

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, APRIL 7, 2011 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 April 7, 2011. 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: Clark Neuringer, Chairman
Robin Kramer, Secretary
Dave Neufeld, Board Member
Steve Silverberg, Counsel to Board
Rob Melillo, Deputy Building Inspector

ABSENT: Barry Weprin, Vice Chairman
Greg Sullivan, Board Member

RECEIVED
CLERK'S OFFICE
2011 JUN 20 PM 12:00
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 Neuringer at 7:06 p.m. and he introduced everyone and detailed the procedures for the meeting. Chairman Neuringer noted for the record that Mr. Weprin and Mr. Sullivan were not in attendance. He asked if anyone wished to adjourn their application due to the fact that there were only three Board members present this evening. The next meeting is scheduled for Thursday, May 5, 2011.

1. Application #4SP-2008 & #7A-2011, DUNKIN DONUTS, 427 E. Boston Post Road

Paul Noto, Esq., the attorney for the applicant, requested an adjournment to the May meeting. The adjournment was granted by the Board. Mr. Noto also referenced a letter he submitted to the Board this evening requesting that the SAPOA application not be decided tonight as a full Board was not present. The Chairman stated that the Board would take that under advisement.

2. Application #5SP-2011 & #10A-2011 CAPUTO TOLLGATE PROPERTY, LLC., 974 E. Boston Post Road

Joseph Messina, Esq., appeared on behalf of the applicant. He stated that he would like an adjournment because he received several documents from individuals who are against the application and he would like to have time to read the material and provide appropriate responses to quell the fears of the opponents.

Chairman Neuringer stated that several people came out tonight to speak against the car wash and the Board wanted to be fair to them as well as the applicant. Discussion arose as to whether the public hearing should be opened for public comment and then adjourned until May. Mr. Neufeld

stated that both the Board and the applicant received a lot of material in the last few days and it might be more appropriate to adjourn, without opening the public hearing, until the May meeting.

Chairman Neuringer stated that he had been in touch with the Board's consultant regarding SEQRA and he wanted to open the meeting for SEQRA and have the Board declare its intent to be lead agency and then adjourn the application until the May meeting.

Ms. Kramer stated that normally she would agree with Chairman Neuringer on this, but since there are only three members of the Board present, the applicant should have the same right as every other applicant to adjourn the matter if he so chooses.

Kathy Zalantis, Esq., attorney for the Board stated that the Board can declare its intent to be lead agency and will still have to wait 30 days for any responses. She stated that this is an unlisted action for both the special permit application and variance application. Ms. Kramer stated that the EIS may have to be changed. Mr. Messina stated that he felt the Planning Board would be better suited for the role of lead agency. He also noted that he would feel more comfortable if the entire Board heard the application. Chairman Neuringer stated that the consultants had no issue with the Zoning Board declaring its intent to be lead agency. Ms. Zalantis clarified for the record that the Board is simply asking for the intent to be lead agency.

Clifford Davis, representing Stewart Avenue Association, stated that he has a trial in May and doesn't see why the hearing can't be opened tonight. Chairman Neuringer stated that he has no problem opening the hearing tonight. Mr. Messina interjected by saying that other Board members are not in attendance this evening and are not present to hear Mr. Davis speak. Chairman Neuringer asked if Mr. Messina had any objection to Mr. Davis speaking. Mr. Neufeld stated that he does not understand how the applicant doesn't have a choice in this matter.

Mr. Davis stated that he feels he can speak without hearing from the applicant first. Mr. Messina objected for the record. Ms. Kramer stated that it was one thing if the applicant wanted to adjourn because he received numerous documents last minute. However, this can be problematic if the Board doesn't adjourn the matter and the two absent Board members don't view the DVD of tonight's meeting. Mr. Neufeld stated that it was highly unusual that the Board only has three members tonight. He went on to say that technically, if the Board is doing SEQRA, then the application is not complete. He also agreed with Ms. Kramer's earlier comments regarding Mr. Messina's request to adjourn due to the lack of a full Board.

Chairman Neuringer asked Mr. Davis if he had submitted anything to the Board and Mr. Davis stated that he planned to do so this evening. Chairman Neuringer instructed Mr. Davis to submit any documents no later than five days before the May meeting. Mr. Davis submitted his documentation to the Board as he had planned to submit it tonight.

Mr. Davis asked if the hearing on this matter will be closed in May and Chairman Neuringer stated that it will not be closed in May. Mr. Neufeld stated that the Board may not even open the public hearing in May if the Board performs SEQRA. It was decided the hearing won't be closed in May. Ms. Zalantis stated that the public hearing is for the special permit and variance. If the Board is making a commitment not to close, then the SEQRA can wait. Mr. Messina stated that the

Planning Board consultant listed the application as an unlisted action. He does not believe the Board needs a hearing to be open to declare intent to be lead agency. Mr. Messina stated that if all three members tonight wish to declare their intent to be lead agency, he does not have an issue with the fact that two members are absent in the spirit of moving the application along.

A motion to declare intent to be lead agency was made by Mr. Neufeld, seconded by Chairman Neuringer.

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

Ms. Powers will circulate a memo to agencies to express intent. Providing the application is complete, the public hearing will be opened in May.

3. Application #3SP-2008, MOLLY SPILLANE'S RESTAURANT, 211 Mamaroneck Avenue

There was confusion as to whether this application was adjourned as the applicant did not provide a request in writing to the Zoning Office, but had contacted the Building Department to say he would be out of town. Chairman Neuringer asked if there was anyone in the audience regarding this application. An audience member stated her concern that the applicant will continue to adjourn the public hearings until opponents stop coming to the meetings. Mr. Neufeld stated that this should be the final request for an adjournment and the public should contact the Zoning Office before the next meeting for any updates.

Another audience member asked what the special permit was for and Chairman Neuringer stated that it was to renew an existing special permit to operate a restaurant.

The application was adjourned until May 5, 2011.

4. Application #3SP-2011, AJMK ENTERPRISE LLC. 181 E. Boston Post Road

Arthur Jacobson, the applicant, addressed the Board. He stated that he is taking over the restaurant formerly known as The Barnacle and will be operating the existing restaurant under new ownership. The hours of operation will remain the same for now. The seating capacity will also be the same, Mr. Jacobson noted. The hours of operation will be from 11:30 a.m. to 2:30 a.m., but he plans on closing by 2:00 a.m. most evenings. Mr. Jacobson stated that this will be a seafood accent restaurant for casual dining.

Ms. Kramer clarified that this is a change of ownership and the Board is granting a new special permit.

Chairman Neuringer 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. Neufeld.

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

5. Application #3I-2011, #4SP-2011 & #12A-2011 ACTION AUTO MART, INC., 416 Mamaroneck Avenue

Joseph Messina, Esq., appeared on behalf of the applicant and requested an adjournment to the May meeting due to the fact that two Board members are not in attendance. The matter was adjourned until May 5, 2011.

6. Application #8A-2011, HOWARD & JANEL ALEXANDER, 1 Pirates Cove

Arnold Wile appeared on behalf of the applicant. He stated that the applicants are seeking a variance for a gas fireplace where it impacts a setback. Chairman Neuringer asked why this application is being treated as a variance and Ms. Kramer answered that it is an increase in the non-conformity.

Chairman Neuringer asked what the length of the living room was and Mr. Wile stated that it was 25 feet. Chairman Neuringer asked if the applicants had considered alternatives to this layout and Mr. Wile stated that they had, but this was what the applicants wanted. Mr. Neufeld clarified that this layout works better for how they wanted to work their interior and Mr. Wile stated that was correct.

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

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

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

7. Application #9A-2011, STEVEN & JENNIFER MARGOLIS, 513 Alda Road

Michelle Lee, the architect, appeared on behalf of the applicants. She stated that the current house is a two story house with a one story garage and it is built too close to the side yard setback. Ms. Lee said that the addition will include a couple of windows on the second story. She noted that the applicants could have chosen to build the second story going out toward the backyard, but this approach is more aesthetic and they are not adding more square footage. Ms. Lee stated that she and the applicants feel this is the best approach.

A question arose as to when the garage was built and Ms. Lee stated that it was built in 1982. Ms. Lee stated that the applicants are building a second story floor on top of a non-legal story. Mr. Neufeld noted that a resolution from the 1980's was referenced in the materials, but the applicants

had not provided a copy with their application packet. The Board asked Ms. Powers to pull the file for the #46A-1982 variance application and provide a copy to the Board.

Ms. Lee went on to say that the applicants have owned the property for six years. The addition proposed will be lower than the existing roof line. Sixteen feet of height is being added.

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

Robert Mann, 519 Alda Road, addressed the Board. He stated that he lives next door to the applicants in an 85 year old Mediterranean house. Mr. Mann stated that his master bedroom is near the garage and he objects to extending more than ten feet as stipulated by the code. Mr. Mann went on to say that the added volume would be an obstruction to him. The garage itself does not bother him. The shrubbery does a satisfactory job of covering the garage, Mr. Mann said. The addition is what Mr. Mann strongly objects to.

Mr. Neufeld stated that the applicants' house and Mr. Mann's house are already close and asked if a variance already exists. Mr. Mann said he does not know what happened 85 years ago. Chairman Neuringer stated that the right of way wasn't created 85 years ago. Chairman Neuringer said that it was unusual to have a house built right up to the property line. The assumption is that at one time there was a separation and at a subsequent time land was taken over or deeded that reduced the amount of Mr. Mann's property. Ms. Kramer stated that the property may have predated the zoning code which was adopted by the Village in the 1920's. Mr. Neufeld asked if Mr. Mann had any participation in creating the right of way and Mr. Mann said he did not.

