

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON TUESDAY, SEPTEMBER 12, 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 September 12, 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
Robin Kramer, Secretary
Greg Sullivan, Board Member
Dave Neufeld, Board Member
Anna Georgiou, Counsel to Board
Bill Gerety, Building Inspector

ABSENT: Barry Weprin, Vice Chairman

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 7:32 p.m. He noted for the record that Barry Weprin would not be present tonight, although the Board did have a quorum. Chairman Gutterman indicated that applicants could request an adjournment if they so wished.

PUBLIC HEARINGS

1. Application #15SP-2010, FRANKIE & FANUCCI'S MAMARONECK LLC., 301 Mamaroneck Avenue (Section 9, Block 19, Lot 11A), to renew a special permit to operate an existing restaurant. (C-2 District)

Angelo Viscoso, the applicant, addressed the Board. He stated that he is requesting a renewal of the special permit to operate a restaurant. He noted that the terms are the same and that there have been no violations.

Mr. Neufeld asked about the parking lot behind the restaurant. Mr. Viscoso stated that customers pull up to the spots and restaurant employees bring take-out food to the waiting cars. Chairman Gutterman asked Mr. Gerety if this was appropriate. Mr. Gerety stated that he was not familiar if this is a right-of-way, but that there have been no complaints made to the Building Department. Mr. Viscoso stated that the parking spaces are owned by the restaurant.

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

Mr. Sullivan moved to close the public hearing on Application #15SP-2010, seconded by Ms. Kramer.

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

2. Application #18SP-2010, CARILLO'S AUTO BODY, 432 Waverly Avenue (Section 8, Block 111, Lot 22A), to renew a special permit to operate an existing body shop. (M-1 District)

Joseph Carillo, the applicant, addressed the Board. He stated that he is requesting the renewal of his special permit to operate a body shop. Mr. Carillo said that everything with the operation of the auto body shop is the same. Ms. Kramer asked if the applicant has complied with all the conditions of the special permit and he indicated that he had complied.

Chairman Gutterman asked if anyone wished to address the Board.

Tony Castro, Esq., addressed the Board. He stated that he represents the auto body shop owners across the street located at 517 Waverly Avenue. Mr. Castro stated that he was before this Board for the original special permit application and objected to it at that time. He stated that in 2000, the Zoning Code did not allow auto body shops in the industrial areas.

Discussion arose as to whether the ZBA can deal with legislative matters. Mr. Castro stated that perhaps he is getting his Boards mixed up and it was the Board of Trustees that had passed that specific legislation. He went on to say that he wants to make his objection for the record. Mr. Castro also stated that he is doing some investigation regarding the legislative matter and will deal with it when and if he comes up with findings.

Mr. Neufeld moved to close the public hearing on Application #18SP-2010, seconded by Mr. Sullivan.

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

3. Application 16SP-2010, JUMANA HAMDAN D/B/A HASH-O-NASH MIDDLE EASTERN COUNTRY KITCHEN, 441 Mamaroneck Avenue (Section 9, Block 11, Lot 4), to renew a special permit to operate an existing restaurant. (C-2 District)

Jumana Hamdan, the applicant, addressed the Board. Ms. Kramer asked about the belly dancing and whether the Board needs to deal with that aspect with request to use. Chairman Gutterman asked if that falls under the cabaret license. Mr. Sullivan stated that this Board does not deal with the issuance of cabaret licenses and there have been no complaints against the restaurant. Ms. Kramer stated that there is belly dancing at the restaurant and Chairman Gutterman said he had been there and has seen it. Ms. Kramer stated that if the applicant needs a cabaret license, he

should obtain one or it should be dealt with in the special permit. Mr. Gerety stated that the applicant needs to have a cabaret license. Chairman Gutterman stated that the Board needs to determine whether to include that condition in the resolution. Mr. Hamdan asked why this issue is only coming up now after two years and that it has never been a problem before. Ms. Kramer stated that the Board did not know about the belly dancing and now it does. Mr. Hamdan stated that the Chairman just stated for the record that he knew about the belly dancing. Ms. Kramer stated that even though the Chairman may have known about the belly dancing, doesn't mean he has jurisdiction to give the restaurant a violation. Chairman Gutterman concurred with what Ms. Kramer was saying. Ms. Kramer stated that because it was permitted does not make it legal.

Discussion arose as to whether there should be a stipulation in the resolution regarding the restaurant obtaining a cabaret license. Mr. Sullivan stated that he did not believe the Board should be placing language in the resolution stipulated that the applicant adhere to this law or that law. Mr. Neufeld stated that the ZBA resolutions stipulate that other applicable laws must be followed and adhered to.

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

Mr. Sullivan moved to close the public hearing on Application #16SP-2010, seconded by Mr. Neufeld.

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

4. Application #14A-2013, BB & G CONSTRUCTION CORP., 209 Grand Street (Section 8, Block 64, Lot 32), for variances to subdivide an existing lot into two lots and construct a new two-family residence on lot B where the property in an R-4F zone per Article V, Section 342-27 of the Schedule of Minimum Requirements for Residential Districts requires the following: 2,500 sq. ft. lot area per dwelling unit required, lots A and B insufficient by 170.76 sq. ft.; 5,000 sq. ft. lot area required, lots A and B insufficient by 170.76 sq. ft.; lot B width 50 ft. required, insufficient by 1.71 ft.; lot B depth 100 ft. required, insufficient by 1.46 ft.; lot A depth 100 ft. required, insufficient by 5.39 ft. and Lot A total side yard 16 ft. required, insufficient by 1.6 ft. (R-4F District)

Michael Mastrogiacomo, the applicant's engineer, addressed the Board. Chairman Gutterman stated that per the Board's request, the applicant had furnished an updated survey which was an issue at the last meeting. Mr. Mastrogiacomo confirmed that the updated survey was the item missing for the last meeting. He stated that though the lot area doesn't meet the criteria, it's in line with the other houses in the area. We have checked the tax maps and there isn't one lot that is 5000 square feet, he stated. There are a handful of properties that are a little larger and meet the code, he said.

Chairman Gutterman asked what the respective areas of each lot are. Mr. Mastrogiacomo stated that he would need to ask the surveyor. He also stated that the lots refer to an old subdivision map. Chairman Gutterman stated that the information is there to crunch the numbers and that the

lot on the left side of the plan is clearly smaller than the other lot. Ms. Kramer noted that the application had a lot area proposed for 4,829.24 sq. ft. Mr. Mastrogiacomo stated that the new dividing line will be rotated in order to balance the 340 sq. ft. He went on to say that the line on the map is the old lot line from the subdivision map and that it has no significance for this application. Mr. Mastrogiacomo said that lot 208 is 2,460 sq. ft. and lot 2010 is 2,180 sq. ft. Mr. Mastrogiacomo stated that it is his intent to make the lots equal in size.

Ms. Kramer stated that on the drawings, there is a proposed lot line and asked how a straight lot line can give two equal lots. Mr. Mastrogiacomo stated that he is pivoting the line. Chairman Gutterman stated that it is quite doable with a straight line.

Chairman Gutterman asked if anyone wished to address the Board.

Patree Limardi, of 259 Grand Street, addressed the Board. She noted that the existing house has four cars parked in the driveway, but that the applicant is taking away the driveway when the new house is built. She asked where the cars will be parking because there is no available parking on Grand Street. She said the parking will be a major problem.

Ms. Limardi went on to say that the owner doesn't live at the residence and although the applicant provided her with a number to call if there is a problem, she said it isn't her responsibility to keep an eye on the house and call the owner.

Tom Cosmo addressed the Board. He stated that he wishes the applicant would reconsider this project and do it in another municipality. Mr. Cosmo stated that the owner wants to build the structure and turn around and sell it for a quick profit.

He went on to say that cars park on one side of Grand Street and that each house has four cars. That creates a lot of cars parked on the street at any given time, Mr. Cosmo stated. He also said that he wants to eliminate the noise, congestion and disturbance that the construction will bring.

Nick Barone, a principle at BB&G Construction, stated that Mr. Cosmo is not a homeowner on the street. He stated that he is asking not to be treated differently than the other residents on the block. Mr. Barone stated that he will comply with all parking issues.

Mr. Barone stated that he did provide Ms. Limardi with his phone number to call should there be a problem. He said that he feels that Ms. Limardi's comments are toward having a specific ethnic slant. At this point, Ms. Limardi stated that Mr. Barone's comments were not accurate.

Dave Casterella addressed the Board. He stated that he understands the houses in the area are not conforming and that he, himself, experienced issues with getting work done on his house because of the non-conformity issue. Mr. Casterella said that he takes issue with the continuation of building non-conforming homes in this area. He concluded by stating that there is no room for these houses.

Ms. Limardi stated that there was no signage on the property and no mailings that went out to the neighbors announcing this meeting. Ms. Georgiou stated that no new mailings are needed for an

application where the public hearing has already been properly noticed and opened. Ms. Limardi stated that she only found out about the meeting because she remembered it. Chairman Gutterman asked what the policy is with respect to signage. Ms. Georgiou stated that the Board may choose to keep the matter open since the sign was apparently removed and not displayed until this afternoon.

Ms. Kramer asked, with respect to the current two-family home, where do the residents park. Mr. Mastrogiacomo said a driveway is used for parking. Ms. Kramer stated that, according to the code, four parking spaces are required and asked how many spaces are there now. Mr. Mastrogiacomo said there are two spaces in the garage and five or six outside, or a little less. Ms. Kramer stated that it is conforming for parking as of now. Ms. Kramer noted that with two lots, the applicant will need a total of eight parking spaces and if there aren't eight, the applicant will need a parking variance. She said that the applicant needs to redo the drawings so that the proposed plan is in compliance with parking. Mr. Mastrogiacomo stated that was not a problem. He also asked if there were any additional comments so that he won't need to keep coming back before the Board.

Ms. Georgiou asked if the existing house is a two-family house and Mr. Mastrogiacomo stated that it was a two-family house. Mr. Sullivan told Mr. Mastrogiacomo to make sure the sign is up well before the next meeting.

Mr. Casterella asked what constitutes a garage and Chairman Gutterman stated that the code will stipulate what the garage should be. Mr. Casterella stated that the Board needs to be sure that the proposed garage can fit two cars. Ms. Georgiou suggested the applicant meet with the Building Inspector to clarify these issues.

The application is adjourned to October 3, 2013.

5. Adjourned Application #3I-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)

Chairman Gutterman stated that the Board received a communication from MB&YC asking for the matter to be adjourned because Mr. Weprin is absent. He stated that the attorney for SAPOA had no objection to adjourning.

Debra Cohen, attorney for SAPOA, addressed the Board. She stated that the applicant came prepared to move forward, but recognizes this is a complicated issue and that the applicant does not mind adjourning until there is a full Board. She apologized to the people who came out to speak. Chairman Gutterman noted that he can't guarantee there will be a full Board next month or the month after that. Ms. Cohen stated that she will be prepared for next month and that this is a courtesy for this month.

Eric Gordon, attorney for MB&YC, addressed the Board. He thanked Ms. Cohen and SAPOA for agreeing to the adjournment. He also stated that he wants to clarify that the first step for this Board is to make a determination regarding the pre-2006 code or the post-2006 code.

Ms. Cohen interjected by stating that if the application was to be adjourned tonight, then there shouldn't be any further discussion.

The application was adjourned to October 3, 2013.

CLOSED APPLICATIONS

1. 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 zero loading spaces and five 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 89 parking spaces are required. (M-1 District)

Ms. Kramer stated that the issue is that there is no existing building being shown on the plans. Mr. Neufeld stated that he is willing to approve if there is a fifteen foot setback on Waverly Avenue. He said that if the Board allows the applicant to bring the building too close to the property line, then others will want to do the same. Ms. Kramer stated that she agrees with Mr. Neufeld regarding the building being right up on the setback. Chairman Gutterman stated that he did not have an issue with the setback. Ms. Kramer also noted that the applicant is raising the building one story. Ms. Georgiou suggested that the Board seek advice of counsel.

On motion of Mr. Neufeld, seconded by Ms. Kramer, the Board voted to have an advice of counsel session with counsel.

At 8:21 p.m. the Board moved into Advice of Counsel Session.

At 8:38 p.m. the Board resumed the discussion of closed applications.

Mr. Neufeld stated that the applicant can achieve their goals and size, but he would impose a setback which could be used for parking and not have it elevated. Mr. Neufeld stated that for the length of Waverly Avenue, for new construction, should have a twelve foot setback. Chairman Gutterman didn't agree. He felt that the applicant's proposed setback adds a sidewalk and improves the appearance of the area. He noted that other buildings are also close to the street. Mr. Neufeld then suggested making the setback ten feet.

Ms. Kramer stated that bulk is the issue; the height of the building is allowed. She said that it is a big building with a big impact. The current building is longer, but only two floors in height, she said. Ms. Kramer stated that she wants to get the bulk back a bit. Chairman Gutterman suggested the building be two stories in the front and as it goes back, it can be raised to four stories. Mr. Neufeld stated that the Board agrees with the size and ratio; he is asking the applicant to relocate the building further back.

Ms. Kramer noted that with respect to parking, the parking study indicates the parking is satisfactory. Mr. Sullivan stated that he doesn't have the same issues as the rest of the Board does. Ms. Georgiou stated that she would like to draft a resolution for the Board to review at the next meeting. Chairman Gutterman asked for Ms. Georgiou to draft two resolutions; one resolution with the setback and the other resolution without the setback. Ms. Kramer stated that she believes this is the only building in the area that will be built up to the street.

Chairman Gutterman stated that he feels four stories at the proposed location is jarring, but suggested having two stories, a setback and then four stories. Ms. Kramer stated that she originally agreed with that concept, but doesn't anymore; it will be the only building up against the street. Mr. Neufeld asked if Ms. Kramer would be comfortable if the setback, per the Planning Board, could be used for anything other than elevation. Ms. Kramer stated that she would find that acceptable and feels it should be at grade. Chairman Gutterman clarified that the one resolution is for the setback and the other resolution is as proposed by the applicant.

Mr. Sullivan reminded the Board that they would be going beyond the 62 day time period for deliberations. Chairman Gutterman asked Chris Murphy, the applicant, if he would extend the Board's time beyond the 62 days. Mr. Murphy asked what would happen if he said no and Chairman Gutterman stated that the application would be denied. Mr. Murphy stated that since he had no choice, he would approve the time extension.

2. 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)

Ms. Kramer stated that it's clear when the property owners received their permit the foundation was not in accordance with FEMA. There was litigation on the FAR and it was determined that the FAR did not exceed the maximum, she said. Ms. Kramer went on to say that subsequent to that the zone was revised and what was built met FEMA regulations. She said she felt the issue of FAR was resolved.

Ms. Kramer noted that there was discussion about the walls of the foundation not being breakaway and that increased the FAR. She said that which is there today complies with FEMA, but what was originally built did not. Chairman Gutterman stated that he agrees with Ms. Kramer. He went on to say that the FAR was resolved and there is also the issue of time-barred, once construction is well on its way to being completed.

Mr. Sullivan stated that the original FAR hearing in 2007 was done in great detail. He noted that with respect to Chapter 186, the Board has made consistent determinations that it doesn't have jurisdiction. The 2007 application was very thorough and was already decided.

Ms. Kramer said that the only FAR issue the applicant raised now was that the property owners didn't build what was on the plans and therefore the 2007 determination doesn't apply anymore. Mr. Sullivan stated that the Board heard nothing from the Building Department regarding that issue. Chairman Gutterman stated that plans change as the construction process starts and gets underway.

Mr. Neufeld asked where this will all go. He said the property owners would have to come before the ZBA for variances. Much of this has already been decided, he said. It's a matter of res judicata, he said. Ms. Kramer said that the applicant is saying that since the homeowner didn't build what was shown on the plans, then the FAR is wrong. Ms. Georgiou noted that the house was completed in 2007 based on comments on the record. Mr. Neufeld asked when the Article 78 was filed and Ms. Georgiou stated it would have been filed 30 days after the decision to be timely. She indicated that there were two ZBA decisions, one in 2006 and one in 2007. Ms. Georgiou also added that there was testimony from the homeowner that the home was built per the plans.

Ms. Kramer suggested that the Board review a draft resolution. Chairman Gutterman asked for it to include the denial based on Chapter 186 and also the previous resolution of the FAR. Chairman Gutterman asked if the applicant would agree to extend the time beyond the 62 days for deliberation and Ms. McCrory agreed to the extension.

3. Application #15SP-2010, FRANKIE & FANUCCI'S MAMARONECK LLC., 301 Mamaroneck Avenue (Section 9, Block 19, Lot 11A), to renew a special permit to operate an existing restaurant. (C-2 District)

The Board discussed the merits of the application. The special permit is granted without a renewal period.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application for the renewal of a special permit is approved without a term limit.

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

4. Application #18SP-2010, CARILLO'S AUTO BODY, 432 Waverly Avenue (Section 8, Block 111, Lot 22A), to renew a special permit to operate an existing body shop. (M-1 District)

The Board discussed the merits of the application. The special permit is granted without a renewal period.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application for the renewal of a special permit is approved without a term limit.

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

5. Application 16SP-2010, JUMANA HAMDAN D/B/A HASH-O-NASH MIDDLE EASTERN COUNTRY KITCHEN, 441 Mamaroneck Avenue (Section 9, Block 11, Lot 4), to renew a special permit to operate an existing restaurant. (C-2 District)

The Board discussed the merits of the application. The special permit is granted without a renewal period.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application for the renewal of a special permit is approved without a term limit.

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

OTHER BUSINESS

1. Application #3SP-2013, WILLIAM VITALE D/B/A ANDREA'S 25 OF WESTCHESTER, LLC., 974 E. Boston Post Road (Section 4, Block 63, Lot 4A), for a special permit to operate a restaurant. (C-1 District)

Ms. Powers noted for the record that the survey was not submitted and that the owner of the property was not in attendance. Mr. Sullivan suggested giving the property owner one more chance. Mr. Neufeld stated that he should submit the survey by end of business (4:30 p.m.) on September 30, 2013 to the Zoning Board Office. Ms. Kramer stated that this should be an enforcement matter. The Board asked Ms. Powers to send a letter requesting the submission of the survey and that failure to do so will warrant the matter to be referred to the Building Department.

2. Proposed Local Law N-2013 (Chapter 342-61 & 342-92 – Fee in Lieu of Parking)

The Board reviewed PLL N-2013. Ms. Kramer stated that right now there is a requirement that one provides specific parking spaces or pay a fee. She noted that the ZBA has given variances for this when applicants have asked for a variance. Ms. Kramer questioned whether someone could vary this provision.

Mr. Neufeld said he felt this section is pre-empted by New York State Law and that he doesn't see how this can be legally done. Mr. Neufeld also noted that some municipalities in the past have tried to change zoning and haven't been allowed.

Ms. Kramer stated that she agrees with the goal, but perhaps it should be handled in another way, such as adding it to the fee schedule. Mr. Neufeld stated that the Board can't tell the ZBA this is your standard. Mr. Sullivan stated that he feels the Village should remove the fee; it has never been used for anything. Chairman Gutterman stated that the ZBA has granted many variances in the past because of Mr. Sullivan's point. Ms. Kramer stated that she supports the intent, but has concerns that as the law is drafted, it doesn't meet its intended goals.

3. Proposed Local Law M-2013 (Chapter 342-3 – Definition of Floor Area, Gross)

The Board reviewed PLL M-2013. Ms. Kramer stated that she did not have a problem with the 400 foot garage not being included in the FAR, but she has issues with two of the sub-categories that exclude FAR (#4 - *For all other uses, any areas or structures devoted only to off-street parking or loading*) and (#5 - *In buildings other than one and two family dwellings, mechanical and utility rooms supporting building operations and maintenance*). She stated that a large room could be built to house utility, but that because of its large size it could be used for other purposes. Chairman Gutterman stated that there are guidelines that prevent people from using utility rooms for other purposes. It was suggested that the word "room" be taken out and replaced with the word "spaces." Ms. Kramer stated that the word change doesn't limit the size of what can be built.

Ms. Georgiou asked if the Board would like a draft of their comments to be circulated for review before sending to the BOT and the Board said yes. Ms. Kramer said she felt the FAR for parking structures should count.

MINUTES

The minutes were tabled until the October 3, 2013 meeting. Ms. Kramer submitted revisions of the July 23, 2013 meeting minutes at the meeting.

ADJOURN

On motion of Mr. Sullivan, seconded by Ms. Kramer, the meeting was adjourned at 9:30 p.m.

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

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers