

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, SEPTEMBER 4, 2014 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 4, 2014. 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: Barry Weprin, Chairman
Robin Kramer, Secretary
Greg Sullivan, Board Member
Dave Neufeld, Board Member
Len Violi, Board Member
Anna Georgiou, Counsel to Board
Les Steinman, Counsel to Board
Rex Gedney, Agent for Building Inspector

ABSENT: None

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2014 DEC -8 PM 3:18
VILLAGE OF MAMARONECK
NEW YORK

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NEW YORK

Kathleen McSherry, Court Reporter, was present at the meeting to take the stenographic minutes, which will not be transcribed unless specifically requested.

PUBLIC HEARINGS

1. Application #11A-2014, BARRY AND CYNTHIA CASTERELLA, 133 Madison Street, (Section 8, Block 81, Lot 25B), for area variances to construct a one story addition and open porch where the addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements where a minimum rear yard setback of 25' is required and the applicant proposes 9.28'. The addition and porch violate the required combined side yard setback of 16' where the applicant proposes 14.7'. (R-4F District)

Joseph Guglielmo of Gordon and Yestadt Architects represented the applicant. He stated the family room addition will be one story, 16'x19.7'. The porch will be 5'x 9'. The side yard projection will be no further than the house projects. An updated survey was submitted.

Ms. Kramer asked about the parking easement. Mrs. Casterella stated the driveway is shared with the neighbors who help maintain it. Off street parking was needed when the houses were built.

Chairman Weprin asked if anyone wanted to address the Board. None did.

Mr. Sullivan motioned to close the public hearing, seconded by Mr. Violi.

Ayes: Neufeld, Kramer, Sullivan, Violi, Weprin

Nays: None

2. Adjourned Application #15A-2014, ANA CEBALLOS, 715 Bleeker Avenue, (Section 9, Block 91, Lot 13A) for area variances to construct a two story addition and second floor addition which violate Article V, Section 342-27 of the Schedule of Minimum Requirements where a minimum side yard setback of 15' is required and the applicant proposes 11.89'. The applicant also violates the required combined side yard setback of 35' where 29' 7" is proposed. (R-15 District)

An updated survey was submitted prior to the meeting. The survey shows a different dimension from the house to the side property line than the previous survey showed. The side yard setback now being requested is 11.7' and the combined yard setback now being requested is 29'.

Chairman Weprin asked if anyone wanted to address the Board. None did.

Mr. Sullivan motioned to close the public hearing, seconded by Mr. Violi.

Ayes: Neufeld, Kramer, Sullivan, Violi, Weprin

Nays: None

3. Adjourned Application #1S-2014, HALF TIME BEVERAGE, 139 Hoyt Avenue, (Section 8, Block 112, Lots 46B-55) for sign variances to legalize signs where the main entrance sign violates Chapter 286-10 A of the Sign Code where the maximum height allowed is 30" and the applicant proposes 96". The awning sign also violates Chapter 286-10 A of the Sign Code where the maximum height allowed is 30" and the awning is 60". The freestanding sign violates Chapter 286-11 B(1) where a freestanding sign is not permitted within 50' of the street. (M-1 District)

Paul Noto, Esq. represented the applicant. He stated they are withdrawing the request for the freestanding sign.

Mr. Alan Daniels, the business owner, stated the bottle cap logo is the façade sign, not the yellow paint.

Chairman Weprin asked if anyone wanted to address the Board. None did.

Mr. Neufeld motioned to close the public hearing, seconded by Ms. Kramer.

Ayes: Sullivan, Kramer, Violi, Neufeld, Weprin

Nays: None

CLOSED APPLICATIONS

1. Adjourned Application #3SP-2008, 211 MAMARONECK AVE. RESTAURANT LLC, D/B/A MOLLY SPILLANE'S, 211 Mamaroneck Avenue, (Section 9, Block 19, Lot 1A) to renew a special permit to operate a restaurant. (C-2 District)

Chairman Weprin stated that a letter had previously been submitted by Mr. Noto asking to re-open the hearing. The Board informally voted not to re-open the hearing as the applicant can re-apply before the special permit expires.

Ms. Georgiou supplied the Board with an embellished draft resolution. Mr. Neufeld submitted a draft resolution with his changes. He commented that although there aren't active complaints by Code, neighbors have complained to the Police Department and testified about the noise levels. The commercial area is next to the residential area, it's a balancing issue with both being legal areas. The applicant was candid in not being able to keep the windows closed. He votes no to re-opening the hearing as the applicant should have supplied the information earlier, it would delay everything now. The applicant can re-apply after 90 days.

Chairman Weprin agrees with Mr. Neufeld but would take out the 90 day restriction to re-apply.

Mr. Sullivan disagrees with the 90 day restriction and closing the patio.

Mr. Violi doesn't have a problem with re-opening the hearing. He visited the site on a Saturday night, talking from the patio was not loud and there wasn't a difference in noise when the patio doors were open. He doesn't agree with #9 in the draft resolution, the patio doors should have a self closing hinge. He wouldn't vote to close the patio but agrees to not having music on the patio.

Ms. Kramer went to the site a few times on Saturday nights, most times the windows were open and the music could be heard outside. She thinks paragraph 9 should be re-worked and that it's not inappropriate to close the patio.

William Ciraco, Asst. Building Inspector/Fire Inspector doesn't want the word lock in paragraph D, any alarm must be in compliance with NFPA72. The Board agrees, the mechanism to keep the windows closed must be in compliance with the law.

Ms. Kramer wants #12 taken out.

Mr. Neufeld motioned to adopt the draft resolution, seconded by Ms. Kramer.

Ayes: Neufeld, Kramer, Weprin

Nays: Sullivan, Violi

2. Application #8A-2014, CAPPETTA, INC., 510 Pine Street, (Section 4, Block 54, Lot 23A) for area variances for issuance of a Certificate of Occupancy for a new one family dwelling constructed under Building Permit #12-0775 with the dwelling violating Article V, Section 342-27 where the front yard setback for an R-5 zone is 20'-0" and the applicant has provided 19'-4". The applicant also violates Article IV, Section 342-14 (A) building projections where exterior stairs shall project a maximum of 3'-0" into a required front yard and the applicant has provided a projection of 4'-6". The applicant also violates Article VIII, Section 342-54 (B) off street parking and loading where the applicant proposes a second required parking space within the required front yard. The applicant also violates Article II, Section 342-3 where the applicant proposes the length of the required second parking space to be 15'.5" where 19'-0" is required as noted in the definition of "parking space". (R-5 District)

NOTE: The third and fourth variances were removed from the application at the June 5, 2014 meeting.

Mr. Sullivan motioned to adopt the resolution as prepared by Counsel, seconded by Ms. Kramer.

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

3. 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)

The Board reviewed the outstanding 28 zoning compliance issues, and the arguments raised by the appellants and the property owner with respect to those issues, as set forth on a chart entitled "SAPOA 5/21/14 RESPONSE TO: MB&YC CHART ON ALLEGED ZONING VIOLATIONS TAKEN FROM SUMMARY OF SAPOA'S ANALYSIS OF APPEALS OF BUILDING INSPECTOR'S DETERMINATIONS DATED JULY 9, 2013" ("Chart").

Mr. Weprin stated that preliminary findings were previously made pertaining to the legality of the use of the property and the applicability of the pre-2006 zoning code. If the ZBA adhered to those findings, some of the 28 issues referred to above would become moot.

Ms. Kramer asked if subsequently received information regarding a 2000 ZBA decision is relevant to the current appeal. Mr. Steinman stated that it is not relevant insofar as it related to the scope of permitted accessory uses on the site. At that time, the ZBA, based upon the size of certain proposed facilities, determined that the uses proposed were not permitted accessory uses. Subsequent to that resolution, in 2001, the Board of Trustees amended the zoning code to expand the extent of permitted catering and dining accessory uses permitted on MR zoned property such as the MBYC property.

No ZBA member requested that the previous two decisions be reconsidered.

Mr. Weprin further stated that a number of the other issues raised are not within the purview of the ZBA. However, issue #'s 8-19 do fall within the ZBA's jurisdiction.

In reviewing the remaining issues, Mr. Weprin stated that the applicant has the burden of proof, and, if there is any ambiguity in terms of interpretation of the zoning ordinance, the ambiguity should be resolved in favor of the property owner.

The Board went through the items on the chart they feel have already been decided or are not within their purview. Issue #s 1, 2, 3, 6, 25 and 26 pertain to use or which zoning ordinance applies, matters that have already been determined. Issue #s 4, 7, 21 and 22 are site plan/Planning Board issues, rather than zoning compliance issues for the ZBA to determine. Issue #s 5 and 24 are Village Engineer/SWPPP issues, not zoning compliance issue for the ZBA to determine. Issue #20 pertaining to ADA parking requirements is a matter of federal law. Issue # 23 involves a plumbing matter under Chapter 186 of the Village Code, not the Zoning Ordinance. Issue # 24 is a storm water pollution prevention issue which the Board has previously determined not to be within our purview. Issue #'s 25 and 26 involved questions going to permitted uses on the property, a matter previously addressed by the Board. With respect to Issue #25, Ms. Kramer disagreed. Issue # 27 pertains to the fire code, a matter not within the ZBA's jurisdiction.

The Board discussed Issue #28 pertaining to a permit required from the Planning Board for any building or structure within 50 feet from the mean high-water line of Long Island Sound. Ms Kramer pointed out that the Zoning Chart refers to a setback requirement in Section 146-7 and that such a setback requirement is a zoning requirement. Mr. Steinman stated that the reference to "setback" was inapt. It is a permit requirement for the Planning Board. Mr. Viola concurred with that interpretation. Mr. Steinman stated that Chapter 146 was replaced by Chapter 240, and 240-30 (D) refers to a permit from the Planning Board. Chapter 240 was adopted in 2004. Ms. Kramer asked if the reference to Chapter 146-7 still applies. Mr. Steinman said that the question was impossible to answer without knowing what was in Chapter 146. The reference could be meaningless or could be construed to potentially apply to the successor of Chapter 146. However, you can't apply something that no longer exists. The Board agreed that they would resolve the ambiguity in favor of the property owner..

The Board discussed Issues # 8 and 9 pertaining to FAR. Ms Kramer noted that issue regarding the mean high water line was not addressed in the pre-2006 code and that Section 58-c of the Village Code referred to by the appellants relates to residential subdivisions and is not applicable to this appeal. Ms. Kramer feels the attic space should be included in the calculation of gross floor area as there isn't a requirement in the definition of floor area that it has to be finished. Also, Ms Kramer stated that the definition of gross floor area does not refer to story and the definition of story, and the distinction it makes between unfinished and finished space, is irrelevant to this issue. Mr. Violi feels attics are slanted roof rafters. There are no walls. Walls are roof rafters and shouldn't be included. Ms Kramer stated that the roof is the external wall. Mr. Sullivan disagrees with Ms. Kramer. Ms. Kramer will accept a portion of the attic space it as floor area but not none of it. Mr. Neufeld agrees with Ms. Kramer. Mr. Weprin feels Ms. Kramer has a point but finds it troubling and wishes the Building Inspector was here to interpret. If it were to be determined that a portion of the attic space should be counted as floor area, a new calculation of floor area by the building inspector would be necessary. The Board chose to move on without making a determination on these issues.

The Board discussed Issue # 10. MB&YC says ½ story only applies to finished attic space. Ms Kramer stated that there isn't anything in the Code that tells you that. The Board doesn't know if counting a ½ story would matter as the buildings are 1 and 2 stories. Mr. Violi doesn't remember seeing anything over 3 stories when he reviewed a prior MBYC application when he served on the Planning Board. No consensus on this issue was reached.

The Board discussed Issue # 11. Ms. Kramer stated the appellant is not right, the issue is building coverage and the tennis courts and pools are not buildings and are not counted as part of coverage.

The Board discussed Issue # 12 pertaining to average grade. According to appellants this issue affects the Clubhouse. However, the 2013 Amended Site Plan does not propose any changes to the Clubhouse.

The Board discussed Issue # 13 pertaining to building height. Here again appellants arguments focus on the Clubhouse and the 2013 Amended Site Plan does not propose any change to the clubhouse..

The Board discussed Issue # 14 pertaining to building separation and determined that the building separation requirements referred to residential zones and do not apply as the MB&YC property is in the MR zone, a non-residential district.

The Board discussed Issue # 15 pertaining to a minimum required number of feet of land immediately surrounding any dwelling unit. The ZBA noted the ambiguity of whether the words "immediately surrounding" are meant to be applied to each individual unit of an attached development, debated whether the Building Inspector had sufficient information to address this issue and did not reach a determination on this issue..

The Board discussed Issue # 16 pertaining to the definition of Lot Frontage and, based upon a review of the arguments presented, determined that there was no issue with the Building Inspector's determination..

The Board discussed Issue # 17 pertaining to the measurement of required yards and determined that the Code is silent on the issue and therefore does not support the issue raised by the appellants.

The Board discussed Issue # 18 pertaining to parking requirements. In a prior challenge to the zoning compliance of MB&YC's 2010 Amended Site Plan Application, the ZBA approved the parking calculation with two exceptions unrelated to the issue now being raised by the appellants. Ms. Kramer stated that new information regarding the various types of memberships was not known to the ZBA at the time of its prior determination. Mr. Weprin stated that the ZBA was aware in 2011 that there were different types of memberships. Mr. Steinman stated in 2011 one of the arguments that was raised dealt with the capacity of dining facilities and this issue was previously addressed by the ZBA and the building inspector's determination on this issue was upheld. None of the other issues were raised in that prior challenge. Based upon its prior determination, the ZBA denied this aspect of the appeal.

The Board discussed Issue # 19 pertaining to landscaping and screening of parking areas. Ms Kramer stated that although it is a site plan issue, specific requirements have to be zoning compliant. Ms. Kramer asked if the parking lot adjacent to Otter Creek has .the 10' buffer. Chairman Weprin stated that other clubs don't have the 10' wide buffer planting strip. The intent of the provision is to protect residents from views of cars. Otter Creek does not abut a residential area and thus the requirement would not apply. The ZBA determined that the Zoning Code can be interpreted so that the 10' wide buffer planting strip requirement doesn't apply, where as here, the parking lot is a significant distance from the nearest residential property.

Mr. Steinman proposed to review everything done tonight, identifying issues that have been resolved and those that have not been resolved. As to unresolved issues, Mr. Weprin requested counsel to review the record and provide further input. Obtaining input from the new Building Inspector on these open issues was discussed but the idea was ultimately rejected. .

The remaining issues for ZBA resolution are #s 9, 10 and 15, which will be discussed further.

Mr. Steinman stated the Board has 62 days from the closing date of the public hearing to make a decision. He will ask the applicant for an extension.

4. Application #11A-2014, BARRY AND CYNTHIA CASTERELLA, 133 Madison Street, (Section 8, Block 81, Lot 25B), for area variances to construct a one story addition and open porch where the addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements where a minimum rear yard setback of 25' is required and the applicant proposes 9.28'. The addition and porch violate the required combined side yard setback of

16' where the applicant proposes 14.7'. (R-4F District)

The Board discussed the merits of the application. Ms. Kramer commented that the rear variance is huge but the applicant can't build in the front due to the driveway easement.

On motion of Ms. Kramer, seconded by Mr. Sullivan, the application for the area variances was approved.

Ayes: Violi, Neufeld, Sullivan, Kramer, Weprin

Nays: None

5. Adjourned Application #15A-2014, ANA CEBALLOS, 715 Bleeker Avenue, (Section 9, Block 91, Lot 13A) for area variances to construct a two story addition and second floor addition which violate Article V, Section 342-27 of the Schedule of Minimum Requirements where a minimum side yard setback of 15' is required and the applicant proposes 11.89'. The applicant also violates the required combined side yard setback of 35' where 29' 7" is proposed. (R-15 District)

The Board discussed the merits of the application.

On motion of Mr. Neufeld, seconded by Mr. Violi, the application for the area variances was approved

Ayes: Sullivan, Kramer, Violi, Neufeld, Weprin

Nays: None

6. Adjourned Application #1S-2014, HALF TIME BEVERAGE, 139 Hoyt Avenue, (Section 8, Block 112, Lots 46B-55) for sign variances to legalize signs where the main entrance sign violates Chapter 286-10 A of the Sign Code where the maximum height allowed is 30" and the applicant proposes 96". The awning sign also violates Chapter 286-10 A of the Sign Code where the maximum height allowed is 30" and the awning is 60". The freestanding sign violates Chapter 286-11 B(1) where a freestanding sign is not permitted within 50' of the street. (M-1 District)

The Board discussed the merits of the application. The location is very unique. If there were multiple tenants there would be more signage, one large sign is less visually cluttered.

On motion of Mr. Violi, seconded by Ms. Kramer, the application for the sign variances was approved.

Ayes: Sullivan, Kramer, Violi, Neufeld, Weprin

Nays: None

MINUTES

Mr. Sullivan stated that on page 3 of the August minutes Ms. Georgiou is Mr. Georgiou.

On motion of Mr. Sullivan, seconded by Mr. Neufeld the minutes for the June 5, 2014 and August 7, 2014 were approved.

Ayes: Sullivan, Kramer, Neufeld, Violi, Weprin

Nays: None

Prepared by:
Barbara Ritter