

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, FEBRUARY 2, 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 February 2, 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
Dave Neufeld, Board Member
Anna Georgiou, Counsel to Board
Lester Steinman, Counsel to Board
Rob Melillo, Building Inspector
Joe Angiollo, Assistant 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

Chairman Sullivan called to order the Regular Meeting at 7:04 p.m.

PUBLIC HEARINGS

- 1. Application #21SP-2008, CHINESE LITTLE KITCHEN, 143 Mamaroneck Avenue (Section 9, Block 51, Lot 7A), to renew a special permit to operate a sit down carry out restaurant. (C-2 District)**

George Wong addressed the Board. He stated that he is requesting a renewal of his special permit to operate Little Kitchen. There are no changes to the operation of the business or its hours. Mr. Wong is not looking to change anything.

Mr. Weprin moved to close the public hearing, seconded by Mr. Neufeld, and carried unanimously.

- 2. Application #3SP-2012, SMASH PARTNERS MAMARONECK, LLC., 448 Mamaroneck Avenue (Section 9, Block 18, Lot 11B), for a special permit to open and operate a Smash Burger restaurant. (C-2 District)**

William Null, Esq., appeared on behalf of the applicant. Discussion arose as to whether this application should be heard after the Application #6A-2012 (Mesara Realty, Inc.) because the special permit could not be granted without the parking variance being granted. It was decided

by the Board to hear this application first and then revisit it after hearing from Mesara Realty, Inc.

Mr. Null stated that the space is 2300 sq. ft. for the restaurant and that the building has been empty for two years. He stated that a parking variance was required and a fee was paid or is in the process of being paid in the amount of \$269,700.00 per the requirement in the code that an applicant provides parking or pays for parking. The restaurant will have 72 seats. It will be a family style restaurant at reasonable prices and will fit in well with other restaurants on the avenue, Mr. Null stated. He noted that this is not fast food, but prepared food specially ordered and brought to the table. Mr. Null stated that there will be venting up through the roof and the roof top will be screened. Mr. Null also provided a duplicate copy of the proof of mailing for the record.

Mr. Weprin asked if the establishment will offer take out and Mr. Null stated that it will, but will be less than 20% of the business. This is not a predominant take out restaurant.

Ms. Kramer noted that the special permit application was well written. She inquired about serving alcohol. Mr. Novick, an owner of the business, stated there will be a beer/wine component which is brought to the table. Mr. Novick stated that the hours of operation will be lunch and dinner times from 11:00 a.m. to 11:00 p.m. seven days.

Mr. Neufeld referenced the site plan resolution from the Planning Board and asked if the site plan would need to be changed or amended. Mr. Null stated that there won't be a need to go back to the Planning Board if the variance is approved.

Mr. Melillo stated that he did not send the application to the Planning Board again because he felt it wasn't necessary.

Mr. Neufeld asked if the applicant had a copy of the original 2007 site plan for the building. Mr. Null provided the Board with a copy of the original approved site plan.

Ms. Kramer stated that since the only change is interior, there should be no reason to go back to the Planning Board. As for parking, the Zoning Board gets applications for parking variances all the time, she stated.

Discussion arose regarding the original use of the site. The site plan resolution did not restrict the use, Mr. Null stated. Mr. Gutterman said that the space requirement shown on the applicant's plan is for 29 spaces and the approved site plan indicates 31 spaces and this only takes up a fraction of the building. Mr. Null stated that is why the variance application which is to follow is a related application and must be looked at globally. Ms. Kramer said that if the Board does not grant the parking variance, either Smash Burger can't operate or another business won't be able to operate. She also made the suggestion that the Board could grant a lesser variance.

Ms. Kramer went on to say that at the time the use was thought to be retail, but the applicants are now changing use which increases the parking requirements.

Chairman Sullivan suggested that the Board hear from Mesara Realty, Inc. and that the Board keep the special permit application open until after the other applicant is heard.

Chairman Sullivan asked if anyone wished to address the Board.

Glen Bakus addressed the Board inquiring about where the 31 parking spaces are coming from. Chairman Sullivan suggested, based on Mr. Bakus' question, he wait until after Mr. Noto presented the parking variance application.

