

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, MARCH 7, 2013 AT 7:30 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 March 7, 2013. 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: Lawrence Gutterman, Chairman
 Barry Weprin, Vice Chairman
 Robin Kramer, Secretary
 Greg Sullivan, Board Member
 Dave Neufeld, Board Member
 Anna Georgiou, Counsel to Board
 Joe Angiello, 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 Gutterman called to order the Regular Meeting at 7:36 p.m. He stated that Ms. Kramer was not yet present, but would be in attendance shortly.

PUBLIC HEARINGS

1. Application #9SP-2010, MOSIA BROTHERS NORTH, INC., 645 Fayette Avenue (Section 8, Block 91, Lot 5A), to renew an existing special permit to operate an automobile repair facility. (M-1 District)

Frank Mosia, the applicant, addressed the Board. He stated that he wished to renew a special permit to operate an auto facility. He stated that there have been no changes since he was before the Board in 2010. Mr. Mosia noted that all conditions of the special permit have been complied with.

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

Mr. Weprin moved to close the public hearing on Application #9SP-2010, seconded by Mr. Sullivan.

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

2. Application #5SP-2010, FAISAL LIAQAT D/B/A DOMINO'S PIZZA, 960 Mamaroneck Avenue (Section 8, Block 53, Lot 1), to renew an existing special permit to operate a Domino's Pizza. (C-1 District)

The applicant did not appear. Ms. Powers will contact the applicant.

3. Application #14SP-2012, F & B LLC D/B/A CLUB CAR RESTAURANT, One Station Plaza (Section 9, Block 2, Lot 2A1), for reconsideration of two conditions (E [ii] and E [iv]) of approval for amended special permit #14SP-2012 granted on January 3, 2013. (C-1 District)

Paul Noto, attorney for the applicant, addressed the Board. He noted that the applicant and owner, Brian MacMenamin, was in attendance. Mr. Noto stated that the applicant was before the ZBA for a limited matter – the reconsideration of two conditions of the amended special permit granted in January 2013 (Conditions E [ii] and E [iv]).

With respect to condition E [ii], Mr. Noto stated that it limits the outdoor dining by having the last seating at 7:00 p.m. Mr. Noto went through the minutes of previous public hearings on this application and noted that most of the negative comments about noise related to after the 11:00 p.m. hours. He also noted that seven people spoke in favor of the application. Mr. Noto also referenced portions of previous meetings where 11:00 p.m. was discussed as the closing time for the outdoor dining and the last order would be taken 45 minutes before closing time for the outdoor dining. Mr. Noto indicated that the comments from the opposition never mentioned noise issues during the dining hours.

At 7:44 p.m., Ms. Kramer joined the meeting.

Mr. Noto stated that residents complaining about the outdoor dining are 300 feet away from the restaurant and trees are in full bloom at that time. He also indicated that the Planning Board has stipulated many conditions to the outdoor seating and that the applicant is investing \$17,000 for planters and other requirements from the Planning Board.

Mr. Noto stated that the restaurant is in a C-1 district. He said that the Village rezoned that area with a restaurant in mind. Mr. Noto also said that the restaurant is separated by a park and train station. He said he believes trains make more noise than diners do. This is a suburban area, Mr. Noto said, and the expectation that there should be no noise is unrealistic.

Mr. Noto indicated that it is unfair to allow other restaurants to have outdoor dining closer to residential areas and restrict the outdoor dining for Club Car Restaurant. He said that during the summer months, the people don't go out to dine until later and these restricted hours would in essence prohibit people from wanting to dine outside. Mr. Noto said that these establishments help the community thrive; this helps property values. He noted that there is nothing more damaging to a community than to have closed and run-down buildings. This community wants a robust downtown that brings in money, he said. He stated that an empty downtown would be damaging to our property values.

With respect to condition E [iv] of the resolution which restricts outdoor music, Mr. Noto said that a cabaret license is issued by the Village Manager and only the Village Manager. He said that the Board is taking away the Village Manager's discretion of allowing outdoor music. He noted that other restaurants, such as Café Mozart, have outdoor music. Mr. Noto said that he doesn't know what the owner of the restaurant intends to do with respect to music, but he is concerned that the opportunity was completely taken away. Mr. Noto stated that the Board should not reference the music and let it be up to the Village Manager. He said that the Village Manager could also revoke the license if there are complaints.

Discussion arose regarding the zoning of the property and that it is in a C-1 district. Mr. Noto reiterated that the property was rezoned specially for this building. Mr. Neufeld asked if the applicant was requesting that outdoor seating be available until 11:00 p.m. all week and to eliminate condition E [iv] and Mr. Noto stated that was correct. Mr. MacMenamin clarified that he would only be open until 10:00 p.m. the latest on the weekdays.

Ms. Kramer asked for clarification of 11:00 p.m. and Mr. MacMenamin stated that at 11:00 p.m. the tables are gone. Mr. Neufeld asked what constituted weekends and Mr. MacMenamin said Fridays and Saturdays.

Ms. Kramer noted that the Club Car Restaurant has significantly more seats (48 in total) than other restaurants that have outdoor dining. Mr. MacMenamin said that Café Mozart has the same number of seats.

Mr. Neufeld asked about amplification for the music and Mr. Noto said that the applicant was not here for that; they are okay with no amplification. He said that the Village Manager can also attach additional conditions in the cabaret license. Mr. Noto stated that the restaurant does not have a license yet, so there will be no music yet. He also stated that the owner has no specific plans, but would like to do something eventually.

Mr. MacMenamin corrected Mr. Noto and said he has received the cabaret license from the Village Manager. Discussion arose as to when the cabaret license was issued. It was determined that the license was issued after the amended special permit was approved in January.

