

Minutes of the Regular Meeting of the **Zoning Board of Appeals** of the Village/Town of Mount Kisco
held on **Tuesday, February 9, 2022 at 7:00 pm** via Zoom Teleconference

Members Present: George Hoyt
Jacqueline Broth
Arthur Weise
Wayne Spector
Ralph Alfano

Members Absent: Harold Boxer

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

Mr. Spector stated I'll take the lead, good evening everybody, all viewers. My name is Wayne Spector, I'm going to be acting as the Acting Chairperson tonight for the meeting of the Mount Kisco Zoning Board of February 9, 2022. Can I have the other members of the Board indicate their presence tonight, who are on this link?

Mr. Weise stated Arthur Weise, present.

Ms. Broth stated Jacqui Broth, present.

Mr. Alfano stated Ralph Alfano, present.

Mr. Hoyt stated George Hoyt, present.

Mr. Spector stated okay, so we do have a quorum tonight, so we're going to proceed based on the circulated agenda. We have four items on, three of which are going to be adjourned, we're going to start those with number one on the agenda tonight, Eugene Gilyard, which is ZBA case #21-23, 87 (89) Maple Avenue, Mount Kisco, NY 10549, section block and lot number 69.80-5-13, this is a continued public hearing.

**1. Eugene Gilyard
87 (89) Maple Avenue
(SBL 69.80-5-13)
Continued Public Hearing**

**ZBA# 21-23
Area**

Mr. Charles Martabano, Esq. was present.

Mr. Spector stated and we have a draft resolution which has been circulated by counsel, Whitney Singleton, which has been reviewed by the Board and addressed many of the issues that we discussed at the last meeting and I believe it's, I reviewed it and I believe the other Board members has, I believe we're all satisfied at this point and I believe the applicant, by their attorney is also present as well. And does the applicant have any questions regarding the resolution that's been circulated

Mr. Martabano stated I brought some issues regarding the content of the draft that I saw in the agenda of the Board. I met with Whitney and the Building Inspector regarding that and I believe that Whitney has made some modifications to the resolution that was originally circulated, if those modifications have been made and appear in the draft that you're going to act on, we are fine with the resolution.

Mr. Spector stated Whitney, I only received one draft, so I don't know if you made any changes to it or if the draft that I received, that we received includes those changes.

Whitney Singleton stated yeah, and actually I have one more correction. We need a new condition 7, 8, 9, 10, and 11. No, I'm joking, Charlie.

Mr. Martabano stated I thought you were, Whitney.

Whitney Singleton stated I had the wrong date for the date of action, I had it for February 8th but it's actually February 9th, so I've corrected that. If you want me to share my screen, I can provide the resolution for the Board to see and for Charlie to see.

Mr. Spector stated are they substantive changes or are they minor language changes?

Whitney Singleton stated there was, in item number two where it used to say that it was three-family house operating a four-family house, as to the other structure, Charlie has provided with the Building Department with a Certificate of Occupancy or pre-date letter, demonstrating that it is a legal four-family, so I've made that correction. I've also deleted a condition of approval that required an approval of the residential

premises to confirm the elimination of a dwelling unit which is obviously no longer necessary, if he's got authorization to occupy four units in that building. So those are the only substantive changes.

Mr. Spector stated was your draft resolution also uploaded so the public could have viewed it?

Whitney Singleton stated I just shared it with everybody, let me check. Last week, I sent it out on Saturday to, I sent it to Peter Miley, I don't know if it was uploaded. You know what I can do though, I can, sorry that it didn't go to everybody. What I can do is show you what the changes were, actually I think I can, let me see if I can find this. Okay, why don't I do this, this will probably be the most effective if I can share my screen and slide this over and slide this over, I know it's a little small but the description of the request, oh no I'm sorry, that's a new one as well. Let me just do this, okay...

Mr. Spector stated while you're doing that, I'll ask the Board members if they have any questions or comments regarding this resolution as corrected, as indicated by Whitney.

Whitney Singleton stated okay, here's what it used to say, the, I'll just show you, it used to say the applicant is the owner of a parcel with both a preexisting, nonconforming use in one structure and a preexisting, nonconforming three-family residential use in another, improperly being used as a four-family. It now says that it is, the owner of the parcel has both a preexisting, nonconforming use in one structure and a preexisting, nonconforming four-family residential use in another structure, it doesn't mention anything about improper or illegal use since the applicant's counsel has provided proof that the four-family is legal. That is substantively one change, I've changed the date down here and what I've also done, you'll notice, there are now only six conditions of approval. The condition of approval relative to, what is the other one...

Mr. Alfano stated number five, I think.

Whitney Singleton stated it now says that instead of saying that they can't occupy the second floor ever, it says there shall be no use or occupancy of the second story of the commercial [inaudible] without further approval of your Board, which shall only occur in accordance with the Village Code requirements and State law.

Mr. Spector stated okay, does anybody have, anybody on the Board have any questions regarding the resolution or any comments?

Mr. Weise stated I think we went into good detail at the last meeting on this, it looks like this is according to those discussions.

Mr. Spector stated okay.

Mr. Alfano stated and while I wasn't in the last meeting, I did review it and I'm okay with the resolution.

Mr. Spector stated okay.

Whitney Singleton stated and Wayne this is not actually a variance, there's no reason to go through the five factors.

Mr. Spector stated right, correct, correct. I believe we're ready to vote on it at this point, we have to close the public hearing first and I'll take a motion to close the public hearing on this matter... First of all, are there any members of the public interested or on any of the, either Facebook or present in the Town Hall, has anybody sent any comments or messages? Okay. Then I would entertain a motion to close the public hearing.

Mr. Hoyt stated move to close. Seconded by Mr. Weise.

Mr. Spector asked for all in favor. The motion carried by a vote of 5 to 0.

Mr. Spector stated now a motion to approve the resolution as modified or corrected as indicated by Whitney in this meeting. Do I have motion to approve the resolution?

Mr. Weise introduced a motion to approve the resolution. Seconded by Mr. Spector.

Mr. Spector asked for all in favor. The motion carried by a vote of 5 to 0.

Mr. Spector asked for any opposition.

Mr. Spector stated okay, we can, it's approved, let's move on then.

Mr. Martabano stated thank you all and have a good evening.

- | | |
|---|-------------------|
| 1. Anthony & Angela Giardina | ZBA# 21-20 |
| 79 N. Moger Avenue | Area |
| Mount Kisco, NY 10549 | |
| (SBL 69.73-3-5) | |
| Continued Public Hearing | |

Mr. Spector stated okay, so we have three requests to adjourn matters, 2, which is Anthony & Angela Giardina, ZBA# 21-20, motion to adjourn the public hearing from tonight, to the next meeting which would be March 15, 2022. Do I have a motion?

Mr. Weise introduced a motion to adjourn the application to March 15, 2022. Seconded by Ms. Broth.

Mr. Spector asked for all in favor. The motion carried by a vote of 5 to 0.

- | | |
|---|-----------------------|
| 2. Lisa Mitchell & Alex Smoller (1 Leonard Street) | ZBA# 21-21 |
| 2 ½ Leonard Street | Interpretation |
| Mount Kisco, NY 10549 | |
| (SBL 80.26-1-18) | |

Mr. Spector stated next we have number three on the agenda, Lisa Mitchell and Alex Smoller, 1 Leonard Street, ZBA# 21-21, again a **motion to adjourn to the March 15, 2022 meeting.**

Mr. Hoyt stated so moved.

Mr. Spector stated so moved, okay, I'll second this one.

Mr. Spector asked for all favor. The motion carried by a vote of 5 to 0.

Mr. Spector stated approved and then the last one, Homeland Towers, once again.

- | | |
|-------------------------------|-------------------|
| 3. Homeland Towers | ZBA# 20-14 |
| 180 South Bedford Road | Area |
| Mount Kisco, NY 10549 | |
| (SBL) 80.44-1-1 | |

Mr. Spector stated 180 South Bedford Road, ZBA# 20-14, a request to adjourn to March 15, 2022, can I have a motion.

Mr. Hoyt stated so moved.

Mr. Weise stated I do have a question on that. Apparently there was a cell tower discussion for a new location in the Planning Board meeting, is there, does anybody have any information on that and what that may mean for this?

Whitney Singleton stated yeah and that's substantively, you know your Board hasn't gotten too deep into this. There's two applications on a single property for separate projects, one is for a solar field and one is for a cell tower. There is a lot of outcry over these applications, in particular the cell application, so there has been discussion as to possible relocated sites. As you may know that the cell towers enjoy quite a bit of protection by Federal and a lot of accommodation needs to be given to those, so the Village Board has, is now revisiting the possibility of locating the cell tower in the rear stretches of Leonard Park, so that it's not visible or next to a home, at least not within 1,000 feet of any single-family residence or residential structure. The current location is about 200 feet from two residences and its highly visible as you're driving east on Route 172 and there's a number of issues associated with that, the relocated site into Leonard Park triggers something else, it triggers if you're going to alienate, even though its only by a lease not by an easement or fee title, when you alienate any park land, it has to be approved by the State legislature, it has to be sponsored by both a State Rep and a State Senator and you need to do replacement property of equal value or of equal size. So there is consideration currently being given by the Village Board to allow the cell tower to be relocated to the back of Leonard Park and as replacement land, they're considering a number of sites, principally, the principal one of which is acquiring the 25 acres on the corner of Sarles Street and 172, which is the subject of these two application. So if its acquired by eminent domain, both the cell tower application and the solar farm application will go away.

Mr. Weise stated okay.

Mr. Spector stated that's very good information, in other words...

Whitney Singleton stated its likely not to come back to your Board.

Mr. Weise stated and so, can I ask, if the Leonard Park solution is what we end up, what the Town ends up doing, will we see that or will that not involve us?

Whitney Singleton stated well obviously whenever you move a location will become more visible for some and less visible for others. There was a presentation, you can go back and take a look, from Monday night, of the visual impacts of various locations. I'll tell you where it's most visible from, if it were to go in the Park and you were stand on Route 117 by the tennis courts, not down at the tennis courts but up on the street, you will see the top of it. If it, there's one or two residences, maybe just one in Mount Kisco Chase, who goes from not seeing any tower to seeing it off in their distance but I think that the Board is considering the impacts on the community as a whole, as opposed to one or two property owners.

Mr. Weise stated my question was really would the Zoning Board of Appeals see this or would it not come to us.

Whitney Singleton stated it would not come to you.

Mr. Weise stated okay.

Mr. Spector stated okay, so do we still have an open motion or is it, did we, I think we voted on that motion to adjourn.

Whitney Singleton stated yes, correct.

Mr. Spector stated okay, I didn't look at minutes and would rather defer the approval of the minutes to next meeting if possible, unless somebody else has an objection to that...

Patti Tipa stated excuse me, Wayne, you did not vote on last moving, there was a motion, then went to question, there wasn't a second.

Mr. Spector stated okay, that's what I was asking. Again, going back to the open motion to adjourn the Homeland Tower matter, I believe it was second. **All in favor of the adjournment request?**

Mr. Weise seconded the motion. The motion carried by a vote of 5 to 0.

Mr. Spector stated sorry. Okay, does anybody else, I'm sorry, let's go back to my other thing which was anybody have any objection to passing on the minutes until the time being, until the next meeting, hopefully in person.

Mr. Alfano stated no.

Mr. Weise stated no objections.

Mr. Spector stated I don't think there's any additional business tonight. Okay, I think there's any other business, so I would entertain a motion to adjourn the meeting.

Mr. Weise introduced a motion to adjourn the meeting. Seconded by Mr. Spector.

Mr. Spector asked for all in favor. The motion varied by a vote of 5 to 0.

The meeting adjourned at 7:17 pm.