Chairman Neuringer asked if Mr. Mann would have fewer objections if the addition was built further towards the applicants' back yard. Mr. Mann stated it would be less objectionable to him. Mr. Neuringer stated that there are four sides to the property and three sides don't conform; it is an issue.

Mr. Margolis, the applicant, stated that the alternative format does not require a variance. He and his wife felt it encroached more on Mr. Mann if they built going towards the back yard. Mr. Neufeld stated that he wants to see the resolution from 1982.

Rob Melillo, the Deputy Building Inspector, stated that the applicants will need another variance. They need a combined side yard variance as well as the lesser side yard variance which they are currently requesting.

Chairman Neuringer stated that the Certificate of Occupancy was issued in 2006 for the legalization to enclose the porch. If the porch was built after 1912, it wouldn't be legal if it didn't have a variance, Chairman Neuringer stated. Mr. Melillo stated that the Building Department will not revoke a C of O once it has been issued.

The application was adjourned to obtain copies of resolutions, permits, and revised plans. A brief discussion arose regarding the right of way and ownership. Neither party owns the right of way. The applicant must amend their application to reflect the additional variance requested.

8. Application #13A-2011, MCMICHAEL BOATING CENTER, 447 E. Boston Post Road

Daniel Natchez, appeared on behalf of the applicant. Mr. Natchez stated that Howard McMichael, President of McMichael Boating was also in attendance. Mr. Natchez noted that the applicant is seeking a variance for a side yard setback for a shed and a variance for a side yard setback for a restroom.

The existing restroom extends three feet into the side yard setback and the shed has a zero setback. Mr. Natchez stated that he does not know when the restroom was built. He distributed a letter to the Board from Harbor Lawn Estates stating they have no objections to the variance requests.

Mr. Natchez went on to say that the shed is considered a structure based on the code definition. He said the restroom is connected to the county sewer. Mr. Natchez noted that there are no practical alternatives to either of these structures and he would like this stated for the record.

Chairman Neuringer 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. Neufeld.

Ayes: Neuringer, Neufeld, Kramer

Nays: None

Absent: Weprin, Sullivan

APPLICATIONS CLOSED

1. Application #3SP-2011, AJMK ENTERPRISE LLC, 181 E. Boston Post Road

The Board discussed the merits of the 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 issued a negative declaration requiring no further action under the State Environmental Quality Review Act (SEQRA). The special permit granted herein shall be valid for an initial period of three (3) years.

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

Ayes: Neuringer, Kramer, Neufeld

Nays: None

Absent: Weprin, Sullivan

2. Application #8A-2011, HOWARD & JANEL ALEXANDER, 1 Pirates Cove

The Board discussed the merits of the case. 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. Neufeld for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

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

3. Application #13A-2011, MCMICHAEL BOATING CENTER, 447 E. Boston Post Road

The Board began to discuss the merits of the case and then decided to hold it over until next month.

4. Application #4A-2011, JOSEPH CALDWELL, 1411 James Street

The Board discussed the merits of the case. 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 Ms. Kramer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Neufeld.

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

OTHER AGENDA ITEMS

Ms. Zalantis noted that Martha McCarty, attorney for Mr. and Mrs. Urbinati of 1380 Flagler Drive, had requested the Board rehear their application without waiting the mandatory six month period. Discussion arose regarding whether the Board made a mistake of fact as is stated in Ms. McCarty's letter or that she is requesting to present corrected plans.

Ms. Kramer said that the Board can rehear the matter, but not until July due to the heavy schedule the Board has the next two meetings. If the applicant is coming in with new drawings, then it is a new application and the applicant must re-notice, she said.

APPLICATIONS CLOSED, (CONTINUED)

5. Application #2I-2011, THE SHORE ACRES PROPERTY OWNERS ASSOCIATION AND BENNETT & CYNTHIA GOLUB, 700 S. Barry Avenue (aka 555 South Barry Avenue)

The Board decided to wait until next month to deliberate. There is a question as to whether the Assessor amended the tax map and whether the Board can consider the amended map. Discussion arose regarding the deed and that a deed is a conveyance of property. A brief discussion also arose

regarding ownership. Mr. Neufeld stated that he has an issue with respect to gravel and paving. He also stated that he found the deed to be very troubling.

MINUTES

The March 3, 2011 meeting minutes were held over to the May meeting.

ADJOURN

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

Ayes: Neuringer, Kramer, Neufeld

Nays: None

Absent: Weprin, Sullivan

On motion duly made and carried, the meeting was adjourned at 9:20 p.m.

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers