

**INC. VILLAGE OF MANORHAVEN
BOARD OF ZONING
33 Manorhaven Blvd. Port Washington, 11050
May 14, 2019 at 6:30 p.m. - MINUTES**

Call to Order: 6:32 p.m.

Pledge of Allegiance: John DiLeo

Attendance: Jeremy Devine, John Di Leo, Jerry Volpe, Joseph Zimbardi, Patrick Gibson - Chair, Sharon Abramski – Village Clerk, Jeffrey Blinkhoff – BZA Attorney; Andrew Levenbaum - BZA Engineer.

APPLICATIONS BEFORE THE BOARD:

Z596 – 12 Dunes Lane, Port Washington, NY 11050, S-4, B-103, L-39, in Zone R1. Applicants, Donald & Patricia DeBari, seeks a variance from Chapter 155-132.1 P(2) for an existing above the ground swimming pool on the property, and a variance for Chapter 155-42 (B), a pool and related nonslip, decks, fences and machinery shall be located not less than 10 feet from side and rear property lines. Applicant’s pool is currently approximately 6 feet from the property line.

Board/Applicant Comments:

- *Donald and Patricia DeBari* discussed their application and noted that their pool has been in place since 1981. She claimed that the pool was in compliance at that point in time and that a special use permit for pools was established after that time period.
- *Patrick Gibson* asked about fencing around the pool.
- *Patricia DeBari* described the fencing, gate and child Safety features around the property. They have a pool alarm inside and outside the home if someone falls in the pool.
- *Andrew Levenbaum* noted they have all the necessary precautions for their pool.
- *John DiLeo* furthered discussed fencing with the DeBaris as well as current landscaping surrounding the property. Patrician DeBari felt that it would be very difficult for anyone to enter the pool area of her yard.

PUBLIC COMMENT:

- *Anthony Piacentini, Esq.* spoke on behalf of 10 Dunes Lane and hoped that the application would be granted in its entirety.
- *Joseph Zimbardi* moved to close public comment; seconded by *Jerry Devine*; motion unanimously carried.
- *Jerry Devine* moved to designate this application as a type II SEQRA application; seconded by *Joseph Zimbardi*; motion unanimously carried.
- *Joseph Zimbardi* moved to accept the application for the setback as well as the special use permit; seconded by *John DiLeo*; unanimously carried.

EXECUTIVE SESSION:

- *Jerry Devine* moved to enter into Executive Session at 6:47 p.m.; seconded by *Joseph Zimbardi*; motion unanimously carried.
- *Jerry Devine* moved to close the Executive Session at 7:02 p.m.; seconded by *John DiLeo*; unanimously carried.

Z-592 - 55 Kirkwood Road, Port Washington, NY, 11050, S-4, B-42, L-151 in Zone R-1. Applicant, Isaac Zarabi, seeks a variance: (1) from Section 155 – 13.1 (L) of the Village Code in order to construct a two – family house with only two parking spaces when under the Village Code three on-site parking spaces are required for occupant use; (2) from Section 155 – 30 (F) of the Village Code in order to include paved area in the front yard of the subject property covering 57.19% of the front yard when the Village Code provides that the maximum paved area in the front yard shall not exceed 50% in a residential zone; (3) from section 155 – 35 of the Village code in order to construct two emergency escape and rescue opening window wells which will project into the required side yard by 3.36 feet when the same are not permitted to encroach into required yards; and (3) from section 155-6 in order to allow for a separate dwelling unit in a cellar when said section does not allow a principal use in a cellar.

Board/Applicant Comments:

- *Jerry Devine moved to designate the application as a SEQRA Type II Action; John DiLeo seconded it; motion unanimously carried.*

- *Joe Zimbardi moved to deny the application based on the written final decision; Jerry Devine seconded the motion; motion unanimously carried.*

Z-589 - 5A Sintsink Drive East, Port Washington, NY 11050, S-4 B-39 L- 32 in Zone E1. Applicant Henderson Ave. Corp/ William Ventura seeks to convert an existing building into two separate occupancies with one being a kennel and the other being office space with a low hazard storage area, and specifically seeks: (1) a determination and interpretation from the Board of Zoning Appeals that a variance is not required in order to maintain a kennel and low hazard storage accessory to office space in the E-1 Residential Zone, or, in the alternative, a use variance allowing for the same; and (2) a variance of section 155 – 46 of the Village Code under which 11 off-street parking spaces are required and the applicant proposes to include no off-street parking spaces.

Board/Applicant Comments:

- *Jerry Devine moved to classify application Z589 as a SEQRA Type II action; Joseph Zimbardi seconded it; motion unanimously carried.*

- *Patrick Gibson reviewed the points that the BZA would be voting on as follows: no walking dogs off premise; soundproofing as in the drawings/plans; if approved there would be no return to light industrial use, only higher usage, if under new ownership. A brief recess took place for the applicant to speak to his attorney.*

- *Jessie Ventura asked if it could return to a warehouse use for plumbing storage. Patrick Gibson said they could consider it upon making their decision. Patrick Gibson said it could be considered.*

- *Jerry Devine moved to adjourn the decision until June 11 at 6:30 p.m. Joseph Zimbardi seconded; motion unanimously carried.*

Z- 595 - 59 Orchard Beach Boulevard, Port Washington, NY, 11050, S-4, B-59, L-636 in Zone R-4.

Applicant seeks a variance: (1) from section 155 – 16 (B) of the Village Code in order to construct a building with a building area of 45.02% of the lot area where the maximum permitted is 35%; (2) from section 155 – 35 (A) of the Village Code in order to maintain the eaves that project into the side yard's by 42 inches when cornices, eaves, and gutters cannot project more than 24 inches into side yards; and (3) from section 155 – 35 (E) of the Village Code in order to maintain an open side entry stair leading to the second floor under both the left and right side of the building when the Code does not permit entry stairs on the side of the structure leading to a second-story, either open or enclosed, covered or uncovered.

Board/Applicant Comments:

- Albert D'Agostino, Esq. represented Pond Ridge Homes and stated that his client seeks relief from the Building Denial letter on file. He gave a brief history of the land, building applications, construction and permits. He discussed the stop work order by Building Superintendent Rogel.

- Bill Rogel affirmed his reasoning for stopping further construction and a discussion took place between Rogel and attorneys Jeffrey Blinkoff and Albert D'Agostino regarding the approval of plans by his predecessor, John Amisano, and whether Amisano would be allowed to give a presentation or be treated as a witness for cross-examination. The Applicant and his counsel disagreed with the interpretation of Rogel. NOTE: There was a brief recess for BZA counsel and the Applicant's attorney to have a discussion off the record.

- Albert D'Agostino continued with his presentation and proceeded to present several exhibits as follows:

Exhibit 1: Email from John Amisano to Village Attorney James Toner dated 2/22/2016 regarding cantilevers, foundation and total building area. Andrew Levenbaum, Village BZA Architect, discussed discrepancies in the soffit drawings., structural framing showing the structure and stated it should be 2 feet;

Exhibit #2: List of Buildings in Manorhaven (2004 – 2016) with the same type of computation as 59 Orchard Beach Blvd. D'Agostino stated that they are seeking a variance for the "cornices" or corners or could cut them back 12 inches so they comply. John Schimenti, architect for the applicant, discussed a 9/26/2017 letter to Bill Rogel discussing the niche to the second floor and the related computations. He noted that the cantilevers were not part of the calculations and the first floor was raised because it was a flood zone.

Patrick Gibson asked if there was a way to bring this building back into compliance. - Andrew Levenbaum asked for clarification of the soffits on the drawings approved on 5/19/2016 by Amisano and his method of computation.

Exhibit #3: Photographs of 59 Orchard Beach Blvd. and surrounding uses. Barry Nelson, real estate expert, briefly spoke regarding the character of the neighborhood and non-conforming homes in the area feeling that the variations have not affected the value of other homes.

Exhibit 4a-4e: Zoning Maps and Aerial Views of Subject Property

Exhibit 5: Nassau County Tax Maps and Aerial View of Subject Property

- Alberto D'Agostino noted that the subject property was classified as G1, governmental use. The Village decided that the subject property classification was in error and changed it to an R4 Zone.

- Anthony Piacetini, co-counsel for the applicant asked how the BZA will exercise its authority regarding the application for the variances. He noted for the record that he felt that should the building become occupied, it would not pose a danger, detriment to the health and safety, or welfare of the neighborhood.

- Patrick Gibson countered acknowledging his remarks and discussing further.

PUBLIC COMMENT:

- Avik Katzav felt the building does not for the neighborhood and looks like a "Burger King."

- Alice Aboody is directly impacted by the structure. She knows the "DNA" of the building she explained that this property was previously a park for the community and remained as such as long as the taxes were paid. Something happened and the taxes went way up. The owner that bought the property saw that it had problems so they sold it. Her house is situated at the lowest level so the height impacts her the most. She noted that the garage was not to be enclosed and there were only supposed to be 2 levels not 3. She feels her property value has gone down. Just because the applicant will lose money does not mean what they are doing is legitimate.

- Allan Teitel said that "it's easier to ask for forgiveness rather than permission; not here!" He feels the building is a monstrosity. Stairs are not an eyesore but there is no safe entrance in and out of the building. Those issues are not being addressed.

- Barbara Thermos invited them to visit her home and look at the building. It's uncomfortably close. She has lost her privacy and sunlight and the building has negatively affected the value of her home. She saw the plans before buying the home and they were very different from what was actually built next to her. She feels it is not in the character of the neighborhood. This problem was self-created and she asks that the BZA

Board not grant the variances.

- Barry Balcourt, former BZA Board member, noted that many come with applications that try to push the limits.. Emotions play a role, but the law plays a greater role. He feels the value of the homes have gone down 23% because of this building. "This is about code violations and breaking the law."

- Malachy Mahon, an attorney and real estate agent, feels there is an elephant in the room. This house is either lawful or unlawful, according to or not according to plan. They pointed out all the inconsistencies and safety issues. He would ask that the BZA review the impervious surfaces to see if it was built according to plan.

- Rich Helfont wants access to the exhibits. He doesn't believe they conform to the character of the neighborhood. He feels the building negatively impacts the comfort of the neighboring homes and asks the BZA not to rush on their decision. He feels it does not conform.

- Amy Prochaska feels it's a crime and hops that because it's 90% completed that this factor won't influence the decision of the BZA Board.

- Gary Pagano, former Manorhaven Mayor, and a former BZA Chair, was also on the Planning Board for when the plans for this property were originally submitted. This building is nothing like what came before the planning Board. He feels they need to go back to square one; it's completely illegal and the feels the building is out of character with the community. The BZA should take this very seriously.

- Michel Parrachi feels the building is a monstrosity and firefighters have said the garage is dangerous.

- Patrick Gibson asked that the meeting be adjourned until June due to the time and asked the Board for an adjournment. He also thanked the public for attending and offering comments.

- Joseph Zimbardi moved to adjourn the meeting to June 11 at 6:30 p.m.; seconded by Jerry Devine; unanimously carried.

ADJOURNMENT: 9:22 p.m.

SHARON NATALIE ABRAMSKI, RMC, CMC
Village Clerk-Treasurer, Secretary to the BZA
Dated: May 14, 2019