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ZONING BOARD of APPEALS

ZBA MINUTES

December 18, 2008

The Zoning Board of Appeals meeting is held in the Village Court Room, 121 West Broadway, Port Jefferson, NY 11777. Applications are scheduled to begin at 7:30 PM, or shortly thereafter. Applications may not be heard in the order as they appear on this agenda.

A pre-hearing ZBA work session began at 7:00PM in the first floor conference room of the Village Hall.

PRESENT:

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

ABSENT:

Jack Giannola

PUBLIC HEARING:

- 1. Appeal No. 403-08CK Section 12, Block 5, Lot 19
(Continuance) Edward DiNunzio, Esq. Agent for Judith Betts
401 High Street**

Applicant seeks a Certificate of Existing Use in accordance with section 250-49(D) for a two story, two family framed dwelling with detached garage. The property is located in the Village RB-3 residential district on the southeast corner of High Street and Prospect Street.

Mr. Edward DiNunzio, Attorney/Agent for the applicant was present. He was sworn in at the 11/13/08 hearing for this application.

Mr. Kevin Koubek, Village Engineer was present and sworn in. Mr. Rosner asked Mr. Koubek what knowledge he had of the 7/21/99 permit that was submitted with the application and what was permissible as far as living quarters.

Mr. Koubek stated that the permit issued was for older renovations and that he had a clear understanding that the premises was a single family dwelling with a finished basement with no bedroom or sleeping quarters.

tion plans submitted with the permit application to the building quarters.

Koubek that if the CEU in 1999 stated ötwo familyö wouldn't the building quarters, be permitted under the old state uniform the code.

Mr. Koubek conceded that it would but that the old state code went out in 2003.

Mr. Rosner read into the record a note from Harvey Weiss dated 11/12/99 that was in the file.

The following exhibits were submitted:

Exhibit J: Affidavit from Gordon Davis

Exhibit K: Affidavit from James W. Grey

Exhibit L: 8 photographs (doorway to lower level, fireplace that existed and decorative pieces still remain and are being used on the 1st floor)

Exhibit M: Letter from Sandra Swenk

Mr. Koubek commented that the bedroom windows do not met code for emergency egress under today's standards.

Mr. Rosner opened the floor up to the public for comments and the following were sworn in:

Regina Teofrio #209 Prospect St, resident since 1967 affirms that Bruce Betts was living in the basement apartment.

Shirley Leonard, resident of #409 High Street, questioned the June 1999 öOrder to Remedyö for illegal two family dwelling. Mr. Koubek stated that the OTR is the reason for the applicant being in front of the ZBA.

Sharon Kelsch, resident of #206 Prospect Street since 1974 affirms that someone has continuously lived in the lower level.

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

**2. Appeal No. 406-08JG Section 15, Block 4, Lot 1
(Continuance) Mark Bowen and Celia Marshik
402 Owasco Drive**

Applicant seeks an area variance for a proposed rear deck. The applicant requests a minimum side yard setback of 12 feet where 18 feet is required and a rear yard setback of 10 feet where 30 feet is required. The property is located in the Village's Residential RB-2 district on the southeast corner of Emerson Street and Owasco Drive.

Owner, Mr. Bowen was present and he was previously sworn in. Owner, Mrs. Celia Marshik was present and sworn in.



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The applicants made a request to amend the application to remove the rear yard setback request and only request a 22ø total front yard setback where 25 feet is required on a small corner lot of property with a width of 75 ft.

Mr. Verruto made a motion to accept the changes to the application, Mr. Gitto seconded the motion, all in favor the vote was 4-0.

Mr. Bowen presented a Certificate of Occupancy for a deck that was issued to #204 Emerson Street, the property immediately adjacent to the east of the subject property. He stated that there was a violation notice for building a deck without a CO issued on this property before the CO was issued. No variance grant was obtained.

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

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

**3. Appeal No. 398-08CK Section 7, Block 1, Lot 5
(Held over) Hawkins, Webb, Jaeger PLLC for H. Jacobson c/o
Sound Express LLC
East side of Beach St.**

Applicant requests a use variance from the provisions of Chapter 250-22(C) for the proposed construction of a 7,000 square foot one story building to be used for boat fabrication. The applicant also requests an area variance from the provisions of Chapter 250-22(E) for an unprotected metal prefabricated building. The applicant is also requesting an interpretation of chapter 250-22(C3) under the provisions of chapter 250 ó 49 (A) (1) for the definition of boat service, repair and storage facility. The property is located in the villageø M-W marine waterfront district, + or ó 1,114 feet north of 25A.

William Jaeger, agent from Hawkins, Webb, Jaeger, PLLC was sworn in to represent the applicant.

Mr. Rosner stated that the SEQRA impact on the property will be reviewed and that it is a multi step process. He also stated that the Board will need a determination letter from the Village to hear the request for the interpretation and the use variance.

Mr. Jaeger stated that he sees the application as an unlisted action. He requested clarification from the Village and could not get it in a timely manner. The Planning Board gave guidance to

or denial, which was done. He continued to state that the matter has
er and now there is a moratorium being considered by the Board of
e applicant from moving ahead until next year.

ey for the applicant was sworn in. He questioned if the ZBA was

Mr. Rosner stated that the lead agency has not yet been determined. Mr. Verruto stated that a lot of involved agencies need to be notified. Mr. Kenny stated that the Board has yet to receive clear guidelines from a building department official. Mr. Verruto read section 712 of the code into the record.

Mr. Koubek stated that he received the request for comments on the application from the Board of Appeals on 10/27/08. He provided a written reply on 11/5/08. The second request came from the Board in December and at that time the files are with the District Attorney's office and the files are needed for a review of the history of the subject property.

The chairman opened up the floor to the public for comments and the following were sworn in:

Raymond Calabrese, resident #306 Myrtle Avenue. Mr. Calabrese reviewed the following code sections: #250-50 (written decision of the building inspector gets you to the ZBA), #129-2B (type I action within 50 feet of the water), #250-49A (an official, a Board or an agency can request an interpretation), #250-50 (provisions of this chapter can be strictly construed).

Mr. Mart questioned the processes and procedures being followed.

Mr. Jaeger stated that he received a letter from Mr. Rau with a recommendation from the Planning Board referring to code section #250-49A1 that gives the ZBA the power to make determinations.

Mr. Rosner stated that the Village code requires that a referral letter from a building department official, not from a Village Planner.

Mr. Jaeger stated that his client is being deprived the use of his property.

Mr. Verruto made a motion to continue the hearing on 1/29/08. Mr. Gitto seconded the motion, all in favor the vote was 4-0.

**4. Appeal No. 400-08RG Section 7, Block 1, Lot 9
(Held over) Hawkins, Webb, Jaeger PLLC for H. Jacobson c/o
Sound Express LLC
Northwest corner of Beach Street & Shelldrake Ave.**

Applicant seeks an area variance from provisions of chapter 250-22 (G) for relief of parking to 19 spaces where 31 spaces are required. Applicant requests a use variance from the provisions of Chapter 250-22 (B) 2 for the proposed construction of a 6,000 square foot two story office building with garage underneath. The applicant also requests an interpretation of chapter 250-22 (B) (2) under the provisions of chapter 250-49 (A) (1) for the definition of a ferry terminal and



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municipal facility structure. The property is located in the village's M-W marine waterfront district on the North West corner of Beach Street & Shelldrake Avenue.

Mr. Jaeger was previously sworn in. He stated that the subject property building complies with the required code height of 30 feet.

Mr. Rosner made a motion to incorporate the minutes from the previous appeal #398-08CK into this appeal. Mr. Gitto seconded the motion, all in favor the vote was 4-0. Mr. Rosner stated that the applicant can withdraw the application or continue with the application but that there would be a long SEQRA process.

Mr. Kenny made a motion to continue the hearing on 1/29/08, Mr. Gitto seconded the motion, all in favor, and the vote was 4-0.

**5. Appeal No. 409-08LR Section 22, Block 2, Lot 31
Jefferson Consultants Inc. agent for Michael &
Beatrice Gravino
20 Jamaica Ave.**

Applicant seeks a Certificate of Existing Use in accordance with section 250-49(D) for a single family one and a half story frame dwelling with enclosed entrance, detached garage with attached shed. The property is located in the Village's residential RB-2 district on the south side of Jamaica Ave.

Mark Lyon, agent from Jefferson Consultants was sworn in to represent the applicant. He presented property surveys from 1973 and 2008 to show that there have been no changes to the property. He entered 5 photos of the subject property into the record as exhibit A.

Mr. Rosner asked for the approximate construction date of the subject property. Mr. Lyon stated that he has deeds starting with Carl Hyser 9/8/45 and a tax roll from 1957-1958. The Decision 2000 Real Estate Services, Inc. records were entered as exhibit C.

Also entered into the record as exhibit B, were affidavits from Helen Dubois and Cliff Nystedt stating their knowledge of the subject property.

Mr. Kenny stated that he visited the property. Mr. Gitto questioned the side entrance.

Mr. Michael Gravino, property owner was sworn in. He stated that the side door goes into the kitchen and that there is no back entrance. There is an unfinished basement with interior entrance and a tool shed attached to the garage with separate entrance.

to the public. There were no comments from the public.

close the hearing, Mr. Kenny seconded the motion, all in favor the

on took place in the first floor conference room of the Village Hall after the Public Hearing, for, but not limited to, deliberation and decision-making.

GENERAL BUSINESS:

Mr. Gitto made a motion, seconded by Mr. Kenny to approve the minutes as amended from the 10/16/08 hearing. All in favor the vote was 4-0.

Mr. Kenny made a motion, seconded by Mr. Gitto to approve the minutes as amended from the 11/13/08 hearing. All in favor the vote was 4-0.

The members discussed application #399-08LR, **Hawkins, Webb, Jaeger PLLC for Allan Pashkow c/o Town Realty #645 Belle Terre Road**. The hearing was closed on 11/13/08 and a decision needs to be made within 62 days of the closing of the hearing. The board will draft a letter to the applicant offering to reopen the hearing subject to obtaining a determination letter from the building inspector regarding the use variance and the interpretation appeal.

Appeal #409-08LR Jefferson Consultants Inc. agent for Michael & Beatrice Gravino #20 Jamaica Avenue: Mr. Rosner made a motion to approve the CEU for a one and a half (1 1/2) story single family dwelling with detached garage with attached shed as depicted on survey dated 11/4/08. Mr. Kenny seconded the motion, all in favor the vote was 4-0.

Appeal #406-08JG Mark Bowen and Celia Marshik #402 Owasco Drive. Mr. Verruto made a motion for approval based on the amended variance request and conditioned on removal of the stoop and door on the northeast corner of the house or alternatively obtaining a Certificate of compliance for same. Mr. Gitto seconded the motion, all in favor the vote was 4-0.

Appeal #410-08RG Invesco Affiliates, Limited 201 West Broadway. Mr. Rosner asked Virginia Capon, the ZBA Liason to the Board of Trustees, for advice from legal counsel on this new file. Ms. Capon acknowledged that she would get back to Mr. Rosner on this matter.

The meeting ended at 12:00AM.

Cindy Suarez, Secretary, Zoning Board of Appeals

December 23, 2008



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