

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, DECEMBER 1, 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 December 1, 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
Barry Weprin, Vice Chairman
Robin Kramer, Secretary
Gregory Sullivan, Board Member
Dave Neufeld, Board Member
Anna Georgiou, Counsel to Board
Lester Steinman, Counsel to Board
Rob Melillo, Building Inspector

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 Neuringer at 7:15 p.m. and he introduced everyone and detailed the procedures for the meeting. Chairman Neuringer stated that Ms. Kramer would be late to the meeting and asked if anyone wished to hold their application until later in the evening and none did. The next meeting is scheduled for Thursday, January 5, 2012.

Chairman Neuringer stated that this would be his last meeting after serving ten years on the Board. He thanked his colleagues, counsel and Village staff. Members of the Board thanked the Chairman for his years of service and hard work.

**1. Adjourned Application #19SP-2006, SANDRA & DON SCHWARZ/TRUSTEES
D/B/A/ DCH MIDLAND LLC., 260 W. Boston Post Road**

Paul Noto, Esq., addressed the Board. He thanked Chairman Neuringer for his ten years of service on the ZBA. Joseph Solano, Director of BMW, was also in attendance. Mr. Noto stated that originally there were 58 employees and parking for 35 or 36; currently, there are 19 employees. Mr. Noto indicated that the issues raised in Mr. Fraioli’s letter are less of an issue. He also noted that there is now valet service for customers and the truck deliveries are in Port Chester now.

Mr. Solano addressed the Board. He stated that many customers do park across the street not realizing the dealership has valet parking. He noted it is a constant struggle. He did say, however, that he feels the issue has been reduced.

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

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

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

2. Adjourned Application #7SP-2000, C & K DRY CLEANING CORP. D/B/A MAMARONECK CLEANERS, 965 Mamaroneck Avenue

Katherine Lee appeared on behalf of the applicant. Mr. Weprin stated that he is a long time customer of the establishment. Ms. Lee stated that there have been no changes to the dry cleaners; the hours of operation remain the same. There have been no violations or complaints.

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. Sullivan, seconded by Mr. Neufeld.

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

3. Adjourned Application #5SP-2001, BEKIR DEDE D/B/A TOP RAK, LTD., 540 Mamaroneck Avenue

Bekir Dede, the applicant, addressed the Board. He stated that this special permit renewal is for the Sunoco gas station. He stated that there have been no changes with the station and the hours of operation are the same as they have always been.

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. Sullivan, seconded by Mr. Neufeld.

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

4. Application #4SP-2001, SING KWOK D/B/A BEST CHINESE, 349 Mamaroneck Avenue

Sing Kwok, the applicant and owner, addressed the Board. He stated that he has been in business for 21 years and that there have been no changes to the operation of his establishment. He requested the granting of the special permit be permanent/without a term limit.

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. Sullivan, seconded by Mr. Weprin.

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

5. Application #12SP-2011, JEREMY LAFARO D/B/A HEALTHY FIT FOR WOMEN, 1000 E. Boston Post Road

Chairman Neuringer stated that this application was being adjourned until January 5, 2012 due to the fact that the mailing notification to neighbors was not correct.

6. Adjourned Application #3F-2011, MATTHEW & JENNIFER COHEN, 746 The Parkway and Adjourned Application #5I-2011, LEONARD AUBREY & KATHLEEN SAVOLT & LOIS FENTON, regarding 746 The Parkway

The Board agreed to hear both the Cohen application and the Savolt/Fenton application as they are inter-related. Chairman Neuringer noted that per the Board's request, the Cohens submitted the survey and topographical map. There was some question as to whether this was the requested topographical. Ms. Cohen, the applicant, stated that at the last meeting Mr. Neufeld had requested a copy of the topographical referred to on the as built and this was what was requested. Chairman Neuringer stated the submission was fine.

Mr. Neufeld asked if the area was now filled in and Ms. Cohen stated it was now flat. Ms. McCarthy handed out current photographs. Chairman Neuringer stated that the topographical survey shows a backyard that has slopes on both corners with a substantial drop. He noted that a retaining wall was built and the property filled in. He also noted that trees were removed and that they were not of an insignificant nature. He asked if the trees removed covered views. Ms. Cohen stated that the trees had large trunks, but they did not offer any screening.

Mr. Neufeld asked the height of the fences. Ms. Cohen stated 4 feet, 6 feet and 0-6 feet. Chairman Neuringer stated that there had been a fair amount of testimony and homework with respect to this application. The application is for a four foot fence on top of a six foot retaining wall for safety reasons. He stated that it would be hard to come up with findings to deny this application. However, Chairman Neuringer stated, there are conditions that need to be addressed; it's a visual matter. He stated he had large concern about the sound, but the sound concerns appear to be mitigated. Also, the lighting may have been addressed, Chairman Neuringer stated.

Chairman Neuringer stated that the Board should hire a landscape architect to look at what was done and advise the Board as to whether it is appropriate or to make suggestions to further enhance the layout. Mr. Neufeld stated that this is more an issue to be discussed after the hearing is closed and during deliberations. Mr. Weprin suggested hearing from the other applicants. Mr. Weprin stated that this is a difficult situation and application. Mr. Weprin stated that he was in favor of Chairman Neuringer suggestion to hire a landscape architect.

Mr. Neufeld stated that the fence could be an open fence that doesn't block and that he is more interested in the type of fence the applicant installs. He did state that he has some concerns about the application.

Ms. Cohen addressed the Board. She stated that all these issues were brought before the BAR and Susan Oakley reviewed everything. She noted that everything this Board is saying has already been done. She went on to say that the plan was submitted and approved by the Fenton/Savolt applicants.

Mr. Neufeld asked if Ms. Cohen had a fence preference and she stated that she would prefer an open fence and that everyone is in favor of an open fence if there has to be a fence. She stated that a black ornamental fence will be sufficient.

Chairman Neuringer stated that the issue is from the standpoint of people living down the hill; there is no screening for privacy or sound.

Mr. Sullivan asked if the plantings above the first wall will typically grow above the fence and Ms. McCarty stated that they will eventually grow to cover the ornamental fence. The plantings are about four feet high and they were three feet high when they were planted.

Chairman Neuringer stated that there is no question that there was a change from the original plan. The applicant should bring in the plans as built and give them to the Building Department for filing. Ms. Cohen stated that this is already in the works.

Ms. Cohen submitted a rebuttal to the letters from Ms. Savolt and Ms. Fenton from the last meeting.

Ms. Fenton addressed the Board. She handed out a letter which was read aloud. Afterwards, Chairman Neuringer asked Ms. Fenton to define what she wants the Board to do. Ms. Fenton stated that she would like the Board to withdraw the Certificate of Compliance due to the placement of the pool and the pool equipment. She stated that the Cohens did not leave enough space to put up the original fence and that is why they are putting it on top of the retaining wall.

Chairman Neuringer asked if the Notice of Disapproval is for the height and Mr. Melillo stated that it was for the height and the setback. Chairman Neuringer asked if the pool was in compliance with the plans and Mr. Melillo stated that it was. Chairman Neuringer asked if Ms. Fenton had an issue with a safety fence. Ms. Fenton stated that the original fencing was not an issue; it's the proposed fencing that is being placed on top of the wall that is off issue to her.

Mr. Weprin stated that he would have preferred if the Cohens had requested a variance before the pool was built. Mr. Neufeld stated that this is an issue; something was done and now a variance is being requested. It appears to be a self-created matter. Ms. Fenton noted for the record that she would be amenable to the independent consultant. Mr. Sullivan stated that he has an issue with hiring a consultant because the applicants stated that all of this was reviewed before. Mr. Neufeld agreed with Mr. Sullivan and said conditions could be placed in the resolution.

Ms. McCarty stated for the record that the fence is not required; for safety reasons the Cohens would like to install the fence. Ms. Fenton stated that the original plan indicated that there would be climbing planting and none were planted.

Ms. Cohen addressed the Board again and stated that the letter Ms. Fenton distributed at the meeting tonight is slanderous. Ms. McCarty interjected that nothing illegal or wrongful was done and that the BAR plan has been substantially complied with. She stated that an as built has been provided and the Cohens are before this Board for a voluntarily fence. For the record, Ms. McCarty stated, she wants the Board to look at this like a Zoning Board, not an arbiter of neighbors.

Chairman Neuringer asked if a building permit was filed when the wood fence was erected and Ms. Cohen stated no, there was an open permit. She also stated that the black ornamental fence is a continuation of the wood fence. Ms. McCarty stated that the Building Inspector recommended a closed fence. Ms. McCarty also stated that she disagrees with the self-created aspect brought up by the Board.

Ms. Savolt, the applicant, addressed the Board. She distributed a picture of what the property looked like before the construction. She stated that the local municipal code states that the pool should be suitably screened and anyone who has seen the pool knows it is not suitably screened. Ms. Savolt indicated that the original plan shows the pool equipment was set further back and she read from the notes on the plan. She said that the plans had enough information and no variance was applied for. She assumed there would be a setback and fence. Ms. Savolt went on to say that when she saw the pool being built right on top of the wall, she was surprised.

Chairman Neuringer noted that the proposed ornamental fence is shown on the top edge of the wall. Ms. Savolt said there is a note on the plan that states there is a three foot setback. Chairman Neuringer stated that what was built looks like what was on the plan except for the pool equipment. Ms. Savolt reiterated that the pool needs to be suitably screened by plantings and fencing. She stated that the Board has an authority to revoke the certificate and the pool equipment should be moved and the pool should be suitably screened.

Discussion arose regarding the rear yard setback for the pool equipment and Mr. Melillo stated that six feet is required, but the applicant has 9.6 feet. Mr. Weprin stated that he feels both parties have a position. He went on to say that if the applicants had come before the ZBA before the pool was built, the situation would be better.

Ms. Savolt stated that an open fence is not going to screen the pool and a closed fence is going to make it look worse. She suggested that the current plantings be removed and taller ones planted in their place.

Mr. Sullivan stated that when he visited the property, he couldn't see the pool. In his estimation, the pool was screened. Mr. Neufeld asked Ms. Savolt if she had a choice between a closed fence, open fence and no fence, what would be her choice. Ms. Savolt answered that she is speaking for herself, but we would prefer a solid fence with plantings. Mr. Weprin asked if a two foot fence would be suitable to Ms. Savolt and she said she did not think two feet would screen the noise; it's the noise and the visual.

With respect to Mrs. Fenton's property, Ms. Savolt stated that the wall depreciates the value of her property. Chairman Neuringer noted that the wall is completely compliance and not as issue.

Lester Steinman, counsel to the ZBA noted that while there is a request for screening, there is no plan before the Board. He asked if the Board would like to ask the applicants to provide a plan with respect to screening. Mr. Neufeld stated that the burden should fall on the applicant requesting the variance.

Ms. McCarty clarified that the note on the plan indicating 3 feet 6 inches was requested by her client with respect to the position of the hot tub. The approved plans show plantings on the lower wall and no planting at the top, she said. Ms. McCarty also noted that she was disturbed by the comment that Ms. Savolt saw people in the pool. A backyard is to be enjoyed whether it is in the pool, barbecuing, etc. These are normal activities, she stated.

Chairman Neuringer noted that pools have strong screening requirements per rules and regulations. The reason no variance was sought is that the Board was told by the Building Inspector that no variance was required, he said. There may have been a series of misunderstandings and the Board is here tonight to rectify the situation, the Chairman stated.

Ms. McCarty stated that her clients want a fence for safety reasons and don't want a two foot fence. She stated at that height, it could be a tripping hazard. Ms. McCarty also noted that the lights have been mitigated as has the noise.

Mrs. Fenton stated that the lights have not been shielded contrary to what Ms. McCarty stated. She noted that the lights are high from her perspective. Mr. Melillo stated that he was of the opinion that the Board should not be involved in the shrubbery aspect. The ZBA should be looking at the fence, he stated. He stated that it is the Building Inspector's role to deal with the nuisance issues after the pool is built. In his opinion, the Building Inspector stated, the pool was built very close to the plan. He also noted that the BAR did not mandate a height for the fence.