3. Application #6A-2012, MESARA REALTY, INC., 448 Mamaroneck Avenue (Section 9, Block 18, Lot 11B), where two restaurants (Smash Burger and Cherrytree Yogurt) proposed to be operated in a commercial building violate Article VIII Section 342-56 (restaurant seating) which requires 1 parking space for each three seats plus 1 parking space for each two employees. The applicant proposes zero parking spaces and 32 parking spaces are required for the use. (C-2 District)

Paul Noto, Esq., appeared on behalf of the applicant. He stated that in 2007 the applicants wanted to build a commercial building but did not know what would go into the building (retail, restaurant, etc.). The plan references a restaurant, retail and offices originally. The applicant initially volunteered to pay for parking, which is quite unusual, Mr. Noto said. Because the applicant already started the process with the Planning Board, he continued forward. A determination was made that \$8700 per parking space, for a total of \$269,700.00, be paid. Because the applicant didn't know what type of business would ultimately go into the building, he wanted to pay for the lowest number of spaces. Mr. Noto stated that the Planning Board came up with 31 parking spaces. Mr. Noto went on to say that the building has been vacant for 3 years. He said that there are four tenants and the applicant needs 63 parking spaces.

Mr. Noto said that the businesses that will be in the building are Cherrytree Yogurt, which this Board has already approved a special permit for, Smash Burger, an Architect office and Bond trader office. Mr. Noto stated that he understands this is a code driven application and that some tenants will not be able to occupy the building without a variance.

Mr. Noto said that the applicant gave 13 spaces to Cherrytree Yogurt and 8 spaces to Smash Burger. Given the Board granted a variance for 52 spaces (1 Station Plaza) in 2009, it seems it would be appropriate for this applicant to receive the parking variance and not be asked to pay for additional parking, Mr. Noto stated. He also said that the applicant would use parking in back for employees and payment would be made to purchase employee parking. There is no negative impact; the entire area is commercial, Mr. Noto said. There is sufficient municipal parking in Mr. Noto's estimation.

Mr. Weprin wanted to clarify that there is no parking lot. Mr. Noto confirmed. Mr. Weprin asked if there had been any analysis with respect to parking. Mr. Noto stated that no analysis was done, but there is a lot of parking around the area. The business district is fairly well designed so that people can park off the avenue and walk into the district, he said.

Mr. Gutterman asked that because the site plan was approved for retail use on the ground floor, would the Planning Board come up with a different number other than 31 parking spaces. Mr. Noto said that it wasn't a that restaurant use wasn't contemplated, but the applicant didn't want to pay more money for parking and end up overpaying if the use required less parking. The applicant has paid more than anyone else has for parking and the Planning Board understood that, Mr. Noto said.

Mr. Neufeld said that the applicant stated in their application that existing tenants will be making arrangements to purchase parking. Mr. Noto confirmed that they will be purchasing parking permits for their employees.

Ms. Kramer asked what the 63 spaces included and Mr. Noto stated it includes parking for customers plus employees. Ms. Kramer asked that if the applicant uses 31 spaces for customers and there are 32 spaces left, and 10 spaces are for employees, why the ten spaces come out of the 63 parking spaces. Mr. Noto stated that it is according to the law. Parking in front is metered and employees can't park there; that is why they need to purchase parking permit, he stated. Ms. Kramer noted that if one removes the parking for the employees, that then reduces the applicant's variance request. Mr. Noto said that the reality is we don't have busy times all the time; Saturday nights and lunch times are the busy periods.

Mr. Null addressed the Board and stated that the calculation is one space for two employees. If the applicant buys permit parking for employees, there might be times when there aren't spaces available even with the permit. He went on to say that the restaurant will be busy at lunch and dinner times. The municipal garage is available for parking. Mr. Null said that if the Board makes a condition that permit spaces be purchased for employees, that does reduce the number of spaces requested.

Mr. Neufeld stated that there is a procedure for paying a percentage for parking; and asked is that money used to create more parking. Mr. Noto stated that he was not sure how it works. There is a parking fund but he doesn't know how the Trustees utilize the funds.

Mr. Neufeld asked if there was ever a consideration to put a parking lot up. Mr. Noto stated that there is no land to do that. Mr. Neufeld inquired about how the garbage will be addressed by the restaurant. Mr. Null stated that there will be a storage area inside with refrigerated storage and private garbage pickup so that garbage is not put outside on the street until it is ready to be picked up.

Mr. Gutterman noted that the garbage storage isn't well delineated. The Board reviewed additional documents presented by Mr. Null and Mr. Novick. Mr. Null stated that he would provide a more detailed plan of the refrigeration and storage of the garbage.

Discussion arose as to how customers order and receive their food. It was explained that there is a walk-up counter where customers place their order and then they sit at tables and are served the food by servers.

Mr. Null stated that this establishment is for families that don't want to wait for a waitress to come and take their order. Chairman Sullivan asked if this is the first Smash Burger and it was noted that there are 144 around the country. The business model is successful.

Chairman Sullivan asked Mr. Backus to address the Board.

Mr. Backus asked the following questions:

1. How many Smash Burgers does the applicant own?
2. Where are the franchises located (malls, streets, etc.)?
3. Is it a destination spot or is it a place where one walks by and stops in?
4. What is the concept?

He stated that if this is a destination stop, it is going to increase the number of cars in the area. There is a problem with traffic and parking already. Mr. Backus stated that he lives at 325 Mt. Pleasant Avenue and that people park in front of his driveway constantly. He is 300 yards down from Smash Burger. Mr. Backus stated that this applicant is going to inundate the area with cars. He noted that people double park on Mamaroneck Avenue to pick up their takeout food. He said that people park where it is convenient; the parking is a nightmare in the Village.

Mr. Null addressed Mr. Backus' questions. He stated this is the applicant's first Smash Burger restaurant, but they operate other food establishments. It is a restaurant for family/casual dining with affordable food. Mr. Null believes it fits a market niche in the village. There is any number of municipalities that would want Mamaroneck's food traffic, he noted.

Mr. Null stated that the owner has tried for three years to get the building occupied and they now have viable tenants. He also noted that one location of Smash Burger will be in Pelham, in a shopping center; not a mall. The quality of what we are doing speaks for itself, he said. The applicant understands the concern for parking, but Mr. Null stated that he feels the applicant is addressing these issues.

Chairman Sullivan asked if anyone wished to address the Board.

Doug Dunaway addressed the Board. He stated that he served on the parking committee as well as the ZBA. During his tenure on the ZBA, the Board did sell five spaces to a tenant. Mr. Dunaway said that the parking study committee recommended that meters be put in as well as code enforcement. The study recommended the money go to a parking fund, but to Mr. Dunaway's knowledge, the money goes into the general fund; not the parking fund.

The other issue Mr. Dunaway addressed is that there are a significant amount of decals sold, and wondered if five more decals sold would affect parking. Mr. Dunaway would recommend the ZBA ask the BOT to do their due diligence to determine what would be the best parking solution for the Village. During the day, Mr. Dunaway stated, parking might not be an issue, but one doesn't know for sure because there are no studies.

Mr. Neufeld asked if Mr. Dunaway was speaking historically about the general fund or currently. Mr. Dunaway stated that he can only speak to what was discussed in the past. As far as he understands it, everything went into the general fund.

Robin Howe addressed the Board. She stated that she has lived in the Village for over 30 years and there are a lot of people who work on the avenue and feed the meter. She said it happens all the time.

John Manouselis addressed the Board. He stated that he and his brother built the building. He noted that approximately 25% of the parking spots on the avenue are taken by employees parking on the avenue and feeding the meter.

Mr. Neufeld asked Mr. Noto, if in essence, the applicant is asking for a variance from the obligation of paying. Mr. Noto stated conceivably that could happen. Mr. Neufeld stated that he has an issue with that. He asked Mr. Noto if he knew whether the Village has a fund. Mr. Noto stated that there was a lot of opposition to the meters when he was Mayor and there was an agreement to fund parking initiatives with that money. Mr. Noto said that his client has paid a substantial amount for parking. He also stated that he believes there is a requirement for maintaining the money in the appropriate fund. Mr. Neufeld asked if it would be out of the question for the applicant to pay more money. Mr. Noto stated that it would be cost prohibitive.

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

Mr. Gutterman moved to close the public hearing on Special Permit Application #3SP-2012, seconded by Ms. Kramer, and carried unanimously.

Mr. Gutterman moved to close the public hearing on Variance Application #6A-2012, seconded by Ms. Kramer, and carried unanimously.

4. Adjourned Application #1I-2012, ELEANOR WEISS, LEONARD WEISS, GEORGE HENDERSON, IRENE HENDERSON AND SUZANNE MCCRORY, regarding 818 The Crescent (Section 9, Block 85, Lot 34B), for an appeal of the issuance of a building permit (revision) for seawall reinforcement. (R-15 District).

Suzanne McCrory, one of the applicants, addressed the Board. Chairman Sullivan asked if Ms. McCrory received Mr. Messina's submission to the Board. Ms. Powers gave her a copy of Mr. Messina's submission.

Ms. McCrory stated that this is an application for an interpretation challenging the issuance of the building permit of the sea wall reinforcement. She stated that she and the other applicants feel the revision permit was issued in error; the area should have received a site plan and flood plan permit. Ms. McCrory stated that the property owners tried to rebuild their property in 2006 – 2007. Ms. McCrory handed out an outline of her presentation. She stated that the house has been non-compliant for five years. She wants the home to follow all necessary avenues to make it zoning and flood compliant. Ms. McCrory read through the outline of her presentation.

History

- July 2006 permit for new house; May 2007 permit for seawall and retaining walls
- July permit challenged: ZBA found that property included lands under water and satisfied floor area ratio
- Setback violations found and swimming pool permit found improperly issued
- As-built house constructed with a closed foundation that violated NYS building codes, FEMA/Village of Mamaroneck flood rules and approved foundation plans
- Certificate of Occupancy denied since Fall 2007
- FEMA outlines options in May 2008; fix foundation, obtain map revision and/or obtain variance from flood rules
- FEMA adopts map revision for property in August of 2009, but then rescinds it after learning that incorrect flood data was used by the Ottinger's engineer (January 2010)
- Map revision #2 attempt now underway and premised on theory that seawall reconstructed in 2007, if included in the mapping analysis, will put Ottinger house in "A" Zone rather than "V" Zone
- Existing (2007) seawall not sufficiently stable to withstand FEMA standards
- Ottingers propose seawall reinforcements to FEMA in hopes that stronger seawall will allow revised FEMA flood map to exclude their house from the V Zone.
- Ottingers seek permit for seawall reinforcements – a series of structures (6 grade beams and 2 dead men) introduced as landward anchors to the seawall with tiebacks connecting seawall to new structures

Ms. McCrory feels that the permit for the seawall reinforcements violates the Village code insofar as it was issued without the required Marine structures permit, area variance for structures in the minimum rear and side yards and an area variance for exceeding the maximum lot coverage ratio.

Ms. McCrory stated that this is the first permit issued since the matter arose in 2007. She believes this is the second attempt to make the house zoning compliant. Everything that was done on this property needs to comply with A zone and V zone rules, she stated. The property is currently in the V zone and the Ottingers are hoping it will be placed in the A zone, Ms. McCrory noted. Ms. McCrory was uncertain as to whether the as-built house requires variances.

Chairman Sullivan asked when the permit was issued. Ms. McCrory answered May 2008. Chairman Sullivan asked if Ms. McCrory challenged the issuance of the permit back in 2008. Ms. McCrory stated that she had not.

Mr. Melillo clarified for the record that this is a revision to the existing permit; not a new permit. Ms. Kramer asked Ms. McCrory to explain what dead men are. Ms. McCrory stated that dead men are large concrete structures used as a land based anchor. Ms. Kramer asked if it is underground. Ms. McCrory stated that it is buried by fill, on land. Essentially, it is keeping the seawall from sliding into the water, Ms. McCrory said. She noted that all seawall reinforcement structures have been covered with fill.

Ms. McCrory continued by stating that the original permitting process did not permit filling. There was a least one plan that showed what the final grading evaluations would be. No one asked for permission to fill, she indicated. Mr. Melillo stated that he disagreed with what Ms. McCrory had stated.

Mr. Gutterman asked if the fill matched the approved finished grade. Mr. Melillo answered yes. Mr. Steinman stated that the application before the Planning Board was to reinforce the seawall with respect to a wetlands permit.

Ms. Kramer asked why no site plan approval was performed. Mr. Melillo stated that site plan approval is not needed for residential properties; only commercial properties.

Ms. McCrory stated that another issue is the rear yard setback. She noted that the Village no longer allows land underwater to be counted as the building area. Therefore, it is a structure buried with fill which must meet setbacks. She stated that she doesn't see anything in the code that relieves a structure from that.

Mr. Gutterman asked how much above original grade. Ms. McCrory answered a foot and a half. Ms. Kramer asked what was meant by original. Ms. McCrory answered that the grade as been elevated three to four feet from the property next door to it.

Ms. Kramer clarified that the applicants were only challenging the seawall reinforcement. Ms. McCrory stated that the issue for the Village is to make sure this home is made to be zoning compliant. Ms. Kramer asked if the construction of the seawall has any relation to the flood zone. Ms. McCrory stated that she believes this is the reason the Ottingers want to change from a V zone to an A zone. The other issue is that the boundary of the A zone and the V zone runs in the middle of the Ottinger house at an angle, she said.

Ms. McCrory said that when the law was changed in 2008, underwater land was not allowed in the building area. The house was built in 2006, the seawall in 2007, and in 2008 the law was changed, Ms. McCrory stated.

Mr. Steinman asked if a seawall has been on the property for decades. Mr. Melillo answered yes. Ms. McCrory stated that she believes the seawall should be built per the code; she is not suggesting the seawall is not compliant. Ms. McCrory believes the seawall reinforcements need a variance; the seawall was reinforced to allow for the map revision.

Ms. McCrory stated that she believes in a single-family district the Village code requires site plan when a Certificate of Occupancy is needed. This property needs a C of O, she said. Ms. McCrory stated that she knows Mr. Melillo disagrees with this. Ms. McCrory stated that she will submit to the ZBA an example of her position. She stated that the Ottinger property desperately needs site plan approval.

Ms. Kramer read from Section 342-75 of the Zoning code (Uses and Actions Subject to Approval). Ms. McCrory stated she is referencing section B. Ms. Kramer stated that there is a house on the property; it's not an empty lot. Ms. McCrory stated that the property does not have

a C of O. She noted that the lot was empty for about seven months from the time the original house was taken down and the current house erected.

Mr. Steinman reminded the Board that the challenge is for the seawall in 2011.

Ms. McCrory stated that the goal should be to remediate all the issues and she believes site plan is the way to do it. She wants to see a plan that shows a legal house on this lot. Ms. McCrory asked the Board to revoke the building permit. When the Zoning Board is acting in the capacity of interpreting an appeal, it is the Board's job to see what the code says, she said. Ms. McCrory noted that the Board can act as the Building Inspector.

Ms. McCrory handed out photographs showing lot lines and grade views. She also showed excavation pictures. Brief discussion arose between Ms. McCrory and the Board regarding the pictures.

Chairman Sullivan asked if anyone wished to address the Board.

Joe Messina, attorney for the Ottingers, addressed the Board. With respect to the setback issues, Mr. Messina stated that something in the ground can't impose into a setback. As for coverage, the wall is the same size as before, he noted. Mr. Messina referred to the packet distributed to the ZBA. He went through the exhibits with the Board.

Exhibit A – September 4, 2011 Resolution of Wetland Permit Approval by the Planning Board

Exhibit B – May 20, 2011 "Notice of No Jurisdiction" issued by the DEC

Exhibit C – June 14, 2011 Letter that the proposed placement of a dead-man system will not require a lease, easement or permit from the OGS

Exhibit D – Affidavit of Adam Peterson

Exhibit E – Building Permit Revision issued on October 4, 2011

Exhibit F – Certificate of Compliance issued on November 15, 2011

Mr. Messina stated that the Ottingers did everything when the seawall was originally constructed and that the reinforcement of the seawall was within the purview of the Planning Board. Mr. Messina indicated that one can't bring an appeal to the ZBA by the Planning Board. One can file an Article 78, but not appeal to the ZBA, he stated.

Mr. Messina noted that the Building Department did not have a choice but to issue a Building Permit as it was a ministerial matter. He also stated that everything else Ms. McCrory brought up at tonight's public hearing has no relevance to the application before the ZBA.

Mr. Steinman stated per Chapter 186 (Flood Damage Prevention; Erosion and Sediment Control), the Building Inspector makes a determination and then his determination can be appealed to the Planning Board.

Ms. Kramer took issue with the word "ministerial" used by Mr. Messina. She stated that all actions by the Building Inspector are ministerial because the Building Inspector does not have discretion, but has to apply the law. Mr. Messina stated that the Building Inspector applies the

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law, not necessarily always correctly. That is why there is the ZBA, he noted. Ms. Kramer and Mr. Messina went back and forth regarding the ministerial issue. Mr. Messina agreed to disagree.

Mr. Steinman stated that while the building permit was issued in October of 2011, work was completed and a Certificate of Compliance was issued in November of 2011. Mr. Melillo concurred with Mr. Steinman.

Chairman Sullivan noted that a submission was made by the former Building Inspector John Winter. Discussion arose as to the lack of signature on the letter and how it was distributed to the ZBA. Mr. Melillo stated that he received the email and considers the email Mr. Winter's signature. Ms. Powers noted that she received the document by email from Mr. Winter with a cc to Mr. Melillo.

Mr. Melillo read Mr. Winter's letter into the record.

Ms. McCrory addressed the Board. Discussion arose as to whether there was a flood development permit for the house. Mr. Melillo indicated that there is a flood development permit for the house. Ms. McCrory stated that there is an application, not a permit. Mr. Melillo stated that the way the Building Inspector, in the past, issued a permit was to keep a copy of the application, but not necessarily issue a specific permit. It was not all separated at that time, he said. Ms. McCrory stated that there should have been a separate amendment to the seawall at that time.

Mr. Gutterman asked when the permit procedure changed. Mr. Melillo said it changed a few years ago. Ms. McCrory stated that the law actually requires it and has all along.

Mr. Steinman stated that throughout the entire Planning Board process, this issue was not raised. Ms. Kramer asked what the purpose of the flood plain development permit is. Ms. McCrory said that it is for health and safety; it dictates the zone a property is located in and what the zone requires as to whether water will be deflected to neighboring properties. If someone was building in a V zone there are a number of technical requirements, Ms. McCrory stated.

Ms. Kramer asked, assuming Ms. McCrory is correct, is there no time an amendment would be needed if another structure was built. Mr. Melillo stated that this is a modification to an existing structure; this is all under grade and has no bearing on anything.

Mr. Steinman read from Section 186-6A2 of the code (Flood Damage Prevention; Erosion and Sediment Control). *The Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local administrator in the enforcement or administration of this article.*

Ms. Kramer asked if a marine structures permit was issued for this amendment. Ms. McCrory stated that a permit was not issued. Mr. Melillo stated that a marine structures permit was not issued because it is below grade. Now the Building Department issues separate permits than what was done in the past, Mr. Melillo said.

Ms. Kramer asked that if work is being done below grade in a flood zone, would a permit be needed. Mr. Melillo stated that he would require a marine structures permit. Ms. McCrory said that a seawall is a marine structure and that this 2011 work is an extension of that and requires a marine structures permit. Ms. McCrory stated that the Building Inspector did not deem it necessary to go to HCZM because it was an amendment.

Mr. Gutterman asked if the applicable code requirements filed in 2011 are subject to the 2007 period. Mr. Melillo noted that there have been no changes, so there is no difference. Ms. Kramer asked if there is something one can build underground that would need a marine structures permit. Mr. Melillo could not think of one. Ms. McCrory wished to clarify that fill has been used.

Mr. Messina addressed the Board. Ms. Kramer stated to Mr. Messina that in his papers he suggests the Board read the Planning Board record. Mr. Messina stated that it is included in the Article 78 filed by the same applicants.

Ms. McCrory stated that she wants to amend her appeal to add the Certificate of Compliance. Mr. Weprin said it was not necessary to do so.

Mr. Weprin moved to close the public hearing, seconded by Mr. Neufeld, and carried unanimously.

CLOSED APPLICATIONS

- 1. Application #21SP-2008, CHINESE LITTLE KITCHEN, 143 Mamaroneck Avenue (Section 9, Block 51, Lot 7A), to renew a special permit to operate a sit down carry out restaurant. (C-2 District)**

On motion of Mr. Weprin, seconded by Ms. Kramer, the Application as submitted to renew the special permit is approved with no term limit.

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

- 2. Application #30A-2011, HPS 122 LLC. C/O H-P CAPITAL, LLC., 122-134 Mamaroneck Avenue (Section 9, Block 50, Lot 14), for an area variance of Article VIII Section 342-56 to build a two story addition and first floor expansion where the applicant proposes zero parking spaces and six parking spaces are required and for an area variance of Article VIII Section 342-57 off street loading where the applicant proposes zero parking spaces and one parking space is required. (C-2 District)**

It was noted that the Planning Board is happy with the current plans and is awaiting the ZBA decision. Ms. Kramer stated that the obligation should be to pay for the parking. They are providing an amenity which substitutes for some of the parking. She went on to say that the Board should require them to pay for 4 spaces as recommended by the Planning Board because

there will be more traffic. The BOT should take and consider the fact that parking is an issue and at some point might be an issue for businesses, Ms. Kramer indicated.

Mr. Weprin finds this a difficult application and stated that the Board has granted these variances in the past. Mr. Sullivan is concerned that the money may not be going to the parking fund. Mr. Neufeld concurred with Mr. Sullivan's concerns. Mr. Neufeld indicated that he doesn't have an issue if the money is going toward fixing the parking, but does have a problem if the money is going elsewhere.

Mr. Gutterman stated that the Planning Board's recommendation seems thought-out. Mr. Sullivan noted that the cut-through the applicants are providing does give people access to park behind and not on Mamaroneck Avenue.

On motion of Mr. Weprin, seconded by Mr. Gutterman, the Application as submitted for a parking variance of six spaces is approved.

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

3. Application #4I-2011, BENNETT GOLUB & CYNTHIA GOLUB & THE SHORE ACRES PROPERTY OWNERS ASSOCIATION, 700 S. Barry Avenue (Section 4, Block 77, Lot 31), for an appeal of the Village of Mamaroneck Tax Assessor's change of the tax map on page 105. Lot 31 was changed from 12.29 acres to 12.87 acres. (R-10 District)

Mr. Weprin stated that he comes down on the two sides, but because this is also before the Courts as an Article 78, his inclination would be to abstain and not overturn the Assessor. It is before the Court. Mr. Weprin stated that the ownership of the land is not under the Board's purview.

Ms. Kramer stated that she doesn't think the Board has jurisdiction over the Assessor. People challenging the assessment map would want to come to the ZBA for an appeal, she stated.

Mr. Gutterman stated that there are established procedures in dealing with the assessment map. Mr. Sullivan noted for the record that Mr. Gutterman had viewed the applicable DVDs and reviewed all the materials as he was not a Board member when the application first was heard in 2011.

Mr. Neufeld stated that he feels that there are several jurisdictions. He stated that he sees factors here; the change made with the map had nothing to do with tax assessment, property values or equalization rates. This change was meant to change the zoning, he stated. He believes this was not a conveyance and that this is a facially defective matter. He went on to say that the map was changed to impact zoning. Mr. Neufeld indicated that he feels there is a circumvention going on. He also said that property disputes are not resolved by the ZBA. Mr. Neufeld doesn't believe the club proved their case. He also mentioned the stipulation when he was Chair of the ZBA. Mr.

Neufeld stated that the Board at the time took no action because they were told by ZBA counsel as well as outside counsel that it didn't alter the Board's right to review anything before it.

Mr. Weprin stated that he agrees that the deed does not show ownership. What the Board is deciding is if the Assessor was wrong in changing the map and that the Board is saying the club doesn't own the land, especially since it is before a judge.

Ms. Kramer stated that she agrees with Mr. Weprin and Mr. Neufeld. This deed was defective, she stated. The question is did they own this extra parcel. She noted that the Assessor uses whatever resources he has to make a determination. Ms. Kramer feels that if the Building Inspector made a determination; then the ZBA could address that.

Mr. Gutterman agreed with Ms. Kramer and Mr. Weprin regarding jurisdiction. The ZBA does not have jurisdiction over correcting a tax map, he stated.

Mr. Sullivan stated that he did not believe the majority wants to overturn the Assessor's change of the tax map. Mr. Sullivan asked counsel if the Board should vote or wait to see a resolution from the attorney and vote at the next meeting. Ms. Georgiou stated that she would prefer to craft a resolution for the Board to review and vote on the next meeting.

The application was held over until the March 1, 2012 meeting.

4. Application #6I-2011, BENNETT GOLUB & CYNTHIA GOLUB & THE SHORE ACRES PROPERTY OWNERS ASSOCIATION, 700 S. Barry Avenue (Section 4, Block 77, Lot 31), for an appeal of the Building Inspector's refusal to revoke the three related building permits issued to the Mamaroneck Beach and Yacht Club on January 14, 2011 despite the Zoning Board of Appeals' determination on May 5, 2011 that the Club's site plan approved by the Planning Board on December 9, 2010 is not zoning compliant. (R-10 District)

Ms. Kramer feels the permit should be revoked since the building permit was invalid. She noted that a building permit that is invalid still exists. Mr. Weprin agreed that the permit is not valid, but he is not sure if the ZBA should revoke it. Chairman Sullivan stated that the Board is still waiting to hear from the Courts and compared this application to the matter on Beach Street.

Ms. Kramer questioned that if the building permit is not valid, how can the Board not revoke it. Mr. Weprin said that if the Courts uphold the building permit, the applicant should have the permit as it was issued originally.

Mr. Steinman stated that in lieu of revoking or not revoking the permit, the other option could be that the Building Inspector should have conditioned the permit on the curing of deficiency by MB&YC which caused the project to be non-compliant as the ZBA found or a reversal of the ZBA decision. Both Ms. Kramer and Mr. Neufeld felt that suggestion was not feasible and would put the Building Department in a difficult position. Mr. Neufeld believes the permit should be revoked.

Mr. Sullivan asked if counsel should prepare a draft resolution reflecting the permit be revoked. Ms. Georgiou stated she will prepare a draft resolution.

Mr. Steinman asked if the Board wanted to address the time limit issue brought up by the club. Ms. Kramer stated that issuance of the permit is not at issue, but the retention of the permit.

The application was held over until the March 1, 2012 meeting.

5. Adjourned Application #11-2012, ELEANOR WEISS, LEONARD WEISS, GEORGE HENDERSON, IRENE HENDERSON AND SUZANNE MCCRORY, regarding 818 The Crescent (Section 9, Block 85, Lot 34B), for an appeal of the issuance of a building permit (revision) for seawall reinforcement. (R-15 District).

The application was held over until the March 1, 2012 meeting.

6. Application #6A-2012, MESARA REALTY, INC., 448 Mamaroneck Avenue (Section 9, Block 18, Lot 11B), where two restaurants (Smash Burger and Cherrytree Yogurt) proposed to be operated in a commercial building violate Article VIII Section 342-56 (restaurant seating) which requires 1 parking space for each three seats plus 1 parking space for each two employees. The applicant proposes zero parking spaces and 32 parking spaces are required for the use. (C-2 District)

Ms. Kramer stated that she appreciates the fact the applicants paid for parking. That takes care of only half of the parking spaces, she noted. Mr. Neufeld said that since the amount of parking was determined by the Planning Board; and they think it works, he would agree them.

Mr. Steinman suggested that the ZBA could send a memo to the Planning Board requesting some advice. The Board felt it wasn't necessary.

Mr. Weprin stated that he is more inclined to approve the application because the applicants are paying for some parking spaces. Discussion arose as to whether the applicants changed the use. Mr. Gutterman stated that the original application was for retail. He noted that he likes what it does for the Village by reactivating that end of the avenue. Mr. Gutterman went on to say that with respect to this application, he sees a very favorable situation in this instance. He noted that he would have a difficult time quibbling with the parking spaces originally provided for and the spaces required now. The spaces don't physically exist, he said.

Discussion arose as to the order in which the applicant would go to either the Planning Board or ZBA with respect to site plan and parking variances. Ms. Kramer stated that if the ZBA sends the applicant back to the Planning Board, the Planning Board will say the applicant is applying for a variance and Planning won't do anything until the ZBA decides.

Mr. Neufeld stated that the standard for this is whether the amount is unreasonable. Mr. Weprin said that the applicant mentioned for the record that it would be cost prohibitive. Ms. Kramer did not feel it was necessary for the applicant to go back to the Planning Board. She stated that all applicants requesting a parking variance have received a parking variance from the ZBA.

Ms. Georgiou addressed the fact that the applicants are paying for some parking. Mr. Steinman stated that the Planning Board approved the site plan knowing they had no parking.

Mr. Neufeld has a concern that this will open the flood gates to future applicants. Mr. Steinman suggested counsel craft a resolution that meets the Board's requirements. Ms. Georgiou will draft a resolution for next meeting. It was noted that employee parking is not an issue for the Board.

The application was held over until the March 1, 2012 meeting.

7. Application #3SP-2012, SMASH PARTNERS MAMARONECK, LLC, 448 Mamaroneck Avenue (Section 9, Block 18, Lot 11B), for a special permit to open and operate a Smash Burger restaurant. (C-2 District)

Discussion arose regarding re-opening the matter due to the fact that the Board did not feel the remedy for garbage was sufficient. Mr. Null stated he had indicated to the Board during the public hearing portion of the evening that he would supply the Board with the necessary changes to the garbage plan. The Board was satisfied with that and did not move to re-open the meeting.

Ms. Georgiou will draft a resolution for the Board.

The application was held over until the March 1, 2012 meeting.

MINUTES

A motion to approve the minutes of November 3, 2011 was made by Mr. Weprin, seconded by Ms. Kramer.

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

A motion to approve the minutes of December 1, 2011 was made by Mr. Weprin, seconded by Ms. Kramer.

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

A motion to approve the minutes of January 5, 2012 was made by Mr. Weprin, seconded by Ms. Kramer.

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

ADJOURN

On motion of Mr. Sullivan, seconded by Ms. Kramer, the meeting was adjourned at 10:24 p.m.

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

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers