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VILLAGE OF MAMARONECK

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, JUNE 5, 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 June 5, 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: Larry Gutterman, Chairman
Barry Weprin, Vice Chairman
Robin Kramer, Secretary
Greg Sullivan, Board Member
Dave Neufeld, Board Member
Anna Georgiou, Counsel to Board
Les Steinman, Counsel to Board
Bill Gerety, Building Inspector
Robert Hughes, Assistant Building Inspector

ABSENT: None

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 stated that this will be his last meeting on the Board. Barry Weprin will be the Chairman effective the next meeting. The Board will not meet in July, the next meeting will be August 7, 2014.

PUBLIC HEARINGS

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)

Paul Noto, Esq. represented the applicant. He submitted a petition from customers and stated the applicant is in compliance with the previous conditions, no violations have been issued, decibel readings have been taken, there isn't outdoor music, the windows are closed and the property is in a commercial district.

Kate Priest of 133 Prospect Avenue spoke of the neighbor's petition which unlike the petition submitted by Molly Spillane's is from Village residents. She stated that she and several neighbors have to call the police every weekend night to complain about the noise and the windows don't get closed until the police arrive. She asked why aren't

violations/tickets being issued by the Police and Building Departments? She referenced Chapter 254-1 regarding excessive and unnecessary loud noise and stated that the rights of one business shouldn't trump the rights of so many neighbors. Club Car has become a good neighbor, why can't Molly Spillane's? They can hire an audio engineer and install sound absorption material as well as turn down the volume. She also stated DUIs have tripled in the Village since Molly Spillane's opened.

Gina Von Eiff of Jefferson Avenue spoke to the fact that Larchmont doesn't let their retail businesses stay open in the early morning hours. The Village (Mamaroneck) has a law regarding residential noise after 11 pm. She asked if a homeowner can be ticketed, why aren't violations/tickets being issued.

Linda Pascale, Lucia Tatavitto, Young Min Song, Lucy Hammer, Amy and Bill Hodman, and Frank Albore of the Regatta as well as Theresa Cozart of Mamaroneck Avenue and Evelyn Marmolejo of Prospect all addressed the noise not just from the music but also from the patio. They and their young children can't sleep at night, and they are regularly woken up by screaming and cursing. They suggested closing the patio at 11pm as restaurants in other areas do. Ms. Hammer suggested putting up a wall along Prospect Avenue. Mr. Hynes stated he would be willing to build a wall along Prospect Avenue to try to reduce the noise.

Mr. Weprin and Ms. Kramer noted that it seems the windows don't get closed until the police get there. David Alvarez said he's worked at Molly Spillane's for 5 years and always closes the windows and doors, the customers must be opening the windows. Doug Torpie of Stuart Avenue suggested alarming the windows.

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

Ayes: Weprin, Neufeld, Kramer, Sullivan, Gutterman

Nays: None

2. Adjourned Application #6A-2014, Jonathan and Sudeshna Banks, 808 Fairway Place, (Section 9, Block 81, Lot 9B) for an area variance to construct a roof portico at the front entrance with said portico violating Article IV, Section 342-14 where architectural features may not project more than 3'-0" into any required yard and the applicant proposed to project 5'-10 1/2" into the required front yard. (R-15 District)

Vince DeCarlo of DeCarlo Home Improvements represented the applicants. An updated survey and photos were submitted prior to the meeting. Mr. DeCarlo stated that the portico will not extend further than the existing landing. The portico is needed for functionality from the weather. It will also make the front of the house look more like a front entrance; it currently looks like it was the back of the house.

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

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

Ayes: Kramer, Sullivan, Neufeld, Weprin, Gutterman

Nays: None

3. Application #4SP-2000, QI SHENG RESTAURANT, INC., LI QING FANG, D/B/A DRAGON CITY, 419-431 Mamaroneck Avenue, (Section 9, Block 11, Lots 2, 3A and 3B) to renew a special permit to operate a take-out restaurant. (C-2 District)

Paul Noto, Esq. represented the applicant. He stated they've been in business since 2000 and requested that the special permit be renewed without a term limit. Mr. Gerety stated the Order to Remedy was cleared up. Mr. Gutterman asked if the parameters of the permit were the same, Mr. Noto said yes.

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

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

Ayes: Sullivan, Kramer, Neufeld, Weprin, Gutterman

Nays: None

4. Application #9SP-2014, Soundview Servicenter, 600 W. Boston Post Road, (Section 9, Block 52, Lot 3B), for a special permit to operate a hot dog cart at an existing service station. (C-1 District)

Paul Noto, Esq. represented the applicant. He stated that the property survey shows there is plenty of room for the cart and that it will be a seasonal operation, only during the warm weather months. The hours of operation will be 10:30 am – 7:00 pm Monday – Saturday. There isn't a parking requirement, drinks will be sold in addition to the hot dogs, and there will be a garbage can next to the cart.

Chairman Gutterman asked if anyone wanted to address the Board.

Clark Neuringer of Stiles Avenue stated that the Parente's run an exemplary operation, they never cause problems and parking will not be a problem.

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

Ayes: Weprin, Neufeld, Kramer, Sullivan, Gutterman

Nays: None

5. Application #8SP-2014, ST. JOHN'S EVANGELICAL LUTHERAN CHURCH, 122 Fenimore Road, (Section 9, Block 53, Lot 22) for a special permit to operate a church in a residential zone. (R-7.5 District)

Rex Gedney, R.A. represented the applicant.. He stated that the church held their first service at the current location in 1927. An addition was constructed in 1958, and they are currently before the Planning Board for a new addition for 2 classrooms and a choir room. Approval has been granted from the Board of Architectural Review for the new addition. The new addition is zoning compliant. Mr. Neufeld and Ms. Kramer commented that the project should have come to ZBA first, before Planning and BAR. Mr. Gerety said he didn't realize there was a need for a special permit before the Planning Board meeting.

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

Mr. Weprin motioned to close the public hearing on Application #8SP-2014, seconded by Mr. Neufeld.

Ayes: Sullivan, Kramer, Neufeld, Weprin, Gutterman

Nays: None

6. Application #10A-2014, JAMES AND KAREN REILLY, 1017 Jefferson Avenue, (Section 4, Block 15A, Lot 16) for area variances to construct a second floor addition, new front

portico and new finish steps where the portico violates Article V, Chapter 342-27 of the Schedule of Minimum Requirements where a front yard setback of 20' is required and the applicant proposes 12'. The proposed garage roof also violates the required front yard setback of 20' where the applicant proposes 13'. The house also violates Article V, Chapter 342-27 of the Schedule of Minimum Requirements where the maximum height of the principal building is 2 ½ stories and the house is 3 stories due to the proposed second floor addition. (R-5 District).

Michael Piccarello, R.A. represented the applicants. He stated the existing house is non-conforming as to front and rear setbacks. He indicated that since the property has flooding issues, the lower level can't be expanded, so they have to expand by going up. The surrounding homes have a 3 story appearance and the house won't look boxy. He submitted 2 letters from neighbors in support of the project. BAR approval has already been granted. Ms. Kramer asked if the non-conformity will be worsened. Mr. Piccarello responded that the portico and skirt roof worsen the non-conformity in front but other improvements will lessen the rear yard non-conformity. The third story does not comply with the Village Zoning Code, but does not involve New York State Code compliance issues. The portico will be 4 feet out from the face of the house over the existing steps.

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

Ms. Kramer motioned to close the public hearing on Application #10A-2014, seconded by Mr. Neufeld.

Ayes: Weprin, Neufeld, Kramer, Sullivan, Gutterman

Nays: None

7. 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 V, 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)

Larry Nardecchia, P.E. represented the applicant. He stated item #s 3 and 4 on the Notice of Disapproval no longer apply as the internal stairs have been removed from the garage so the second parking space is now in the garage. Ms. Georgiou asked if the Building Dept. was aware of this, Mr. Gerety stated yes, the items were corrected after the Notice was created.

A discussion followed regarding the entry stairs. Mr. Nardecchia stated the variance is necessary for the projection since they weren't able to raise the exterior grade and more exterior stairs were necessary, . It wasn't possible to lower the house as the issue didn't come up until the house was built and that he wasn't involved in the design of the house. Mr. Nardecchia then discussed the 8" front yard variance. Ms. Kramer asked how the problems with the home's construction were discovered. Mr. Nardecchia stated by letter from the Building Inspector dated April 13, 2014.

Chairman Gutterman asked if anyone wanted to address the Board.

Stuart Tiekert addressed the application and stated that other neighbors had left the meeting earlier. Among the issues discussed by Mr. Tiekert were his view that the public hearing notice was deficient, that construction did not comply with Village approvals, including the SWPPP, and that there was no record that as-built plans for the street had been filed with the Village. He stated that the elevation of the house and lot have been raised 3 feet, that Mr. Schneider, the rear neighbor, has to walk down 2 steps where it used to be flat, and that a lot of fill has been added. Mr. Tiekert then discussed other issues not just pertaining to the subject property, but also with regard to Pine Street itself.

Ms. Kramer asked if the 6 inch discrepancy was there when the site was staked. Mr. Dominick Brescia of Cappetta Inc., owner the house, responded he used the offset markers for the corners but did not have a foundation survey done as it wasn't required. The grade was matched to the neighbors, and there isn't any ponding. Mr. Nardecchia stated the first floor elevation is exactly as designed and approved.

Ms. Kramer requested a copy of the drawing or plan that would show the elevation issue – original and what was done. Mr. Gerety stated he would provide the plans.

Mr. Sullivan moved to close the public hearing, seconded by Ms. Kramer subject to getting the plans from the Building Department.

Ayes: Weprin, Neufeld, Kramer, Sullivan, Gutterman

Nays: None

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

Debra Cohen, Esq. represented SAPOA. She requested an adjournment to the next meeting noting the lateness of the hour and that the co-applicant, Sue McCrory, had to leave the meeting earlier. Chairman Gutterman stated there's no justification for the matter not to be heard tonight. Mr. Gutterman stated that members of the public will speak first..

Mr. Keith Waitt, speaking on behalf of SAPOA, stated that he wanted to correct comments, made at the recent meeting on the legality of the commercial use, which were factually incorrect and would have prejudicial influence on the vote. Mr. Waitt stated that Chairman Gutterman had referred to the applicant as Mr. Natchez. Mr. Natchez is not the applicant, SAPOA and Sue McCrory are the co-applicants. Mamaroneck Beach and Yacht Club has spun the appeal as one individual fighting against their application. SAPOA represents an ever increasing number of people in the community. He said Chairman Gutterman had mentioned the applicant(s) want to shut down MB&YC, SAPOA has never indicated that they want the club shut down, they want the club to conform to the MR zoning laws just like all the other clubs.

Regarding the definition of membership club he compared MB&YC with Orienta Beach Club, of which he was a member for years. OBC membership begins with being sponsored by a current member, the prospective member(s) are interviewed, there is an initiation fee, an annual membership fee and the club is governed by the members. MB&YC has few annual members, none being Village residents, it is not member owned or run. Village Clubs need a special permit for commercial event use, the revenue from the events can't exceed 20% of the total annual revenue. MBYC does not conform to the Village Code requirements on membership clubs. Much of its commercial activity is camouflaged as member activity. To stay below the 20% threshold, MB&YC creates fake memberships. If you want to have a wedding there, you can become a member for a day. He presented Groupons for discount membership and day camp as examples of commercial activity at MBYC.

Ms. Gabrielle Cohen spoke. MB&YC should not be allowed to develop an additional 25,000 square feet of facilities to increase the intensity of their use when the current use is not in compliance with the pre-2006 zoning code. The term "Club" used in the Zoning Code is intended to represent a community oriented organization with long term dedicated members.

Alison Stabile spoke. The zoning code is not being adhered to, MB&YC operates in violation of Village laws. The proposed expansion will double the intensity of use on the site and will negatively impact the sensitive surrounding environment. It's not a membership club. It's a for profit wedding and catering factory.

Chairman Gutterman read letters from Paul Noto and Debra Cohen regarding additional submissions made by SAPOA on the application. The Board discussed the matter and decided the submissions were timely and would be included in the record as the hearing remains open.

Mr. Noto, for MBYC, stated this application has been pending for 14 months. Everything has been heard more than once. MBYC has no need to respond to anything said tonight. The use issue has already been voted on. They'd object to a further adjournment and would like the hearing to be completed and closed.

Mr. Weprin stated that given the time, there won't be a vote tonight and there will be a new Board member at the next meeting, the application should be adjourned to the next meeting. Mr. Neufeld agreed.

Ms. Cohen asked if she could be heard. Mr. Weprin said he didn't think it was necessary. She requested being first on the agenda for the next meeting. Mr. Weprin said no, and noted that the arguments submitted tonight on behalf of SAPOA are repetitive.

Mr. Neufeld motioned to adjourn the public hearing on Application 3I-2013 to the next meeting, seconded by Ms. Kramer.

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

Mr. Weprin stated the Board would prefer no further submissions.

CLOSED APPLICATIONS

1. Application #8SP-2011, MARIO CASTALDO, D/B/A CAS CAR IMPORTS LTD., 519 Waverly Avenue, (Section 8, Block 101, Lot 12) to renew a special permit to operate a motor vehicle repair shop. (M-1 District)

The Board discussed the merits of the application.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application to renew a special permit to operate a motor vehicle repair shop was approved with no term limit.

Ayes: Sullivan, Neufeld, Weprin, Gutterman

Nays: None

Abstain: Kramer

2. Adjourned Application #6A-2014, Jonathan and Sudeshna Banks, 808 Fairway Place, (Section 9, Block 81, Lot 9B) for an area variance to construct a roof portico at the front entrance with said portico violating Article IV, Section 342-14 where architectural features may not project more than 3'-0" into any required yard and the applicant proposed to project 5'-10 ½" into the required front yard. (R-15 District)

The Board discussed the merits of the application. Front yard variances are usually not given and Mr. Neuringer's comments are appreciated but the portico will only be over the steps and the situation is unique to the site.

On motion of Mr. Sullivan, seconded by Mr. Weprin, the application for an area variance was approved.

Ayes: Sullivan, Kramer, Neufeld, Weprin

Nays: Gutterman

3. Application #4SP-2000, QI SHENG RESTAURANT, INC., LI QING FANG, D/B/A DRAGON CITY, 419-431 Mamaroneck Avenue, (Section 9, Block 11, Lots 2, 3A and 3B) to renew a special permit to operate a take-out restaurant. (C-2 District)

The Board discussed the merits of the application.

On motion of Mr. Neufeld, seconded by Mr. Weprin, the application to renew a special permit to operate a take-out restaurant was approved with a 3 year term limit.

Ayes: Weprin, Neufeld, Kramer, Sullivan, Gutterman

Nays: None

4. Application #9SP-2014, SOUNDVIEW SERVICENTER, 600 W. Boston Post Road, (Section 9, Block 52, Lot 3B) for a special permit to operate a hot dog cart at an existing service station. (C-1 District)

The Board discussed the merits of the application. Ms. Kramer wants a garbage can next to the cart at all times.

On motion of Mr. Weprin, seconded by Mr. Neufeld the application for a special permit to operate a hot dog cart at an existing service station was approved.

Ayes: Sullivan, Kramer, Neufeld, Weprin, Gutterman

Nays: None

5. Application #8SP-2014, ST. JOHN'S EVANGELICAL LUTHERAN CHURCH, 122 Fenimore Road, (Section 9, Block 53, Lot 22) for a special permit to operate a church in a residential zone. (R-7.5 District)

The Board discussed the merits of the applicaton.

On motion of Mr. Neufeld, seconded by Mr. Weprin, the application for a special permit to operate a church in a residential zone was approved.

Ayes: Sullivan, Kramer, Neufeld, Weprin, Gutterman

Nays: None

6. Application #10A-2014, JAMES AND KAREN REILLY, 1017 Jefferson Avenue, (Section 4, Block 15A, Lot 16) for area variances to construct a second floor addition, new front portico and new finish steps where the portico violates Article V, Chapter 342-27 of the Schedule of Minimum Requirements where a front yard setback of 20' is required and the applicant proposes 12'. The proposed garage roof also violates the required front yard setback of 20' where the applicant proposes 13'. The house also violates Article V, Chapter 342-27 of the Schedule of Minimum Requirements where the maximum height of the principal building is 2 ½ stories and the house is 3 stories due to the proposed second floor addition. (R-5 District).

The Board discussed the merits of the application.

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

Ayes: Weprin, Neufeld, Kramer, Sullivan, Gutterman

Nays: None

Ms. Georgiou stated the Board will need an extension from Application 8A-2014, Capetta, Inc. to hold the vote at a subsequent meeting. She will speak to the zoning

secretary so that a letter can be prepared and sent to the applicant requesting the extension.

MINUTES

On motion of Mr. Sullivan, seconded by Mr. Weprin, the minutes of the April 3, 2014 meeting were approved.

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

The Board was not ready to approve the minutes of the May 1, 2014 meeting.

Prepared by:
Barbara Ritter