Ms. Powers asked if the prior record would be incorporated into this proceeding and Chairman Gutterman stated that it would.

Chairman Gutterman asked if anyone wished to address the Board.

Gina von Eiff, a neighbor, addressed the Board. She indicated that none of the Board members have to live with music playing constantly. She said that the issue is that this is a cabaret with drunks and loud noise. She said that she is here because the Board granted the special permit with conditions and the restaurant wants more. She indicated that 48 diners make a lot of noise. She also stated that she does not have trees to block the noise. She also stated that this is a residential area. People who live there left the city to be away from all the noise, she noted. She asked when she can open her windows in the summer time and not have to listen to diners.

Ms. von Eiff said that the Regatta Condominium residents have a big issue with Molly's Restaurant. People can't sell their homes because of the noise at Molly's. She said that the park now closes at 10:00 p.m. due to all the issues with drugs and loiterers. She suggested that the ZBA come and see the impact. Ms. von Eiff asked that the Board members consider the residents that are subjected to the loud noise.

Ms. von Eiff also said that outside cafes have to provide insurance and that the owners of the Club Car Restaurant don't own the area where they want to have outdoor dining. She also stated that the outdoor area as reconfigured creates problems for ambulance and fire trucks trying to get by. She noted that it is extremely crowded with people and cars. Ms. von Eiff said that the outdoor dining hours the Board granted should remain the same.

She said that neighbors are dealing with a lounge that is open until 4:00 a.m. She said that last year, when the music stopped, the complaints stopped. She feels the restaurant should work with what was approved by the Board. She also said that trains are not louder than 48 diners. Ms. von Eiff also questioned how the outdoor seating would be enforced. The rights of homeowners should be usurped by the restaurant; it should be equal, she said.

Mr. Neufeld asked if Ms. von Eiff opposes extending the hours and she said she feels that what the Board did was fair, although she would rather not have outdoor dining at all.

Chairman Gutterman indicated for the record that he received a correspondence from the Village Attorney and Village Manager that Metro North owns all the land that surrounds the structure including the sidewalk area itself that surrounds the building.

Ms. Kramer asked to see the correspondence from the Village Manager and Village Attorney. Ms. Georgiou stated that what she recalled from the previous application was that Parkview owned the area where the applicant intended to put the outdoor seating and that Metro North had an easement. Chairman Gutterman stated that was not what the correspondence from the Village Manager and Village Attorney indicated. Ms. Kramer said that she believed Parkview owned the property up to the end of the curb. Mr. Neufeld thought it was the other way around in that Parkview had the easement. Ms. Kramer asked if the applicant had a copy of the deed. Mr. Noto stated that John Verni, the owner of Parkview, said at an earlier meeting that Parkview owned up to the curb. Ms. Kramer said that was her recollection as well.

Ameet Barve, a neighbor, said that he was a fan of the restaurant and frequents it all the time. He said he feels that the current hours are fair. The point is that the assumption is that trains make more noise than diners and that is not true, he said. Mr. Barve noted that people are eating and drinking and this creates noise. He indicated that with eating and music, it could become disruptive after a few nights. He also stated that he feels the applicant is trying to get around the Board to get the outdoor music. With respect to the money the applicant is spending on the outdoor dining, the residents have spent a lot of money to live here.

John Riccini, a neighbor, addressed the Board. He stated that he was concerned that the outdoor seating was granted up until 9:00 p.m. and wants it to be less than that and certainly no longer.

He said that whatever type of music played, it will be disruptive. He also questioned why residents were not notified of the issuance of the cabaret license.

Matthew Pang, a neighbor, addressed the Board. He stated that the re-zoning for this area was done back in 2008, before the issues with Molly's Restaurant came about. Mr. Pang asked that Mr. MacMenamin respect the desire of the neighbors to have peace and quiet.

Mr. Neufeld asked about the issue with commuters during the day time and the interference and his recollection of the easement that this is a walkway for pedestrians and commuters during the day and how the utilization as expanded for the week impacts pedestrians getting by. Mr. Noto asked if Mr. Neufeld was talking about lunch time or dinner time. Mr. Neufeld said at lunch time as well as early evening. Mr. Noto stated that the parking lot has thirteen spaces dedicated to the restaurant. Mr. Neufeld clarified that he was speaking to the outdoor seating area specifically. Mr. Noto said that the restaurant has a site plan that provides for limited access as per the easement. Mr. Noto went on to say that the applicant went through a full site plan approval process. He indicated that the restaurant will be in compliance with the easement and make sure that people can walk through that area. There is an agreement with Metro North that access must be provided to pedestrians, he said.

James Fleming, the architect, provided a copy of the site plan approval to the Board and reviewed it with them. Mr. Noto indicated that the Board had seen these plans before. Mr. Fleming went through the outdoor seating with the Board. He noted that the sides are completely clear for pedestrians to walk by and there is plenty of access.

Chairman Gutterman asked who owns the sidewalk and Mr. Fleming said that Parkview owns up to the curb and the rest of the area is owned by Metro North.

Mr. Neufeld asked Mr. Noto, with respect to acting on a rehearing (modification) what he believes is the type of vote necessary for approval and Mr. Noto said it was his understanding that it was a majority of the Board, although it was a unanimous vote to re-open the hearing. Mr. Weprin stated that counsel indicated it did not need to be a unanimous vote because this is a special permit.

Mr. Neufeld asked if Mr. Noto had done any research on the matter. Mr. Noto said he hadn't, but would leave it up to counsel. Chairman Gutterman asked what counsel's position was on the matter. Ms. Georgiou stated that since the February meeting, she has reviewed some cases and it appears that in addition to support of the view expressed at the last meeting that only a majority vote would suffice, there is also support for the view that formal rehearing provisions would apply. She went on to say that this is a unique situation, so it is something the Board may wish to discuss. She went on to say that there is support for treating this as a rehearing, which would require a unanimous vote.

