requested. Members of the Board reiterated that this is a very unique location.

A motion to approve the variance due to the unique location of the property and requiring that shrubbery with a height of four (4) be planted in front of and along the seven (7) foot high fence 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

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

The Board discussed the merits of the application. The Board determined that this is an unlisted action under SEQRA and issued a negative declaration.

Chairman Neufeld indicated that a letter from Donald Mazin, Esq. after the hearing was closed will not be accepted.

Ms. Kramer stated that the applicant is entitled to operate at the minimum height necessary for its equipment. The applicant is requesting fifty feet; with respect the applicant indicated that it had to be at least 25 feet for 26 feet wide. Ms. Zalantis stated that the Courts look at the class of the license. This applicant holds the highest class. Mr. Neuringer said that the applicant has provided to the Board a tremendous amount of information and that he has done everything correctly. Mr. Weprin asked if this was a variance or interpretation. Ms. Kramer answered that it is a variance and the applicant needs to demonstrate the need and he has done that.

A motion to approve the variance at fifty (50) feet and twenty-six (26) feet 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

WORK SESSION

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

The applicant submitted a new EAF. The Board declared this a Type I under SEQRA. Chairman Neufeld listed the involved agencies and indicated that the Army Corp. of Engineers has signed off on doing the review. The Zoning Board is coordinating with the Planning Board and the Army Corp. of Engineers is an interested agency. Chairman Neufeld stated that the Board would complete the second part of the EAF and identify any potential impacts.

Chairman Neufeld reviewed the scoping process and indicated that the applicant won't have to revisit issues already discussed as they move through this process. Chairman Neufeld indicated that he did research and met with Susan Favate, Senior Planner at BFJ Planning. He also stated that this site is in a major flood area and that the building is the largest in the area. Chairman Neufeld handed out the EAF and reviewed content of material. He stated that the applicant will need a flood plain development permit from the Planning Board as well.

Discussion arose as to whether this was an area or use variance. Ms. Kramer stated that the Board has to look at the impact of granting the variance. Chairman Neufeld distributed a draft positive declaration and reviewed the form with the Board. He also discussed Keith Furey's, Village Consultant, flood plain study.

A motion to issue the positive declaration was made by Chairman Neufeld based on the review of the EAF and 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

Ms. Zalantis clarified that lead agency makes the determination. Ms. Kramer confirmed that the only role the applicant has at this point is to submit the materials and Chairman Neufeld concurred. Ms. Kramer stated that the scoping documents should be provided to the Board beforehand so that they can be reviewed. Chairman Neufeld indicated that there is a 30 day window.

APPLICATIONS CLOSED (Continued)

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

The Board discussed the merits of the case. The Board determined that this is a Type II action not subject to SEQRA. Ms. Kramer noted the issue with respect to the fire lanes and how the applicant has addressed.

The special permit is granted without a term limit.

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 Ms. Kramer.

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

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

The Board discussed the merits of the case. The Board determined that this is a Type II action not subject to SEQRA. Discussion arose regarding the pending code change and that the Board has, in the past, granted variances from five to six feet.

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

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

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

The Board discussed the merits of the case. The Board determined that this is a Type II action not subject to SEQRA. Chairman Neufeld questioned the safety issue. Ms. Kramer indicated that the Board does not know if there was an issue with the slope of the property that could not enabled the fence to be erected differently. Chairman Neufeld stated that the applicant has created the problem by building the stone wall and creating the drop. He indicated that he did not have an issue with the exterior fence.

A motion to approve the variance to erect a six (6) foot high fence on the exterior location and a (6) foot high fence measured from the base of the retaining wall on the interior location 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, Kramer, Sullivan, Weprin
Nays: None

6. Application #14A-2010, JOSE MADERIA

The Board discussed the merits of the case. The Board determined that this is a Type II action not subject to SEQRA. This is a situation of an invalid permit that the applicant wishes to validate. Mr. Neuringer stated that he felt the applicant did a good job in presenting his request. Ms. Kramer noted that this issue has come up before with erroneous permits. The Board needs to look at this as if it were being built tomorrow.

A motion to approve the application 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, Weprin

Nays: None

Abstain: Kramer

MINUTES

A motion to approve the minutes of February 4, 2010 was made by Mr. Weprin, seconded by Mr. Sullivan.

Ayes: Neufeld, Neuringer, Kramer, Sullivan, Weprin

Nays: None

Chairman Neufeld suggested that the entire Board can work together with the East Coast North Properties application. Ms. Zalantis cautioned the Board with respect to the Open Meetings Law. Chairman Neufeld clarified that this would be gathering and sharing information before meetings.

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 10:25 p.m.

GREGORY SULLIVAN
Secretary

Prepared by:
Ann P. Powers