

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, OCTOBER 4, 2012 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 October 4, 2012. 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: Gregory Sullivan, Chairman
Barry Weprin, Vice Chairman
Robin Kramer, Secretary
Lawrence Gutterman, Board Member
Anna Georgiou, Counsel to Board
Joe Angiello, Assistant Building Inspector

ABSENT: Dave Neufeld, Board Member

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

Chairman Sullivan called to order the Regular Meeting at 7:09 p.m. Chairman Sullivan stated that Mr. Neufeld would not be present at tonight’s meeting and asked if anyone wished to adjourn their application they should let the Board know when they are called to present. The next ZBA meeting will be on November 1, 2012. He went through the procedures of the public hearing.

PUBLIC HEARINGS

1. Application #13SP-2012, HECTOR A. SOTO D/B/A ASHLEY CJ CORP., 152-158 Mamaroneck Avenue (Section 9, Block 50, Lot 19A), for a special permit to operate an existing restaurant under new ownership. (C-2 District)

The applicant did not appear when called. Chairman Sullivan stated that he would call the applicant again at a later time in the evening.

2. Application #15SP-2012, POST TRIPOD INC., 181 E. Boston Post Road (Section 4, Block 60, Lot 3), for a special permit to operate a restaurant. (MC-2 District)

William Bishop, the owner, addressed the Board. He is seeking a special permit to operate a restaurant that was formerly The Barnacle. Mr. Bishop stated that the operation is the same as before; it is being operated as a restaurant and bar.

Chairman Sullivan asked what the hours of operation will be. Mr. Bishop stated that on Fridays and Saturdays the restaurant will be open until 2:00 a.m. or 3:00 a.m. and weekdays the restaurant will be open until 1:00 a.m. or 2:00 a.m. He noted that nothing has been altered inside the restaurant.

Mr. Bishop stated that he has a liquor license. When asked by Mr. Gutterman if there will be live entertainment, Mr. Bishop said there won't be. Mr. Gutterman asked if there will be any music piped to the outdoor area and Mr. Bishop answered no.

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

Mr. Weprin moved to close the public hearing on Special Permit Application #15SP-2012, seconded by Mr. Gutterman.

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

3. Application #16SP-2012, MOISES HERNANDEZ D/B/A TEXAS CHILI II, 123 Halstead Avenue (Section 9, Block 11, Lot 19), for a special permit to operate a restaurant. (C-2 District)

Lucia Chiochio, attorney for the applicant, addressed the Board. She stated that the architect, Pierre Sarrazin was also in attendance. She stated that the applicant wishes to operate a restaurant at an existing commercial building. Ms. Chiochio said it is a small restaurant, 730 square feet in size. Ms. Chiochio stated that this is the second restaurant for Mr. Hernandez. The first Texas Chili restaurant is located in Port Chester, she said.

Mr. Sarrazin, the architect, stated that the applicant is installing a commercial kitchen, ADA compliant bathrooms and the restaurant will seat fourteen. Chairman Sullivan asked about the transmittal the Board received from the Fire Inspector with respect to some deficiencies on the plan. Mr. Sarrazin stated that a commercial hood will be installed and that everything will fully comply with the Fire Inspector's mandates.

Ms. Chiochio indicated that the hours of operation will be 6:00 a.m. to 2:00 a.m. seven days a week and that the restaurant will not be serving alcohol. Mr. Gutterman asked if there will be take-out service and Ms. Chiochio stated there will be. With respect to parking, Ms. Chiochio stated that there are no parking requirements in this district.

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

Mr. Angiello stated that with respect to the Fire Inspector issues brought up in his transmittal to the ZBA, they will be taken care of during the Building Department process.

Mr. Weprin moved to close the public hearing on Special Permit Application #16SP-2012, seconded by Mr. Gutterman.

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

4. Application #27A-2012, MELBOURNE REALTY LLC., 403 Melbourne Avenue (Section 4, Block 26, Lot 33A), to level the basement floor, add a bathroom in the basement, remove the existing stair in the garage, install a new stair in a different location, raise the roof, remove the barn door, add a window and remove a wall on the first floor in the garage as it violates Article IX, Section 342-64(A) (Nonconforming Uses & Buildings): A building or structure the use which does not conform to the use regulations for the district in which it is situated shall not be altered, enlarged or extended unless the use therein is changed to a conforming use. The dwelling is a two-family dwelling in a single-family zone. (R-5 District)

Martha Sokol McCarty, the attorney for the applicant and Thomas Giannetti, the President of Mamaroneck Realty LLC the applicant, addressed the Board. Ms. McCarty stated that she has been speaking with the Building Department and the application is different than what the Notice of Disapproval indicated. Ms. Kramer asked what the applicant was applying for and Ms. McCarty stated that the applicant was applying for a use variance, with some elements of an area variance. Ms. Georgiou stated that the area variance standards would apply in this matter. She said that it's consistent with spatial variance requirements related to the non-conforming use provisions as it involves an alteration to an existing non-conforming use. Ms. Georgiou noted that the Board has applied area variance standards in the past for similar applications.

Ms. McCarty stated that the applicant is requesting three variances. The garage is collapsing, she said. The first proposal for the garage was with the same footprint, but a higher roof and pitch, Ms. McCarty noted. Now, she said, the applicant won't raise the roof and will lower the pitch to conform.

Secondly, Ms. McCarty stated that when the building was purchased, the sewer pipes were in bad condition. When the pipes are replaced, Ms. McCarty said that the applicant would like to have the possibility of putting in a bathroom at some point. She stated that this is a two-family dwelling and each residence has one bathroom.

Thirdly, Ms. McCarty noted that when the basement was dug up to fix the piping, the applicant didn't want to level the floor completely. He wanted to make room for the mechanicals for a bathroom, she noted.

Ms. Kramer asked if the exterior of the building or the garage would be affected. Ms. McCarty stated that the garage will need to have its second floor removed. Mr. Angiello noted that the removal of the second floor of the garage is considered a repair and that it is not increasing the footprint. The applicant is simply repairing the second floor, Mr. Angiello said, at it needs to be done because it is currently a hazardous condition.

Ms. McCarty stated that additionally the barn door will be removed and windows replacing it. She stated that the bulk will not be changed. Mr. Angiello informed the Board that this application will also be going to the BAR for review because the applicant is changing the exterior look. Mr. Angiello continued by stating that although the roof is maintaining the same pitch and height, the roof has a little bit of a bump which will now be straight.

Mr. Giannetti, the applicant, stated that the reason the second floor needs to be removed is because he can't put a new roof on top of what is there; it will collapse. The second floor has to be fixed before the new roof can be built, he said. Mr. Angiello stated that this is consistent with proper practice for fixing roofs.

Mr. Weprin asked if the applicant did the bathroom work, would they need a use variance. Ms. Georgiou stated that prior precedent of the Board was to apply the area variance standards. However, Ms. Georgiou noted that if this application involved conversion of a two-family to a three-family dwelling then a use variance would be required. Requirements pertaining to alteration/reconstruction of a legal existing non-conforming use have been subject to the area variance standards, she noted.

Ms. Kramer asked how the applicant received a permit to put in a new kitchen. Mr. Angiello stated that it was a replacement kitchen, not a new kitchen. Ms. Kramer stated that if it isn't a safety issue as she understands the code, the applicant can't renovate the kitchen with respect to a non-conforming dwelling. Mr. Angiello stated that he did not have the answer to Ms. Kramer's question, as he was not here when the kitchen was renovated.

Ms. Kramer asked that beside the garage, what else is being done. Ms. McCarty stated that the applicant would like to move a staircase and to have the fixtures in place for a bathroom at some point in the future. The applicant also wishes to level the basement floor, she noted.

Ms. Kramer asked if this application was granted, would the applicant come back for a variance for a bathroom or is this as of right. Mr. Angiello stated that he would need to go through the Building process. Ms. McCarty stated that Mr. Melillo said the applicant should go before the Board and ask for the bathroom as well.

Mr. Gutterman asked what the scope of the plumbing was. Mr. Giannetti said that nothing needs to be done now. He noted that he replaced all the plumbing. In the future, if he wants to have a bathroom, he would rather not dig up the basement again, Mr. Giannetti said. Mr. Angiello stated that all under slab plumbing was replaced and it is set up for a bathroom. Mr. Giannetti said that he only replaced the waste line which was in need of replacement. There is no water or fixtures, he noted. Ms. Kramer asked if the work was already done in the basement and Mr. Angiello said yes, the applicant is trying to legalize the work.

Chairman Sullivan asked if anyone wished to address the Board.

Mike Sadano addressed the Board. He stated that Mr. Giannetti does not live at the location. He said that the garage appears to be getting built up. Mr. Giannetti stated that the garage is not

changing in size and the stairs are on the inside of the garage. He stated that he is using the garage to park his car.

Ms. McCarty said that the footprint of the garage is remaining the same. The only difference is the barn door is being removed and some windows are being added.

Paul Milliot addressed the Board. He said that he is an adjacent neighbor behind the barn. He said he is happy that the original upwards expansion is no longer going to happen. In terms of what is being altered, he said the staircase and doors are being altered. The garage doors are being widened and these are all alterations, he said.

Mr. Milliot stated that there appears to be some inaccuracy on the zoning analysis chart. He stated that the chart gives the impression that everything complies with the yard requirements and the fact is they do not in his opinion. Given this is a corner lot, there are two front yards and two side yards, he said and asked that the zoning chart be corrected for the record.

Lastly, with respect to who will use the garage, it appears from what Mr. Giannetti said, he is using it and not the person living there, Mr. Milliot said. He is concerned that the garage may be used to rent out for storage, he noted.

Ms. McCarty said that she was unaware that the zoning analysis wasn't accurate until a half hour before the meeting. She stated that she will work with the Building Department to correct it. Mr. Gutterman asked about a new survey and Ms. McCarty said that everything today is identical to what was there when the survey was done. She also stated that the garage will not be rented out and that tenants will use the garage.

Ms. Kramer read from the code regarding garages not being used by the actual tenant. Discussion arose as to whether the structure was an accessory to the main house. Ms. Georgiou read the definition of private garage. Ms. Kramer asked if it is accessory to the dwelling if it is used by someone other than the tenant. Ms. McCarty stated that it is an accessory use because it is being used in a proper manner. She also said that right now no one is using the garage. She reiterated that the garage is unsafe.

Mr. Milliot read from Section 342-21. Ms. Kramer stated that based on that definition, Mr. Giannetti would be allowed to use it.

Discussion arose as to whether the Board should close or adjourn the application until the plans are corrected and the application corrected. Ms. McCarty stated her concern because winter will be approaching soon and she urged the Board to close the application. Ms. Kramer stated that she did not want to vote on something that isn't shown properly on the plans or application. Ms. McCarty asked if the Board could close the application on the garage and basement. Ms. Georgiou stated that this was all one application. Ms. Kramer suggested closing, but not voting until the Board had the corrected application and plans filed with the Building Department. Ms. Georgiou stated that the motion should reflect closing the hearing with the caveat that the Board is awaiting the revised plans.

Mr. Angiello stated that Mr. Melillo knew about the zoning analysis and figured it would be fixed once final plans were submitted. Mr. Gutterman felt this wasn't a large issue and that there was a wealth of information to act on. Ms. Georgiou asked if Ms. McCarty could provide a list of what is being envisioned at this point.

Ms. Kramer stated that she does not feel the application is accurate and there is nothing for the record. Chairman Sullivan stated that the applicant's attorney has spelled out what they are seeking. Ms. Kramer said that if the applicant can't meet the zoning standards, then the Board can't vote on the application.

Ms. McCarty reviewed a case in White Plains which was similar to this application before the ZBA. Ms. Kramer felt that Ms. McCarty wasn't going through the five findings to determine granting an area variance. Ms. McCarty stated that she submitted a memo with the application that addresses the five-pronged test. Ms. Georgiou read each of the five findings and Ms. McCarty answered each one as follows:

Ms. McCarty stated that the garage rehabilitation would be a tremendous benefit to the neighborhood. The barn is in line with the character of the neighborhood, she noted.

As for the leveling of the basement floor and plumbing work, Ms. McCarty noted that it neither does anything for or against the neighborhood.

Ms. McCarty stated that there is no other alternative for the rehabilitation of the barn except to tear down the second floor. She said the floor could be done differently, but the applicant would like to do it this way because of the mechanicals.

Because no bulk is being added, the basement won't affect anyone and the applicant is not creating a third family, this is not a large variance, Ms. McCarty said. She went on to say that the barn will maintain the character of the neighborhood and new plumbing is always preferred.

Finally, Ms. McCarty said that the difficulty is not self-created. Everything that was fixed or will be fixed was original from the 1920's.

Mr. Gutterman moved to close the public hearing on variance Application #27A-2012, seconded by Mr. Weprin.

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

5. Application #30A-2012, FRED LOWENFELS, 889 Orienta Avenue (Section 9, Block 104, Lot B), for a fence variance of Article IV, Section 342-14C(1) to increase the height of an existing fence where the applicant proposes to add 2 feet in height to an existing 4 foot high fence, where on a corner parcel, placed beyond the front or side building lines, the fence shall not exceed 4 feet in height. R-20 District)

Fred Lowenfels, the applicant, addressed the Board. He stated that the neighborhood is inundated with deer and that this is an application to raise the height of a post and rail fence which is currently four feet in height to six feet in height. Mr. Lowenfels submitted photos to the Board.

Mr. Lowenfels stated that his neighbors don't mind him raising the fence and they won't be able to see it. He said he doesn't know any other way to keep the deer out. He stated that he hoped this would not be a burden to his neighbors. Mr. Lowenfels said the reason he is before the ZBA is because he is on a corner lot and the code prohibits fences on corner lots higher than four feet without a variance. He stated that the fence does not block the site line at the corner.

Chairman Sullivan asked if anyone wished to address the Board.

Joanne Weiner addressed the Board. She stated that she lives next door to Mr. Lowenfels and that he has rebuilt his entire home and has been a good neighbor. She stated that she was not notified by mail with respect to this application. She said that she saw the sign in front of the house indicating there was to be a public hearing on the fence and went to the Building Department to take a look at the plans. Ms. Weiner stated that in the Building Department file there is a letter that says Mr. Lowenfels' neighbor does not have an issue with the fence and she reiterated that they were never notified of his intent to erect a higher fence.

Mr. Weiner addressed the Board. He stated that he does not see an issue with the deer. He noted that he has lived at his present address for 15 years and has never had a problem with tics or problems between the deer and his dog.

Mr. Weiner said that he has seen only two or three deer in the past 15 years. He said he has a four foot fence around his property and does not see the problems that Mr. Lowenfels is referencing.

Mr. Weiner said that the fence is virtually invisible to Mr. Lowenfels, but that Mr. Weiner sees the unattractive wire fence. From his perspective, he sees the chicken wire, Mr. Weiner stated. He also said that he thought fence codes dictated that the unattractive side should face the property owner who owns the fence.

Ms. Weiner clarified for the record that she did in fact receive notice of the meeting the Thursday prior to the ZBA meeting.

Ms. Kramer asked if there was any way that Mr. Lowenfels can move the fence so that it is less disturbing to the neighbors. Mr. Lowenfels stated that he would be willing and happy to work with the neighbors to come to an agreeable result.

Ms. Kramer moved to close the public hearing on variance Application #30A-2012, seconded by Mr. Gutterman.

Ayes: Sullivan, Kramer, Weprin, Gutterman

Nays: None

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Absent: Neufeld

6. Application #31A-2012, STEPHEN ANTINELLI & MICHELE ANTINELLI, 370 Orienta Avenue (Section 9, Block 66, Lot 1C), for an area variance of Article V, Section 342-27 of the Schedule of Minimum Requirements to construct a left side addition where the applicant proposes a combined side yard setback of 30.75 feet and 35 feet is required. (R-15 District)

Mr. Weprin stated that as a neighbor to the applicant, he received notice of the meeting and that he sees no reason to recuse himself. Bill Witt, the architect, addressed the Board. He indicated that the applicant is building an addition to the rear of the house. The house was built in the early 1960s and complied with the code at the time, he said. Mr. Witt stated that the code has since changed. He noted that the addition being proposed has been specifically designed to meet the code with respect to the 35 foot combined side yard setback requirements.

Mr. Witt stated that he was informed by the Building Department that the 15 foot minimum side yard would now transfer to the existing 10.4 foot side yard. He noted that this is a small one story addition to the rear of the house being proposed which extends out about 7 feet from the back of the house.

He said the applicant is proposing to add 400 sq. ft. to the first floor. Mr. Witt noted that his memo, submitted as part of his application, spelled out the five findings.

Ms. Kramer noted for the record that the applicant had submitted an old survey as part of the application and asked that he provide a new survey. Mr. Witt stated that he now has a new survey; the new survey wasn't completed before the application deadline. Mr. Witt submitted the new survey for the record.

Mr. Witt went on to say that the neighbor who is most affected by the addition has submitted a letter of support. He then submitted the letter for the record.

Mr. Angiello stated that with respect to the setbacks, 35 feet is needed for both sides and the lesser side needs to be at least 15 feet. The applicant's lesser side is 10.4 feet and, therefore, the other side has to make up the difference, he noted.

Ms. Kramer asked when the applicants put this new addition in, will they still have the 10.4 feet on the one side. Mr. Angiello stated that was correct. Ms. Kramer then asked if this is the cause of the problem or is there some problem caused by the addition. Mr. Angiello stated it was because of the existing condition. He went on to say that this Board has ruled on the fact that an applicant must make up for the deficiency of the lesser side. Ms. Kramer stated that she understood that, but asked if the problem was the existing foot print. Mr. Angiello stated that was correct; and if the Board didn't take into account the right hand side of the house (first story of the garage), it would comply. He also stated that it is not written in the code; it is how this Board has made determinations in the past.

Mr. Witt stated that the applicant is within the setback requirements and not increasing the non-conformity. The driveway, he said, will stay as is.

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

Mr. Weprin moved to close the public hearing on variance Application #31A-2012, seconded by Mr. Sullivan.

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

7. Application #13SP-2012, HECTOR A. SOTO D/B/A ASHLEY CJ CORP., 152-158 Mamaroneck Avenue (Section 9, Block 50, Lot 19A), for a special permit to operate an existing restaurant under new ownership. (C-2 District)

Mr. Soto addressed the Board. He stated that he is requesting a special permit to operate an existing restaurant. The hours will be from 6:00 a.m. to 4:00 p.m. seven days a week, Mr. Soto stated. Everything else regarding the restaurant remains the same as the previous establishment, he noted.

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

Ms. Kramer moved to close the public hearing on Special Permit Application #13SP-2012, seconded by Mr. Weprin.

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

8. Application #32A-2012, 690 MAMARONECK AVENUE CORPORATION, 690 Mamaroneck Avenue (Section 8, Block 82, Lot 1), to request an extension of time to complete restoration work for an existing non-conforming use for a period of 2 years where the applicant is in violation of Article IX, Section 342-66 – Restoration of a damaged nonconforming use which allows based on compliance with specific requirements of that section the restoration and resumption of a nonconforming use which is accidentally destroyed in whole or in part by fire, explosion or other cause; provided, that the work of restoration must be completed within a period of 12 months of such damage or destruction. (RM-3 District)

Martha Sokol McCarty, attorney for the applicant, addressed the Board. She noted that the owner, Richard Cimaglia and Nancy Wasserman, the broker for the property, were in the audience should questions come up that they are better able to answer.

Ms. McCarty stated that the building recently housed the restaurant Three Jalapenos. She noted that the property has been operated as a restaurant in a mixed use residence. Ms. McCarty

indicated that the property has been hit very hard with flooding and that the owner as well as the tenant did not have flood insurance. She went on to say that the applicant is running out of time to do the renovations and is asking for an extension of time for the use.

Ms. Georgiou clarified that this is a restoration of a damaged non-conforming use. Ms. McCarty said that the restoration is needed due to the flooding the area (the Flats) has incurred. Ms. McCarty stated that the owner is asking for a two year extension because there are currently no tenants in the building. The previous tenants left without any prior notice, she stated.

Mr. Gutterman asked if there were any safety hazard issues and Mr. Angiello answered that there were not. Ms. Kramer asked when the building was flooded. Ms. McCarty stated that the building was flooded during Hurricane Irene. She said that the applicant is asking for the right to reconstruct to be able to continue the non-conformity.

Chairman Sullivan stated that he believes the Board granted a variance for property on New Street that had a similar situation. It related to the foundation being undermined and the owners did not have time to fix it, he continued.

Ms. McCarty stated that the applicant is waiting to either sell the property or have a tenant fix it. She stated that the owner does not have the funds to do the repair work himself.

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

Mr. Weprin moved to close the public hearing on Variance Application #32A-2012, seconded by Mr. Gutterman.

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

9. Adjourned Application #14SP-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), to amend a special permit to operate a restaurant in order to increase seating inside the restaurant and add seasonal outside seating. (C-1 District) **AND** Adjourned Application #24A-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), for an area variance of Article VIII, Sections 342-54 (Layout, Location & Maintenance) and 342-56 (Off Street Parking Requirements) for a Certificate of Occupancy for additional seating where the applicant proposes zero on-site parking spaces and 28 on-site parking spaces are required. (C-1 District) **AND** Adjourned Application #1S-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), for a sign variance to erect three façade signs as the signs are a violation of Village Code 286-12 (Signs) where business establishments shall be limited to one façade sign and the applicant proposes three façade signs. (C-1 District)

The Board agreed to hear all three matters at the same time. Ms. Georgiou indicated that there are three applications for the Board's consideration:

1. An amendment of a special permit to increase seating indoors and provide outdoor seasonal seating.
2. Sign variances (there are three signs displayed and only one sign is permitted).
3. Variance of off-street parking requirements triggered by the additional seating (inside the restaurant and outside).

Mr. Weprin stated that it was brought to the Board's attention that this is not a public sidewalk. Ms. Georgiou stated that if this isn't a public sidewalk, the restaurant would not fall within a café license for outdoor seating. Mr. Weprin asked if outdoor seating was permitted by the MTA. Ms. Georgiou stated that the applicant needs to answer this and that the MTA appears to have an easement over the sidewalk.

Chairman Sullivan asked if the amendment to the special permit is for seating. Mr. Noto, attorney for the applicant, stated that was correct. Chairman Sullivan asked if the number of seats the applicant is requesting relative to the number of parking spaces needed could be accommodated inside the restaurant and Mr. Noto stated that they could. However, Mr. Noto said, the variance includes the proposed additional outdoor dining.

Mr. Noto stated that the applicant is proposing 48 seats outside and 28 seats inside for a total of 76 seats for which the applicant needs a 28 parking space variance.

Ms. Kramer clarified Chairman Sullivan's question by asking if the Board approves 76 seats inside, would they all fit inside the restaurant. Mr. Noto stated that they would not. Mr. Fleming, the architect for the applicant, stated that the Building Department suggested that the applicant ask for the additional seating outside to go along with the parking variance since they were going to go before the Board anyway. Brian MacMenamin, the owner of the restaurant, addressed the Board and stated that the 76 seats could, in fact, fit inside the restaurant.

Chairman Sullivan stated that he was still not clear on who would ultimately handle the outdoor seating and that is why he had initially asked the question on whether all the seats could fit inside the restaurant.

With respect to the request made by the ZBA at the September meeting, Paul Noto stated that the applicant provided a parking study. He also indicated that the MTA will fix the parking signs to correct any inaccuracies. Mr. Noto stated that he has seen a letter from the Parkview Condominium Association regarding their concerns about outdoor dining. He told the Board that every restaurant that has asked for outdoor dining has received it. Mr. Noto also said that it is inconceivable that 20 or 30 people can make more noise than a locomotive. He noted that on the other side of Parkview is Mamaroneck Avenue, which is extremely busy. Mr. Noto said it would not be fair to grant outdoor seating to other restaurants closer to residential areas and not the Club Car. Mr. Noto indicated that the applicant would abide by any conditions set forth by the Board.

Mr. Noto went on to say that outdoor dining would enhance the restaurant. As for the parking issues, Mr. Noto stated that he believed they have been addressed. He said Mr. Verni, the owner of One Station Plaza, pays for the right to use the parking so that the only entities that can use the lot are the restaurant patrons and the MTA users. There is enough parking, he said.

Ms. Kramer stated that she was confused by the Club Car's parking study. She stated that the spots available at 5:30 p.m. do not accommodate additional seating. Mr. MacMenamin stated that at 5:30 p.m. the parking lot is busy, but at about 6:00 p.m. or 6:15 p.m., cars start leaving the lot. Ms. Kramer noted that at 5:30 p.m., there are 25 spots plus the 11 the restaurant owns.

Ms. Kramer asked that leaving out Saturdays and Sundays where parking is free, what about the weekdays. Mr. MacMenamin said that after 6:00 p.m. the lot is free on weekdays.

With respect to the signage, Mr. Gutterman asked if the signs could be addressed. Mr. Fleming stated that there are three signs all together. One sign is on the front of the building and there is also a sign on each side of the building, totaling three signs, he said. Mr. Fleming stated that the applicant appeared before the BAR and they had no issues with the signage. Mr. Fleming went on to say that the signs are modest.

Mr. Gutterman asked why the applicant was seeking a variance for the signs. Mr. Noto stated that three signs, instead of the one sign permitted, were necessary because of the restaurant's location. He said that people traveling on Mamaroneck Avenue can't see the restaurant. Also, since the restaurant used to be part of the train station, people might not know it's now a restaurant, he said. Mr. Noto went on to say that the three signs create a more attractive look. Ms. Kramer asked if the signs meet the size limits and Mr. Noto indicated that they do.

Chairman Sullivan asked if anyone wished to address the Board.

John Rossini addressed the Board. He stated that he is against the outdoor seating, as well as piped music or live entertainment outside. Mr. Rossini stated that he is concerned about the increased noise having outdoor seating and a comparison can't be made between trains going by and the constant noise of diners. He stated that the request should be denied.

Matthew Pang addressed the Board. He stated that he had no issue with the signage and adding seating inside the restaurant. Mr. Pang said that the constant chatter of people dining outside versus a train going by quickly is not comparable. He indicated that he did not see a need for outdoor seating if the seating can be accommodated inside.

Gina von Eiff addressed the Board. She said she is confused as to whether the Board or Village can give permission for an area that has an easement for egress or ingress. Ms. von Eiff stated that the contract is in complete authority of the MTA. Her concern is the noise, she stated. She also noted that there is a distinction between the restaurant and when it becomes a lounge. Ms. von Eiff referenced the noise code and said the restaurant can't guarantee that people won't call the police to complain about the noise.

Ms. von Eiff went on to say that there had been an issue regarding a tree that was in danger of falling. She said it took seven weeks for the tree to be taken down because the Village Manager said the Village workers couldn't go on to MTA property without permission.

With respect to train noise, Ms. von Eiff said that the trains come twice an hour and that is a different noise than the noise that goes on outside the restaurant. She also stated that per the MTA agreement, the signs are to be maintained by Parkview, not the MTA. Ms. Georgiou asked if the outdoor seating will be on the sidewalk in question and Mr. Noto answered yes.

Mr. Noto stated that the owner of the sidewalk is Parkview and it is indicated on the survey. Mr. Verni, owner, stated that he owns the building and the sidewalk around it. Mr. Verni said that Parkview has a cross agreement with the MTA to allow for the non-exclusive use of the sidewalk so commuters can walk by. He went on to say that if there is outdoor seating, there needs to be a buffer so people can walk by.

Ms. Georgiou asked for a copy of the survey to resolve any remaining questions about Parkview's ownership and control over the sidewalk. Ms. Kramer stated that this was all discussed at length at the September meeting, showing that the legal description covers the survey. Ms. Georgiou stated that she was clarifying the matter for the record, because the issue had again been raised. Mr. Noto stated that Columbus Park, which is in between the restaurant and Parkview, is a public park that is open until 10:30 p.m. It would be conceivable that there could be a lot more noise generated from people hanging out at the park, he noted. If the restaurant closes the outdoor dining at 11:00 p.m., that would be consistent with the timing of when the park closes, Mr. Noto said.

Ms. Kramer stated that there was a case last year where a neighbor sued a restaurant that had outdoor dining on its roof and the restaurant had to remove their outdoor dining. Mr. Noto stated that the Village has a noise ordinance which the restaurant would comply with. Mr. Noto stated that Mr. MacMenamin wants to be a good neighbor. He suggested that a committee can be formed to meet once a month to address any issues that may arise.

Ms. Kramer asked if the Board has a copy of the document that shows that the sidewalk that abuts the station was conveyed to Parkview. Mr. Noto stated that he believed the Board did have a copy. Ms. von Eiff provided gave a copy to the Board.

Ms. Georgiou recapped that the applicant agreed to close the outdoor seating at 11:00 p.m. and Mr. Noto stated that was correct. Mr. MacMenamin stated that he would require that the last order be in 45 minutes before closing the outdoor dining. He also noted that there will be no piped music and that he may have a jazz band on Sundays for brunch. Mr. Noto stated that was part of the cabaret license and did not involve the ZBA.

Ms. Georgiou stated that the playing of live music outdoors does concern the ZBA because of noise impacts. Mr. MacMenamin stated that he did not have concrete plans for the music. It was noted that the hours of operation will be 11:00 a.m. to 2:00 a.m. Friday, Saturday and Sunday and weekdays the restaurant will be open 4:00 p.m. to 2:00 a.m.

Ms. von Eiff addressed the Board again to note that now that the Jefferson Avenue Bridge is closed, she doesn't see how there can be entertainment outdoors; it would cause more traffic.

Mr. Weprin moved to close the public hearing on Parking Variance Application #24A-2012, Sign Variance Application #1S-2012 and Special Permit Application #14SP-2012, seconded by Ms. Kramer.

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

CLOSED APPLICATIONS

1. Application #13SP-2012, HECTOR A. SOTO D/B/A ASHLEY CJ CORP., 152-158 Mamaroneck Avenue (Section 9, Block 50, Lot 19A), for a special permit to operate an existing restaurant under new ownership. (C-2 District)

The Board discussed the merits of the application indicating that a three year time period should be applied to the special permit.

On motion of Mr. Weprin, seconded by Ms. Kramer, the special permit is approved with a three year time limit.

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

2. Application #15SP-2012, POST TRIPOD INC., 181 E. Boston Post Road (Section 4, Block 60, Lot 3), for a special permit to operate a restaurant. (MC-2 District)

The Board discussed the merits of the application indicating that a three year time period should be applied to the special permit.

On motion of Mr. Weprin, seconded by Ms. Kramer, the special permit is approved with a three year time limit.

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

3. Application #16SP-2012, MOISES HERNANDEZ D/B/A TEXAS CHILI II, 123 Halstead Avenue (Section 9, Block 11, Lot 19), for a special permit to operate a restaurant. (C-2 District)

The Board discussed the merits of the application indicating that a three year time period should be applied to the special permit.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the special permit is approved with a three year time limit.

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

4. Application #27A-2012, MELBOURNE REALTY LLC., 403 Melbourne Avenue (Section 4, Block 26, Lot 33A), to level the basement floor, add a bathroom in the basement, remove the existing stair in the garage, install a new stair in a different location, raise the roof, remove the barn door, add a window and remove a wall on the first floor in the garage as it violates Article IX, Section 342-64(A) (Nonconforming Uses & Buildings): A building or structure the use which does not conform to the use regulations for the district in which it is situated shall not be altered, enlarged or extended unless the use therein is changed to a conforming use. The dwelling is a two-family dwelling in a single-family zone. (R-5 District)

The Board discussed the merits of the application. Ms. Kramer noted that the applicant is repairing the condition and making it safer; she is comfortable with that. She noted that the applicant should correct the application as this was not a use variance, but an area variance. She went on to say that the building should have the exact same envelop. Ms. Kramer stated that the applicant must come back to the ZBA if he wishes to complete the bathroom and that the resolution should state that fact.

On motion of Ms. Kramer, seconded by Mr. Weprin, the area variance is approved.

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

5. Application #30A-2012, FRED LOWENFELS, 889 Orienta Avenue (Section 9, Block 104, Lot B), for a fence variance of Article IV, Section 342-14C(1) to increase the height of an existing fence where the applicant proposes to add 2 feet in height to an existing 4 foot high fence, where on a corner parcel, placed beyond the front or side building lines, the fence shall not exceed 4 feet in height. R-20 District)

The Board discussed the merits of the application. Mr. Gutterman stated his concern about setting a precedent and noting the fact that the Village doesn't have a policy on deer issues.

Mr. Angiello stated that the variance was needed only because the applicant is on a corner lot. Chairman Sullivan noted that the existing fence doesn't come close to the intersection to impair the sight line. Mr. Weprin concurred with Chairman Sullivan.

Ms. Kramer stated that before the code was changed, the Board would have given some consideration to neighbors. She went on to say that the negative aesthetical impact of the fence shouldn't be facing the neighbor. She asked if shrubs might alleviate some of the issues.

Mr. Gutterman stated that the neighbor's argument is legitimate with respect to the nice side of the fencing facing neighbors. Chairman Sullivan asked if the Board wanted to ask the applicant for a different type of fence. Mr. Gutterman didn't feel that was necessary.

Mr. Angiello reminded the Board that Mr. Lowenfels stated he would be willing to work with the neighbors. Discussion arose as to whether or not to impose conditions. Ms. Georgiou stated that the Board should look at this in the context of the factors. The extension in height is only two feet, she said. Mr. Gutterman stated for the record that the fencing Mr. Lowenfels showed the Board was not chicken wire fencing.

Ms. Kramer stated that in areas where there isn't screening, perhaps the Board could make a condition in the resolution that there is some type of screening. Ms. Georgiou stated that would bring up the issue of how it is enforced. Chairman Sullivan reminded the Board that if this wasn't a corner lot, this wouldn't be an issue. The applicant would be allowed to add the two feet of fencing without a variance. Ms. Georgiou stated that the resolution would reflect the fact that the applicant said he would work with the neighbor in coming to a mutually acceptable solution to address visual impacts associated with the wire mesh fencing .

On motion of Mr. Weprin, seconded by Ms. Kramer, the variance is approved.

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

6. Application #31A-2012, STEPHEN ANTINELLI & MICHELE ANTINELLI, 370 Orienta Avenue (Section 9, Block 66, Lot 1C), for an area variance of Article V, Section 342-27 of the Schedule of Minimum Requirements to construct a left side addition where the applicant proposes a combined side yard setback of 30.75 feet and 35 feet is required. (R-15 District)

The Board discussed the merits of the application. It was noted that the applicants haven't created the existing situation.

On motion of Mr. Weprin, seconded by Mr. Gutterman, the variance is approved.

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

7. Application #32A-2012, 690 MAMARONECK AVENUE CORPORATION, 690 Mamaroneck Avenue (Section 8, Block 82, Lot 1), to request an extension of time to complete restoration work for an existing non-conforming use for a period of 2 years

where the applicant is in violation of Article IX, Section 342-66 – Restoration of a damaged nonconforming use which allows based on compliance with specific requirements of that section the restoration and resumption of a nonconforming use which is accidentally destroyed in whole or in part by fire, explosion or other cause; provided, that the work of restoration must be completed within a period of 12 months of such damage or destruction. (RM-3 District)

The Board discussed the merits of the application. Ms. Kramer stated that she did not have an issue with this application. If the tenant hadn't left and they weren't impacted by the floods, it would be a different issue, she said. Ms. Kramer noted that giving the extension was only fair. She went on to say that if in two years the applicant doesn't have a tenant, then it needs to be addressed. Chairman Sullivan noted that this is a restoration, not a construction.

Ms. Georgiou clarified that the Board is granting a two year extension from today (October 4, 2012).

On motion of Mr. Gutterman, seconded by Mr. Weprin, the variance is approved.

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

8. Adjourned Application #14SP-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), to amend a special permit to operate a restaurant in order to increase seating inside the restaurant and add seasonal outside seating. (C-1 District) **AND** Adjourned Application #24A-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), for an area variance of Article VIII, Sections 342-54 (Layout, Location & Maintenance) and 342-56 (Off Street Parking Requirements) for a Certificate of Occupancy for additional seating where the applicant proposes zero on-site parking spaces and 28 on-site parking spaces are required. (C-1 District) **AND** Adjourned Application #1S-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), for a sign variance to erect three façade signs as the signs are a violation of Village Code 286-12 (Signs) where business establishments shall be limited to one façade sign and the applicant proposes three façade signs. (C-1 District)

Ms. Georgiou stated that she can draft resolutions for the Board to review. Mr. Weprin stated that since Mr. Neufeld wasn't in attendance, the Board should wait to vote.

SIGN VARIANCE #1S-2012

The Board discussed the merits of the sign variance application. Mr. Gutterman stated that the signs have already been approved by the BAR. Ms. Kramer stated that she would limit the sign variance to the Club Car restaurant and tie it to the special permit.

On motion of Mr. Gutterman, seconded by Mr. Weprin, the sign variance is approved.

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

PARKING VARIANCE #24A-2012

Chairman Sullivan stated that the Board has given parking variances to applicants with a lot less parking spaces available. Ms. Kramer noted that she believes applicants should comply with the provisions of the Village Code that if they can't provide the parking spaces, they must make the required contribution to the parking fund. Chairman Sullivan stated that he would agree with Ms. Kramer except that there isn't a mechanism to manage the money.

The application was tabled to the November 1, 2012 meeting.

SPECIAL PERMIT #14SP-2012

Ms. Kramer stated that talking while dining and trains going by are not the same thing. She said she felt that the additional seating inside was fine, but that there shouldn't be outside seating. Ms. Kramer felt it was a problem waiting to happen.

Mr. Gutterman stated that the Board heard from a lot of neighbors and their concerns are legitimate. The sidewalk area is an issue with respect to allowing a use that is not an as-of-right, Mr. Gutterman noted.

Ms. Georgiou suggested that the Board could eliminate the live music and allow for outdoor seating. Chairman Sullivan stated that he was concerned with respect to the outdoor seating; the Board needs to show why they are denying this outdoor seating request when other restaurants have outdoor dining. Ms. Kramer stated that the difference is those restaurants are on public property and this is on private property.

Ms. Kramer stated that the Board could grant the outdoor seating until next September, but it would have the condition that tables are brought in at 11:00 p.m. each night. However, she said, no one will enforce that condition.

Mr. Weprin stated that he would want to give the applicant a one year term limit if the Board was inclined to grant the outdoor seating. Ms. Kramer suggested conditioning the approval for 25 seats, although she didn't know if that would make a difference with respect to noise.

Mr. Gutterman stated that he did not wish to get into micro-managing the restaurant. Mr. Weprin noted that 48 seats are more than what other restaurants have.

Ms. Georgiou stated that she would draft resolutions based on the Board's comments.

Chairman Sullivan asked Ms. Powers to let Mr. Neufeld know that the Board did not vote on two of three applications. Mr. Gutterman noted that he would not be at the November 1, 2012 meeting.

MINUTES

On motion of Mr. Sullivan, seconded by Mr. Weprin, the minutes for the July 18, 2012 meeting are approved.

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

The minutes of the September 6, 2012 meeting were tabled for review.

ADJOURN

On motion of Mr. Gutterman, seconded by Mr. Weprin, the meeting was adjourned at 9:53 p.m.

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

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers