

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, JUNE 6, 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 June 6, 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: Larry Gutterman, Chairman
Barry Weprin, Vice Chairman
Robin Kramer, Secretary
Greg Sullivan, Board Member
Dave Neufeld, Board Member
Anna Georgiou, Counsel to Board
Lester Steinman, Counsel to Board
Bill Gerety, 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.

PUBLIC HEARINGS

1. Application #2SP-2013, SFMG-S4, LLC D/B/A SALSA FRESCA MEXICAN GRILL, 354 Mamaroneck Avenue (Section 9, Block 18, Lot 22B), for a special permit to operate a restaurant. (C-2 District)

Seth Hirschel, the applicant, addressed the Board. He stated that he wishes to open a Mexican restaurant at 354 Mamaroneck Avenue called Salsa Fresca Mexican Grill. He noted that there are three other locations already in existence. Mr. Hirschel indicated that he is excited about being in Mamaroneck. The former tenant of 354 Mamaroneck Avenue was A & S Deli and the store has been vacant for some time and in disrepair, Mr. Hirschel noted. He said he wants to fix up the establishment.

Ms. Kramer asked if this will be a full service restaurant. Mr. Hirschel indicated that Salsa Fresca is a fast casual restaurant where customers order their food at a counter and then pick it up to bring to the tables. The hours of operation will be 11:00 a.m. to 10:00 p.m. seven days a week, Mr. Hirschel said. He indicated that there will be 49 seats in the restaurant. With respect to delivery services, Mr. Hirschel said that he may add delivery in the future, but has no plans to do so right now. Ms. Georgiou asked how large the restaurant space is and Mr. Hirschel said it was 2,000 square feet.

Mr. Neufeld asked about the length of the lease. Mr. Hirschel stated that he has a five year lease, with two five year renewal periods for a total of 15 years. Mr. Neufeld asked about the violations from the Building Department which were included in the application. Mr. Hirschel stated that the violations were from the previous tenant and that they would become moot once he took over the establishment since it is being gutted.

Discussion arose regarding Mr. Hirschel's statements this evening that the hours of operation will be from 11:00 a.m. to 10:00 p.m., but the application states the hours will be 7:00 a.m. to 10:00 p.m. Mr. Hirschel said he put down 7:00 a.m. on the application because at the time he was planning on serving breakfast. However, at this time, there are no plans to serve breakfast and that is why he said 11:00 a.m. during his presentation, he noted.

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

Mr. Sullivan moved to close the public hearing on Application #2SP-2013, seconded by Mr. Weprin.

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

2. Application #1S-2013, PROSPECT CIGAR GROUP D/B/A DOC JAMES CIGAR LOUNGE, 133 E. Prospect Avenue (Section 9, Block 51, Lot 9B), to legalize a hanging sign where the sign violates Section 286-12B(1) (business establishments shall be limited to one façade sign) where this is the second facade sign, Section 286-12C(2) (the lower edge of a sign shall not be located above the level of the second story of the building), and Section 286-2 (Projecting Sign: the sign extends 7 feet where 18 inches is allowed from the plane of such wall or structure. (C-2 District)

Marc Martilotta, the applicant, addressed the Board. He stated that he is before the Board regarding a request to continue to hang a vinyl sign on the building. Mr. Martilotta stated that a sign was erected before he brought his business to the location. The prior tenant had an upholstery business, he said. When he took over the location, Mr. Martilotta stated that he took down the upholstery sign and erected a sign for the cigar shop. He said he would like to keep the new sign up.

Ms. Kramer asked if the sign was non-conforming to begin with. Mr. Martilotta said he didn't know. Mr. Weprin stated that the Board heard a similar matter involving a dance studio. Mr. Martilotta stated that the sign has been on the building since the 1970's. Ms. Georgiou read from Chapter 286-13 (non-conforming signs):

In the event that a sign lawfully erected prior to the effective date of this chapter does not conform to the provisions and standards of this chapter, then such signs shall be allowed to continue as is. However, other than maintenance, a nonconforming sign may not be remodeled, relocated or changed in size or content unless such

action will make the sign conform to the current sign code. She also noted that the law was adopted in 1999.

Chairman Gutterman stated that the applicant needs to discuss factors the Board should consider in order for the applicant to obtain a variance for the sign. Mr. Martilotta stated that when he was considering the space for his cigar shop, the sign attracted him to the building. He went on to say that Mamaroneck Avenue brings in the business and although he does get some foot traffic, this is the only way to let people know the business is there. Mr. Martilotta stated that he felt that keeping the sign and not changing the structure would be permissible.

Discussion arose as to the actual size of the sign. It was determined that the sign is 40 inches by 30 inches and the post which the sign is attached to is 7 feet by 3 feet. Mr. Weprin asked if the post was staying regardless of there being a sign hung on it and Mr. Martilotta stated that was correct.

Chairman Gutterman asked Mr. Gerety, the Building Inspector, if there are any safety considerations regarding the pole. Mr. Gerety stated that the pole has been there for some time and that the Building Department will continue to monitor the sign and the post.

Mr. Neufeld stated that there are not many signs like this in the Village and his concern is that someone else from a side street will ask for a sign like this should the variance be granted to this applicant. Ms. Kramer stated that the sign has been there for a long period of time and won't change the character or environment of the neighborhood. Mr. Martilotta agreed, saying that the sign has been in existence and he isn't changing the character of the neighborhood simply by changing the sign.

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

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

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

3. Application #10A-2013, JESSE LIPSCHER AND BARBARA GEBALA, 303 Orienta Avenue (Section 9, Block 58, Lot 41), for an area variance to enclose an existing covered porch where the proposed plan violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant proposes a front yard setback of 17.4 feet and 20 feet is required. (R-5 District)

Jesse Lipscher, the applicant, addressed the Board. He stated that he is seeking a variance to enclose an existing porch. He noted that the existing garage has a porch on top of it. The house is 88 years old, he said. Due to the rain over the years, the porch has rotted out and he would like to enclose the area and install windows, Mr. Lipscher indicated.

Mr. Sullivan asked if the footprint will remain the same and Mr. Lipscher stated that it would. Mr. Sullivan asked if the setback issue is an existing one and Mr. Lipscher answered that it was. He also noted that he is not expanding the structure in any way or exacerbating the setback issue. Chairman Gutterman asked if there are any other zoning shortcomings. Matt Evans, the architect, stated that the lot depth is a pre-existing, non-conforming lot and that the combined side yard setback is not changing.

Ms. Kramer asked if the applicant is enclosing the structure, isn't that increasing the FAR. Mr. Evans stated that the applicant was not seeking an FAR variance. Ms. Kramer noted that the space currently is not floor area, but once it is covered the applicant is adding floor area. Mr. Evans stated that it is still be within the .55 FAR.

Mr. Evans went on to say that he was careful to keep the proposed architectural details in line with the existing architecture and that all materials will remain the same. Chairman Gutterman asked if the applicant has been before the BAR and Mr. Evans stated that he did not believe so, but would work with them.

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

Ms. Kramer moved to close the public hearing on Application #10A-2013, seconded by Mr. Neufeld.

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

4. Adjourned Application #9A-2013, EAST COAST NORTH PROPERTIES, LLC., 416 Waverly Avenue a/k/a 560 Fenimore Road (Section 8, Block 111, Lots 29-42), for four variances to construct a new four-story (40,620 sq. ft.) self-storage facility, and site and existing building improvements where the proposed plan violates Article VI, Section 342-38 of the Schedule of Minimum Requirements where the applicant proposes a Floor Area Ratio of 1.34 where no more than 1.0 is allowed and a new building of four stories where no more than three stories are allowed. The proposed plan also violates Article VIII, Section 342-57 of the Schedule of Off-Street Loading Requirements where the applicant proposes two loading spaces and ten loading spaces are required. The proposed plan also violates Article VIII, Section 342-56 of the Schedule of Off-Street Parking Requirements where the applicant proposes 52 parking spaces and 86 parking spaces are required. (M-1 District)

Chairman Gutterman noted for the record that the applicant requested an adjournment of the application until the July 23rd meeting.

5. Adjourned 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 distributed talking points of her presentation to the Board. She noted that she is challenging the Certificate of Occupancy issued by the Building Department to 818 The Crescent.

Ms. McCrory asked Ms. Powers if what she had received from her was the complete Building Inspector submission. Ms. Powers stated that she emailed everything to Ms. McCrory except for the February 11, 2008 survey, as it was too large to scan and email to her.

Ms. McCrory stated that she believes the record the Building Inspector provided to the Board is not complete and she noted that there is more material to be provided from over the past several years. Ms. Kramer asked if Ms. McCrory was saying that the Board doesn't have all the files the Building Department has and Ms. McCrory stated that the files in the Building Department are voluminous.

Mr. Neufeld asked if Ms. McCrory had seen the files and asked whether she had copies. Ms. McCrory stated that she does have some copies. Mr. Weprin asked Mr. Gerety about the Building Department record. Mr. Gerety stated that he felt he provided the pertinent materials that lead to the issuance of the Certificate of Occupancy. Mr. Weprin stated that the Board will not review boxes of records. Ms. McCrory stated that she did not expect the Board to do so, but she has provided documents to the Building Inspector which are not included in his record.

Ms. McCrory went on with her presentation. She read from a letter from the former Village Engineer Keith Furey dated March 8, 2008 providing a description of the material differences of the as-built foundation.

Ms. McCrory stated that the Ottinger's had plans approved for a foundation, built a different foundation than what was approved and that Chapter 342-84 requires a permit for external modification.

Ms. Kramer noted that the Building Department received plans for a foundation; the Ottingers built a different foundation and, therefore, needed an additional approval according to Ms. McCrory. Ms. Kramer stated that assuming that Ms. McCrory is correct, perhaps the property owners should have amended their foundation plans. When one alters plans for a building that hasn't been built yet, one hasn't altered the building because it hasn't been built yet. Although, she said it did not mean the Ottingers should receive a second permit.

Ms. McCrory stated that the Building Department has no record of an application to revise the original foundation plans or to seek permission to fill the property. She asked Mr. Gerety if the Building Department was in possession of the revised application and Mr. Gerety answered that he can't categorically say no.

Mr. Sullivan asked if the building survived a 100 year storm and Ms. McCrory answered that the house survived a big storm, but not the 1% storm FEMA requires. She also stated that the Ottingers shouldn't receive an exception to the zoning rules. She asked that the Board nullify the Certificate of Occupancy because the FAR was violated and it should not have been issued within the flood zone.

Ms. Kramer asked that since the flood zone of the property has been changed, doesn't it make the house compliant at this time. Ms. McCrory stated that the property still needs to be evaluated. She suggested that one of the basement walls can be removed.

Ms. Kramer said that leaving aside the question as to whether the foundation was built to plans or not, what is non-compliant with the structure. Ms. McCrory answered that the FAR is 50% to 70% larger. Mr. Neufeld asked what the remedy to the situation would be. Ms. McCrory stated that a variance should be obtained. Mr. Neufeld asked what the outcome would be if a variance was not granted. Ms. McCrory stated that the FAR would need to be reduced.

Ms. Georgiou noted for the record that the Board dealt with the FAR matter in 2007. Ms. McCrory stated that had the Ottingers built what they said they were going to build, it would not be an issue. She went on to say that the Ottingers built the foundation and enclosed it, which grossly increased the FAR.

Ms. Georgiou asked the Board if they would like to include the FAR materials from 2007 into the record and the Board agreed to do so. It was noted that Ms. Powers will provide copies of the FAR materials from 2007 to the Board.

Ms. McCrory concluded by noting for the record that she is not challenging the first or second floor of the structure; only the basement.

Chairman Gutterman asked if the property owners wished to address the Board.

Joseph Messina, attorney for the Ottingers, addressed the Board. He noted that the FAR was adjudicated by this Board and the Courts previously. He also questioned why the application was before the Zoning Board, as Ms. McCrory is not an aggrieved party. He said that with respect to the Building Department files, the Building Inspector has provided the ZBA with a record.

Ms. Ottinger, the property owner, addressed the Board. She stated that she wants to correct comments made by Ms. McCrory with regard to the foundation walls. Ms. Ottinger stated that there are no solid walls above ground and that all walls above ground are breakaway walls. She went on to say that the plans submitted in 2006 for the foundation indicates breakaway walls. Ms. Ottinger stated that the walls above 13 feet are breakaway and that the walls below 13 feet are solid. She said that the plans submitted and the house that was built is exactly what was proposed in 2006.

With respect to FEMA, Mr. Messina stated that everything was determined to be compliant when the flood map was changed in December of 2012. He went on to say that the Certificate of Occupancy states that the house is in full compliance and that Chapter 186 is not within the jurisdiction of this Board.

Ms. Kramer asked for clarification on what breakaway walls are. Mr. Messina stated that when water hits, the walls are designed to break away so that the structure is not compromised.

Ms. Georgiou asked how high the crawl space is. Ms. Ottinger stated that the crawl space is 2.9 inches high. She said that there isn't a wall; it's a standalone slab that tries to enclose the crawl space for appearance reasons.

Ms. McCrory referenced the letter from former Building Inspector John Winter to the Ottingers in February of 2008, regarding the foundation and the need for new plans. Ms. Kramer asked if Ms. McCrory did not believe the foundation has breakaway walls. Ms. McCrory stated that FEMA requires open walls that have piers and that are elevated. In this case, there isn't an open pier foundation; the Ottingers built a closed foundation, she said. Ms. McCrory went on to say that FEMA's regulation concerns allowing water to pass under the house. Ms. Georgiou clarified that this requirement was for the V-zone. Ms. McCrory stated that was correct, however the requirement is also coming to the A-zone soon.

Mr. Messina submitted for the record an email from former Building Inspector John Winter dated June 6, 2013 stating that he reviewed the failed inspection report of February 22, 2008 for the Ottinger property and that all items on the list were corrected before he left the position of Building Inspector for the Village of Mamaroneck. The only remaining item was to correct the foundation or receive a LOMR, the letter read. Ms. Ottinger stated that, with respect to retro-fitting, nothing they have done to the house is retro-fitted. It is simply not the case, she said.

The Board discussed whether the application should be closed. The decision was made to adjourn the matter to the July 23rd meeting. Ms. McCrory asked if she could still submit additional material and Chairman Gutterman answered yes. Mr. Sullivan suggested the Board receive materials no later than two weeks prior to the July meeting. Ms. Georgiou stated that since the record has been open for so long, the Board could ask for documents no later than two weeks before the July meeting. Chairman Gutterman stated that the deadline for submission of materials is July 9, 2013 and instructed that all materials should only be submitted to Ann Powers. Mr. Messina stated that he would need to get the materials prior to that date in order to respond in a timely fashion.

The application is adjourned to July 23, 2013.

Chairman Gutterman addressed the issue of communications to the Board on current applications before the Board. He noted that his personal email had been forwarded to residents in the Village regarding a particular application before the Board. He also stated that emails are being sent directly to Board members and that this is inappropriate. He noted that any and all materials must be submitted to Ann Powers, as Secretary to the Zoning Board. He also noted that he had requested that the ZBA Rules and Regulations be distributed to the Board and the Board will be discussing changes to the rules in order to address the matter regarding communications sent directly to Board members.

6. Application #31-2013, SHORE ACRES PROPERTY OWNERS ASSOCIATION, ET AL., regarding 700 S. Barry Avenue a/k/a 555 S. Barry Avenue - Mamaroneck Beach & Yacht Club (Section 4, Block 37, Lot 1) for an appeal of the determination of the Building Inspector, made on April 5, 2013, finding that the amended site plan application of Mamaroneck Beach & Yacht Club is zoning-compliant. (MR District)

Debra Cohen, attorney for the applicant, addressed the Board. She stated that this is the first time she is before the ZBA and will get acquainted with all the rules. She stated that this appeal arises from the Board taking an appeal from a determination made by an administrator of the Village. She went on to say that the appeal doesn't reflect the opinion the applicant has toward the Building Inspector.

Ms. Cohen went on to say that there are a couple of threshold issues. The first being Chapter 342-74 in determining whether the site plan application is zoning compliant and which zoning code to apply, she said. She stated that there have been opinions that the 2006 code should be followed. Ms. Cohen noted that she will provide documentation that shows the post 2006 code (the present code) should be applied.

The second aspect, Ms. Cohen stated, is whether the Board has jurisdiction over those matters. She noted that the Board has made previous determinations with respect to Chapters 186 and 294, but she intends to make an argument that there is jurisdiction.

Ms. Cohen referenced the letters submitted from Village Attorney Linda Whitehead on behalf of the Building Inspector. Ms. Cohen noted that in the letter, Ms. Whitehead states that she will be attending the July 23rd meeting to defend the Building Inspector's determination. She questioned what the role of the Village Attorney is in this matter and that the normal process is going to the ZBA for an appeal and then, if the appeal is not given, to move to an Article 78. If this matter goes to an Article 78, Ms. Cohen stated, it would place the Village Attorney in a strange position.

Mr. Weprin noted that the Village Attorney does not defend the Zoning Board of Appeals and Ms. Cohen stated that she was aware of that. She then handed over the presentation to Dan Natchez, the applicant.

Mr. Natchez addressed the Board and submitted a document of the slideshow presentation he was going to give to the Board. Mr. Natchez noted that this is an extremely important issue and proceeded to go through the slideshow presentation. He stated that MB&YC accounts for 27% of the marine zone and that what the Board decides regarding this matter will have a tremendous impact on the marine zone and other entities as well.

With respect to the legal name of the entity, Mr. Natchez stated that there is no listing with the Department of State for either name the Club has provided or with Westchester County as a d/b/a.

Mr. Natchez stated that the appeal is asking the ZBA to overturn the Building Inspector's determination. Mr. Natchez stated that he has known Mr. Gerety for a long time and this matter is not a reflection of him. He said that he feels the determination was made based on history and that new information has come to light which wasn't available in the past.

Mr. Natchez went on to say that the Club is in an MR zone and has been around for a long time. He said he feels this is an expansion of a non-conforming use since he believes the Club is a for

profit organization. Mr. Natchez also stated that the current zoning code is not being applied properly and the proposed development is not zoning compliant for either the present code or the pre-2006 code.

Mr. Natchez said that on April 5, 2013, a referral was made from the Building Inspector to the Planning Board that the amendment to the site plan application is zoning compliant. Mr. Natchez stated that he believes this referral was not correct. Mr. Natchez went through the Building Inspector's referral. He said that the use is non-conforming; the lot area is overstated; the building coverage is understated; the floor ratio is greater than 15%; there is no buffer for the parking setbacks; the architectural sketches are insufficient and there are plumbing issues with the flood elevations.

With respect to use issues, Mr. Natchez stated that the Zoning Code was changed over the years. And, with the change, the Club needed to become a not-for-profit entity. He said that the Board needs to know if the club is legally non-conforming or is acting as a non-zoning compliant entity. Mr. Natchez went on to say that one may not expand a non-conforming use.

Mr. Natchez referenced excerpts from a deposition of Lisa Rosenshein, the Club's owner, on September 10, 2009. In the deposition, Mr. Natchez states that Ms. Rosenshein stated that the not-for-profit corporation formed in the 1950's is a vestigial corporation at this point and that upon the Club's rezoning, it became unnecessary to operate through "Inc."

Mr. Natchez referenced the 2010 Stipulation Agreement between the Club and the Village and how the agreement was fully satisfied. When the site plan was approved, it became the final site plan, Mr. Natchez indicated. The building permit was issued, fees were paid by the Club and MB&YC was paid a settlement of \$825,000, Mr. Natchez noted. Once the assessed valuation was reduced, the consent judgment was fully satisfied, Mr. Natchez said. Based on all of the above, Mr. Natchez said that final means final and there shouldn't be any exceptions and that the Club shouldn't get a redo after a final site plan.

Mr. Natchez noted that in 2004, "seasonal housing" was not defined in the code and now it is defined. The code allows for 12 seasonal residences and the Club is proposing 18, Mr. Natchez said. The code prohibits kitchens in seasonal residences and the Club is proposing cooking facilities, he noted. Mr. Natchez said that the code states that the maximum square footage allowed is 600 sq. ft. and the Club is proposing a minimum of 480-1250 sq. ft. He also stated that per the code, the residence can't be occupied by the same person for more than 30 days and the Club allows less than six months per year for an occupant.

Mr. Natchez stated that clubs have been permitted in the MR district for some time now, but the definition has changed. Based on the changes, Mr. Natchez says the Club is either a non-conforming or non-compliant entity.

Mr. Natchez said that clubs in the MR zone are clearly supposed to be run by its members for the benefit of its members. He noted that Beach Point Club (on its website) emphasizes its members as does Orienta Beach Club. Mr. Natchez stated that, in contrast, MB&YC's web page emphasizes special events rather than member-oriented uses. He went on to say that the question becomes

what is a non-member event. Unlike other clubs, Mr. Natchez stated that MB&YC welcomes non-members to book event space at the club.

Mr. Natchez referenced a slide that showed multiple activities by the French American School at MB&YC Club. He also listed additional non-member events held at the Club in 2013. He noted that the Club submitted documents showing that they held 26 non-member events in 2012 and 26 non-member events in 2013 based on a Google search.

With respect to the manager's house, Mr. Natchez stated that he believes the house is used as a residence for a Club employee which is against the zoning code. He also noted that the Club has a large administrative space which is beyond what other clubs have. Mr. Natchez stated that much evidence exists, in his opinion that the club is not in compliance with the code.

Mr. Natchez stated that there is a discrepancy with the existing conditions at the Club and the survey. He said that the actual coverage of the tennis and maintenance building is not accurately shown on the survey. Mr. Natchez went on to say that there are massive lights on the premises that are not shown on the plans. The proposed plan is incomplete and inconsistent with observed existing conditions, he stated.

Mr. Natchez went through the non-compliance aspects of the club stating that the Club exceeds the maximum allowable lot coverage as the tennis courts and pool are not included. The Club is over the maximum allowable FAR by over 871 sq. ft., he noted. Mr. Natchez stated that the building height is higher than allowed, the building separation is not sufficient for residences and parking spaces are deficient by up to 728 parking spaces.

Mr. Natchez discussed the dining facilities and parking requirements which were not adequate for the dining facilities. He stated that Club members don't have access to the main dining facility because of the non-member events being held at the Club. He said that, unlike other clubs where you can go to the dining facility, that is not the case at MB&YC. This makes them deficient in their parking spaces, Mr. Natchez said. In addition, Mr. Natchez showed pictures of parking overcrowding at the Club.

Mr. Natchez showed a picture of lot area and underwater land analysis which he said demonstrates the Club is over the FAR. He went on to say that he believes none of the attic areas in either the existing or proposed buildings have been included as part of the FAR. If they were to be included, Mr. Natchez stated that the attic space would put the Club over the maximum FAR.

With respect to allowable story height, Mr. Natchez stated that the Otter Creek seasonal residence building and main clubhouse exceed the allowable story height. Mr. Natchez said that he feels that the grade has not been properly calculated as well. He said he believes mistakes have been made and that recalculations need to be performed.

Mr. Natchez said that the building height exceeds the allowable 40 foot height. Mr. Natchez stated that the coverage calculations are deficient because they do not include the tennis courts and swimming pool and they should be included.

Mr. Natchez noted that regarding FEMA flood damage prevention, new construction in the Village requires that all new plumbing openings be elevated to or above flood levels and the new plumbing fixtures the Club proposes are not above the flood elevation.

Mr. Natchez stated that there are a lot of questions regarding the swimming pool because there is insufficient information provided on the site plan. He asked how one can make a determination when there is uncertainty as to what is being proposed.

Mr. Natchez concluded by stating that he is asking the Board to overturn the determination by the Building Inspector. The site plan is an expansion of a non-conforming use since operations are commercial in nature and the current zoning code is not being used which makes the proposed development not zoning compliance, Mr. Natchez stated. He said the Board had a right to come up with its own determination per the stipulation that the Board entered into.

Mr. Steinman stated that there is a co-appellant that the Board may want to hear from before asking the owners of the Club to speak.

Sue McCrory, the co-appellant, addressed the Board. She stated that the issue before this Board is one of use. Mr. Weprin reminded Ms. McCrory that the Board has been through this in the past. Ms. McCrory said that the question of use was not addressed in 2010. She noted that the Village records were finally released after a FOIL request she had made had been denied and she filed and won an Article 78. With respect to the parcel of land known as Otter Creek, Ms. McCrory stated that MB&YC does not own the land and never did. Mr. Weprin stated that that issue should be taken up with the Court. Ms. McCrory stated that there may have been fraud perpetrated against the Village.

With regard to the seasonal residences and how they are operated, Ms. McCrory said that there was an earlier suit against the Planning Board regarding SEQRA. She went on to say that the public has been deceived through these corporate name changes and she cautioned the Board to be careful with the business entities. She noted that there is sworn testimony indicating the Club is a business entity. Chairman Gutterman asked if Ms. McCrory could flag the depositions since the documents she submitted were quite lengthy and Ms. McCrory stated that she would flag the appropriate pages. Mr. Natchez noted that very limited excerpts have already been provided from his slideshow presentation.

Chairman Gutterman asked if anyone wished to address the Board.

Paul Noto, attorney for MB&YC, addressed the Board. He stated that he first wished to address Ms. McCrory's comments and said that they were incredibly inaccurate. He went on to say that to suggest there was some hidden agenda is untrue. He stated that the Village had all the information that was mentioned by Ms. McCrory. He noted that this is an attempt by a handful of angry neighbors to stop the project from moving forward.

Mr. Noto stated that in January of 2013, the Club filed an amended site plan which lowered the height, re-arranged parking, expanded the yacht master building and lowered another building.

Because the Building Department was in flux, nothing could be done until a new Building Inspector was hired, Mr. Noto said. He stated that with Village counsel's involvement, the Building Inspector made a determination. Once the plan was deemed compliant, Mr. Noto said the Club went before the Planning Board. This Board needs to make a determination as to whether the current code or the previous code should be applied, he said.

Mr. Noto said that he has a concern that a precedent is being set whereby every determination made by the Building Inspector is challenged before the applicant goes to the Planning Board. He noted that the Building Inspector makes interpretations and that is his job. Mr. Noto questioned whether the Board wants to override his ability to make determinations. Once that line is crossed, he stated, there is no going back.

He stated that the Village Attorney, Linda Whitehead, will address the Board at the July meeting and the Building Inspector will provide testimony. Once that is done, Mr. Noto stated that he would provide a response to the Board. Mr. Noto asked the Board to synthesize what it wants from the Club as far as information. Mr. Weprin stated that with respect to the FAR, the Board would need to look at the tennis courts and pool areas. Mr. Noto stated that this presentation was done before the Planning Board. He also noted that the Building Inspector needs to know what the Board would like from him. Mr. Noto stated that the burden is on the applicant and not the Club.

Chairman Gutterman stated that there had been some discussion with counsel about a legal memorandum and he would like that to be distributed by the next meeting. Ms. Kramer stated that the Board needs to hear from the Village Attorney why the Board should use the pre-2006 zoning code versus the post 2006 zoning code. Mr. Steinman stated that if the Board determines the pre-2006 is incorrect, then we can't go further. Chairman Gutterman stated that he was disappointed that the Village Attorney was unable to attend tonight's meeting to answer the questions as to her determination.

Chairman Gutterman asked if anyone wished to address the Board.

Scott DeFoe addressed the Board. He stated that what is at issue is if a misrepresentation or fraud has taken place (which he is not saying has occurred). He said he feels the Board can consider this matter because it is a large plan and will have an impact long after this case is settled.

Eric Gordon, co-counsel for MB&YC, addressed the Board. He stated that he wasn't sure how this can be a claim of fraud when the Building Inspector has reviewed everything and made an interpretation.

Gabriel Brand addressed the Board. He stated that there is a significant change to the 2010 plan and is confused as to why the plan is not being reviewed under the current zoning laws. He stated that the proposed project will have a significant impact on the neighborhood. Mr. Brand also stated that this is not a Shore Acres issue, but a community issue. He provided an example of how there are large coach buses going through the streets and onto the Club's property when there are non-member events.

Jennifer Banks addressed the Board. She stated that she is confused as to why the Board is looking at the pre-2006 zoning laws. Mr. Weprin stated that that is something the Board needs to look at to make a determination. Ms. Kramer stated that the Court decided that the earlier code should apply. Ms. Banks stated that she also didn't understand how someone could make a determination after being on the job for only four days.

Allison Stuvio addressed the Board. She stated that she wanted to address Mr. Noto's comments that the individuals who oppose this project are angry neighbors. She went on to say that she has been depicted negatively over and over again and feels it's necessary to stand up and say that she and others are acting as responsible residents. Ms. Stuvio stated that there are reasons why people continue to speak up. She said that the Planning Board Chair had asked the Club not to have their members and non-members park their cars in a certain area to show good faith. She stated that last week that parking area was crowded with cars. There was even a situation where a car had to be dug out, she said.

Debbie Dorn addressed the Board. She stated that Mr. Natchez has done a thorough job in outlining the application. She said that there are non-conforming uses in the Village and that her concern is expanding that non-conformity. She also cautioned the Board that a huge precedent will be set.

John Hofstetter addressed the Board. He stated that as trustee during the settlement discussions, he had noted that the project could be viewed as a hotel and the Village Attorney at that time said someone later will need to make that determination. Mr. Weprin asked who the attorney was and Mr. Hofstetter said it was Steve Silverberg. Mr. Hofstetter went on to say that he believes this is a new plan and should be reviewed by the current zoning laws and not the pre-2006 zoning code.

Mr. Natchez addressed the Board. He stated that the Rosenshein depositions were not available to the public in the past and, therefore, never brought to the ZBA's attention until now. He went on to say that SAPOA supports the Club with respect to club activities. Mr. Natchez stated that Ms. Whitehead's communication stating that she will defend the Building Inspector is of concern to him. He said that this is not adversarial toward the Building Inspector and is uncomfortable with being characterized as being adversarial.

Mr. Natchez stated that he was surprised that the Board was asked by the Club to provide them with what the Board is looking for. Additionally, Mr. Natchez stated that it was noted that no changes are being made to the clubhouse when in fact it is being raised one story. Mr. Natchez asked the Board to review everything holistically. Mr. Weprin stated that Mr. Natchez appears to agree that if the pre-2006 code doesn't apply, there is nothing else to look at. Mr. Natchez stated that was true. He thanked the Board for their time.

The application is adjourned to the July 23rd meeting.

CLOSED APPLICATIONS

1. Application #2SP-2013, SFMG-S4, LLC D/B/A SALSA FRESCA MEXICAN GRILL, 354 Mamaroneck Avenue (Section 9, Block 18, Lot 22B), for a special permit to operate a restaurant. (C-2 District)

On motion of Ms. Kramer, seconded by Mr. Neufeld, the application for a special permit with a three year term limit is approved.

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

2. Application #10A-2013, JESSE LIPSCHER AND BARBARA GEBALA, 303 Orienta Avenue (Section 9, Block 58, Lot 41), for an area variance to enclose an existing covered porch where the proposed plan violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant proposes a front yard setback of 17.4 feet and 20 feet is required. (R-5 District)

The Board discussed the merits of the application. It was noted that the applicants propose to enclose an existing porch/terrace with no increase to the footprint of the home.

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

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

3. Application #1S-2013, PROSPECT CIGAR GROUP D/B/A DOC JAMES CIGAR LOUNGE, 133 E. Prospect Avenue (Section 9, Block 51, Lot 9B), to legalize a hanging sign where the sign violates Section 286-12B(1) (business establishments shall be limited to one façade sign) where this is the second facade sign, Section 286-12C(2) (the lower edge of a sign shall not be located above the level of the second story of the building), and Section 286-2 (Projecting Sign: the sign extends 7 feet where 18 inches is allowed from the plane of such wall or structure. (C-2 District)

The Board discussed the merits of the application. Chairman Gutterman stated that this is an existing condition, the topography is important to note and it is not a safety issue. Mr. Neufeld requested a draft resolution from counsel and Ms. Georgiou stated that she would provide one to the Board for the next meeting. It was also noted that there will not be a change to the character of the neighborhood as the pole and previous sign have been erected for years.

MINUTES

On motion of Mr. Sullivan, seconded by Mr. Neufeld, the April 4, 2013 meeting minutes are approved.

Ayes: Gutterman, Kramer, Sullivan, Weprin, Neufeld

Nays: None

On motion of Mr. Sullivan, seconded by Mr. Weprin, the May 2, 2013 meeting minutes are approved.

Ayes: Kramer, Sullivan, Weprin, Neufeld

Nays: None

Abstain: Gutterman

ADJOURN

On motion of Mr. Gutterman, seconded by Ms. Kramer, the meeting was adjourned at 10:45 p.m.

Ayes: Gutterman, Kramer, Sullivan, Weprin, Neufeld

Nays: None

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers