



**INCORPORATED
VILLAGE of PORT JEFFERSON**

121 West Broadway
Port Jefferson, NY 11777
Tel. (631) 473-4744 Fax (631) 473-2049
www.portjeff.com

ZONING BOARD of APPEALS

Chair
Lee Rosner

Members
Michael Verruto
Charles Kenny
Jack Giannola
Rob Gitto
Secretary
Cindy Suarez

ZBA MINUTES

June 11, 2009

PRESENT:

Lee, Rosner, Chairman
Michael Verruto
Charles Kenny
Rob Gitto
Virginia Capon, Trustee

ABSENT:

Jack Giannola

The Zoning Board of Appeals held a general business meeting at 7:00PM in the first floor conference room at Village Hall, 121 West Broadway, Port Jefferson, N.Y. 11777.

On a motion made by Lee Rosner, seconded by Rob Gitto, the Board made a motion to accept the amended minutes of 1/29/09.

The members reviewed the scheduled public hearing applications.

PUBLIC HEARINGS:

**Appeal No. 416-09JG Section 19, Block 2, Lot 13
Dennis Eylers
204 Lincoln Avenue**

Applicant seeks an area variance from the provisions of section 250-27A of the code. The applicant requests a rear yard variance to build a deck. The setback requirement is 30' where 13.7 feet is requested. The property is located in the Village's RB-2 residential district.

Mr. Dennis Eylers, property owner was sworn in. He stated that he lives at the premises for 4 years and that the existing deck was there when he bought the house. He explained that the present deck is rotten and he would like to replace it for safety and recreational use. The existing deck is 10' out from the house and a 29.7' backyard exists. He stated that other neighbors in the surrounding area have similar deck setbacks and gave the following examples:

1. Robert Levine #201 Washington Ave. (approximately 300 sq ft octagon deck is approximately 9' off the rear property line).
2. Howie Wolf #202 Lincoln Ave. (approximately 20' x 35' deck approx 9' off rear property line).

3. John Leahy #203 Lincoln Ave. (approximately 20' x 30' pie shape deck approximately 12' off rear property line).
4. Muffly #201 Lincoln St. (approximately 20' x 30' deck approximately 10' off property line).

Mr. Eylers stated that he is not aware of any variances for rear yard setbacks in the area.

Mr. Verruto requested that the hearing go off the record for time to review the property file history. After reviewing the file with the other members, Mr. Verruto, stated that on 5/16/96 a variance was granted to the property owner for a rear yard variance.

Mr. Rosner made a motion to amend page 7 of the application to read "yes" a previous appeal has been made to the ZBA. Mr. Gitto seconded the motion, all in favor the vote was 4-0.

Mr. Rosner questioned the applicant whether or not there were other alternatives to consider. He stated that the variance requested is substantial. He also stated that it would be beneficial and helpful for Mr. Eylers to do homework and research any other similar variances in the surrounding neighborhood.

Mr. Kenny stated that it would be helpful for the applicant to take photographs of properties that will be immediately impacted. Further, he must document that variances were issued by the Village if the ZBA is to consider these neighboring properties as reliable comparisons.

Mr. Rosner opened the floor up to the public for comments. There were no comments from the public.

Mr. Verruto made a motion to continue the hearing to the 7/16/09 hearing, Mr. Kenny seconded the motion, all in favor the vote was 4-0.

Appeal No. 415-09JG Section 21, Block 3, Lot 15.2
Tsunis & Gasparis LLP for Kinga Koreh
32 Overton Avenue

Applicant seeks an area variance from the provisions of section 250-27A of the code for a two lot residential subdivision. Parcel one is 13,488 sq ft where 15,000 is required, and parcel two is 13,267 sq ft where 15,000 ft. is required. The property is located in the Village's RB-2 residential district.

Mr. Tsunis was present to represent the applicant. He requested that the Board consider all previous reports and records to be presented as part of this new application.

Mr. Tsunis gave a brief summary of the reasons why the application is before the ZBA. He stated that the applicant was requested by the Planning Board to get approval from the sewer agency. The Planning Board gave a certain period of time for the sewer and water approvals. The applicant sought one extension which was granted and then asked for a second extension that was not granted, as the Planning Board resolution provided that only two extensions would be allowed.

Mr. Verruto questioned whether or not there were any changes made in the application.

Mr. Tsunis stated that the application is identical with the addition of the approvals in hand.

Mr. Verruto questioned when the sewer and water applications were granted.



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Mr. Tsunis responded that the applications for sewer and water were granted 12/12/08.

Mr. Rosner asked if the same set of variances is granted as in 2007, would the applicant have to go back to the Planning board?

Mr. Kenny stated that he is aware that the Planning Board can grant one six month extension of the original 12 month grant provided that no physical changes to topography or site have been made since the last application.

Ms. King Koreh, #18 Richmond Hill Rd., Stony Brook, NY 11789 was sworn in and testified to the statements made by Mr. Tsunis.

Mr. Rosner questioned the site plans from two years ago and if the “envelope” was settled. He also questioned if the SEQRA process had been completed by the Planning Board.

Mr. Tsunis stated that the variances were requested and he filed the applications with the Planning Board who accepted and gave it a negative declaration.

Mr. Kenny stated that the 1/31/08 resolution of the Planning Board makes a classification to SEQRA conditional approval 120-07 by Phil Schiavone and Jennifer Sigler. This document was put into the record as exhibit “A”.

Ms. Suarez read the 5/20/09 Suffolk County Planning Commission’s response letter into the record.

Mr. Rosner made a motion to accept into the record the prior proceedings before the Zoning Board of Appeals in 2007. Mr. Kenny seconded the motion, all in favor; the vote was 4-0. Mr. Kenny put on the record that one of the current ZBA board members was not on the board in 2007.

Mr. Rosner opened the floor up to the public:

Lynda Barlotta #40 Overton Ave. was sworn in. She asked for an explanation of what is considered to be on site storage of drainage, and also questioned why there is another meeting being held if all the variances were granted.

Mr. Verruto answered that site storage is normally required in drywells for driveways. The highway department may consider additional drainage on the street because of the slope on Overton. The Planning Board will handle those issues.

Mr. Rosner answered Ms Barolotta’s other question by stating that the variances may have expired.

Mr. Tsunis stated that the storm water drain at the bottom of the cul-de-sac needs to be cleaned out.

Mr. Jack Grobe #602 Scraggy Hill Rd was sworn in. He asked if there were any other reliefs being sought besides what the application states.

Mr. Rosner answered that the applicant is requesting relief from the total lot area and lot width.

Jennifer Skula #27 Reeves Rd was sworn in. She stated that she lives at the bottom of all of this and is concerned with water runoff onto her driveway. Ms. Skula also questioned what the applicant is proposing to build. She also stated that she never received any other public notices before this one.

Mr. Tsunis answered that the applicant is looking to build a small one family house.

Mr. Rosner stated that site and construction specific issues relate to the Planning Board.

Mr. Verruto made a motion to close the hearing, Mr. Gitto seconded the motion, all in favor the vote was 4-0.

Appeal No. 417-09MV Section 21, Block 1, Lot 8
Demetrius Tsunis
71 Sheep Pasture Road

Applicant seeks a Certificate of Existing Use in accordance with section 250-49(D) for a single family dwelling and a detached garage/storage building. The property is located in the Village's RB-2 residential district.

Mr. Rosner recused himself on this matter due to having done business with the applicant in the past.

Mr. Verruto stated that at some date many years ago one of the applicant's contractors's used his company's services. He is not recusing himself from this matter if it is agreed to by the applicant that he participate in the matter. The applicant had no problem with Mr. Verruto participating in this matter.

Mr. Demetrius Tsunis #7 Sunset Path, Belle Terre was sworn in. Mr. Scott Zamek #3124 Expressway Drive South, Islandia was present to represent the applicant.

Mr. Zamek stated that the subject property has been in existence since 1930 and is the same today as it was before except for a renovation done in 2000 which had permits and variances. Mr. Tsunis first purchased the home in 1990 and then sold it to Mr. Philip Lanieri. Mr. Tsunis recently just bought the house back in 2009.

The following exhibits of proof of existence were entered into the record:

- #1A: 2 pages Brookhaven physical inventory sheet indicating 1930 residence.
- #1B: 1 page title report 3/12/09 notes 1930 remodeled 1985.
- #1C: 1969 survey shows detached structures & footprint.
- #1D: 1 page affidavit Isadora & Kathryn Katsaros #125 Sheep Pasture Rd.
- #1E: Oct. 1979 building permit #1215 for single family structure.
- #1F: Certificate of Occupancy #1215 "reconstruction of building".
- #1G: Building dept. documents referring to a single family residence.



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#1H: “ “ “ “ “ “ “ “

Mr. Kenny questioned why there are two electric meters.

Mr. Tsunis stated that when Mr. Lanieri owned the house he had several family members living there which warranted the separate meters.

Mr. Kenny opened the floor up to the public for comments. There were no comments from the public.

Mr. Gitto made a motion to close the hearing, seconded by Mr. Verruto, all in favor the vote was 3-0.

**Appeal No. 414-09LR Section 12, Block 7, Lot 2
Gerard Costanzo
232 Barnum Avenue**

Applicant seeks an area variance in accordance with code section 250-18G for interior reinstallation of a partition wall. Applicant requests relief from the 800 sq ft minimum required; 503 square feet in unit B and 436 square feet in unit C. The property is located in the Village's commercial C-1 district.

Mr. Gerard Costanzo, #232 Barnum Avenue, property owner was sworn in. He presented a color photograph of the building as it exists now. He stated that the building was built in 1965 and was clearly built as three separate units with three exterior doors. He purchased the property in August 2004 from Mr. Karaftis who at the time occupied the entire bottom floor with openings between demising walls. The apartment entrance is in the back on left side of the building.

Mr. Costanzo continued to explain that two people were waiting to take over the store. This prompted him to go immediately for a building permit to renovate the ground floor. This is when he first discovered the 800 square foot minimum code requirement. He decided to do the renovation and deal with the ZBA later as alleged recommended to him by building department staff. He did not put the wall back at that time. The tenant "Just A Note", moved into the building for one year, and she asked for the wall to be reinstalled. Since then this tenant has moved out. Mr. Costanzo decided to move his own office into the south store and restore the three retail spaces. He referred to the 1965 Certificate of Occupancy for the building as it reads "commercial building".

Mr. Rosner stated that he looked carefully through the property file at the building department and did not see anything that states how the property should be divided.

Mr. Costanzo stated that he has blueprints showing that there were openings in the walls between the rooms buildings without doors. He did not have the blueprints with him.

Mr. Verruto stated that at the time, legislation was enacted requiring a minimum footprint for the stores. He asked Mr. Costanzo what was different with his request.

Mr. Costanzo stated that there are other retail units in Port Jefferson that are smaller than what he is requesting. He feels that this is a pre-existing situation. His property is off the beaten track and a good location for offices. He mentioned that he has a barber shop that is interested in renting a space right now. He stated that he needs the option of separate units.

Mr. Verruto stated that if the space is rented for office space, there is no 800 square foot minimum.

Mr. Kenny stated that an unbroken continuous use has not been proven.

Mr. Verruto explained to Mr. Costanzo that a dozen retail building owners in the village may ask for the same option and a 30 foot wide store has to be considered.

Mr. Costanzo feels this is not true because he has three entrances.

Mr. Kenny stated that the interior square footage is what is considered, not the doors.

Mr. Costanzo told the Board members that at this time the wall is up and done and the permit is denied. He cannot utilize the building the way it is set up and he has lost a year of income.

Mr. Verruto stated that since the work is done he would recommend asking a building inspector what the code allows as to what kind of tenant can go in the vacant space.

Mr. Rosner opened the floor up to the public for comments. There were no comments from the public.

Mr. Verruto made a motion to close the hearing, Mr. Gitto seconded the motion, all in favor the vote was 4-0.

Appeal No. 413-09CK Section 8, Block 3, Lot 4.1
Kevin Reilly for Janet Pisco
116 East Main St.

Applicant seeks a Certificate of Existing Use in accordance with section 250-49(D) for three retail stores and three apartments. The property is located in the Village's General Commercial C-1 district.

Kevin Reilly, #1227 Main Street, Port Jefferson, NY 11777, attorney for the applicant was present.

Mr. Rosner informed Mr. Reilly that there has been no response from Suffolk County Planning and without their comments this hearing will be left open. Mr. Reilly understood the procedure.

Mr. Reilly explained that the building is one with two different numbers for mailing reasons. The prior owner was the mother of the applicant Janet Pisco. The building was first purchased in the 1950's and the earliest use was "The Bucket of Blood Bar" and the second floor was a rooming house. Since then, the extension has been added. The northern of the three stores is vacant at this time.

The following exhibits were submitted;



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Exhibit #1: packet of seven documents A-G:

- A) Commercial physical inventory dept of Brookhaven.
- B) Affidavit of owner, Janet Pisco, summary of history.
- C) Affidavit of Joan Gumbus, neighbor since 1947, summary of history.
- D) Affidavit of Andres Reyes, neighbor #115 Main St., summary of history.
- E) Affidavit of George Davis, lifelong resident, summary of history.
- F) Affidavit of Joan Lehtonen, mother in law, #111 E. Broadway, Port Jefferson, summary of history.
- G) Affidavit of Helen Lewin, friend of Betty Deptula (Janet Pisco's mother), summary of history.

Mr. Reilly stated that when he reviewed the property file in the building department there was some confusion as to when the addition to the building was made. The notes implied there was an extension of the antique business. Mr. Reilly submitted:

Exhibit #2: 2D, Planning Board letter determining that the parking is adequate. 2C, Planning Board note after review of rental of extension that parking is adequate. 2B, document with two separate entries by Mayor Hal Sheprow, 2A, Certificate of Occupancy dated 3/5/78 for retail extension.

The records maintained by the Town of Brookhaven indicate three retail on the first floor and apartments on second floor.

Mr. Rosner stated that a building inspector will contact Mr. Reilly to do a site inspection. Mr. Rosner was told by the building department that there were a couple of attempts made to get in for an inspection.

Mr. Verruto suggested to Mr. Reilly that the last paragraph be removed from the 5/15/09 supplement of petition document. Mr. Reilly agreed.

Mr. Rosner questioned how the carport and wood deck flow into the certificate of existing use request. There is an open building permit #1674 that was issued on 6/26/85.

Mr. Reilly stated that #118 E. Main has a Certificate of Occupancy and a storefront. He requested to amend the application to state that relief is looking for a CEU for #116 E. Main St. as it was constructed before 1963 which building consisted of two storefronts and three apartments.

Mr. Rosner made a motion to accept the amendment as requested, Mr. Gitto seconded the motion, all in favor the vote was 4-0. Mr. Verruto made a motion to continue the hearing on 7/16/09, Mr. Gitto seconded the motion, all in favor the vote was 4-0.

POST MEETING GENERAL BUSINESS:

Appeal No. 415-09RG Tsunis/Koreh: The members reviewed the application relative to SEQRA. The members preliminarily classified it as a Type 1 Action. The members found that the project meets or exceeds Village Codes 129-2(B) (12) and may exceed 129-2(B) (14). The members cannot render a decision until a positive or negative SEQR Declaration is made. The ZBA will draft a letter to the applicant suggesting that they consent to allowing the ZBA to reopen the appeal and continuing the hearing until a SEQR Declaration has been made. A letter will also be sent to the Planning Board requesting that they take lead agency.

Appeal No. 417-09MV Tsunis: MV made a motion to declare as a type II action and does not require any further SEQRA review, RG 2nd, all in favor 3-0 (LR recused). MV made a motion to grant the conditional approval CEU for a single family two story residence according to 4/28/09 survey by Wm Simmons, Land Surveyor conditioned upon removal of the second electric meter. RG second the motion, all in favor the vote was 3-0.

Appeal No. 414-09LR Costanzo: LR made a motion to deny this application due to the failure of proof. There are no substantive arguments to grant such a large variance. There are alternatives to such a variance request. The applicant did not show examples of other properties that received similar variances. RG second the motion, all in favor vote was 4-0.

The meeting ended at 11:00PM.

Cindy Suarez, Secretary, Zoning Board of Appeals

June 11, 2009