Mr. Neufeld stated that he had done some research as well and he asked if Mr. Noto wanted to address the issue. Mr. Noto stated that at the last meeting it was brought up that because it was a special permit and not a variance, that a simple majority is required. That was the end of the discussion at the last meeting, he noted. Mr. Neufeld stated that he was giving Mr. Noto an

opportunity to see if Village Law Section 7-712 applied as he was not necessarily in agreement. He said he would leave it to counsel and the Board can make whatever interpretation it chooses.

Chairman Gutterman asked Ms. Georgiou when this should be discussed, either in the open or closed phase of this application. Ms. Georgiou stated that it has already been put on the record that there are two views on the matter and there is support for treating this as a rehearing which would be a more formal process. Ms. Georgiou said that she believes Mr. Neufeld is asking the applicant to address this issue. Discussion arose regarding closing the hearing or keeping it open to accept Mr. Noto's documents regarding the vote. Ms. Georgiou suggested that the Board close the hearing but accept submissions only on that issue.

Ms. Kramer asked counsel if there are separate provisions in state law with respect to the Board's jurisdiction on special permits. Ms. Georgiou said that there is and that is part of the issue. It is Village Law Section 7-725-b that pertains to special permits, she said.

Mr. Noto stated that he doesn't appreciate the constant depiction of the clients of the restaurant as drunks. He said that this is a very nice restaurant and it is expensive. He also noted that the restaurant is sandwiched between Mamaroneck Avenue and Van Ransst Place. Both are commercial streets, he said. He indicated that he understands people's concerns, but this is a restaurant.

Mr. Neufeld asked if it made it more important to be cautious since this is a commercial area already. Mr. Noto stated that the applicant has been careful. He said he will provide a letter to the Board regarding the voting matter. After a brief discussion, the Board agreed to close the hearing subject to the submission from Mr. Noto.

Mr. Weprin moved to close the public hearing subject to submission from either side on the standards that we should apply on voting on Application #14SP-2012, seconded by Mr. Neufeld.

Ayes: Gutterman, Sullivan, Kramer, Weprin, Neufeld

Nays: None

4. Application #1F-2013, DOMINIQUE HERRMANN, 310 Claflin Avenue (Section 9, Block 71, Lot 1B1), for a fence height variance where the fence violates Article IV, Section 342-14C(1) (Building Projections) where the applicant proposes to install a six foot high fence on the southwest side of the property and only a four foot high fence is allowed. (R-15 District)

Dominique Herrmann, the applicant, addressed the Board. He stated that he was requesting a variance to erect a six foot high fence, on his corner property, where only four feet is allowed. Mr. Herrmann stated that there is already a five foot high fence that is in a state of disrepair. He said he wants a six foot fence in order to maintain privacy. The current fence is on the inside of the property, he noted, and that the new fence will not affect visibility. He also noted that the property was surveyed by Mr. Spinelli.

Mr. Neufeld asked why the applicant was going from a five foot high fence to a six foot high fence. Mr. Herrmann stated that he can see a lot of cars and garbage cans and one more foot would help aid privacy.

Chairman Gutterman asked if there was a variance for the existing five foot fence and Mr. Herrmann said he did not believe so. Chairman Gutterman stated that perhaps the five foot fence was legal at one time. Mr. Herrmann stated that he would need a variance whether he was requesting a five foot or six foot fence.

Ms. Kramer asked how long the fence was and Mr. Herrmann stated that it was approximately half of a 64 foot fence. Chairman Gutterman asked what the slope of Rushmore Avenue was and Mr. Herrmann stated that it is totally flat. Chairman Gutterman asked if the neighbor's house was higher or lower than his home. Mr. Herrmann stated that the two houses were about the same.

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

Mr. Sullivan moved to close the public hearing on Application #1F-2013, seconded by Ms. Kramer.

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

5. Application #4A-2013, JEROME LE JAMTEL, 875 Pirates Cove (Section 9, Block 103, Lot 3), to obtain a Certificate of Compliance for Building Permit #23392 amended as Permit # 08-0026 for an in-ground pool and pool equipment where the proposed pool and pool equipment violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the pool has a lesser side yard setback of 13.9 feet and 20 feet is required and the pool equipment has a lesser side yard setback of 16.6 feet and 20 feet is required. (R-20 District) **AND** Application #5A-2013, JEROME LE JAMTEL, 875 Pirates Cove (Section 9, Block 103, Lot 3), to obtain a Certificate of Occupancy for the deck and enclosed porch where the structure violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant has 16.6 feet for a lesser side yard and 20 feet is required. (R-20 District)

The Board agreed to hear both applications at the same time. Mr. Neufeld noted for the record that there was no reason set forth for the variances in either of the applications and that the application was made by Cool Pool Inc. and not the owner. It was noted that the owner provided a letter to the Board authorizing Cool Pool to act on his behalf.

Armando Insignares, the President of Cool Pool Inc., addressed the Board. He stated that the pool was built 8 inches encroaching on the sideyard setback. He said that perhaps the crew may have mistakenly taken the measurement from a fence which was a foot from the property line.

Mr. Neufeld said that the survey did not include the enclosed porch. He stated that the site plan indicated there was an enclosed porch. Ms. Kramer asked when the pool was built and Mr.

Insignares said it was built two years ago. Ms. Kramer asked why there was no as-built survey and Mr. Insignares said there was a survey and it was done on May 29, 2012. Ms. Kramer located the as-built survey in her packet.

Mr. Neufeld stated again that the as-built did not show the enclosed porch. Mr. Insignares said it is listed as the one-story portion on the survey. Which, in turn, has the wood deck and stairs that go down toward the pool, Chairman Gutterman said. Mr. Insignares said that was correct. Mr. Neufeld asked if the pool was not built per the permit and Mr. Insignares said it appears so.

Chairman Gutterman asked when this became known to the Building Department and Mr. Insignares said the owners are trying to refinance their home and need these permits closed before the refinancing can go through.

Mr. Neufeld noted that the site plan shows a different location for the enclosed porch than the one-story structure Mr. Insignares mentioned earlier that is reflected on the as-built survey. Chairman Gutterman stated that the plans appear to be drawn differently. Mr. Insignares said he didn't know why that was the case.

Ms. Kramer noted that the permit that was obtained had the pool seven feet from the side yard, so there was a seven foot difference that was built. Mr. Insignares said no, the original pool permit had the pool set twenty feet from the side property line. Ms. Kramer noted that it is now 13.9 feet. Mr. Insignares said that is showing the concrete deck. Chairman Gutterman asked if the 19.4 feet is the curb of the pool and Mr. Insignares said yes.

Mr. Angiello stated that this issue was missed originally. Right now the Building Department would consider this pool deck as the variance that is needed. It was something that was missed when the permit was given out, he said. When the pool was installed, they were supposed to hold twenty feet to any part of the structure but that was not laid out by the inspector at that time, Mr. Angiello noted. He said that while the applicant is going for the variance, he should go for everything. Mr. Neufeld asked when the pool was built and Mr. Insignares said about five or six years ago.

Chairman Gutterman asked why there were two applications and Ms. Georgiou stated that it was not her decision to have two applications. Mr. Angiello stated that he was told to separate the two because it is two separate issues. Chairman Gutterman stated that the Board will probably view this as one application. Mr. Weprin noted that there are three variances to this application.

Discussion arose as to whether the 20 feet was achievable in the first place. Ms. Kramer noted that plans were done wrong. Mr. Neufeld questioned why work wasn't stopped when the issue of the 20 feet arose.

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

Mr. Weprin moved to close the public hearing on Application #4A-2013 and Application #5A-2013, seconded by Mr. Neufeld.

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

6. Application #6A-2013, COSIMO PANETTA, 822 Stuart Avenue (Section 4, Block 61, Lot 7), to obtain a Certificate of Occupancy for Building Permit #11-0197 for a new single-family dwelling where the front steps violate Article IV, Section 342-14(A) (Building Projections) by projecting 8.02 feet into the required front yard and only three feet is allowed. (R-7.5 District)

Frank Marsella, the architect for the applicant, addressed the Board. He stated that this application involves a front yard variance for a set of entry stairs to access a front entrance. He stated that as part of the as-built survey, it was determined that the stairs connecting to the house needed to be in the buildable area. Mr. Marsella stated that he had nothing to do with the building of the original house. He said that the house was originally designed to be situated in its current condition. There was no way around it for the fifteen steps, Mr. Marsella indicated.

Discussion arose as to how far the stairs were projecting. Mr. Marsella said that if one subtracts the three feet that is provided, it's not projecting 8.02 feet, but more like 5.02 feet. He went on to say that if the grade was raised in the front of the property, this would not be an issue. Mr. Marsella said the stairs were well constructed and integrated with the retaining wall.

Discussion then arose regarding the issue of individuals proposing one thing, doing another and then coming before the Board for a variance. Ms. Kramer said that since the Mayor is in attendance, she proposes that the BOT should look into the matter by perhaps initiating fines or some other method so that applicants comply with the original plans.

Chairman Gutterman stated that he feels this may not have been the case in this situation as the plans were not well developed.

Chairman Gutterman asked if anyone wished to address the Board.

Stuart Tiekert stated that when he viewed the application, he did not see any reference to site stairs and he said he was surprised the Board didn't have the original plans. Mr. Tiekert also stated that he agrees that individuals shouldn't be allowed to do what they want and then come to the ZBA for variances.

Mr. Weprin moved to close the public hearing on Application #6A-2013, seconded by Mr. Sullivan.

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

7. Application #7A-2013, MICHELE ANTINELLI AND STEPHEN ANTINELLI, 370 Orienta Avenue (Section 9, Block 66, Lot 1C), for a revision of Building Permit #12-0850 (addition) to build a new single-family dwelling where the proposed revision violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the

applicant has 10.4 feet for the lesser side yard where 15 feet is required. The proposed revision also violates the combined side yard setback where the applicant has 29.9 feet and 35 feet is required. (R-15 District)

Paul Noto, the attorney for the applicant, addressed the Board. Mr. Weprin noted for the record that he had received a mailing notification regarding this application. He didn't feel it warranted him recusing himself from the matter if Mr. Noto didn't have any issue. Mr. Noto stated he had no objection to Mr. Weprin hearing the matter.

Mr. Noto stated that in October of 2012, the applicant came before the Zoning Board for a variance to build an addition. He said the applicants started construction and, in the process, found a great deal of decay and rotting. Mr. Noto said that the Building Department felt the applicant removed too much of the existing house and are actually building a new house. Mr. Noto said that what the applicant is building is exactly what was proposed in October except the ceiling is being raised one foot higher.

Chairman Gutterman asked if there is a new foundation. Mr. Noto stated that there was not a new foundation and the footprint remains the same. Mr. Antinelli, the applicant, stated that the first floor is still there and the foundation is the same.

Mr. Neufeld asked if the side yards changed and Mr. Antinelli answered no. The Chairman asked if the only change was to the extent of the new modification and Mr. Noto answered yes. Mr. Angiello said that as far as the footprint is concerned, it will remain the same. He said that all the walls were taken down. Mr. Angiello also stated that it is a technicality as to why the applicants had to come back to the ZBA.

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

Mr. Sullivan moved to close the public hearing on Application #7A-2013, seconded by Ms. Kramer.

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

Mr. Noto asked if the Board could vote tonight.

8. Application #2I-2012, HENRIETTE MCCABE, regarding 418 North Barry Avenue (Section 4, Block 27, Lot 12), for an appeal of the issuance of a building permit (revision) for authorized grading changes. (R-5 District)

Henriette McCabe, the applicant, addressed the Board. She stated that the reason the hearing is being re-opened is because at the last meeting the Board asked three times about the storage calculations, which had not been provided.

Ms. McCabe noted that the second aspect she wished to address is the authority issue. She noted that her application stated that the ZBA has authority to hear this matter under Section 7-712a-4

of the Village Law of the State of New York. She read from the law: “Unless otherwise provided by local law, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any local law adopted pursuant to this article.” Because the Stormwater Pollution Prevention Plan is environmental, Ms. McCabe said she feels that the Board should ensure implementation of the provisions.

Ms. McCabe also questioned how a Certificate of Occupancy and a Certificate of Compliance can be issued on the same day. She noted that the as-built plan still indicates no grade change. Ms. McCabe stated that the Stormwater Pollution Prevention Plan is a pre-requisite for getting a Certificate of Occupancy. In addition, Ms. McCabe noted that the street names on the plans are incorrect.

Ms. McCabe stated that the Building Department and Village Engineer were notified of the issues before the Certificate of Occupancy was issued and that the Building Permit does not override any laws with respect to stormwater discharge. She indicated that there were many ways that these issues could have been caught. Ms. McCabe wants the Building Inspector to revoke the September 4, 2012 plan, thereby rescinding the Certificate of Occupancy.

With respect to the storage calculations, Ms. McCabe stated that her engineer drafted a letter to the Board on February 27th and that he was present tonight. Chairman Gutterman stated that he would like the respective engineers to speak to the storage calculations.

Ms. McCabe also stated that the decision she is appealing is not time-barred in her estimation.

Ralph Mastromonaco, the engineer for the applicant, addressed the Board. Chairman Gutterman stated that he wished to make it clear that one of the factors why the Board re-opened the hearing was the calculations that were provided to the Zoning Secretary after the hearing was closed.

Mr. Mastromonaco stated that the Village Code requires an amount of water storage. This helps to protect neighboring properties, he said. Mr. Mastromonaco indicated that the volume is specifically calculated. He said that the shortfall in the storage exacerbated the flooding on Ms. McCabe’s property. Mr. Mastromonaco stated that what was installed at 418 North Barry Avenue was 762 cu. ft. of storage capacity and the required capacity is 2176.5 cu. ft. The water is not going into the storage reservoir; it is going onto Ms. McCabe’s property, he said. Mr. Mastromonaco stated that Mr. Pisco only installed about one third of the required storage.

Chairman Gutterman referenced Mr. Mastromonaco’s letter of February 27, 2013. Mr. Mastromonaco stated that driveways are generally considered impervious and that even if it were fully pervious, there would be a huge shortfall.

Ms. Kramer asked if the issue is the grade change or the failure to have sufficient storage capacity. Mr. Mastromonaco stated that the applicant wouldn’t be here if there was the grade change, but ample storage capacity.

Ms. Kramer asked if the grade change violated the code. Mr. Mastromonaco stated that he would rather not answer that question because it would take things far afield. Ms. McCabe interjected that 3 inches is the allowable grade change without a permit. Mr. Mastromonaco concluded by stating that the Village Stormwater code is very clear and there is no other way to interpret the code.

Anthony Carr, the Village Engineer, addressed the Board. Chairman Gutterman said that the Village Engineer had stated in the past that the storage capacity was accurate. He asked Mr. Carr to speak to that again.

Mr. Carr indicated that, in his professional opinion, the stormwater controls address the code requirements. Mr. Carr stated that he spoke with two stormwater gurus and they concurred. Based on his review, Mr. Carr said that he feels that there is adequate storage. Mr. Carr stated that water does not run off gravel as it does paved driveways.

Chairman Gutterman stated that his concern is that there are two engineers saying two different things. Mr. Carr referenced Chapter 294-8B (Site map/construction drawing(s) at a scale not smaller than one inch equals 50 feet, or as otherwise approved by the SMO, for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges).

He stated that there is gradual release of water over time. Mr. Carr discussed detaining and retaining aspects of the storage tanks. Mr. Carr stated that water does not need to be retained in the drywells. He said he believes that the applicant, based on the as-built and the calculations has demonstrated that he has detained the correct amount of water.

Chairman Gutterman asked other than the drywells, what other means are there. Mr. Carr said that there is a lag in detention provided by the crushed stone. When the water hits the stones, it will settle to the bottom and then fill up, he noted. Chairman Gutterman noted that Mr. Carr had said the driveway was impervious. Mr. Carr said that based on the definition of the code, it is. However, based on discussions with the DEC, the crushed stone of the driveway allows it to be modeled as somewhat pervious, he noted. He said there is storage within the crushed stone.

Ms. Kramer said that Mr. Carr is saying that the code says you have to detain all of the run-off from an impervious surface. How does one calculate the run-off from an impervious surface, she asked Mr. Carr. Did Mr. Mastromonaco calculate it correctly, she asked. Mr. Carr stated that he doesn't agree with Mr. Mastromonaco's calculations. He said that Ms. McCabe's engineer uses a runoff depth of .5 feet (six inches). He said the run-off depth from an impervious surface is reduced down to about 5.76 inches and that the entire six inches doesn't run off. Ms. Kramer asked if the half foot is not the right calculation and Mr. Carr said it should be slightly less than a half foot. Ms. Kramer asked how much stormwater the property needs to detain. Mr. Carr stated that the applicant's engineer did the calculations and he looked at the code, the proposed and

what was built. Mr. Carr noted that the 7.62 cu. ft. was for the drywells and did not include the gravel driveway.

Ms. Kramer asked if Mr. Pisco's engineer and Mr. Mastromonaco treated everything the same with respect to impervious surface, why are the numbers different? Mr. Carr stated that he usually stops at 2 decimals when calculating. Ms. McCabe's engineer may have rounded the numbers differently, Mr. Carr noted. Chairman Gutterman said the numbers are too far apart for the rounding of numbers to be the issue. He also stated that he does not feel satisfied that the Board has received an answer as to why Mr. Mastromonaco's numbers are three fold more than the Village Engineer's numbers. Mr. Carr stated that Mr. Mastromonaco may have had a different interpretation of the code. Ms. Kramer asked if Mr. Carr had the engineer's calculations so that the Board could look at it to better understand the issue.

Ms. McCabe provided Mr. Carr with a copy of the Stormwater Pollution Prevention Plan and he took a moment to review it. Mr. Carr noted that the applicant's engineer's initial calculations did show a decrease in calculated curb number or an improvement between pre and post conditions. Mr. Carr said that the run-off potential between pre-development conditions and post-development conditions. The run-off potential pre-development was 86 and post-development was 84, he said.

Ms. Kramer stated that Mr. Mastromonaco's calculations seem so simple and straightforward. Chairman Gutterman asked if Mr. Carr could speak to Mr. Mastromonaco's calculations. Mr. Carr said he could not speak to Mr. Mastromonaco's numbers, but he could speak to the owner's engineer's calculations. There was a reduction in run-off, Mr. Carr stated. Ms. Kramer said that just because there was a reduction in run-off, does not mean it complied either before or after. Ms. Kramer asked if this is code compliant. Mr. Carr said it was because the impervious surfaces that drain to the two cultec chambers in the back are captured. Chairman Gutterman asked to see the Stormwater Pollution Prevention Plan.

Mr. Mastromonaco addressed the Board. Chairman Gutterman asked if he had seen the Stormwater Pollution Prevention Plan and he noted that he had and he also had responded to the document in a September 13, 2012 memo. In that letter, he pointed out significant errors in those calculations, he said. Chairman Gutterman said he had no further questions. Mr. Mastromonaco stated that that he wanted to explain how a problem develops when there is a shortfall in storage volume. Mr. Mastromonaco noted that if one tries pouring a quart of water into an 8 oz. glass, it will detain a portion of it for a little while, but the rest will spill over. The entire quart can't be detained, he said.

Mr. Pisco, the former property owner of 418 North Barry Avenue, stated that there are overflow pipes attached to the drywells, so that as the drywells fill to $\frac{3}{4}$ in capacity, the water flows out to a storm pipe. The drywells never fill up, Mr. Pisco noted. He said that the original plan called for one Cultec and he installed two Cultecs. Mr. Pisco also stated that 90% of the backyard is contained. He said he felt there was no chance of any water running from that area onto Ms. McCabe's property. Mr. Pisco indicated that the Village Engineer felt that Ms. McCabe should have a stormwater management system installed.

Martha McCarty, attorney for Mr. Pisco, addressed the Board. She stated that the source of Ms. McCabe's flooding problems is her gutters and leaders that drain directly to her backyard. She also noted that she would speak later as Mr. Carr wished to address the Board again.

Mr. Carr, the Village Engineer, addressed the Board again. He stated that he wished to clarify a few points. The system in the back (two Cultecs) can hold several hundred cubic feet of run-off and it is sized to detain the area of run-off that is going to that system, he said. Mr. Carr stated that in the front, there is the house and portion of the driveway draining towards the four Cultecs in the front. Mr. Carr said there is a storage volume close to 762 cu. ft. for all six Cultecs; that is just straight storage. It does not include any additional infiltration, he said. Therefore, one needs to add the amount of water that is infiltrated, he noted. Mr. Carr also said that infiltration allows for more storage of water. The system has a storage capacity of 762 cu. ft., but that does not include the infiltration rate, Mr. Carr indicated.

Chairman Gutterman asked if the stormwater pipe improves the situation. Mr. Carr said it does. He noted that as long as an adequate amount of water is being held back, then it is compliant with the code.

Mr. Mastromonaco addressed the Board. He stated that with respect to overflow, the water that leaves is no longer detained. Chairman Gutterman stated that the water is going where the storm drainage dictates it to go.

Ms. McCarty addressed the Board. She stated that she thought the discussion related to the grading. She said that the drywells were signed off on in March of 2012. Because of that fact, this application is time-barred and may not be discussed, she noted.

Ms. McCarty provided the Board with a case (Palm Management Corp. v. Goldstein). She stated that the drywell permit was issued over a year ago. With respect to the storage calculations, as an attorney she said she can't relate to that. She said she went with the numbers the Village Engineer provided. Mr. Weprin stated that he feels the case provided by Ms. McCarty is very different from this application.

Ms. Kramer asked if the neighbor would have known (or by some action would have known) that the stormwater plan was approved at that point and Ms. McCarty said she did not know, but she may have seen the actual drywells being installed. Ms. Kramer said that Ms. McCarty stated that the ZBA has no jurisdiction to review a decision made under the Stormwater Pollution Prevention Plan provisions of the code. With that being said, Ms. Kramer went on to say that the neighbor is appealing the Certificate of Occupancy. Wouldn't that be different, Ms. Kramer asked. Ms. McCarty stated that the ZBA has jurisdiction only over appeals that involve zoning decisions of the enforcement officer; other decisions have to be appealed to the New York State Uniform Fire Prevention and Building Code officials. This is not the proper venue, she said. Ms. McCarty said that the applicant has started off with the grading and is now talking about the drywells.

Ms. McCarty handed out photos of 418 N. Barry Avenue and 416 N. Barry Avenue and reviewed them with the Board. Two of the photos are of 418 N. Barry Avenue and two photos

are of 416 N. Barry Avenue. Mr. Pisco noted that Ms. McCabe's garage has only one pipe to deal with all the water.

Ms. McCarty indicated that a majority of the houses do not have a water retention system and that her client has six. Ms. McCarty said that she believes this matter is either time-barred or jurisdictionally barred. She said she believes her client did everything correctly. Ms. McCarty also noted that the grading is not 30 inches, but 12-15 inches. She said she does not believe Mr. Pisco caused Ms. McCabe's flooding and that only 10% of the property was affected by the grading. Ms. McCarty asked that any emails or Building Department submissions be included as part of the record. Chairman Gutterman said that was why the hearing was re-opened, to gather more information for the record.

Ms. McCabe addressed the Board. She stated that there is an email from Mr. Carr dated August 28, 2012 stating that "While minor field changes due to unforeseen conditions or constructability issues are acceptable, the proposed changes shall not adversely affect downstream or adjacent structures, properties, etc." Ms. McCabe said that the ZBA isn't the place to find the answers to these questions, but what they do is they point to a series of questionable actions by the Building Department that support her request to the ZBA that they instruct the Building Department and the Building Inspector to revoke the Certificate of Occupancy pending further review of the file.

Ms. McCabe went on to say that instead of stopping work when they notice the change in grade to obtain approval, the owners continued to do the work. She also noted that the SWPPP stipulates no change in grade and no increase in run-off.

Ms. McCarty addressed the Board. She noted for the record that Mr. Pisco is no longer the owner of the property. She said that they have tried to work things out. Ms. McCarty said she would like to suggest that the grade be returned to the normal level. She said she does not know if that will solve Ms. McCabe's flooding problem.

Chairman Gutterman asked if anyone else wished to address the Board.

Tim Farrell, neighbor behind 418 N. Barry Avenue, said that since the construction, his backyard is very spongy. For the past 24 years, he never had that issue and now he does, he said. Mr. Farrell stated that the plans were not followed.

Ms. Kramer moved to close the public hearing on Application #2I-2012, seconded by Mr. Sullivan.

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

9. Application #2I-2013, SUZANNE MCCRORY, regarding 818 The Crescent (Section 9, Block 85, Lot 34B), for an appeal of the issuance of a Certificate of Occupancy for Building Permit #22476 and seeking a determination that the Certificate of Occupancy is invalid. (R-15 District)

Suzanne McCrory, the applicant, addressed the Board. She stated that she is appealing the issuance of the Certificate of Occupancy because the building that was built did not conform to the approved plans. She stated that the foundation of the house did not meet the flood plan.

Ms. McCrory also noted that there have been three Certificates of Occupancy issued for this property. Ms. McCrory said that the issue is that there were approved plans to build a house on piers and there was a major deviation from those plans. Since the plans were approved, Ms. McCrory stated, there have been no new plans since the construction of the foundation. She indicated that the foundation as it was actually built is not flood zone compliant and not FAR compliant.

Ms. McCrory said that there is still a permit outstanding because the permit has never been revised. Ms. McCrory showed the Board a picture of a home that is elevated on piers as an example. She said that the homeowners were supposed to have these piers with breakaway walls and that did not happen. She also stated that the house is very over-sized for the neighborhood. Ms. McCrory stated that because of the way the house was built, a basement has been created. She said that FEMA does not allow a basement in that area. She also noted that there isn't a final plan on file with the Building Department.

Ms. McCrory distributed photos of 818 The Crescent, showing the different types of walls. She said that she has been unable to find any documents from the Building Department of any of these changes. Because of these issues, Ms. McCrory believes the Certificate of Occupancy was not legally issued.

Ms. McCrory said that the following is required: 1) Revised foundation plans, 2) Building Permit needs to be revised, 3) A Flood Plain Development Permit and a Compliance Certificate must be performed, 4) Fill was added, 5) Revision to the permit regarding the pool.

Ms. McCrory stated that the house is well beyond the FAR. Mr. Neufeld asked if there were dates on the photos and Ms. McCrory answered no; they were taken by a neighbor. She said that the changes to the exterior wall need to be approved with new plans.

Ms. Kramer asked Ms. McCrory to clarify her application. Ms. McCrory stated that the Certificate of Occupancy was not legally issued and that the FAR is too great. The changed foundation would require a variance for the FAR, she noted.

Mr. Angiello indicated that an amendment to the Certificate of Occupancy was filed on February 15, 2013. He said the amendment was to remove the pool from the C of O.

Mr. Neufeld asked when Ms. McCrory began to look at the FAR and she said it was probably in 2006 when construction ensued. Mr. Neufeld asked if Ms. McCrory notified anyone about the FAR issue. She said she sent a letter to Assistant Building Inspector Rob Melillo and he said he would take it under advisement. In 2007, Ms. McCrory said, it was apparent that the foundation that was constructed was not what was approved on the plans. She said the property owners spent the next several years trying to obtain a Certificate of Occupancy. She said that the permit revision was never made because it would not have been zoning compliant. She noted that the foundation has been there for five years.

Ms. McCrory handed out the original Building Permit #22476. Ms. Kramer asked if this was moot since there was no pool. Ms. McCrory said she didn't believe that would be true. Mr. Sullivan noted that Ms. McCrory's application had missing pages.

Mr. Neufeld asked where this discussion leads to. Ms. McCrory said that a variance is required for exceeding the FAR. These revisions were not approved, Ms. McCrory said. Mr. Neufeld asked if this is an academic exercise or a substantive exercise. Ms. McCrory said that the house is over the FAR and the Certificate of Occupancy is issued based on plans that were not approved.

Chairman Gutterman asked if anyone wished to address the Board.

June Ottinger, the property owner, addressed the Board. She stated that she submitted a document to the Board questioning Ms. McCrory's application and whether it was even appropriate that it go before this Board. Ms. Ottinger stated that she is not represented by counsel.

Ms. Ottinger addressed whether Ms. McCrory has standing as she is not a neighbor and therefore not aggrieved. Ms. Ottinger said that Ms. McCrory needs to provide all the legal authorities and she feels this application is not properly filled out. Ms. Ottinger went on to say that the courts have heard this matter and made determinations regarding the issues Ms. McCrory has brought up. Mr. Weprin stated that it may seem as if the court may have made a determination based on plans not provided.

Ms. Kramer asked what the foundation looked like when the court made its determination. Ms. Ottinger stated that it looked exactly the same as it does now. There have been no changes since the foundation was built, she said. Ms. Ottinger said that the foundation plan was supposed to be break-away walls and it did comply with plans. No additional plans were submitted because the foundation has not been changed since 2006, she noted. Additionally, Ms. Ottinger stated that BFJ, the Village's consultant, also reviewed the matter for the ZBA. She said that the Court affirmed the ZBA's ruling on FAR.

Ms. Ottinger stated that she met with FEMA, Village Engineers and other officials to gain approval of the foundation. She noted that it took FEMA almost 3 1/2 years for the flood zone. She also said that she never had to make any changes to the plan. Ms. Ottinger also questioned whether the Board had authority to judge whether the house is flood compliant. She said she feels that is a matter for the Planning Board. Ms. Ottinger also said that the Planning Board's determination was not included with Ms. McCrory's application. She said the Board should ask for documents from all authorities.

Chairman Gutterman asked that the Building Department furnish a document list of the contents of their file. Ms. Ottinger stated that the Board should look at the as-built drawings. She said that the issuance of a Certificate of Occupancy should not re-open determinations already made. She said that the Board needs to make a determination as to whether this matter is time-barred.

Mr. Ottinger, the property owner, addressed the Board. He stated that this has been a horror story. He said Ms. McCrory has done everything she can to keep him from living in the house. He noted that she has brought five lawsuits and cost the Village hundreds of thousands of dollars. He also said that the appeal is under Chapter 186 and this should be before the Planning Board. Chairman Gutterman stated that the Board will need to sort through the jurisdictional issues.

Ms. McCrory submitted documentation from FEMA saying the foundation was not compliant. She said she does not believe there is an as-built.

Discussion arose as to whether the hearing should be closed. Ms. Georgiou suggested keeping the hearing open.

The application was adjourned to the April 4, 2013 meeting.

CLOSED APPLICATIONS

1. Application #26SP-2006, ORIENTA BEACH CLUB, 1025 Rushmore Avenue a/k/a 1054 Walton Avenue (Section 9, Block 98, Lot 1), to renew a special permit to host non-member events. (R-15 District)

The Board reviewed the draft resolution provided by counsel and discussed the merits of the application. The Board did not want the request to the Board of Trustees to be in the resolution. It was noted that the violation has not been remedied. The Board requested there be a condition in the resolution of compliance with respect to the violation (60 days to fix the violation).

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application for renewal of the special permit is approved.

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

2. Application #16SP-2009, MAMARONECK BEACH & YACHT CLUB, LLC., 700 South Barry Avenue (Section 4, Block 77, Lot 31), to renew a special permit to host non-member events. (R-10 District)

The Board reviewed the draft resolution provided by counsel and discussed the merits of the application. The Board noted that the issues on this application are the same. Ms. Georgiou stated that the name "Mamaroneck Beach and Yacht Club" is consistent with the prior resolution approving the special permit as well as the application.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application for renewal of a special permit is approved.

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

3. Application #9SP-2010, MOSIA BROTHERS NORTH, INC., 645 Fayette Avenue (Section 8, Block 91, Lot 5A), to renew an existing special permit to operate an automobile repair facility. (M-1 District)

The Board discussed the merits of the application.

On motion of Mr. Weprin, seconded by Mr. Neufeld, the application for renewal of a special permit approved without a term limit.

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

4. Application #7A-2013, MICHELE ANTINELLI AND STEPHEN ANTINELLI, 370 Orienta Avenue (Section 9, Block 66, Lot 1C), for a revision of Building Permit #12-0850 (addition) to build a new single-family dwelling where the proposed revision violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant has 10.4 feet for the lesser side yard where 15 feet is required. The proposed revision also violates the combined side yard setback where the applicant has 29.9 feet and 35 feet is required. (R-15 District)

The Board discussed the merits of the application. The Board agreed that they were basically approving something that had already been approved in October of 2012.

On motion of Mr. Weprin, seconded by Mr. Neufeld, the application for variances is approved.

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

5. Application #6A-2013, COSIMO PANETTA, 822 Stuart Avenue (Section 4, Block 61, Lot 7), to obtain a Certificate of Occupancy for Building Permit #11-0197 for a new single-family dwelling where the front steps violate Article IV, Section 342-14(A) (Building Projections) by projecting 8.02 feet into the required front yard and only three feet is allowed. (R-7.5 District)

The Board discussed the merits of the application. The Board noted that the house is above grade and that there isn't much depth to the lot.

On motion of Mr. Weprin, seconded by Mr. Neufeld, the application for a variance is approved.

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

MINUTES

On motion of Mr. Weprin, seconded by Mr. Neufeld, the January 3, 2013 meeting minutes are approved.

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

ADJOURN

On motion of Chairman Gutterman, seconded by Ms. Kramer, the meeting was adjourned at 11:45 p.m.

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

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers