

Minutes
Meeting of the Planning Board
Regular Work Session
Village/Town of Mount Kisco
Tuesday, April 28, 2009

Meeting called to order at 7:55 P.M. at the Municipal Building Mount Kisco, New York.

Members Present: **Vice Chairman Anthony Sturniolo**
 Doug Hertz
 Stanley Bernstein
 Sol Gibbons
 Joseph Morreale

Members Absent: **Chairman Joseph Cosentino**
 Ralph Vigliotti

Staff Present: **Nanette Bourne**
 Whitney Singleton
 Anthony Oliveri

Vice Chairman Sturniolo opened the meeting at 7:55 P.M. in the absence of Chairman Cosentino.

Minutes: March 24, 2009

Motion: **Stanley Bernstein**
Second: **Doug Hertz**
Aye: **Sol Gibbons**
Aye: **Joseph Morreale**
Aye: **Doug Hertz**
Aye: **Stanley Bernstein**
Aye: **Vice Chairman Sturniolo**

Conceptual Application:

Bellizzi
153 Main Street
PB2009-07

Present: Isidore Albanese, Owner

Vice Chairman Sturniolo: We have an application, outdoor dining diagram and a memo from the Building Inspector.

Isidore Albanese: Good evening. Basically we've had outdoor dining for about 10 or 12 years. We were one of the first ones to have it. Each year the application was put in for about 44 seats. Last year the landlord had the Town come over and measure and asked us why we are doing the application the way we are doing it; it is their property and I should not be paying for that space. This year, when I put the application in about one month ago, they said I have to go before the Board, because it is your own property, not Town property anymore. Basically, the plan that I have now is decreased in size. It went down from 44 to 34 seats and is basically set back towards the building. The whole area is inside the owner's property.

Vice Chairman Sturniolo: So the old is 17 tables and now you are reducing it to 14.

Isidore Albanese: I am reducing it to eight tables and 34 seats. We have a total of 44 tables inside the restaurant, which works out to be about 18% and 160 seats, about 21%.

Vice Chairman Sturniolo: Nothing has changed in the interior?

Isidore Albanese: Nothing.

Doug Hertz: You are using the same chairs and railings?

Isidore Albanese: Yes. The railing will be small as we are cutting back.

Anthony Oliveri: There was a comment from Austin Cassidy regarding the detail on the railing.

Isidore Albanese: It is a black railing that cuts across the bottom and the top and is supported on all sides and ties in together. In most seating areas, you can get in from the outside, but ours can only be entered through from the inside of the building. It is more for our patrons.

Joseph Morreale: Are these permanent? Do they stay out there?

Isidore Albanese: They come in every night. The railings break down and are brought inside also.

Doug Hertz: When you re-did the signage in the front of the store, did that go before the ARB?

Isidore Albanese: Yes, a long time ago.

Doug Hertz: Was this part of that design at that point?

Isidore Albanese: No. This was before that. This was part of the original outdoor dining that was done in the beginning. When we increased the other store, we basically added another piece to it. That was the last change that we made. Every other year it's been exactly the same plan and the same size.

Doug Hertz: I have no objection to what I am seeing; making it smaller makes the sidewalk access a little better. My only thought is because this is now being integrated into what is essentially going to be site plan because it is within your property.

Nanette Bourne: A site plan is part of the outdoor dining.

Isidore Albanese: Because it is removable. It is not fixed.

Nanette Bourne: There is an outdoor dining law that needs to be complied, so it is a site plan compliance that is within the code, but not in a sense a site plan approval. This is not an amended site plan application. It is an outdoor dining application.

Joseph Morreale: And that is because it's temporary?

Nanette Bourne: Yes. For a site plan, you have setbacks, etc. This is different.

Vice Chairman Sturniolo: The only reason it is here is because the seating arrangement and table arrangement has changed. If it did not change, then you would have had the automatic renewal.

Isidore Albanese: The change is that it is owner's property rather than town property and less.

Joseph Morreale: When did it go from owner's property to town property?

Isidore Albanese: It was always his property. We always thought that all outdoor dining fell under "outdoor dining." When we first did it, we basically kept the application the same way. Outdoor dining is the same as far as the rules, but there is a fee to be paid if your on Town property; \$3.00 per square foot. All these years we have been paying that \$3.00 per square foot to the Town, not knowing that you do not have to pay that \$3.00 per square foot if it is on the owner's property.

Nanette Bourne: One of the changes you are making is to pull it out of Village property and onto your own property?

Isidore Albanese: That is the only reason why I am here. If it was the same way, then basically Austin could have just approved it. We still have to look at it the same way, but it falls into something different. There are other places in town, The Flying Pig, The Café of Love. That is on their own property and that falls into something different.

Whitney Singleton: I do not know that I wholly agree with your assessment, but it may not impact you. The reason that the Flying Pig's application did not go to another board had to do with the number of seats, nothing else. It is a sidewalk café, as is yours.

Joseph Morreale: If it is now understood that this is your property, is that the way the original site plan was drawn?

Nanette Bourne: He is saying that the previously approved outdoor dining permit was for the location of seating on village-owned property, and he paid the fee for the right to use village-owned property.

Joseph Morreale: Wouldn't that have been shown on the site plan that that was village-owned property?

Isidore Albanese: When we did the drawings, we did not work off sketches that showed the property line. Assuming that it was town property, we stayed ten feet from the line, and that is how big we made it before.

Nanette Bourne: There was no site plan approval for Bellizzi. That was an existing strip of stores that was tenanted by a small pizzeria that became a larger pizzeria. I do not know that there is a site plan for that strip of stores.

Joseph Morreale: Thank you.

Whitney Singleton: With regard to the fees, those are whatever they are; he has an application to put in a sidewalk café. The code does not distinguish directly between what is his property and what is village property. There are certain limitations and I think the applicant is more within the confines than what is permitted, based upon my preliminary review. He simply needs to take this conceptual applicant and submit an applicant to your board for final approval. I do not see any reason why there should be any problem with it, as he is reducing the overall number of outdoor seating. If what was previously approved was permitted, then a lesser number should be permitted as well.

Anthony Oliveri: Austin is pointing out in his memo as a Planning Board issue might be the coordination of umbrellas and decorative barrier. Is that a Planning Board issue that the Planning Board needs to look at?

Whitney Singleton: If his requirements are within 93-4 D and those are simply issues that I would caution the applicant to make sure he is compliant with when he submits his formal applicant, and to the extent your board wants to see specifics of those, that is purely up to your discretion. The gist of what is required under the code is that these barriers and tables and awnings are not supposed to be advertising, a uniform color and consistent with the two others.

Isidore Albanese: Last year the umbrellas were too low, so this year we had extenders made on them to bring them up to seven feet.

Whitney Singleton: It is up to your board if you want to see actual swatches, etc. It is pretty clearly delineated. I would imagine that as a business owner he is not going to want to choose a color pattern that would be inconsistent with his signage or anything else.

Nanette Bourne: Are you going to have this surveyed? How will you know the property line?

Isidore Albanese: Over here, we are 9.6 feet.

Nanette Bourne: So, you are going to take it off the building?

Isidore Albanese: Yes.

Nanette Bourne: And this is based on the survey?

Isidore Albanese: Yes.

Nanette Bourne: You do not have any survey information on here. This is not stamped.

Isidore Albanese: This is by Johnson. I have one that is stamped. I will get it to you. I wanted to make it measurable, as the village ones are smaller. Last year when they had to measure for the cement, they knew where the property line was.

Vice Chairman Sturniolo: How did the property owner know about where the tables were in relationship to the property line?

Isidore Albanese: There was a problem with the cement. We had the cement lowered about an inch and a half, which became a hazard. We told the landlord and the town that someone is going to fall and get sued, so the town came out to measure to find out whose responsibility it was, and when he measured he said it is all within the property of the landlord.

Nanette Bourne: Who within the town did the measuring?

Isidore Albanese: I think it was one of the Building Inspectors that came. We then looked at the survey, we found where the lines were, and we were within those lines.

Vice Chairman Sturniolo: At this point, let us submit this to staff and have a review.

Isidore Albanese: What kind of timing is this before we can put tables out? Our customers are interested in our outdoor seating.

Whitney Singleton: You are here solely on a conceptual basis. If you come in with your stamped application showing everything in the code that you are currently not showing, there should be no problem. Because there is a fairly long list of items to comply with, if you have any questions you may contact Austin, Nanette, Anthony or myself and confirm those. You have to be able to demonstrate that you are leaving sufficient, unobstructed passage that is required by the code regardless of where the property line is.

Nanette Bourne: I will ask you for some documentation on what would normally be included in the survey. As seemingly simple that is, do not underestimate how they may complicate that. That may be one of the first calls you may want to make.

Anthony Oliveri: If he has a survey that is signed and sealed by the surveyor, does he now need to produce a plan with the seating drawn on it? A surveyor can submit that, or does he need to confirm it later that he is within the property line when the tables are set up?

Whitney Singleton: For a temporary seating adverse seating it's taken down every day.

Anthony Oliveri: How do you draw claim to that? There has to be a mechanism to check to see if it is where it is supposed to be.

Nanette Bourne: That is just an extra step.

Anthony Oliveri: It would probably be quicker, because if he needs to have him draw this on here, he may already have a survey.

Whitney Singleton: It still needs to be drawn on because he has to show the minimal passable width. Once it's on a plan, the board can say we approve subject to conditions D3-4 and 1-16 he's done.

Nanette Bourne: I think it goes to locating your tables. As far as the iron rails, where you put some pretty permanent poles for your rails, you need to nail that down right away.

Isidore Albanese: We are allowed to cross the line, if we do are we using town property, as far as the other seating. We just pay for that.

Nanette Bourne: That is not true. Whatever you get approved is what you have approved. If you cross over the line, that will not be in compliance with what the Planning Board approves.

Isidore Albanese: That is why I stayed inside the property line. I stayed within those limits and I am definitely sure that is correct.

Vice Chairman Sturniolo: The next meeting is in two weeks, you have to get that survey information done.

Whitney Singleton: I cannot help in your timing. I can only tell you the Building Inspector and Village Manager are authorized to approve up to ten. Once you go over that threshold in the CB1 and the CB2, the Planning Board has jurisdiction.

Vice Chairman Sturniolo: You could do the reduced number of seating with Austin tomorrow, to be supplemented by this later on.

Isidore Albanese: That will help.

Whitney Singleton: The only other thing I could suggest, and it's entirely the discretion of the board, if the board is open to processing this application and the material is coming in to all of us, we could write up a draft of the resolution, so the next time you see it, he could be on for approval at the next meeting.

Isidore Albanese: That would be great.

Vice Chairman Sturniolo: Is everybody okay with this?

Stanley Bernstein: It would be nice to expedite this. Perhaps Austin could work something out that he can re-do this application. At least he gets his seats.

Vice Chairman Sturniolo: In either case, get all the information to staff so they can prepare a draft of the Resolution of Approval for the next Planning Board meeting.

Nanette Bourne: Make sure we get copies of everything early, so that if there is anything that is not right we can have you correct it so the board can approve the draft resolution at the meeting.

Anthony Oliveri: You need Johnson to put the proposed tables and railings on to the existing survey and show the clearances.

Isidore Albanese: Will do. Thank you very much.

Continuing Review

**Mount Kisco Diner
252 Main Street
PB2008-10**

**Present: Frank Georgiou, Owner
Lucille Munz, Architect, Munz Associates
Clifford Munz, Architect, Munz Associates**

Vice Chairman Sturniolo: The Planning Board has been asked by the village board for a recommendation for a zone change, and that is all we are going to discuss tonight. Section 110-21 A expressly provides that the OD District is intended to provide for professional or services of low intensity, and it is reflective of the neighborhood. CB1 and CB2 have private parking facilities, and they have the availability of municipal parking, such as in and around Shopper's Park. I, for one, am concerned with what happens at 251 Main Street, which is Lunar and Woody's Restaurant, Pour Café and Valvoline. Suppose those uses change and they become more intensive? In speaking for myself, I do not think changing the zoning would be a wise thing to do. Also, it does not go along with, and it's not consistent with, the Master Plan. The Master Plan makes recommendations for zoning changes within the village, and this is not a part of it. Again, I do not think it is smart long-range planning on our part to recommend the zoning change.

Joseph Morreale: I will add to what you said. The concern I always have about planning, is that once you set a comprehensive plan and you really map out the village, as soon as you start moving some zoning in very specific places, it does a couple of things. It starts to eat away at the plan. The plan can be nibbled to death by the ducks and eventually you do not have a plan. Secondly, it opens the door to everyone else who wants to do this, and before you know it the whole map changes. I guess my view from a planning point is that we stay consistent with the plan that was drawn up after many years of deliberation and not allow what is equivalent to spot zoning. I would not like to see that.

Doug Hertz: I wish we had looked at this more carefully at the beginning. We talked generically about moving a line, but I did not look at it carefully. We were looking at specifics of the site plan and trying to make a site plan work. I have to agree, when looking at a zoning change it is very hard to recommend a zoning change to a more intensive use from a less intensive use. Generally speaking, the applicants who have come before us, who want to essentially downzone property is something that we always like to see. It means less intense uses, less village resources being taxed. It is hard to come up with a really good argument for making a use, which is currently low intensity office district into a higher density usage. I would be concerned if we did it here, there

would be other nibbling by the ducks, as it were, by those peripheral zones around the town. I apologize that we have not looked at this more carefully at a much earlier point. In my view, it is a dangerous precedent to set.

Stanley Bernstein: I agree totally with Doug. I am definitely against a more intensified use of the area. To go to CB2, I think this is right at the location of where that line is. It is an ideal location for a less intense use going further south, from that point south. Also, I am definitely against spot zoning. I will not accept spot zoning. My recommendation to the village board would be not to re-zone this property.

Sol Gibbons: When the Master Plan went in, there was a lot of thought that went behind it. The danger is, where does it stop? You are going to have a "me too" thing, a domino effect, and I do not think it is a good idea to do spot zoning. I agree with the rest of the board.

Vice Chairman Sturniolo: Since everyone is in favor of the concept of not changing the zoning, I suggest we ask the Planning Board attorney to draft a memo stating that to the village board that our recommendation is not to change the zoning.

Whitney Singleton: Did you want to put that to a vote?

Motion for the Village Attorney to Draft a Memo to the Village Board Stating the Planning Board has agreed not to Change Zoning

Motion: Vice Chairman Sturniolo
Second: Stanley Bernstein
Aye: Sol Gibbons
Aye: Joseph Morreale
Aye: Doug Hertz
Aye: Stanley Bernstein
Aye: Vice Chairman Sturniolo

Vice Chairman Sturniolo: I am sure you would like to say something for a moment or two.

Clifford Munz: No.

Vice Chairman Sturniolo: Okay.

Clifford Munz: Thank you.

Continuing Review:

Omnipoint Personal Wireless
One Mountain Avenue
PB2007-12

Douglas Warden, Attorney at Law, Snyder and Snyder
David Weinpahl, Managing Partner, On Air Engineering on behalf of the Applicant.
Ananbd Rapolu, Radio Frequency Operator, Omnipoint Communications, Parsippany, New Jersey

Vice Chairman Sturniolo: In our packet, we also now have the analysis by the village's consultant in supporting PierCon. I looked at it and have no technical qualms with the village's consultant, but I would like to suggest to my fellow Planning Board members to look at that last page of the February 17 meeting notes titled "Conclusion." I am suggesting that conclusion be incorporated in our resolution of approval, and I do not think we have any other issues with the application.

Doug Hertz: There is a reference here to structural integrity, stating:

Review of the Structural Analysis was reviewed and deemed complete. The existing conditions with the three antennas proposed and 12 coax lines at 1 5/8 inch coax will place the pole at a stress level of 84% capacity and the anchor bolts at 92% of their capacity. This monopole will probably not allow any future carriers.

Doug Hertz: When something gets to 90% capacity, I start to get nervous.

Anthony Oliveri: Usually you do not design to 92% capacity. I do not know if he is incorporating a factor for safety here or not.

Doug Hertz: I would hope so.

Anthony Oliveri: We would need more information on that. The structural analysis would need to be requested by the Building Department.

Doug Hertz: I want to make sure we are going to put something up that is not going to come tumbling down. This consultant's document has been before the Village Board?

Whitney Singleton: Yes.

Doug Hertz: So the Village Board is aware there is no additional room on the pole, etc.?

Whitney Singleton: Yes.

Vice Chairman Sturniolo: Does that fly in the face of the 1996 telecommunications act, which encourages co-location?

Douglas Warden: It does encourage co-location where possible under the telecommunications act. The telecommunications act does not, under any circumstances, want us putting up additional antennas that would be unsafe. They would not make us do that. As an additional point, any future co-locating carrier would be responsible for, for example, retrofitting the pole and make sure they could structurally handle this. They would come before this board to get all the necessary approval for that.

David Weinpahl: Looking back in my notes, the pole was built in 1995.

Vice Chairman Sturniolo: Whitney, at this point, what needs to be crafted?

Whitney Singleton: It is pretty straightforward, approving the site modifications. The only conditions of approval that I possibly see are compliance with the provisions with the wireless overlay, pre-emissions, compliance with the plants at the fence and a requirement that the documents be submitted to the village, which I believe, based upon my earlier discussions with the applicant's attorney that they've already acknowledged the condition of approval from the Village Board.

Doug Hertz: We are also asking them to clean up the site where it had been overgrown.

Whitney Singleton: They offered that.

Joseph Morreale: What is CW data?

Douglas Warden: It is drive testing. Drive testing is when they would actually drive around and measure something that is up there already.

Ananbd Rapolu: CW is a technological term for the radio frequency.

Joseph Morreale: You are saying this is related to six-tenths of a percent?

Douglas Warden: That is a separate issue. I think you are thinking of total radio frequency emission with respect to the FCC limits. We are less than one percent. Basically, once the facility is up and running, we will agree to drive around and measure everything that is up there, and see where it is. There are two issues. One is where are we going to cover, and are we within the FCC health and safety requirements? The six-tenths of one percent that you just referenced have to do with the second of the two issues. The CW test has to do with the first.

Vice Chairman Sturniolo: Any cell carrier has to accept the guidelines of the FCC and ANSI and IEEE. The bottom line is they are allowed to put out 550 milliwatts per centimeter squared, and as long as the providers adhere to that specification, coupled to the fact that there is no downward tilting of the antennae which had a tendency to raise the RF radiation at one particular level. Those are two important criteria the FCC demands be met and it appears that these demands are met in this application.

Motion for a Resolution of Approval for a Site Plan Modification for Omnipoint Communications

Motion: Stanley Bernstein
Second: Joseph Morreale

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Aye: Sol Gibbons
Aye: Doug Hertz
Aye: Joseph Morreale
Aye: Stanley Bernstein
Aye: Vice Chairman Sturniolo

Whitney Singleton: I will send you a gratis copy of the resolution.

Douglas Warden: Thank you very much.

Continued Discussion

Whitney Singleton: At the last meeting, your board was presented with a laundry list of recommendations for zoning modifications that have been discussed over the past year or two, and specifically at the last meeting, we discussed how to implement some of those. Your board expressed some concerns about the potential for adverse impacts on the crossroads entry to the village with applications that have come in from big box, pharmacies, different uses, etc., and there has been some concern as to traffic patterns, ingress/egress, traffic safety, pedestrian safety, etc. Part and parcel of Nanette's recommendations, or items that we have been discussing over the past couple of years was one, specifically, to look at Section 110-38 of the code governing Change of Use Permits. Specifically, we can go with some prior examples in the village, we have changes of use and changes of tenancy where the new use is rarely as dormant or subdued as the prior use. For example, a retail sales of pianos or retail sales with Crazy Eddie. You can have a same supposed use classification result in substantially different parking demands, traffic generation, delivery issues, etc. That has been a growing concern as certain Chinese restaurants in town saw maybe eight to ten customers a day are now replaced with very, very successful restaurants that are pouring over into adjoining sites. We saw that potentially with Panera replacing Pacific Chinese Restaurant. There would have been various multiples with the increase of the degree of traffic and the parking demands. While they are the same use classification, it calls into question, how do we deal with this as a logistical issue without being discriminatory in our approach? At the last meeting, Nanette had done a proposal to modification of 110-38, and that is before you now. I have proposed modifications on 110-59 regarding the definition of a major change of use as opposed to a minor change of use. I conferred with the Building Inspector on this as well, and I think Nanette has done an excellent job of capturing the sentiment of what we are trying to address here. However, I am not comfortable that it is far enough along so as to have a well-defined set of criteria by which you would distinguish a major change of use in a minor change of use. It is too subjective, and there needs to be a measuring stick so the Building Inspector can say yes or no as to issuing a building permit. I have tried to address that slightly and examine those things that have happened in the village, which really do result in significant changes that should come before your board. I think it still requires some further tweaking. I have reviewed 110-38 in context with 110-45, which are the site plan elements. I have thought about prior applications and non-applications in the village, and I've seen there is a tendency for a lot of buildings to be re-demised into multiple spaces without it ever coming back to your board, yet they still use the same entrances. I do not understand how a building, which is designed to be a stand-alone and have one loading area all of a sudden, becomes five different tenants, and there is still only one loading area. They are hauling things in throughout the street, or the front door, the garbage is no longer in a centralized location, if there are new doors they are not necessarily designed in a fashion, which is safe for pedestrians. I have tried to capture those items, which I think should be appropriately returned to your board for consideration. That would be changes in the number of tenants, doors, ingress/egress points, elimination of ingress/egress points, changes in the loading docks. It is by no means a complete or exhausted list that I have here.

Stanley Bernstein: I have said it before, and I will say it again that any change in tenancy regardless of the use should be the purview of the Planning Board. It is not that it is in violation of the code, because the code is going to be changed. There has to be some language in there saying that all changes must come before the Planning Board, even though it is not a change of use, but a change in ownership or tenancy.

Doug Hertz: We cannot do that. I do not think we want to do that. I do not want to be the tenant police. I do want to be the Planning Board. I think there is a difference. When jewelry store A goes out of business and jewelry store B takes its place, I don't want to see them.

Stanley Bernstein: It depends what jewelry store B is. Is it going to be a giant Zales or the neighborhood store?

Doug Hertz: I think this is what Whitney is trying to get at; to come up with some criteria.

Whitney Singleton: That is exactly it, where you are not addressing the applicant, you are addressing the use.

Doug Hertz: Where we see that there is a difference in the way the space will be used; to try to pick up on what those items would be that would trigger a review. But just for office space - when an accountant goes out and a lawyer comes in.

Whitney Singleton: Then the question becomes what happens when the accountant or the lawyer goes out, and the one lawyer and the one secretary leave and the phone bank of 27 cold callers come in and you have 18 times the number of parking spaces being occupied that was previously occupied. It is still an office, but that is not unheard of. That is what is happening at the former Mount Kisco Seafood site now, along with a number of places in town. When you look at the records that exist in our town, historically as opposed to currently, there is a much greater degree of specificity now that did not exist back then. When you have a use that is a retail use, and they sold pianos and there were two guys in the 7,000 square foot store, because it had that nomenclature of retail, the new owner comes in and says I want a Sam Goody, which produces a whole bunch of traffic generators. They are able to say I am allowed to do this as of right. Those are all retail uses. They take 6,000 square feet, they break it down between four or five tenants; there are more tenants in the site before 8:00 am than existed during an entire week under the old use, but it's still "retail" because the Certificate of Occupancy said retail. We did not have that specificity. We cannot go ahead and divest people of their property rights after the fact, but we can make sure that the situations do not get worse. That is the criteria that I and Nanette is trying to establish so that your board and the village can have some appropriate controls to prevent further escalation and intensity in the village.

Vice Chairman Sturniolo: At this point, because you still need to do some work on this, would it make sense now to send this to the Village Board with the caveat that this is a work that is being fine-tuned, so they know where we are time-frame wise?

Whitney Singleton: I think that would be appropriate, but I do think it needs to be fine-tuned. It would probably require input and consideration by that board as well as all the consultants, and I do not think that it should be limited to 110-38. 110-38 is a Change of Use Permit, and you are looking to see whether one use can be substituted for another. It is not site plan review. I think the village needs to consider what applications should actually come back to you for site plan review. If somebody is re-demising their space into five tenants where it used to be one, and they are putting in new doors and new loading docks, or they are not putting in loading docks when they need them. This is happening as we speak.

Doug Hertz: How could they not come to us?

Whitney Singleton: For example, you had a change in tenants at Blockbuster. Blockbuster went out - Sears went in. A few months later, they come meandering back to the Building Department looking to increase the size of the doors in the rear of the building for deliveries. That is not a designated delivery area. They want to do anything to avoid coming back to your board and do a comprehensive analysis. We had the same thing with CVS, Mount Kisco Seafood.

Stanley Bernstein: The former Mount Kisco Seafood has a specific resolution of approval. Why? Is he changing anything in that resolution? He came before us.

Whitney Singleton: He did not get approval from you. He abandoned his application because he did not want to deal with you.

Stanley Bernstein: So why is he building?

Whitney Singleton: Because he was issued a permit to renovate and restore the building, and as part and parcel of that application, he went to the ARB, and his position was he was not changing the footprint of the building. It is an accurate position.

Stanley Bernstein: He is changing the use.

Whitney Singleton: But his position was, that going from retail to medical offices, both uses have a parking requirement of one space per 150 square feet, and at 1 per 150,

the way the code is written under Section 110-38, there is no referral to your board unless the parking requirement goes up.

Stanley Bernstein: That has to be changed.

Whitney Singleton: People are deliberately avoiding your board, and more importantly, they are circumventing. What ended up happening is the tree that you did not want cut down has been cut down, the building that you did not want expanded has been expanded and the use intensification that you did not want to occur has occurred. That was predicated on the fact that the Certificate of Occupancy for that building said "retail." It was retail but you could barely fit in with a giant lobster tank and debris everywhere and upstairs was nothing more than a stove where they cooked chowders. No customers ever went upstairs. But they went before the Zoning Board and said, "our C.O. says retail. It was two-story retail when we got the C.O., we want two story retail or the equivalent thereof now." By raising the ceiling height and making more usable space upstairs, they have effectively circumvented your board.

Stanley Bernstein: You mean to tell me the powers that agreed to that did not have the sense enough to make them come back here?

Whitney Singleton: The Zoning Board, in interpreting the zoning ordinance, felt they had no option but to acknowledge the terms of the Certificate of Occupancy.

Stanley Bernstein: The Zoning Board cannot issue a Certificate of Occupancy.

Whitney Singleton: They issued an interpretation, which is one of their two statutory authorities by State law.

Doug Hertz: I believe we are beset with these issues. What is your recommendation to us at this point?

Whitney Singleton: I think we should make some recommendations to the Village Board to examine this issue and examine it before things get worse in the village, in a downturn economy where people are looking to utilize every square inch they can, sublet, split their space, and we do not allow abuse of the otherwise permitted uses in the zone. By getting something before them, and continuing to have them, your board and staff work on tweaking this language. Whether it is 110-38, 110-45, maybe re-examining categories within the parking regulations as to what the requirements should be, whether they should be further broken down beyond what they presently are.

Doug Hertz: Can we get to a point where we can get a moratorium on certain types of actions happening?

Whitney Singleton: Once you get something to them where they schedule a public hearing, that is when the automatic moratorium begins for a period of 60 days.

Vice Chairman Sturniolo: As this is being fine-tuned, we should send this to the Village Board now.

Joseph Morreale: I have a concern with that. I do not think this is specific enough, and if you send this over to the Village Board, they will approve it. What do we then do? We have got our own hands tied. I would rather give them almost a finished product. Your first statement was it is not specific enough. If you are going to specify it, then you do have to quantify it and talk about how much of an increase we are talking about. If you do that, of course, you are going to create a line where you will be above or below. That is the danger of setting quantitative measures. Do you want to do that? I also do not like the idea that the minor change be left to the Building Inspector, because without specificity you are going to be caught between who says it is major and who says it is minor. I think that is dangerous.

Whitney Singleton: Currently, any Change of Use, which does not result in additional parking requirements, does not constitute a Change of Use and does not come before your board anyway.

Joseph Morreale: That is why we are getting into trouble.

Vice Chairman Sturniolo: We are trying to curb that. It is still going to need some collective input.

Nanette Bourne: I think there are areas that need to be tweaked, and I think we all understand the sensitivity of this and where the gray area is. If you send it to the Village Board without a specific request that they move it forward, it probably will not get moved forward.

Whitney Singleton: I can tell you the laundry list of zoning changes that was sent to your board at the last meeting was a list that Nanette and Austin and I have been compiling for three or four years.

Nanette Bourne: There will be other opportunities to make refinements, and it is not perfect, but it is a start. Again, what we are trying to achieve is not the perfect ordinance, but to get it to a point where as applicants come in for these changes of uses, if they can be halted while this gets refined, we will be dealing with these changes that have a really negative effect on the village. My point is if this is not accompanied by a "this is our recommendation, please move forward on this," they are not.

Whitney Singleton: I think that covering letter that Nanette is talking about could also be coupled with a statement that the Planning Board is going to continue to keep this item on their agenda for further consideration and refinement, will be conducting some work sessions, and would like to schedule a joint work session with the Village Board on this topic prior to any action by the Village Board on this proposed zoning. This would be moving the ball down the field and making progress.

Nanette Bourne: Isn't it an important milestone to get a public hearing scheduled?

Whitney Singleton: Having the public hearing has consequences.

Joseph Morreale: It sure does. The first question someone is going to ask is what is the difference between major and minor?

Whitney Singleton: It's defined on page 2.

Joseph Morreale: That is subjective.

Whitney Singleton: We will continue to work on it

Stanley Bernstein: I think we need to take this home and make comments.

Whitney Singleton: I think there are many things that need to be done, and sometimes you cannot get them accomplished until you decide on a course. If there are determinations that more work needs to be done, nobody is going to say it is good enough. This Village Board conducted five public hearings before adopting a sign law, and then after it was adopted, you had people come back wanting further modifications, and the board has been entertaining a number of considerations. When we adopted our 68-page taxicab law, I think we had between five and seven public hearings. We went back and tweaked things along the way. We realized there were issues with the Taxi and Limousine Commission that needed to be address, processing fingerprints, etc. We tweaked those things as time went on. But we put something on the table to improve it. This is only a portion of it. We also need to look at 110-45 and 110-35. That is regarding non-compliant buildings and whether or not we want to put a temporal element to those. In other words if you have a building which has insufficient parking and you abandon that use for a period of ten years, can you come back and have insufficient parking? Under our code, you can. We also need to address whether we want to be much more specific in our parking requirements and whether or not our parking requirements sufficiently support off-street parking for particular uses.

Stanley Bernstein: That presents another problem. Planning is going in a different direction. Rather than accommodating an automobile, it is trying to lessen the reliance upon cars and parking and traffic, etc. That is not within our purview at this particular moment, but it is something we should keep in our minds over the long term.

Nanette Bourne: Many communities are actually reducing the parking requirements.

Whitney Singleton: Designing uses in a fashion where there won't be a need for parking.

Joseph Morreale: I'm hearing a couple of things, one, that you're trying to get a process going, and two you're trying to engage the board to start to deal with this. So we do not give them a finished product, we sort of hook it along together.

Vice Chairman Sturniolo: And suggest we work together.

Joseph Morreale: Either we go incrementally on this or we wait and do this big change with all these multiple facets and then probably get shot down because it is too big a change. I think incrementally makes more sense.

Nanette Bourne: I would recommend you advance the fees and the public hearing and map changes.

Vice Chairman Sturniolo: Is the consensus of everyone that we start the ball rolling with the Village Board by asking Whitney and Nanette to send them this memo?

Doug Hertz: That makes a great deal of sense. While I agree that it is nice to have a quantifiable standard that triggers, whenever you have such a hard and fast rule, it has to be the right rule. It takes away someone's judgment. So on the negative side, yes, if someone has bad judgment they cannot impose their bad judgment. On the other hand, I'd like to think that we hire people who impose good judgment. I worry that you create a standard that is so rigid it may not accomplish what we want.

Joseph Morreale: Even if you put in numbers or quantitative measures, you can always have that last link that says, "to leave it in the board's hands."

Whitney Singleton: That is not the issue. Giving your board discretion or authority to do what is in the best interest of the health safety and welfare of the community is not a problem. What we are trying to avoid a situation where an administrative official is exercising discretionary authority that they really should not be. There needs to be a specific set of criteria, that when you plug them into this formula or set of circumstances that it spits out and goes to the Planning Board, it spits out and goes to the Building Inspector, Zoning Board, etc., not whatever he feels like on a particular day. You cannot vest someone who is doing a ministerial task with discretionary authority.

Vice Chairman Sturniolo: We are all in agreement for Nanette and Whitney to get this going to the Village Board.

As there was no further business, on a motion by Mr. Hertz, seconded by Mr. Bernstein, the meeting was adjourned at 9:25 P.M.

Respectfully submitted,

Stanley Bernstein:
Recording Secretary

dm