

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, APRIL 5, 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 April 5, 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  
Robin Kramer, Secretary  
Lawrence Gutterman, Board Member  
Dave Neufeld, Board Member  
Anna Georgiou, Counsel to Board  
Lester Steinman, Counsel to Board  
Joe Angiello, Assistant Building Inspector

**ABSENT:** Barry Weprin, Vice Chairman  
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**

Chairman Sullivan called to order the Regular Meeting at 7:04 p.m. Chairman Sullivan stated that the Board would convene into executive session to discuss litigation on the matter of Lucas v. ZBA.

Mr. Neufeld made a motion to enter into executive session to discuss litigation matters, seconded by Ms. Kramer.

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

At 7:05 p.m. the Board convened into Executive Session.

At 7:49 p.m. the Board returned from Executive Session.

## CLOSED APPLICATIONS

1. 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). **(Closed 2/2/2012)**

Chairman Sullivan stated that the Board would go out of order with the agenda and discuss closed application #1I-2012 - 818 The Crescent. He stated that the hearing for this application was closed on February 2, 2012 and by law the Board has 62 days to render a decision. He noted that requests by the Board for extensions had been done with other applications in the past and permission for the extension had been given. Chairman Sullivan stated that Ann Powers, secretary to the Board, sent a letter to the applicants requesting a one day extension of the 62 days and that the applicants had denied the Board's request.

Chairman Sullivan went on to say that there had been much discussion about the application at the last meeting and the Board had crafted a resolution that was prepared by counsel. He suggested that the Board review the draft resolution to show that the Board has fully reviewed the record and has come to a consensus on the matter.

The Board reviewed the draft resolution prepared by counsel and made minor edits to the resolution.

Mr. Neufeld stated that after reviewing the statute, he does not believe that the default is triggered automatically where there is no motion. He stated that when the Board votes, he will probably not vote on the fact that it was an automatic denial. Mr. Neufeld does not think it was an automatic denial. However, he did say that he agreed with the findings completely in terms of the substantive grounds.

Chairman Sullivan asked Mr. Neufeld that had the Board convened yesterday (within the 62 days), would Mr. Neufeld vote in favor of the resolution and Mr. Neufeld stated he would.

Ms. Kramer stated that if this is an automatic default denial, and if this divests the Board of jurisdiction, then the Board shouldn't have to do anything.

If this didn't divest the Board of jurisdiction in such a way that the Board can make a vote in line with what was discussed at the last meeting, then isn't this saying that the Board didn't deny the application yesterday, Ms. Kramer questioned.

Mr. Steinman stated that he does not believe the Board is precluded from setting forth the rationale that is set forth in the resolution by the fact that there was a default and it wasn't within the 62 days. He said the Court will review the record and the Board would be in the most advantageous position to set forth its findings so the Court would have the benefit of those findings when they do review the record, should there be a judicial appeal of this proceeding. He went on to say that the Board should present both options – default denial and findings to deny the application.

Mr. Gutterman stated that he had no comments except he feels Ms. Kramer's perplexity for the time expiration and what to do in terms of the motion.

Ms. Kramer stated that the denial happened yesterday without the Board doing anything. She asked if the resolution should state that if, for some reason, it is not deemed denied, then to that degree these are the findings. Mr. Steinman stated that the language was in the resolution. Ms. Kramer stated that the resolution reads that the Board does both. Mr. Steinman stated that the resolution reads "independent of the default denial" and the intent is to cover both bases.

A brief discussion arose as to whether a default denial was meaningless. Mr. Steinman stated if the Board's decision is appealed and the Court doesn't accept the fact that it was a denial and dismiss the appeal, findings would then be reviewed by the court. He went on to say that the Board has completely clean hands with respect to asking the applicant for an extension of the 62 days.

Mr. Neufeld stated that he agrees with the conclusion on substantive reasons; he does not agree that it was a default denial per the statute.

Chairman Sullivan made a motion to adopt the resolution to deny the application as amended by Mr. Neufeld, seconded by Mr. Gutterman.

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

\* Mr. Neufeld concurs with all findings set forth that support denial of the instant application on the merits. Mr. Neufeld, however, does not concur with the determination that a default denial has resulted by operation of law pursuant to Village Law § 7-712-a (Finding "A") insofar as no motion to grant or deny the application was made within the sixty-two day period allotted in Village Law Section 7-712-a(8) to trigger such a default denial.

Mr. Steinman left the meeting at 8:05 p.m.

### **PUBLIC HEARINGS**

1. Adjourned Application #1SP-2009, STEPHEN SCOLI D/B/A DELISH ENTERPRISES CORP., 901 Mamaroneck Avenue (Section 8, Block 61, Lot 6), to renew a special permit to operate a delicatessen. (C-1 District)

Stephen Scoli, the applicant, addressed the Board. He stated that he was requesting a renewal of the special permit to operate a deli. The only change to the deli is the hours of operation which are now 5:30 a.m. to 3:30 p.m. Mondays through Fridays, 6:00 a.m. to 3:00 p.m. Saturdays and the deli is closed on Sundays.

Chairman Sullivan asked if anyone wished to address the Board. No one did.

Mr. Neufeld moved to close the public hearing on Special Permit Application #1SP-2009, seconded by Ms. Kramer.

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

2. Application #2SP-2009, MAMARONECK HOLDING, LLC. D/B/A BANK OF AMERICA, 1160 W. Boston Post Road (Section 9, Block 21, Lot 2A1), to renew a special permit to operate a bank with a drive-thru window. (C-1 District)

The applicant did not appear. Chairman Sullivan asked Ms. Powers to contact the applicant and let them know they will be placed on either the May or June meeting depending on how full the upcoming agendas are. Ms. Georgiou stated that the applicant will need to re-notice the meeting.

3. Adjourned Application #5A-2012, MAMARONECK REALTY LLC, 751 Old White Plains Road (Section 8, Block 79, Lot 1), for an area variance of Article V Section 342-27 to install a required dumpster enclosure where the front yard setback is zero feet and 25 feet is required and where the combined side yard setback is 8.7 feet where 50 feet is required. (C-1 District)

Dennis Licht, attorney for the applicant, addressed the Board. He stated that the applicant is requesting an area variance. He asked that the Board grant the applicant the relief sought.

Chairman Sullivan asked if the dumpsters will be enclosed where they presently sit. Mr. Licht indicated that there will be a small change. He said that the fencing currently extends and is on Village property. Assuming the application is granted; Mr. Licht stated that fencing has to be set back in order to be in line with the property line.

He stated that another factor for the Board's consideration is that with respect to the parcels that make up the conglomerate of the three multi-family buildings, Mamaroneck Realty LLC is a member of all three entities, so the other properties don't oppose the application.

Chairman Sullivan asked if anyone wished to address the Board. No one did.

Ms. Kramer moved to close the public hearing on variance Application #5A-2012, seconded by Mr. Gutterman.

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

4. Application #6A-2012, 689 MAMARONECK AVENUE ASSOCIATES, LLC., 689 Mamaroneck Avenue (Section 8, Block 83 Lot 6), for an area variance of Article II Section

342-3 to perform site work (paving, curbing and landscaping) on an existing parking lot where the applicant proposes parking spaces 17 feet long and 19 feet in length is required. (C-1 District)

Dennis Noskin, architect for the applicant, addressed the Board. He stated that he is before the Board for a variance to perform site work on an existing parking lot where the parking spaces do not meet the required length per code. He stated that the building was purchased approximately two years ago. Two buildings on the site were removed and paved over, he said. The Village Manager happened to walk by the location and noticed that part of the paving was on Mamaroneck Avenue, in its right of way. The Village Manager contacted the Building Department and violations were issued.

Mr. Noskin reviewed the survey with the Board to illustrate the situation. He also showed the Board pictures of the parking area. He stated that he is working with the Building Inspector and it's been determined that the applicant needs one small variance which would rectify the problem. Mr. Noskin stated that he worked with Susan Favate (the Village's engineering consultant) to create a plan for the proposed parking to legalize the parking as best as possible. Mr. Noskin went on to say that everything complies except for the one area in question. He stated that the code requires parking spaces to be 19 feet in length and the applicant has spaces that are 17 feet in length. The applicant also must go before the Planning Board, Mr. Noskin stated. He said that shrubbery will also be provided at the location.

Ms. Georgiou asked how many parking spaces are non-compliant. Mr. Noskin answered that 17 spaces out of the 41 spaces are non-compliant. Ms. Kramer asked how big the drive isle was and Mr. Noskin answered that it was 21 feet. Mr. Noskin stated that the correct number is actually 24 feet by code. We have a Certificate of Occupancy for the property, he said. When the applicants first purchased the property, there were a series of violations which have all been remedied; Mr. Noskin indicated. He stated that all violations were rectified except for this issue.

Mr. Gutterman asked that in terms of the 17 foot depth of the parking space, which is the subject of this variance, with respect to parking lot design, how is a 17 foot deep parking space regarded in terms of the level of service and performance. Mr. Noskin stated that it is a little short and suggested that he could put down compact spaces for spots 24 and 25 because they are near the turn and that might help. To answer Mr. Gutterman's original question, Mr. Noskin stated that the normal practice is 18 to 20 feet.

Mr. Neufeld asked how many spaces are for employee parking and Mr. Noskin answered 17 spaces. Mr. Angiello indicated that there is no distinction for employee versus non-employee parking. Mr. Neufeld asked if Mr. Noskin would be averse to putting up an "employee parking" sign. Mr. Noskin said not at all.

Mr. Gutterman asked what type of planting is proposed and Mr. Noskin stated that low lying shrubs would be planted. Chairman Sullivan stated that the Planning Board would take that into consideration. Ms. Kramer asked how high the plantings would be. Mr. Noskin said the height of the plants would be about 8 inches and then the additional height of the curb should be included to make it about 13 inches. Discussion arose regarding the shrubs growing out toward

the cars and Mr. Noskin stated that the applicants would be responsible for maintaining the shrubs. Ms. Kramer's concern is that the Board grant the 17 feet and the shrubs grow, thereby reducing more the size of the parking spaces.

Ms. Georgiou asked if the applicant was going before the Planning Board and Mr. Noskin answered that he was appearing before the Planning Board on April 11<sup>th</sup> and then again two weeks from that date. Ms. Georgiou asked why the applicant was going before the Planning. Mr. Noskin stated that one of the comments from the Village consultant was that circulation has to change on the site. That involves reorganizing the site as well as showing the buffers and landscaping, he noted.

Ms. Georgiou then clarified that this is for an amended site plan and Mr. Noskin stated it wasn't really a formal site plan. At some point, the adjacent property was purchased and the property was paved. That's what started the problem initially, Mr. Noskin said.

Ms. Georgiou asked if the applicant has an approved site plan. Mr. Noskin stated that there was one originally and a Certificate of Occupancy was granted, but that included an out parcel which is no longer there. Mr. Noskin clarified that the out parcel was at a different location.

Ms. Kramer brought up the point that the original site plan should be looked at because there might be a larger issue at hand. Mr. Gutterman asked what the Building Department's position was regarding the matter.

Ms. Georgiou stated that she did have a conversation with the Building Inspector this afternoon and he reviewed the plans. His understanding is that the matter would be reviewed by the Planning Board with regard to an amended site plan. Ms. Georgiou suggested that the Board refer the matter to the Planning Board for comment, as has been done in the past. Ms. Kramer thought this was a good suggestion. Mr. Neufeld suggested that the Board can make the applicant compliant with parking and make it subject to the Planning Board approving the site plan. Technically, the applicant can't go to the Planning Board unless they are compliant, Mr. Neufeld stated.

Chairman Sullivan asked if anyone wished to address the Board. No one did.

Mr. Neufeld moved to close the public hearing on variance Application #6A-2012, seconded by Mr. Gutterman.

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

### **CLOSED APPLICATIONS**

1. Application #1SP-2009, STEPHEN SCOLI D/B/A DELISH ENTERPRISES CORP., 901 Mamaroneck Avenue (Section 8, Block 61, Lot 6), to renew a special permit to operate a delicatessen. (C-1 District)

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

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

2. Application #5A-2012, MAMARONECK REALTY LLC, 751 Old White Plains Road (Section 8, Block 79, Lot 1), for an area variance of Article V Section 342-27 to install a required dumpster enclosure where the front yard setback is zero feet and 25 feet is required and where the combined side yard setback is 8.7 feet where 50 feet is required. (C-1 District)

On motion of Mr. Sullivan, seconded by Ms. Kramer, the Application as submitted for a variance to install a dumpster enclosure is approved.

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

3. Application #6A-2012, 689 MAMARONECK AVENUE ASSOCIATES, LLC., 689 Mamaroneck Avenue (Section 8, Block 83 Lot 6), for an area variance of Article II Section 342-3 to perform site work (paving, curbing and landscaping) on an existing parking lot where the applicant proposes parking spaces 17 feet long and 19 feet in length is required. (C-1 District)

The Board discussed the merits of the case. Mr. Neufeld stated that he would approve the variance subject to site plan approval. Ms. Kramer stated that she wanted to make certain that the facts are straight and to make sure that the entire plan gets covered.

On motion of Mr. Neufeld, seconded by Ms. Kramer, the Application as submitted for a variance of the length of parking spaces is approved.

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

### **MINUTES**

A motion to approve the minutes of February 2, 2012 was made by Mr. Sullivan, seconded by Mr. Neufeld.

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

Minutes for the March 1, 2012 were tabled for further review.

**ADJOURN**

On motion of Mr. Neufeld, seconded by Ms. Kramer, the meeting was adjourned at 8:35 p.m.

Ayes: Sullivan, Kramer, Gutterman, Neufeld

Nays: None

Absent: Weprin

ROBIN KRAMER

Secretary

Prepared by:

Ann P. Powers