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MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, AUGUST 7, 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 August 7, 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

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 #10SP-2011, FANG WANG, D/B/A NEW GREAT WALL, INC., 589 East Boston Post Road, (Section 4, Block 60B, Lot 21) to renew a special permit to operate an existing restaurant. (C-1 District)

Mr. Wang represented himself. He stated the hours would remain the same.

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

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

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

2. Application #10SP-2014, MEI CHUN WANG, D/B/A IZENZO FUSION, INC., 330 Mamaroneck Avenue, (Section 9, Block 18, Lot 19) for a special permit to operate an existing restaurant under new ownership. (C-2 District)

Mr. Wang represented himself. He stated the hours will be shorter – 12:00 p.m. – 10 p.m. Mon.-Thurs, 11a.m. – 10 p.m. Fri. and Sat. and 11 a.m. – 9:30 p.m. Sun.

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

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

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

3. 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. The building is 20,000 square feet between Mamaroneck Avenue and Fenimore Road, it doesn’t get a lot of foot traffic. The applicant is asking for 3 separate variances, 1 for a freestanding sign, 1 for the main entrance sign, the length of which is less than the lengths of the 2 previous tenants signs and 1 for the awnings.

Mr. Alan Daniels, owner of Half Time also spoke. He stated the freestanding sign will not interrupt sidewalk thoroughfare and will not be illuminated past 9:30 or 10:30 p.m.

Mr. Violi commented that the freestanding sign is huge and not near the 50’ required setback from the street. Mr. Noto said isn’t a negative impact on the neighborhood of industrial tenants. Ms. Georgiou stated the freestanding sign appears to be 36 square feet where 16 is allowed.

Mr. Noto suggested going over the application with Mr. Gedney and adjourning the application until the September meeting.

Chairman Weprin is concerned with the size of the freestanding sign. Mr. Neufeld stated a variance is needed for the size of the freestanding sign, possibly also for the number of signs.

Chairman Weprin asked if anyone wanted to address the Board.

Clark Neuringer, R.A. spoke. He stated he is neither for or against the application but there are other businesses on Hoyt Avenue, what will happen if they apply for freestanding signs? The Board has historically voted against pylon signs. He asked the Board to consider this application in context.

Mr. Noto requested an adjournment until September. The applicant will re-notice if necessary.

Mr. Neufeld asked if the Building Inspector made a mistake on the Notice of Disapproval can the Board make the determination that should have been made. Ms. Georgiou stated the Board's appellate jurisdiction in granting variances runs from the Building Inspector's Notice of Disapproval. The Notice and noticing would typically have to be redone.

4. Application #13A-2014, DARRIN DELUCIA, 1421 Arlington Street, (Section 8, Block 17, Lot 9) for area variances to construct an addition and deck which violate Article V, Section 342-27 of the Schedule of Minimum Requirements where the required rear yard setback is 25' and the applicant proposes 18' 7". The applicant also violates Notes 4 – a minimum distance shall be observed between buildings on the same lot: a distance equal to the average height of such buildings at the points where such buildings are nearest each other, 18' is required where the applicant proposes 17' 2". (R-5 District)

Mike Csenge, R.A. represented the applicant. Chairman Weprin asked if the deck could be smaller. Mr. Csenge stated the deck is only 10 feet, if it was smaller it wouldn't be useable. The homeowners would like to have an outside dining area on the main level of the house.

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

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

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

5. 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)

Mike Csenge, R.A. represented the applicant. Chairman Weprin asked for a current survey. Mr. Csenge stated the homeowner doesn't have one, there hasn't been any exterior work done except the installation of a generator.

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

Chairman Weprin stated the Board should have a current survey. The application can be closed but not voted on until a current survey is received. Mr. Neufeld suggested leaving the application hearing open until the survey is received. Chairman Weprin stated the applicant won't have to appear if the updated survey matches the current one. The public hearing

remains open.

6. 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 Weprin acknowledged a last minute e-mail submission from Doreen Rooney in favor of SAPOA. The submission will be accepted as it makes arguments that have already been heard.

Debra Cohen, Esq. represented the appellants. Ms. Cohen read from a prepared statement that was to be placed into the record. She referred to the Building Inspector's Planning Board referral dated April 5, 2013. The appellants believe the Building Inspector made mistakes in certifying Mamaroneck Beach and Yacht Club's (MB&YC) application was code compliant and eligible to be submitted to the Planning Board. Also, the Village Engineer failed to make a certification before the application was forwarded to the Planning Board. The appellants have previously submitted a detailed response to the table submitted by MB&YC. She won't go through the 28 items in the table but reminded the Board it is part of the record.

Ms. Cohen stated the Building Inspector was only on the job for 4 days when he certified MB&YC's application. His certification wasn't based on a thorough review but by pressure from Village officials anxious to avoid delay for or conflict with MB&YC. He didn't provide a basis for his determination during the proceedings and is no longer available to be consulted. The previous Building Inspector, Mr. Melillo, documented issues which fell by the wayside and were ignored by Mr. Gerety. Section 342-90 and 91 of the Village Code give the Board appellate jurisdiction over administrative decisions. ZBA rules state that decisions must be made based on proof, either written or oral factual testimony. Evidence has been submitted as to excessive volume of catering activity and the commercial marketing activities of MB&YC. The appellants have provided eyewitness testimony, depositions, financial records, pictures, code provisions and precedential decisions. MB&YC's presentation was long on arguments, threats against the Village and personal attacks on the appellants but bereft of documentation, particularly that use of the property is consistent with Code requirements of a membership club. The threshold issue is should the 2004 or 2013 zoning ordinance be followed in determining if the Building Inspector erred in certifying the Planning Board application as zoning compliant. The appellant's position is that the Building Inspector erred in using the pre 2006 zoning law. The prior settlement between the Village and MB&YC require the pre 2006 Code be used. Did the Court intend that to apply to a new application that was submitted years later and with substantive changes. If the Board determines that the 2010 stipulation agreement wasn't fulfilled and the 2004 zoning applies then the other terms of the stipulation must also apply.

Ms. Cohen again referred to the Building Inspector's referral memo of April 5, 2013. Regarding "use", there have been at least 2 prior ZBA decisions that MB&YC didn't operate under the Code definition of membership club. The Rosenshein's prior depositions confirm

MB&YC is not run by or for members.

The Building Inspector erred with regard to the calculation of “lot area” requirements relating to dwelling units. The lot doesn’t meet the required frontage, it is a non-conforming lot. The Building Inspector erred in certifying that the lot complies.

Regarding “building coverage”, the tennis courts, pools and decks should be included in the calculations.

Regarding “FAR”, the lot area used by MB&YC included land under water, such land must be excluded. The Building Inspector erred by permitting MBYC to subtract attic areas from the FAR calculations. The Building Inspector certified FAR as zoning compliant without sufficient plans, details or calculations from MBYC.

Regarding “maximum stories and height of building”, the main club house is over the 40’ limit. It is incorrectly referred to as 39’ high. Nor does the application comply with the definition of story and ½ story or with the average grade requirements.

Regarding “building setbacks”, the proposed Yacht Club Building doesn’t meet the side yard setbacks.

Regarding “off street parking”, the extent of the commercial use is minimized in the parking calculations.

Regarding “parking setbacks”, the screening and landscaping doesn’t comply with Chapter 342-53, 54B and 55B.

Regarding “architectural sketches”, several calculations, elevations and setbacks are not correctly shown and the survey is not accurate.

Regarding “Chapter 186 – flood elevations”, the plans show plumbing fixtures below the flood elevation, they are not Code compliant. There isn’t any evidence of a Floodplain Development Permit being reviewed.

SAPOA requests the Board reverse the Building Inspector’s determination and provide MB&YC with a Notice of Disapproval listing each aspect of the site plan that is not compliant. They also request a determination that the existing use of the site is non-conforming limiting proposed or expanded uses to the limits of Article 9 of the Zoning Code. Ms. Cohen then requested that the hearing be closed.

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

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

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

CLOSED APPLICATIONS

1. Application #10SP-2011, FANG WANG, D/B/A NEW GREAT WALL, INC, 589 East Boston Post Road, (Section 4, Block 60B, Lot 21) to renew a special permit to operate an existing restaurant. (C-1 District)

The Board discussed the merits of the application.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application to renew a special permit to operate an existing restaurant was approved with no term limit.

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

2. Application #10SP-2014, MEI CHUN WANG, D/B/A IZENZO FUSION, INC., 330 Mamaroneck Avenue, (Section 9, Block 18, Lot 19) for a special permit to operate an existing restaurant under new ownership. (C-2 District)

The Board discussed the merits of the application.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application for a special permit to operate an existing restaurant under new ownership was approved with a 3 year term limit.

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

3. Application #13A-2014, DARRIN DELUCIA, 1421 Arlington Street, (Section 8, Block 17, Lot 9) for area variances to construct an addition and deck which violate Article V, Section 342-27 of the Schedule of Minimum Requirements where the required rear yard setback is 25' and the applicant proposes 18' 7". The applicant also violates Notes 4 – a minimum distance shall be observed between buildings on the same lot: a distance equal to the average height of such buildings at the points where such buildings are nearest each other, 18' is required where the applicant proposes 17' 2". (R-5 District)

The Board discussed the merits of the application. The deck is open and there aren't any neighbor complaints.

On motion of Mr. Sullivan, seconded by Mr. Neufeld the application for area variances to construct an addition and deck was approved.

Ayes: Violi, Neufeld, Kramer, Sullivan, Weprin

Nays: None

Chairman Weprin acknowledged a submittal from Stuart Tiekert to reopen Application #8A-2014, 510 Pine Street. The Chairman stated the Board will consider the material submitted because it consists of Building Department plans/ records and such records were to be submitted after the hearing was closed. He doesn't think there's a reason to reopen the hearing. There was no motion made to reopen the hearing.

4. 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)

Mr. Violi stated he has reviewed the information and is comfortable addressing it.

The Board discussed the merits of the application and that (i) The inherent problem is the mixed commercial/residential zone, (ii) it's not entirely anyone's fault, (iii) the business is where it is, the apartments are where they are, (iv) the Board feels the owner is aware of the noise problem, he spent a lot of money making sure the upstairs and downstairs music inside the restaurant doesn't affect each other, (v) violations not being issued by the Police Department doesn't mean the violations didn't happen, (vi) no other businesses have music as loud with the windows open late at night, (vii) and the possibility of putting up a wall along the Prospect Avenue side the of the patio was discussed, but the Board doesn't think that will solve the problem. The neighbors complaining about noise from the patio was also addressed. Mr. Violi feels it is an enforcement issue, he is not for locking the windows or closing the patio.

After a long discussion it was agreed Ms. Georgiou would draft a resolution to be considered by the Board at the next meeting. The terms of the draft resolution will be the patio will be closed at 11 p.m. on weeknights, midnight on weekends (Friday and Saturday) and Sundays before a Monday holiday. The windows are to be closed at 10 p.m. on weeknights and 11 p.m. on weekends. The windows are to be locked or alarmed as Mr. Hynes had stated he can't control customers opening them. The term of the special permit renewal will be 1 year.

5. 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.

Chairman Weprin asked Ms. Georgiou what is the Board's jurisdiction regarding the elevation issue. Ms. Georgiou stated that the Notice Of Disapproval references the two variances the Board is required to vote on. Chairman Weprin noted that the variances are minor. Ms. Kramer noted the front yard setback variance is only 6-8 inches and the stairs is a projection variance. The consensus of the Board was that the variances won't have a negative impact on the community and won't have an adverse impact on the environment.

Ms. Georgiou suggested that she draft a resolution for Board consideration at the September 4th meeting reflecting the consensus being to grant the variances, and the board agreed. She noted the Board has received an extension for the vote from the applicant.

7. 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 discussed whether the votes on Phases 1 and 2 of the application are binding given that former Chairman Gutterman, the deciding vote in each case, is no longer on the Board. Chairman Weprin analogized the prior votes regarding the legality of the use and the applicability of the pre-2006 Zoning Code to the doctrine of law of the case. Mr. Steinman stated it was agreed by all parties at the beginning that the decision making process would be phased, and the previous votes were intended to be a final resolution of those aspects of the appeal. Mr. Neufeld agreed that was the intent but stated that it wasn't a binding intent. Mr. Weprin also addressed the matter of fairness to the property owner should these issues now be reopened for decision.

Ms. Kramer noted that new evidence, prior ZBA decisions, pertaining to the legality of the use were submitted by the applicant after the ZBA made its determination as to the legality of the use. Mr. Steinman stated that everyone was on notice that the issues would be decided in order and evidentiary submittals had to be made during the timeframe that each issue was being considered. He will confirm when the submissions referred to by Ms. Kramer were received. Regardless of when the submissions were made, the evidence in question existed at the time the use issue was being heard and determined by the ZBA. Chairman Weprin noted that there was nothing in those submissions that was dispositive on the use issue or otherwise binding on the ZBA in this proceeding.

Chairman Weprin asked Mr. Violi if he has reviewed any of the information regarding the application. Mr. Violi stated that he was on the Planning Board for the site plan approval. Mr. Steinman noted that if the first 2 phases are resolved then Mr. Violi only has to focus on Phase 3. He will help to assemble the relevant information for Mr. Violi's review of the Phase 3 issues.

MINUTES

On motion of Mr. Sullivan, seconded by Mr. Neufeld, the minutes of the May 1, 2014 meeting were approved.

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

The Board was not ready to approve the minutes of the June 5, 2014 meeting.

Prepared by:
Barbara Ritter