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Minutes of the regular meeting of the Planning Board of the Village of Rouses Point, New York, held on Monday, 26 April 2010 at Halstead Hall, commencing at 7:00 p.m.

PRESENT: Tom Murnane, Mike Tetreault, Dean Schneller (Attorney for the Legion), Bruce Wallett, Bob St. John, Dick Baker, Debbie Mattot, Matt Fuller (Attorney for Amadar/Shannon), Bill Shannon, Donna Racine, Amanda Racine, Bob O’Neill, Steve Pinto, Don Gladd, Alan Kaufman

RECORDING SECRETARY: Geri Favreau

CALL MEETING TO ORDER: Mr. Cooper called the meeting to order at 7:00 p.m. and began with the Pledge of Allegiance.

ROLL CALL: In attendance: John Cooper, Tom Batha, Geri Favreau, Maggie Barie, Shirley Hall

APPROVAL OF MINUTES: Ms. Hall made a motion to accept the minutes of the 22 March 2010 meeting, seconded by Mr. Batha. Roll Call Vote: Ms. Favreau – Aye, Mr. Batha – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Cooper – Aye; Carried

Ms. Hall made a motion to accept the minutes of the 12 April 2010 meeting with the following correction: Mr. Murnane and Mr. Tetreault were not in attendance; seconded by Ms. Barie. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper – Aye. Carried

CORRESPONDENCE: None

SITE PLAN REVIEW/PUBLIC HEARING: AMERICAN LEGION MONTGOMERY POST 912:

Ms. Barie made a motion to open the Public Hearing, seconded by Ms. Hall. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper – Aye. Carried

Mr. Cooper asked that anyone who speaks to give a summation. People were asked to stand up and identify themselves.

Dean Schneller (Attorney for the Legion) submitted documents to the Board for the deed filed that afternoon merging the two lots. Addresses concern about having two lots under the Village Zoning Ordinance Section 120-41 defining a lot as “Any parcel of land which individually or as part of a subdivision of land has been recorded in the County Clerk’s office.” This creates one lot waiving the need for a further variance.

Addressed correspondence received from Attorney Fuller. Mr. Schneller: Based on variance granted to the ZBA, relocation of the office is unnecessary. If the office is moved, a variance will be required for parking. Current plan provides necessary space for Legion, emergency access and current parking scheme. Will serve as a visual, physical and sound barrier. Legion opposes requirement for a fence as part of approval because it limits emergency vehicle access and creates a fire hazard.

New York State Building Codes requires a firewall if located near an adjoining property line. There is no absolute prohibition from the bldg. being located in this position.

Matthew Fuller (Attorney for Shannon/Amador) addressed the recording of the deed. He stated that in order to use a part of the residential lot as part of the commercial setback (30’) permission is required from

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the ZBA under Section 120-8 or a variance. Anything rendered by the ZBA for the prior application under 120-8 is moot. He stated that if the deed was recorded on 26 April and has not been presented to the Zoning Administrator, then the Administrator has not ruled and the application needs to be tabled tonight. Two simple things can be done to move the application forward: relocate the office and put up a fence. He stated that parking is not an issue to the neighbors.

Mr. Schneller does not agree with the interpretation of Section 120-8. There is nothing speaking to a green space buffer. It was for construction into the residential zone. It would be a determination of the ZBA or Code Enforcement Officer. Mr. Tetreault was there when the ZBA previously granted the variances interpreting the zoning ordinance. Plain reading (???) doesn't show in section 120-8. They disagree with interpretation.

Mr. Kaufman asked if 120-8 was applied for in the application to the ZBA. Mr. Murnane stated that he feels 120-8 only applies if the Legion was building into the residential zone. The ZBA was applied to seeking green space buffer variance and setback variance in the commercial zone which were granted.

Mr. Fuller stated that they didn't apply for a rear setback variance. Under 120-8, there are two choices: either apply for a commercial setback. He stated that this is not a determination of the Planning Board.

Mr. Murnane stated that his understanding of what occurred at the ZB was that the Legion needed variances for green space, rear yard setback and side yard setback. Mr. Fuller stated that there was no rear yard setback. The Legion was asked at the ZBA meeting if they wished to withdraw their original application. They did not and submitted the second application with modifications so that they could go forward and not start the process all over again.

There was much discussion about the interpretation of Section 120-8. Mr. Fuller feels that they need to get a rear setback variance from the ZBA and Mr. Schneller feels that because it is one lot, they don't. Mr. Murnane said that he believes the Legion did not apply for a rear yard setback. An interpretation of 120-8 is that either you can use the 30' as a buffer or a setback into the residential zone or you have to apply with the rear yard setback in the commercial zone or apply for a variance.

Mr. Kaufman stated that according to 120-8 an extension of more than 30' requires a variance. A variance was not requested. They were granted special authorization for less than 30'. He questioned why the residential lot was now being discussed.

Mr. Murnane stated that they need to comply with the rear yard setbacks or apply for a variance. We are addressing Site Plan Review tonight and if after reviewing there is a need for an area variance, then that will have to be addressed. The Legion has ZBA approval for variance for green space buffer and side yard setback. It does not appear that any variance was applied for for rear yard setback and at that point the first application was still pending decision of the Appellate Division. Mr. Murnane that this application cannot be approved if there are outstanding ZBA issues that need to be addressed (rear yard setback).

Ms. Barie stated 120-8 would allow the Legion to use the rear yard set-back for residential property or have to get a variance for commercial property. The other option is to move the office but then a variance would be required for parking.

Mr. Schneller stated that you should not need a setback requirement for your own lot. Interpretation: setback from "lot lines" not from commercial or residential boundaries. Dimensional Requirements Chart states setback from lot lines.

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Mr. O'Neill stated that he was at the ZBA meeting and everything was approved. Mr. Kaufman stated that if there was another variance that was required, the ZBA and ZBA counsel should have told them that at that time.

Mr. Murnane stated that by the language of 120-8 because of the Appellate decision it renders the necessity of getting a rear yard variance.

Mr. Kaufman said that the Legion will demolish the front part of the bldg. and construct in the same footprint without Site Plan Review and the back part of the lot will remain as is. He asked that the Planning Board move on this application tonight.

Mr. Schneller read the definition of lot in the code – “Any parcel of land which individually or as part of the subdivision of land has been recorded in the County Clerk’s office.” They feel that the rear lot line is State St. He stated that there is nothing in the ordinance requiring a setback from a zone only from a lot line. Mr. Schneller showed the Board the outline of the current lot and that it has a side yard setback.

Mr. Fuller stated that if this is the case then nothing would stop someone from purchasing residential lots, merging them together with a commercial lot and extending the zone and that is not how the law is written.

Mr. Murnane stated that the Legion needs a rear yard setback in light of 120-8 and the decision of the Appellate Division. Mr. Schneller asked a setback from what?? They don't need a setback from a zone.

Ms. Barie stated that they are governed by the commercial district guidelines just that the 30' rear setback falls in the residential district. Mr. Murnane stated that they need to apply for the variance. Mr. Schneller again asked what they would be applying for. Mr. Murnane said for the 30' setback – extend from edge of bldg. 30' into the residential lot.

Mr. Batha asked a hypothetical question of Mr. Fuller – The Legion goes back to the ZBA to request a variance for the 30' setback, are you going to say we don't think it should be there. Are you going to contest it?? Mr. Fuller said that they would still feel the bldg. should be in line with the rest of the bldg. His clients are very firm that proper procedures are followed.

Mr. Kaufman stated that they would demolish the old bldg. and move forward. Mr. Fuller stated that in the Village of Rouses Point according to the Zoning Law (102-15) all construction requires Site Plan Review except one or two family dwellings. No exception for replacement.

Ms. Demers-Matott again stated her concerns about the privacy issues of the neighbors and requested that a fence be erected.

Ms. Favreau asked a hypothetical question – We don't want this project stall any longer than we have to but it appears that whatever decision is made by the ZBA or PB, there will be an appeal. What exactly are you asking the Legion to do?? Move the office up and to the right so that the back of the bldg. is flush and it sticks out into the parking lot. Then the Legion would have to return to the ZBA for a parking variance.

Mr. Barie stated that moving the office causes other problems such as access for upkeep the residential lot and snow removal and emergency vehicle access.

Mr. Murnane asked if there was a possibility to incorporate the office in some portion of the addition or existing bldg.

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Mr. Kaufman stated that had been explored but not possible. They have plans for all the area and it would limit access to the office. The office provides an extra buffer for noise. No door, 2x6 window 6' off the ground in the back. The office is only used about 6 hours/week.

Mr. Fuller had recommendations for the location of the fence across the zone line.

Mr. Kaufman stated that this location would prevent any egress from the door on the south side of the existing bar area. They would consider a fence with a gate across State St. lot on the south side of the garage still allowing access to the garage.

Mr. Fuller said that if the office was moved in 2-3' and a fence erected on the zone line, there would be access to the back of the bldg.

Ms. Hall made a motion to close the Public Hearing, seconded by Ms. Barie. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper – Aye. Carried

Ms. Hall made a motion to approved the Site Plan Review – motion rescinded

Mr. Murnane said that the ZBA did SEQRA and confirmed with Mr. Tetreault SEQRA is not required because the addition is less than 4000 sq. ft. Mr. Batha made a motion that SEQRA is a Type II Action and that SEQRA is not required because the new building is under 4000 sq. ft., seconded by Ms. Favreau. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper – Aye. Carried

Ms. Hall made a motion that the Board discuss the Site Plan Review, seconded by Mr. Batha. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper – Aye. Carried

Mr. Batha feels the plan is reasonable and everything has been addressed. Ms. Hall agreed. Ms. Barie likes the Site Plan as is and we should move forward with it as is. If there needs to be clarification of the law by a judge, then so be it but the interpretation that we are making according to the best of our abilities and training are moving this forward. She doesn't think there should be a fence for her previously stated reasons and doesn't want to ask a property owner to erect a fence across the middle of a lot. Ms. Hall agreed and is concerned with fire safety.

Ms. Favreau stated that we are supposed to take into consideration both sides of the issue and it has been strongly discussed about privacy of and doing something for the neighbors. She asked if it would be an advantage to the Legion to have a fence to prevent patrons from crossing the State St. lot and considering the concerns of the neighbors. Mr. Kaufman stated that most of the people crossing are going to the Day Care, kids riding their bikes rather than going around on Maple St. and people crossing to go to their neighbors on State St. She also asked about the liability of someone crossing this lot and getting hurt. Mr. Kaufman stated that the Legion does not stay open late very often. If there is an issue they cannot control, then it becomes an issue for Law Enforcement.

Mr. Cooper stated that he does not find any issues with the current plan but he recused himself as he is a member of the Legion.

Ms. Favreau asked Mr. Murnane if the Board can ask he Legion to put up a fence if there are problems or if it's either a do it or not. Mr. Murnane stated that leaves it open to interpretation. It has to be one way or the other.

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Ms. Hall made a motion to approve the Site Plan Review for the American Legion Montgomery Post 912 as it is, seconded by Ms. Barie. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper - Recused. Carried

Ms. Barie asked if this was Ms. Favreau’s last meeting – it was. Ms. Favreau will continue as an alternate for now and as Recording Secretary.

Mr. Kaufman thanked the Board for their decision and for their patience.

OLD BUSINESS: None

NEW BUSINESS: None

ADJOURNMENT: Ms. Barie made a motion to adjourn at approximately 8:20 p.m., seconded by Ms. Hall. Roll Call Vote: Ms. Favreau – Aye, Ms. Hall – Aye, Ms. Barie – Aye, Mr. Batha – Aye, Mr. Cooper - Aye. Carried

NEXT REGULAR MEETING: Monday, 24 May 2010 at 7:00 p.m. at the Civic Center.

Respectfully submitted,

Geri Favreau
Planning Board Secretary