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 Mr. Weprin.

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

Ms. Kramer joined the meeting at 8:49 p.m.

7. Adjourned Application #30A-2011, HPS 122 LLC. C/O H-P CAPITAL, LLC., 122-134 Mamaroneck Avenue

Chairman Neuringer noted that this application was referred to the Planning Board for their input. The Planning Board agreed with granting the variance for parking. Chairman Neuringer wished to clarify the Planning Board letter by stating that the first floor is a net of 800 sq. ft., not 600 sq. ft. as noted. Michael Burns, the architect and David Sacarny addressed the Board.

Chairman Neuringer asked how the deliveries of goods arrive at the store. Mr. Burns stated that trucks pull up, unload goods and then leave. He also noted that this is how all the other shops handle deliveries on Mamaroneck Avenue.

Mr. Sacarny stated that there are seven stores in the building and one store will be eliminated to make a walkway to the rear. Each store will have 200 sq. ft. of storage. The plan is to install framing for one set of stairs to go up to the second floor, Mr. Burns stated. They will leave the options of erecting the stairs to the store owners. The stairs can be a structure or a pull down type. Chairman Neuringer stated that by erecting a permanent staircase, this changes the nature of the space. Mr. Burns stated that the storage space on the second floor will be divided by chain link fencing; not solid walls. The space will not be used for anything else because that would be a violation of the code. Chairman Neuringer stated that windows seem to be convenient egress windows. The windows are for natural lighting, Mr. Burns stated.

Ms. Kramer noted the slope on the back property and asked what the applicant was planning to do with it. Mr. Burns stated that they will be creating a walkway. Part of the area will have grass, some plantings and trees and the rest will be the walkway. The walkway will take pedestrians to the parking garage, he stated.

Discussion arose as to whether the walkway would be ADA compliant. It was determined that a lift would not be required, but other ADA requirements will be fulfilled.

Mr. Sacarny stated that he is asking for a variance for parking and in turn he is providing the walkway. He noted that this is not expected to be in perpetuity. Chairman Neuringer stated that this is a different representation that what was made at the last meeting. Mr. Burns stated that the Planning Board is asking for a certain amount of time before approving the application. Mr. Sacarny stated the time limit wouldn't be forever.

Mr. Burns stated that he will provide lighting and have hours within which the walkway will be open. And, the commitment is for ten years. Chairman Neuringer reminded the applicant that the variance goes with the land and that changes can't be made to conditions of the resolution.

Ms. Kramer asked what guarantee the Board has that the area won't be closed off. Mr. Sacarny answered the site plan. Ms. Kramer stated that answer was not good enough for this Board. She stated that a recorded covenant to guarantee this would be needed or the site plan recorded. Mr. Steinman noted that site plans can be amended and that a declaration against the property owner would be beneficial. Ms. Kramer stated that the Board can grant the variance for ten years or grant it indefinitely.

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. Weprin, seconded by Mr. Sullivan.

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

The Chairman announced that the Board would convene into executive session to discuss pending litigation with respect to current applications before the Board.

A motion to convene into executive session to discuss pending litigation and notice of claim was made by Mr. Neufeld, seconded by Mr. Weprin.

Ayes: Neuringer, Sullivan, Neufeld, Weprin, Kramer

Nays: None

At 9:09 p.m. the Board convened into executive session.

At 9:43 p.m. the Board returned from executive session.

8. Adjourned Application #4I-2011, BENNETT GOLUB & CYNTHIA GOLUB & THE SHORE ACRES PROPERTY OWNERS ASSOCIATION, 700 S. Barry Avenue

Chairman Neuringer went over the ground rules of the application. He noted that substantial information had been submitted to the ZBA and the Board would only accept new information.

Steve Kass, attorney for the applicants, addressed the Board. He asked if there was anything to report about the executive session. Mr. Steinman stated that no determinations were made that require public discussion.

Mr. Kass stated that the application was effectively closed in September with respect to information. He noted that recently additional information was submitted improperly by the club and he has nothing to add.

Ms. Kramer asked Mr. Kass to clearly state the applicants' appeal. Mr. Kass stated that with respect to this matter, the applicants are appealing and asking the Board to reverse the Tax Assessor's change of the tax map to increase the lot size of the club's property by a half acre for zoning purposes.

Mr. Neufeld asked if the applicants can provide a chronological list of what was submitted to the Board from the beginning. Mr. Kass stated that he had a list available now with the omission of one letter submitted by Mr. Sachs, attorney for the club, dated September 28, 2011. Mr. Neufeld asked Mr. Kass to note that omission so that the Board knows they have all the documents.

Discussion arose regarding submissions after the September meeting and Mr. Katz stated those submissions were not appropriate to be considered.

Eric Gordon, attorney for the club, addressed the Board. He asked that all documents submitted by him be accepted as they do not raise new issues, but address matters already discussed. As for the court papers, the Village has copies and he thought the ZBA should be aware as well since they relate to the application before the ZBA, he stated.

Ms. Kramer stated that Mr. Gordon's position appears to be that if the Planning Board is taking one position based on advice from legal counsel and if the ZBA takes a different position, it would be inconsistent, correct? Mr. Gordon stated that he believes it would be inconsistent.

Mr. Steinman asked that Mr. Gordon, attorney for the club, receive a copy so he can confirm the list. Mr. Gordon was given a list. Mr. Gordon asked that the Board consider the letter submitted after the September 1st meeting as well as the documents submitted this week (Court papers). Chairman Neuringer stated for the record that the documents were not requested by the Board.

Ms. Kramer stated that if the Board determines the Assessor should not have changed the map, is Mr. Gordon saying that the Board can't do that. He answered yes.

Ms. Kramer provided a scenario with respect to the Planning Board making a determination with advice of counsel and an Article 78 was filed and an interpretation requested. Mr. Gordon stated that it would have to go to the ZBA first before going to Court and it would be dismissed by the Court for lack of jurisdiction.

Mr. Neufeld asked that assuming the Board has jurisdiction, and the Board makes a determination and another Board has an opposite position, is Mr. Gordon suggesting that the Board would be bound to follow the other Board and be divested of jurisdiction. Mr. Gordon stated that this is a matter where the Village believes the Tax Assessor made the correct change. Mr. Neufeld stated that in Mr. Gordon's papers, he indicated that the Board would be capricious if the Board went against another Board.

Mr. Weprin stated that he felt this discussion was getting far afield and it is not an issue for him. Mr. Gordon stated that the Club's position is that this Board does not have jurisdiction and he hope the Board denied the application for that reason.

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

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

Ayes: Neuringer, Weprin, Kramer, Sullivan, Neufeld

Nays: None

**9. Application #6I-2011, BENNETT GOLUB & CYNTHIA GOLUB & THE SHORE
ACRES PROPERTY OWNERS ASSOCIATION, 700 S. Barry Avenue**

Steve Kass, attorney for the applicants, addressed the Board. He stated that he, along with the club, believes this belongs in the Courts and not in front of the ZBA. Mr. Kass said that in May 2011, the ZBA made a determination that the matter was not zoning compliant. His clients expected the Building Inspector to rescind the permits and were surprised to find out that he did not. Mr. Kass went on to say that the club filed an Article 78 and, in turn, Mr. Kass filed an Article 78 to compel the Building Inspector to rescind the permit. Mr. Kass noted that the Village Attorney felt this matter should be referred to the ZBA.

Mr. Kass stated that when Mr. Melillo became Building Inspector, he forwarded a second request asking him to rescind the permits and received no response from the Building Inspector.

Mr. Kass stated the applicants believed the permits were stayed because of an oddity of the law that states permits need to be referred to the Freshwater Wetlands Appeals Board. Mr. Kass indicated that attorney Steve Silverberg sent a letter stating that the Golubs/SAPOA could not go to that Board. It was later determined the law was not accurate and the court of appeals concurred that they did not have jurisdiction. This, Mr. Kass believes, constituted a stay and the Village Attorney informed Mr. Kass that his clients should go before the ZBA first. Mr. Kass stated that he would welcome a decision by the ZBA determining if it has jurisdiction.

Discussion arose regarding whether this matter would become moot depending on the Court's decision. Mr. Weprin asked what the Building Inspector would do if the Court affirms the ZBA decision. Mr. Melillo stated that he would need to consult his attorney.

Chairman Neuringer asked if there was a timeframe in which the Building Inspector was to have acted on the permits and Mr. Kass stated that he did not believe there was one. Chairman Neuringer questioned whether it would be possible that the Building Inspector needs times to review the matter and Mr. Kass stated it would be possible and that is why he sent the second request in August 2011.

Mr. Steinman asked if an injunction was sought regarding the site plan and Mr. Kass answered no. Mr. Steinman asked if a stay was sought (just to clarify) and Mr. Kass stated that there was no motion for a stay or injunction.

Paul Noto, attorney for the club, addressed the Board. Regarding the documentation list Mr. Kass distributed, he requested that the October 3, 2011 Keane & Beane Memorandum of Law be added. Mr. Noto stated that there was a request in the original Article 78 seeking an injunction. Mr. Kass stated that he stood corrected.

The question was posed to Mr. Noto as to whether the ZBA could have an adverse position with the Board of Trustees relative to land use issues. Mr. Noto stated that it depends on the situation. Chairman Neuringer asked if the Village is required to follow the zoning ordinances and Mr. Noto stated it is not that black and white.

Mr. Noto stated that there are serious problems with this application. The statute of limitations has expired, he noted. The applicants missed the deadline and the application is jurisdictionally flawed. Mr. Noto went on to say that the appeal is meritless; the Building Inspector has the discretion to revoke or not to revoke the permits.

Mr. Weprin asked what would happen if the Supreme Court upholds the ZBA determination. Mr. Noto stated that if the club receives the land, the ZBA's determination may need to be re-addressed. Mr. Weprin asked if the applicants were proceeding with the permits and Mr. Noto stated that they are not; they are waiting to hear from the OGS.

Ms. Kramer stated that she takes issue with the statement that the Building Inspector has discretion to issue a building permit. She clarified that if the applicant meets all aspects of the code, the Building Inspector must issue a permit.

Ms. Kramer illustrated a scenario where a person wishing to build a two-family house in a one-family district receives a permit to build, but an appeal is filed with the ZBA. The ZBA, in turn, overturns the Building Inspector. Doesn't the Building Inspector have to revoke the permit, Ms. Kramer asked. Mr. Noto answered no because something might change; the Building Inspector has the ability to look at the totality of the circumstances. Mr. Noto then read from the code regarding the Building Inspector's authority to revoke permits.

Chairman Neuringer stated that the Board has acted in the past and the Building Inspector has revoked permits. Mr. Noto stated that there are issues in this matter that would warrant the Building Inspector wait to see the outcome before acting.

Chairman Neuringer asked if anyone wished to address the Board.

Victor Carfew addressed the Board. He stated that he lives close to the property and that this matter has been dragging on for many years. He stated that residents are looking to this Board to clarify and made determinations. He stated that it is better to take action and do something.

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

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

Mr. Steinman stated that the 62 day period does not apply in this instance and all parties agreed. Mr. Kass stated that he wished to request a special meeting before the end of the year to make a determination. Chairman Neuringer stated that with varying schedules and the holidays, that would be a difficult request to honor.

Don Mazin addressed the Board. He wanted to take a moment to thank Chairman Neuringer for his years of dedication and hard work. Ms. Kramer also took an opportunity to thank the Chairman for his service to this Board.

APPLICATIONS CLOSED

1. Application #19SP-2006, SANDRA & DON SCHWARZ/TRUSTEES D/B/A/ DCH MIDLAND LLC., 260 W. Boston Post Road

The Board discussed the merits of the case. Due to the fact that there were some issues relative to parking, the Board recommended imposing a three year term for the renewal of the special permit. 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 renewal of the special permit with a three year term limit was made by

Mr. Weprin for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Neufeld.

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

2. Application #7SP-2000, C & K DRY CLEANING CORP. D/B/A MAMARONECK CLEANERS, 965 Mamaroneck Avenue

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). The renewal of the special permit was granted without a term limit.

A motion to approve the 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. Neufeld.

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

3. Application #5SP-2001, BEKIR DEDE D/B/A TOP RAK, LTD., 540 Mamaroneck Avenue

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). The renewal of the special permit was granted without a term limit.

A motion to approve the 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: Neuringer, Sullivan, Weprin, Neufeld
Nays: None
Abstain: Kramer

4. Application #4SP-2001, SING KWOK D/B/A BEST CHINESE, 349 Mamaroneck Avenue

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). The renewal of the special permit was granted without a term limit.

A motion to approve the 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. Neufeld.

Ayes: Neuringer, Sullivan, Weprin, Neufeld

Nays: None
Abstain: Kramer

5. Application #30A-2011, HPS 122 LLC. C/O H-P CAPITAL, LLC., 122-134 Mamaroneck Avenue

The Board discussed the merits of the case. Ms. Kramer stated that she had concerns regarding the parking. Mr. Sullivan stated that the applicant is offering something for the parking. Ms. Kramer stated that this arrangement should be in perpetuity, maintained, guaranteed and insured. There should be a covenant or it should be part of the C of O, Ms. Kramer stated.

Mr. Steinman reminded the Board that the applicant still has work to do with the Planning Board, so this Board may take its time in deliberating. Board members were in agreement to grant the variance to allow for the expansion, however, Ms. Georgiou suggested waiting to hear from the Planning Board.

Ms. Georgiou stated that she would prepare a draft resolution and ask the Planning Board to review the matter and get back to the ZBA.

6. Application #3F-2011, MATTHEW & JENNIFER COHEN, 746 The Parkway

The Board discussed the merits of the case. Mr. Neufeld stated that a three foot fence and landscape would be agreeable, but he stated that the applicant did create this issue. Mr. Weprin stated that the pool equipment was rotated and the Board needs to give the Building Inspector discretion in some matters.

Chairman Neuringer stated that a transparent fence should be screened with planter boxes. Mr. Weprin stated that this is a mess of an application through no one individual's fault.

The Board discussed granting the variance with conditions. The type and style of the fence is fine. Discussion arose as to whether four feet was excessive. The Board wanted the fence installed as far as possible on the outside and the applicant should plant evergreen plant species on the inside that will grow up and through the fence. The plantings should be at least 30 inches in height and fast growing. The applicant must submit a plan with specifications for the approval of this Board within 90 days.

Mr. Neufeld stated that he feels the wall looks so atrocious and he does not feel the fence is necessary. Ms. Kramer suggested that a four foot fence might work, if greenery covers it.

Ms. Georgiou stated that the applicant also has to provide the Building Department with as built plans. Mr. Weprin stated that he was not comfortable with Ms. Fenton painting the wall. The Board also wished to grant the variance for the area covering the equipment as it is right now. The wooden fence needs to stay up per the pool code.

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

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

7. Application #5I-2011, LEONARD AUBREY & KATHLEEN SAVOLT & LOIS FENTON, regarding 746 The Parkway

The Board discussed the merits of the case.

A motion to deny the appeal of the issuance of the Certificate of Compliance for Building Permit #11-0133 for the installation of a new pool was made by Mr. Weprin for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Sullivan.

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

Mr. Weprin stated that there was going to be a public discussion regarding the imposition of fees and to establish procedures at the next Board meeting as it pertains to the language in the code. Chairman Neuringer stated that counsel shouldn't be consulted and Mr. Neufeld agreed. He stated that it was never imposed of before and it would inhibit people coming before the ZBA on appeal. Mr. Weprin stated that people are entitled to know what the rules are. Ms. Kramer stated that there should be appropriate fees for special permits and variances.

Mr. Neufeld also asked that counsel get back to the Board regarding the MB&YC Notice of Claim.

MINUTES

A motion to approve the minutes of October 6, 2011 was made by Mr. Sullivan, seconded by Mr. Weprin.

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

ADJOURN

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

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

On motion duly made and carried, the meeting was adjourned at 11:23 p.m.

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers