

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, December 17, 2019 at 7:00 pm** in the Frank J. DiMicco Board Room, Village Hall, 104 Main Street, Mount Kisco, New York

Members Present: Chairman Harold Boxer
George Hoyt
Arthur Weise
Ralph Alfano

Members Absent: Wayne Spector

Staff Present: Whitney Singleton, Board Counsel
Peter J. Miley, Building Inspector

Chairman Boxer stated let's begin. Zoning Board number ZBA19-9, 41 South Moger Realty.

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| 1. 41 So. Moger Ave. Realty, LLC | ZBA# 19-9 |
| 41 South Moger Avenue | Area |
| Mount Kisco, NY 10549 | |
| (SBL) 69.81-6-9.1 | |

Ms. Corina Wong of Code Ninjas and Ms. Kim Galton, real estate agent were present.

Ms. Galton stated yes, good evening.

Chairman Boxer stated hi, come on over here.

Ms. Galton stated hi, I'm Kim Galton, I'm the broker working with Code Ninjas for their new venture. They're looking for a change of variances because it's education going to the first floor in the building.

Chairman Boxer stated right.

Ms. Galton stated this is Corina Wong and she will be running Code Ninjas.

Chairman Boxer stated hi.

Ms. Galton stated and she can certainly tell you all about it.

Chairman Boxer stated okay, why do you want the first floor?

Ms. Wong stated okay, the franchise requires that we are first or second floor retail and if it's second floor retail, it has to be something that somebody walks by so it's like [inaudible], like a sidewalk on the second floor, it can't be a look for something up there. So that's a franchise requirement.

Chairman Boxer stated that's okay, you're the same as any other big company that comes in.

Ms. Galton stated there are also some ceiling height requirements.

Ms. Wong stated yes, we have that 10 foot height requirement.

Chairman Boxer stated right, and this space, who used to be in this space there?

Ms. Wong stated the wine store.

The Secretary stated Siegel Brothers.

Mr. Hoyt stated the wine shop.

Chairman Boxer stated okay.

Mr. Weise stated so is there a second floor on that?

Ms. Wong stated there is sort of above Beer Noggin there is a second floor, I looked at it but they only have 9 ½ ceilings and my franchise was adamant about 10 foot ceilings.

Chairman Boxer stated 10 foot ceilings huh? I'm just curious, is there a reason?

Ms. Wong stated to fly drones because they'll be programming drones.

Chairman Boxer stated cool.

Mr. Hoyt stated Whitney's not coming?

The Secretary stated as far as I was aware, he was coming.

Mr. Hoyt stated what's the provision on why the first floor education?

The Secretary stated unfortunately, I couldn't answer that question, it's within the Code.

Ms. Galton stated it was something that is very date, it was written in the Code a long time ago.

Chairman Boxer stated they just redid the Code.

Mr. Hoyt stated it's retail, so I get that but it would be nice if...

Chairman Boxer stated well we have to, the attorney's not here yet and we have some questions for him but meanwhile we can listen to you. So you're going to be, you're a franchise?

Ms. Wong stated yes, a franchisee.

Chairman Boxer stated okay, what is STEM training, just out of curiosity?

Ms. Wong stated so this STEM training is specifically teaching kids to write code. So we start them off, right now the program is from 7 to 14. They're kind of redoing the curriculum, the current curriculum starts them off from scratch and they go to java script and so on. The new curriculum doesn't start from scratch, I haven't seen it yet, so it's super new and then they're also coming out with a 5 to 9 year old for kids who can't read yet or are weak readers to learn, you know the logic and basically the foundation for being able to write code.

Chairman Boxer stated interesting.

Mr. Hoyt stated is this a new franchise for you or are you coming from somewhere else?

Ms. Wong stated for me it's a new franchise.

Ms. Galton stated but they have nationally opened 490 of them.

Ms. Wong stated not yet, they've opened about 400, I think 500 have been sold so...

Mr. Weise stated and what is the name?

Ms. Wong stated Code Ninjas.

Mr. Weise stated Code Ninjas.

Mr. Hoyt stated and how big, how many children, how many people in the space?

Ms. Wong stated so right now, I think the max before we have the design plans in is like 59, so we're working with that.

Mr. Hoyt stated is it like a sit down classroom kind of thing?

Ms. Wong stated there's like an open area. We haven't finalized design yet, so you come in and there's like a lobby waiting area, there's an office and behind that is like the classroom area with a dividing wall so we can split it into two separate situations if we need to. And then down the side there's like bathrooms and like the breakroom, that sort of thing.

Chairman Boxer stated another question for Whitney is how many people does the Fire Code allow.

The Secretary stated does the Fire Code allow, that would be a question for Peter.

Ms. Wong stated I think it was 59.

Chairman Boxer stated is he around?

The Secretary stated I just sent him a text, I'm not sure where he is.

Chairman Boxer stated okay...

Mr. Hoyt stated well not just that but the access, everything...

Chairman Boxer stated well they have the rear access but the rear access going into another building or it goes to the back staircase.

Ms. Galton stated well they're taking part of the space from Ann Taylor, so that backs part into the Ann Taylor space.

The Secretary stated there's a utility hallway though, isn't there.

Mr. Weise stated so is this an afterschool class?

Ms. Wong stated afterschool and when school is out.

Mr. Weise stated so the average child will be there for an hour or...?

Ms. Wong stated so they can choose one to, so basically the way it works is the parents can buy anywhere from one to four hours a week and the child can take that anyway they want, an hour, two hours, you know twice...

Mr. Weise stated so every child has their own course.

Ms. Wong stated it's you know, move at your own pace, the curriculum is move at your own pace and the consumption is at your own pace as well.

Mr. Alfano stated what kind of courses will you be teaching.

Ms. Wong stated it's just specifically teaching kids to write code by writing video games, build their own video games and in doing that they use code, and programming drones and that sort of thing.

Mr. Hoyt stated are there parking issues as well? Do we know?

The Secretary stated no, it's located in the Central Business District 1, so there is not a parking requirement for a first floor use.

Mr. Hoyt stated because they utilize that whole big lot there.

Chairman Boxer stated yeah, the parking behind them and across the street and on the street but you'll never get on the street.

Mr. Weise stated so your neighbors to either side are?

Mr. Alfano stated Starbucks.

Ms. Galton stated yup and Beer Noggin.

Me. Weise stated does that bother you at all that you're sharing...

Ms. Galton stated I think part of what Code Ninjas is trying to promote in the community is also parents using the facilities in the community while their kids are there, so they'll go to Starbucks, they'll go to Beer Noggin...

Ms. Wong stated I don't know if they'll go there...

Chairman Boxer stated it sounds good to me. Drop the kid off...

Mr. Weise stated hopefully these two units are going to support you.

Mr. Hoyt stated speak of the devils.

Mr. Miley stated hello.

Chairman Boxer stated hello Peter.

Off-topic discussion

Chairman Boxer stated Peter, we have two questions. What is the limit for people on 2,400 square feet?

Mr. Miley stated yes, the amount of people is based on the Building Code.

Chairman Boxer stated on the drawing here.

Ms. Wong stated 49?

Mr. Miley stated well B occupancy is 49...

Ms. Wong stated okay.

Mr. Miley stated but it's all going to be predicated on once we do a full review, and distances and calculations on everything. But it has no bearing on what we're doing.

Chairman Boxer stated I know, I'm just curious.

Mr. Miley stated right now it's set at 49 because of B occupancy unless determined that the square footage would allow more.

Chairman Boxer stated okay.

Mr. Alfano stated what's the history behind not having it on the ground floor?

Mr. Miley stated just zoning history.

Mr. Hoyt stated why? What's the...?

Whitney Singleton stated the history being that generally speaking, municipalities like to keep their ground floor operations available for retail, restaurants, things that are more pedestrian oriented, not for office uses, not for educational uses.

Mr. Weise stated the point that somebody made, that was an old code, I mean clearly retail has changed.

Mr. Hoyt stated well we're in a new world right, so.

Whitney Singleton stated I don't know that retail has changed but the downtown has changed.

Mr. Hoyt stated people have changed.

Mr. Weise stated the way people shop has changed.

Chairman Boxer stated but this is a unique space because it never was good for anybody that was in the back, so just take this, like they said, they'll hopefully bring people to the back.

Mr. Weise stated this is...

Mr. Hoyt stated there's only one variance required and that's the...

Mr. Miley stated the location.

Mr. Hoyt stated the location, first floor.

Mr. Miley correct.

Chairman Boxer stated do you plan an signs on the sidewalk in the front?

Ms. Wong stated on the sidewalk?

Chairman Boxer stated yeah.

Ms. Wong stated it depends, if we're allowed a lot of the Code Ninjas have a cardboard cutout or a blow up during special events but those all come back inside, like not permanent.

Chairman Boxer stated you might need a permit on those, talk to Peter.

Mr. Miley stated they have a sign package on the whole building...

Chairman Boxer stated do they?

Mr. Miley stated so if it meets the criteria of the package, they're fine. If it's outside then they may or may not be before you again.

Chairman Boxer stated okay. Sounds good.

Mr. Hoyt stated well I'll cut to the chase, I'm totally for it.

Mr. Weise stated I think it's a great use of that space.

Chairman Boxer stated okay, then we can close the public meeting, a motion please.

Mr. Hoyt stated I move to permit this, accept the...

The Secretary stated close the public hearing.

Mr. Hoyt stated oh sorry, I move to close the public hearing.

Mr. Weise seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

Chairman Boxer stated okay.

Ms. Galton stated thank you.

Ms. Wong stated thank you.

Mr. Miley stated you're not there yet.

Chairman Boxer stated you're not done.

Mr. Weise stated no, no, that was just to close it.

Chairman Boxer stated we didn't vote on you yet. Now, we'll go through the five factors quickly:

1. *Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance.*

Chairman Boxer stated and they say not and it's probably no but you know, again it's the first floor nonretail.

2. *Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than area variance.*

Chairman Boxer stated the answer to that would be yes, as long you don't stay on the first floor. I know you have special requirements but if there was space on the second floor, it means, that's why you're here.

3. *Whether the requested area variance is substantial.*

Chairman Boxer stated and it is, it takes the whole property.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.*

Chairman Boxer stated adverse effect on the environmental conditions, no because they've been up a while.

5. *Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board which shall not necessarily preclude the granting of the area variance.*

Chairman Boxer stated and the answer usually is self-created but that is something that we can waive.

Whitney Singleton stated let me answer it. You were just going through what the questions are or did you just answer them?

Chairman Boxer stated I answered them too, make it quick.

Whitney Singleton stated okay. And you also need to make a determination under SEQRA that this is an unlisted action and that you don't deem there to be any adverse environmental impact. Even though it's not in your package, the applicant did submit a short form environmental assessment. So you don't have before you...

Chairman Boxer stated okay.

Ms. Wong stated I have a copy.

The Secretary stated I have it in my office.

Whitney Singleton stated perhaps just to give to the Chairman.

Chairman Boxer stated a copy, you said you have a copy of it.

Ms. Wong stated yes.

Chairman Boxer stated thank you. Alright, so...

Whitney Singleton stated and Harold, could you just read me the date that's on that, on page three.

Chairman Boxer stated 11/13/19. So then we need to approve...

Whitney Singleton stated you just need to make a determination that their proposed use does not have an adverse environmental impact and that you're issuing a negative declaration.

Chairman Boxer stated okay, that requires a vote?

Whitney Singleton stated okay.

Chairman Boxer stated I didn't hear what he said but we have to vote on the short environmental assessment form that there's not environmental impact.

Mr. Hoyt introduced the motion. Seconded by Mr. Weise.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

Chairman Boxer stated okay, now as to the main reason they're here. We went through the five factors, anything else anyone wants to throw in? Okay...

Whitney Singleton stated and so with regard to the proposed variance, it would be solely for this particular educational use and no others.

Chairman Boxer stated right and also because of where it's located, I don't think we want to approve that if it's something right on the street.

Whitney Singleton stated okay.

Mr. Weise stated can I ask, does this also apply to the gyms because that's not really retail either.

Mr. Alfano stated like stretch lab?

Mr. Weise stated yeah.

Mr. Miley stated they're physical training studios.

Whitney Singleton stated physical training studios have their own requirements.

Mr. Miley stated they're permitted on the first floor.

Mr. Hoyt stated you're thinking stretch or...what's that one?

Mr. Weise stated its similar in my mind...

Whitney Singleton stated they're not restricted as to the second floor location, they are restricted as to the amount of square footage that they can have.

Mr. Miley stated 2,500 max.

Chairman Boxer stated okay, good question. Alright, motion to approve?

Mr. Weise introduced a motion to approve. Seconded by Mr. Hoyt.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

Chairman Boxer stated okay.

Mr. Miley stated now you can say thank you.

Ms. Wong stated thank you very much.

Ms. Galton stated thank you.

Mr. Miley stated good luck.

Mr. Hoyt stated good luck.

Mr. Miley stated so down that area, you're only allowed maximum 2,500 for physical training studio, it's not a membership club...

Mr. Hoyt stated what's the membership club thing, what's the definition of that?

Mr. Miley stated join a club, pay the monthly fee, the others are by booklets, pa as you go.

Mr. Hoyt stated so if I had a gym that had a membership packet...

Mr. Miley stated its not permitted.

Mr. Hoyt stated at all, so only those without a membership and then they're still limited to 2,500...

Mr. Miley stated with these structures, it's one thing, its really a size limitation, you can't have Saw Mill come to the downtown area because it's just too large.

Off-topic discussions.

The Secretary stated Chairman, do we have a quorum for those minutes? I don't know if you have enough people, Wayne's not here, we're probably out...

Mr. Weise stated can I ask a question? How often do we see a change in people on the Board? Because I didn't know Nancy left.

The Secretary stated she resigned, her term was longer. Each term is 5 years, so you can either request to stay on, you can choose to not stay on and then we'll get a new face.

Chairman Boxer stated yeah we had two people...

Mr. Weise stated oh, did she move?

Chairman Boxer stated not her but...

The Secretary stated we had two Board members move within months of each in the summer last year. Quorum or no quorum on the minutes?

Chairman Boxer stated yeah, I think we have a quorum.

The Secretary stated just need a motion.

Chairman Boxer stated only two people can vote on it but we still have a quorum. Do you need a vote of more than two?

The Secretary stated yes, I need 3 because you're a Board of 5.

Chairman Boxer stated well we don't have the three that were here.

The Secretary stated then just make a motion.

Chairman Boxer stated I'm going to make a motion to approve the minutes of July 16, 2019.

Mr. Hoyt seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

Chairman Boxer stated there you go.

The Secretary stated and a motion to adjourn, if you're all set.

Chairman Boxer stated who wants to go home? Who want to make a motion?

Mr. Weise introduced a motion to adjourn. Seconded by Mr. Hoyt.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

The meeting adjourned at 7:17 pm.