

TOWN OF NEW WINDSOR

ZONING BOARD

August 22, 2016

MEMBERS PRESENT: HENRY SCHEIBLE, ACTING CHAIRMAN
RICHARD HAMEL
FRANCIS BEDETTI
PATRICK TORPEY
GREGORY BIASOTTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
ZONING BOARD ATTORNEY

STEPHANIE RODRIGUEZ
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE

MEETING AGENDA:

1. Mahin Corporation
2. Best Fudgin Cakes

REGULAR MEETING:

MR. SCHEIBLE: Welcome to the New Windsor Zoning Board of Appeals for the August 22 meeting. If there's anybody who, really we don't have too many people out here tonight, so everybody will have a chance to ask questions or whatever is needed. Okay, ladies and gentlemen, thank you.

PRELIMINARY MEETINGS:

MAHIN CORPORATION (16-18)

MR. SCHEIBLE: First on this evening's agenda is the preliminary meetings, the first one there is Mahin Corporation, 16-18. A variance is requested to permit the conversion of a mixed use occupancy to a two-family dwelling. Located at 1105 River Road in a PI zone. Anyone here?

MS. CHOUDHURY: Yes.

MR. SCHEIBLE: Come on down.

MR. CHANIN: Stand right there, right where you're standing and say your name and address, okay?

MS. CHOUDHURY: My name is Ruqaiya Choudhury, address is my home address is 33 Cloud Street, Newburgh and the address what I am appealing is 1105 River Road, New Windsor.

MR. CHANIN: Tell us please what this is all about.

MS. CHOUDHURY: Okay, this is the building I bought 2002 and at that time it was apartment, two apartment upstairs, one apartment downstairs and a small store. Then I thought I want to make it for business because it was mixed property so I applied for a deli and they granted me downstairs I made only one deli moving the apartment and upstairs is the apartment. Then when we started with someone it wasn't very good then after three years those people husband and wife they died and moved away and then I tried to rent it. There's not any good people I found, they started and left only just not in new ones, they also rented it and they're very good. Then they need more space to move. And after that, actually, I could not rent it. And even like three or four years it was totally vacant. And I have some personal problem also so I cannot sell because of the economy. And like my own house is abandoned totally so we're very upset and we deal with that one. Also I'm thinking if I can make another apartment probably at least I can cover the expenses, the expense is about 12,000 and I'm renting only 1,000 then I'm to pay electric, insurance, everything out of this because it can't and it's like one big room only. Everything is there, only if I can make it two room it will be not too much cost then I can rent it actually

it will--

MR. TORPEY: You want to get rid of the deli and make all apartments?

MS. CHOUDHURY: Yes, it's not a deli four or five week.

MR. TORPEY: No more deli.

MS. CHOUDHURY: When I cleaned the whole house it was one big room, if I can divide into two small bedroom and other will be like common dining plus living room for people I can rent it 900 or 1,000 because it's a total loss for a couple of years but--

MR. SCHEIBLE: Where is the, I know it's 1105 River Road.

MR. TORPEY: Right next to Hobie Carmichael's.

MR. TORPEY: The little--

MR. BEDETTI: Right across from the burn plant.

MS. CHOUDHURY: Like at 5:00 all the trucks come out from there and at that time there is no commercial even for a cup of tea or coffee. So I was thinking it will do something but it's 45 like speed so people do not stop at it. This is the reason. And then it was vacant and all are residential there only it was the deli. Later they make another deli next to it, not deli, actually like drink and everything so if it is residential it will, they won't like it anyway and at least I can pay my bill.

MR. SCHEIBLE: Approximately how long have you owned this?

MS. CHOUDHURY: 2002 I bought it, 2002, two or three years we bought it, actually we have some people they're running very good but then they have cancer and died. Then my problems started. Then I rented it for one year I think but then more bigger place then they moved to near the movie theater, it's a nice place, nice, quiet place.

MR. SCHEIBLE: Gentlemen, any questions?

MR. BEDETTI: Yeah, if I understand correctly, this is a use, will require a use variance, residential homes

are not allowed in an industrial, planned industrial area the mixed use.

MS. CHOUDHURY: Yeah, it was mixed.

MR. BEDETTI: Mixed use is allowed if the apartment is supporting the business but you're attempting to make this a totally residential area.

MS. CHOUDHURY: Because it is vacant for five years nobody want to rent it.

MR. BEDETTI: But understand that's not permitted in this zone.

MS. CHOUDHURY: But before it was apartment also when I bought it it was one bedroom apartment downstairs even they're separate in this building has three electric what they call it meters and things.

MR. BEDETTI: Let me ask is there a pre-existing variance on this building?

MS. CHOUDHURY: It was not, they did not make it like legal, they're renting it but without anything.

MR. TORPEY: How many apartments are in the house now?

MS. CHOUDHURY: Only two bedroom and one is storage.

MR. TORPEY: That's the upstairs?

MS. CHOUDHURY: Upstairs and downstairs only one big room before it was like apartment then they're selling some windows but I make it whole one thing for the lady.

MR. CHANIN: Can I ask a couple of questions?

MR. SCHEIBLE: Yes, sir.

MR. CHANIN: I'm sorry, I'm slow, so I have to ask you for some clarifications. You purchased the building in 2002?

MS. CHOUDHURY: Two.

MR. CHANIN: In 2002 there were two apartments upstairs, right?

MS. CHOUDHURY: No. When I bought it, yes.

MR. CHANIN: Alright, okay, when you bought it, there were two apartment upstairs and there was a business downstairs?

MS. CHOUDHURY: Yes.

MR. CHANIN: Is that right?

MS. CHOUDHURY: Yeah, plus apartment.

MR. CHANIN: Okay, wait, there were two apartments upstairs, there was a business downstairs and was there another apartment also downstairs?

MS. CHOUDHURY: No storage, selling windows.

MR. CHANIN: So upstairs when you bought it in 2002 there were two apartments and downstairs there was a business and storage, is that correct?

MS. CHOUDHURY: No, apartment and storage.

MR. CHANIN: So downstairs there were two apartments upstairs and downstairs there was a business?

MS. CHOUDHURY: An apartment.

MR. CHANIN: An apartment?

MS. CHOUDHURY: Yes.

MR. CHANIN: Alright, now, so you, subsequently the business went out of business and it's vacant, is that right?

MS. CHOUDHURY: Yeah, and they're in violation.

MR. CHANIN: Were the three apartments still occupied?

MS. CHOUDHURY: Only one.

MR. CHANIN: What happened to the other two tenants?

MS. CHOUDHURY: Nobody's there because outside is one storage because when I bought it there was a violation, they have to correct the violation, make the one storage two bedroom apartment and downstairs--

MR. CHANIN: Again, I'm slow, you lost me, we'll start over again. When you bought it in 2002, there were two apartments upstairs, right, there was a business and another apartment downstairs?

MS. CHOUDHURY: Yes.

MR. CHANIN: Is that correct?

MS. CHOUDHURY: Yeah.

MR. CHANIN: Okay, wait.

MS. CHOUDHURY: But it was violation.

MR. CHANIN: You have to let me finish. When you bought it in 2002, there were two apartments upstairs and downstairs there was a business and another apartment, is that correct?

MS. CHOUDHURY: Yes.

MR. CHANIN: Was the business in operation when you bought it in 2002?

MS. CHOUDHURY: No, it was kind of storage.

MR. CHANIN: Was the business in operation when you bought it?

MS. CHOUDHURY: I don't know, I don't know, those persons bought--

MR. CHANIN: When you bought the building, was there a business in operation in the business?

MS. CHOUDHURY: No.

MR. CHANIN: It was vacant?

MS. CHOUDHURY: Vacant.

MR. CHANIN: Were the people living in the three apartments?

MS. CHOUDHURY: Yeah.

MR. CHANIN: When you bought it, were there people living there?

MS. CHOUDHURY: No.

MR. CHANIN: So the whole place was vacant when you bought it?

MS. CHOUDHURY: Yeah because they have all violation.

MR. CHANIN: So nobody was there when you bought it?

MS. CHOUDHURY: No.

MR. CHANIN: Okay, after you bought it, did a business move in?

MS. CHOUDHURY: I applied that I want to make a deli.

MR. CHANIN: When you bought it, did somebody move into the business space?

MS. CHOUDHURY: Yeah.

MR. CHANIN: Did they operate a business there?

MS. CHOUDHURY: Yes, deli.

MR. CHANIN: Did somebody move into the apartments?

MS. CHOUDHURY: Yes.

MR. CHANIN: All three or two?

MS. CHOUDHURY: Only one because this is the problem it is a violation, they have to correct it, so they moved out, all the tenant make one big room downstairs and two bedroom upstairs and one is storage.

MR. CHANIN: Now, bring me up to date today, the business part, is there a business in there now?

MS. CHOUDHURY: No, five years it's vacant.

MR. CHANIN: And of the three apartments, are there anybody living in the two upstairs?

MS. CHOUDHURY: Only two apartments is there.

MR. CHANIN: Is somebody living there?

MS. CHOUDHURY: Yeah, one person is living there.

MR. CHANIN: The other one is vacant?

MS. CHOUDHURY: Yes.

MR. CHANIN: What about the apartment downstairs, is somebody living there?

MS. CHOUDHURY: There was violation, I have to remove it.

MR. CHANIN: Is somebody living there?

MS. CHOUDHURY: No, only one room.

MR. CHANIN: So the place downstairs that you're calling an apartment is just one room?

MS. CHOUDHURY: Yeah, one big room.

MR. CHANIN: Now, so right now it's vacant but there's one person in the apartment upstairs, is that correct?

MS. CHOUDHURY: Yes.

MR. CHANIN: Okay, now, what you're requesting is to convert this building from a business and apartments to all apartments, is that right?

MS. CHOUDHURY: Yeah, only apartment.

MR. CHANIN: Alright, then, as Mr. Bedetti said you're applying for a use variance because the zone allows for a business and apartments, planned industrial, but you want to make it all residential, is that right?

MS. CHOUDHURY: Yeah, residential only.

MR. CHANIN: I have one more question. On our agenda which may not be correct so I'm asking you it says you want to convert this building into a two-family dwelling?

MS. CHOUDHURY: Yeah.

MR. CHANIN: Is that right?

MS. CHOUDHURY: Yes.

MR. CHANIN: Is it your plan to have one family upstairs and one family downstairs, is that correct?

MS. CHOUDHURY: Yes.

MR. CHANIN: And these people that you want to make this a two family for, are they for your family or for tenants?

MS. CHOUDHURY: Kind of friend, not my family.

MR. CHANIN: So if you get this variance, you're going to have tenants?

MS. CHOUDHURY: Yeah.

MR. CHANIN: And they're going to pay you rent?

MS. CHOUDHURY: Yes.

MR. CHANIN: Now I'm clear, thank you very much. Gentlemen of the board, do you have any other questions?

MR. SCHEIBLE: Let's go back to, now I'm getting confused here too, but the upstairs now there's two, right, there's two apartments?

MS. RODRIGUEZ: It's one bedroom, two apartments.

MR. SCHEIBLE: But restroom facilities, what do they have in that area upstairs, one bathroom or--

MS. CHOUDHURY: Two bathroom.

MR. SCHEIBLE: Is there a bathroom facility?

MS. CHOUDHURY: Yes.

MR. SCHEIBLE: Let's go downstairs, same question, alright, is there bathroom facilities?

MS. CHOUDHURY: Yes.

MR. CHANIN: How many, one or two?

MS. CHOUDHURY: One.

MR. CHANIN: Now I have to ask you these questions, thank you, I'm supposed to ask you these questions by law. In this application are you cutting down any trees?

MS. CHOUDHURY: No.

MR. CHANIN: Creating any ponding or water erosion?

MS. CHOUDHURY: No.

MR. CHANIN: Are you trespassing over somebody's easement or right-of-way?

MS. CHOUDHURY: No.

MR. CHANIN: Okay, those are the questions I'm supposed to ask you.

MR. SCHEIBLE: Just also ask you so what kind of parking facility do you have, how many cars are you, is the facility ready for this?

MS. CHOUDHURY: Ten or 15 in the back side, back it was like grass and everything because I want to make the deli I make everything paved 10 or 12 parking.

MR. CHANIN: How many parking spaces are available?

MS. CHOUDHURY: I think 10 or 12, big area, it's too big for two family but I already have it.

MR. SCHEIBLE: Gentlemen, any other questions?

MR. BEDETTI: I'd like counsel to give us, give me an idea of the legality of having the residential, this being a residential building and it's not a permitted use.

MR. CHANIN: Okay, as Mr. Bedetti correctly pointed out, this is an application for a use variance. What that means is you want to get a variance from this board which is an exception to the town code for you, for this property so that you can use it in a way that the town code says should not be allowed which is to say that you want to use it, to make it completely residential when the zone says that you're not allowed to do that, you're only allowed to use this building mixed, meaning residential and business, okay. Now, you're allowed to apply for a variance, that is your right, you're allowed to come to this board and ask for a variance. What I think Mr. Bedetti is referring to is the fact that there are very, very strict laws and standards that apply if somebody is applying for a use

variance. Now, those are not just rules that this board is making up, they're not just rules that the town board passed in a local law, these are rules that apply all over New York State to every zoning board in the state. And I think what Mr. Bedetti is referring to is the fact that it is very difficult for an applicant such as yourself to get a use variance. In order to get a use variance, you have to show the following things. You have to show that you could not get a reasonable return, any reasonable income from the property without the variance. You have to show that this is a particularly unique one of a kind hardship on you because of the nature of the property.

MS. CHOUDHURY: Okay.

MR. CHANIN: I'm not saying you can't do it, just telling you what you have to show.

MS. CHOUDHURY: I understand.

MR. CHANIN: You have to show that this hardship was not self-created by yourself. And you have to show that if the variance is granted and this is also I think one of the factors that Mr. Bedetti is referring to, you have to show that if the variance is granted and if you're allowed to use this only for residential that you would not have a negative impact on the essential character of the surrounding neighborhood.

MS. CHOUDHURY: Ah-huh.

MR. CHANIN: Now, for that reason including for the reason that you have to show that you could get no other kind of reasonable income from this property the standard for granting an applicant such as yourself a use variance is very high. I'm not saying you can't do it, I'm not saying it's impossible, people are granted use variances all the time, but these are the things they have to show required by law before this board can consider granting you a variance.

MS. CHOUDHURY: Can I tell you something?

MR. CHANIN: Is that your point, Mr. Bedetti?

MR. BEDETTI: Mostly.

MS. CHOUDHURY: I can tell you something, right, at my building there's a street there after that, there's a

three story building, even the deli was not appropriate with the car and things with the kids, two building, one is mine two floor, next one all attached is another three floor building next one. And also about the price you're telling I'm getting, my taxes are 13,000, I can show, and then building insurance is 35 on the top of that I have water bill and electric bill, also maintenance everything but my income is here, only 10 or 12.

MR. CHANIN: I think you're on the right track. I think that part of what you have to show the board is how financially this cannot work for you unless you get this variance. So as far as the topic goes you're on the right track. But if I didn't completely cover all of Mr. Bedetti's concerns then I have to, we should ask him what additional information he's after.

MR. BEDETTI: Isn't there a condition that says that she has to show that she can't even sell that building?

MS. CHOUDHURY: No, I tried.

MR. CHANIN: He's asking me, okay. In effect, okay, the language of the law is that she cannot make any reasonable return on the property. If that means that she can't sell it at any price or if that means that she can't sell it except for far, far below its market value then in the discretion of the board you could say that she satisfied that requirement. Does that answer your question?

MR. BEDETTI: Yes.

MR. CHANIN: Okay, now I want to ask you a question. Is there anything that we have not talked about that you want to tell the board today?

MS. CHOUDHURY: Yeah, I already sign up John J. Lease seven or eight years ago I didn't withdraw, I did not get anywhere because I think it's the economy. I didn't get any, I did it like nine years ago with option rent, an option to buy, they said they'll buy it but after one year they left.

MR. CHANIN: Why did they leave?

MS. CHOUDHURY: They need more space, they come next to the movie theater.

MR. CHANIN: Have you done anything to advertise the property, either the business part to rent it to another business?

MS. CHOUDHURY: Yeah, I told whatever my tenant somewhere I want to rent it then at least I can pay the balance. This property I paid cash and bought it otherwise on the top of that there will be another--

MR. CHANIN: What have you done to try to get a new business to move into the space?

MS. CHOUDHURY: I'm telling everything, I'm telling John J. Lease that I did.

MR. CHANIN: What you're doing to try to get another business in the space you're talking to people?

MS. CHOUDHURY: Just renting, I cannot--

MR. CHANIN: Are you doing any other advertising?

MS. CHOUDHURY: Yeah, in the paper they did it.

MR. CHANIN: In the paper?

MS. CHOUDHURY: In the real estate the way they do it they did it and personally I know a lot of people even I gave one only like one year without any money, I don't need the money then when you start business then you can give the money.

MR. CHANIN: Let me give you one more piece of information cause you're doing this yourself.

MS. CHOUDHURY: Yeah.

MR. CHANIN: Here's what I want you to know. The law says that if a person such as yourself makes an application to this board and if the board says no, you cannot come back with the same application for six months.

MS. CHOUDHURY: Yeah, it doesn't make any sense.

MR. CHANIN: Wait, that's the law, alright. So if you want to come back, the board will listen to you, will hold a public hearing and then we'll vote on your application. So my advice to you is that if you want to do that, you should bring as much information as you

can so that the board has a basis of evaluating your application. Because if you don't bring the board enough information and if they vote no by law you can't come back for six months. So my personal advice to you is that when you come back and don't come back before you're ready but when you come back, make sure that this board has all the information that you told us about your efforts to recruit a new business, the situation of the building, you've had tenants come and go, the whole story since you purchased it. Because if the board does not have enough information and if they vote no, you can't come back for six months. Do you understand what I just said?

MS. CHOUDHURY: Yeah, but I don't understand there's a lot only two building on this floor, this one is two floor and this is the highway.

MR. CHANIN: Hold on a second. I want you to tell me if you understood what I told you about the six months, did you understand that?

MS. CHOUDHURY: Yeah, I understand. But six months will not change my tax will be the same.

MR. CHANIN: It's the law. My advice to you is to come to this board with enough information so the board can consider your application. Because if you don't provide them with enough information and they vote no, you cannot come back for six months. Do you understand that?

MS. CHOUDHURY: Yeah, I understand, I'm thinking how I can survive, I'm taking--

MR. CHANIN: I just wanted you to understand the way the board works. I'm not talking about your application, I just want you to understand the process, okay?

MS. CHOUDHURY: Okay. But what I have to do?

MR. CHANIN: Well, if the board votes to give you a public hearing then you'll come up here and Stephanie will give you a sheet of paper with your next steps.

MR. SCHEIBLE: You understand this is the preliminary hearing, we're getting all your information that is necessary that this board should be reading. But then you move on to a public hearing where the, correct me

if I'm wrong, where anyone, any neighbors who have something to say about your possible problem here, what you want to call it, you know, and so I just want to let you know also that it's not only going to be the board but we're going to be listening in a public hearing to the neighbors or so forth around you so that's just I want to interject that.

MR. CHANIN: Have you spoken to your neighbors about this?

MS. CHOUDHURY: I'm not a neighbor, they have a problem when I have a deli.

MR. CHANIN: Have you spoken to your neighbors?

MS. CHOUDHURY: It was two times, you know what it's called.

MR. CHANIN: Have you spoken to your neighbors about this?

MS. CHOUDHURY: About this, yes.

MR. CHANIN: Have they told you how they feel about it?

MS. CHOUDHURY: Yeah, they'll feel good because it is--

MR. CHANIN: When you come back for the public hearing, our secretary will be sending out legal notices in the mail to all the neighbors and they'll be invited to show up here at the next time you come and they'll be able to give their comments to the board, if they support your application, they oppose your application, whatever it may be. And this board will take their comments into account. Do you understand that?

MS. CHOUDHURY: Like you send every neighbor letter, are there any problems?

MR. CHANIN: That's right.

MR. CHANIN: Do the board members have any other questions?

MR. BEDETTI: Are you aware of the fact at the next meeting she has to address all six of those things that he said you have to meet by state law? You have to address each one and you have to meet all of them. If you meet four out of the six or two out of the six you

have to meet all of those requirements in order to meet--

MR. CHANIN: Now here's what you can do if you want. If you're not ready to come back to the public hearing, if you come back to the public hearing the board is going to vote yes or no. If you're not ready for that yet, what I can do is you can visit Stephanie and you can visit Jennifer in the building department in this building during the week and they'll give you further information and guidance. Does that sound like a good idea?

MS. CHOUDHURY: What things do you need, you need like paper, I have everything like taxes and things, what are my expenses I have.

MR. CHANIN: I understand but this is a legal process and we have to follow the law.

MS. CHOUDHURY: What are the six things?

MR. CHANIN: If you are not following the law then you're going to be denied your application. Do you understand that?

MS. CHOUDHURY: Yeah, no, that I understand.

MR. CHANIN: Okay, good. Board members have any other questions? Do you want us to schedule a public hearing or would you rather speak to the building department first since you're doing it yourself, maybe it would be a good idea to speak to them first?

MS. CHOUDHURY: I can make a date and I'll go maybe tomorrow. In the meantime, I will finish everything.

MR. CHANIN: Just call them and when you're ready they'll be happy to accommodate you and give you as much information as they can. How about that?

MS. CHOUDHURY: Okay.

MR. CHANIN: We're not going to schedule a public hearing until you talk to the building department.

MS. CHOUDHURY: Okay, I will stop by tomorrow.

MR. CHANIN: Any other questions? Thank you very much.

August 22, 2016

17

MS. CHOUDHURY: Okay, thank you.

MS. RODRIGUEZ: See you tomorrow.

PUBLIC HEARINGS

BEST FUDGIN CAKES (16-16)

MR. SCHEIBLE: Next on this evening's agenda is a public hearing for the Best Fudgin Cakes, 16-16. A variance for off-street parking is required, 13 spaces are required, five provided, eight variance required. Location at 1 Quassaick Avenue in a future NC zone. Please come up, state your name and address.

MS. GUIFFRE: My name is Jennifer Guiffre, my address is 51 Union Avenue, New Windsor, New York.

MR. GARRITY: Matt Garrity, same address.

MR. CHANIN: As you did at the preliminary, just repeat what you told us last time on August 8 about what this is all about.

MS. GUIFFRE: The bakery is located at 1 Quassaick Avenue. We're looking for a variance on the parking. It's a very small footprint, there's not a lot of parking there. My bakery is not going to be a full time retail bakery. There may be some retail hours but it would be on the weekend hours and there is plenty, the business next to us is very nice and they've given us an easement for a few spaces. And there's more spaces the owner said we could park there, it would be very limited retail hours, most of the time people would be calling up to pick up cakes so it would be very little traffic as far as cars. So we're looking for a variance and asking to be granted for that. That's it.

MR. SCHEIBLE: You said you'd be baking cakes?

MS. GUIFFRE: Yes.

MR. SCHEIBLE: I like that idea. I'll just go back, I think I asked this question, what is presently the building being used for right now?

MS. GUIFFRE: Presently, it's vacant.

MR. GARRITY: The building's actually been delapidated for many, many years. Part of the reason it was delapidated had to do with the owners and their state. I'm not sure whether they just couldn't afford to fix what was happening with it but as the building became

more and more delapidated it became less desirable. In addition, the building is currently in an industrial zone but the building is on a list of properties that are being considered for the change in zoning. So with that, the change in zoning would allow the business, that was the whole reason we bought the building, the idea that the zoning would change. Cause under the industrial zone a kitchen is not allowed and which of course we need to do the baking. So we're waiting for all of, this is actually in lieu of the change in zoning so I know we're at the end of the process, we're sort of waiting but currently right now just trying to bring the building up to code. The gentleman ran a woodworking shop downstairs, this is going back many, many, many years.

MR. SCHEIBLE: I'm sure that you've spoken with the building department or et cetera that--

MR. GARRITY: Daily.

MR. SCHEIBLE: I just want to bring that up when you go into this type of business you're going to have exhaust, it's going to be all filtered?

MR. GARRITY: Oh, yeah.

MR. SCHEIBLE: It's the building department that takes care of that but just my own good hearing that.

MR. GARRITY: Well, the building end of it, I'm structurally knowledgeable but as far as the kitchen that's her expertise. We have already had the ANSEL consultant to come in and give us the lowdown on that system, inspect it, but we're still working with the building department to accommodate building permits that had expired under the previous owner just to get everything back to where it should be in addition to making improvements on the building that are going to be needed for our use we well.

MR. CHANIN: So I have a couple questions I have to ask you. In connection with this application, are you cutting down any trees or significant vegetation?

MR. GARRITY: The two easement parking spaces have some brush that will be trimmed back but that's it so no significant trees or anything like that.

MR. CHANIN: In connection with the application, are

you going to cause any ponding, runoff or erosion?

MR. GARRITY: No.

MR. CHANIN: Are you transgressing on anybody else's easements or right-of-ways?

MR. GARRITY: No.

MR. CHANIN: You said that the good people, neighbors next door have given you an easement to allow you to use their parking, is that right?

MR. GARRITY: Well, the easement, part of the negotiation of purchasing the property since we're so limited and now we'd be eventually pursuing a variance, worked it out where we have a permanent easement from the neighbor next door and that adds two parking spaces. So prior to that, all we could produce was three. So we were able to get it up to five. But there's literally no other way to go any higher than that.

MR. CHANIN: Is the easement that you were granted by your neighbors in writing?

MR. GARRITY: Yeah, it had to be added to the deed that was per the planning board and the town engineer with the site plan and everything. So we got all that done ahead of time and we did all that per the consult of the planning board.

MR. CHANIN: And is my understanding correct that when all the work is done and your business moves into this place that you don't expect a lot of people dropping by and sitting down at a little table and eating at that place?

MS. GUIFFRE: I won't have any tables, maybe a table to sit with the bride to talk about a wedding cake.

MR. CHANIN: Not talking about a desk but somebody comes in and has a meal, that's not going to happen?

MR. GARRITY: No. If you want to call it the retail space where customers would come in the front door is very limited, it's a very tiny, small alcove area which would be great for people to walk in comfortably and come to a countertop. Other than that, there's really no plans for any large display cases because she's not

really going to the full time bakery concept where there will be massive cases of food, it's more a pre-order kind of thing.

MR. CHANIN: So what you would expect are your customers to drop by, pick up their order and leave?

MR. GARRITY: Yeah.

MR. TORPEY: What about like a drive-thru?

MS. GUIFFRE: Yeah, if we had room for a drive-thru that would be great.

MR. GARRITY: They'd go around.

MS. GUIFFRE: We'd like to convert the broken bridge and make it a flower bridge, have it as a walking bridge.

MR. CHANIN: Am I correct that the only variance you're asking for at this time is the number of parking spaces?

MR. GARRITY: Correct.

MR. CHANIN: You're not asking for any other variances at that time?

MR. GARRITY: No.

MS. GUIFFRE: No.

MR. CHANIN: Board members?

MR. BEDETTI: I just have two simple questions. You own the building now?

MS. GUIFFRE: Yes.

MR. BEDETTI: Is parking allowed on Columbus Avenue, that's the one right on the side, any on-the-street parking?

MR. GARRITY: It's a one-way road, it's, there's a lot of residential back there and whether it's formally allowed, I know a lot of cars park there at night for the residents that are there. When trying to meet the requirements of the town code, a formal parking space is not allowed to back out into traffic so although

there's usable land there so to speak for cars to park or pull over, et cetera, couldn't be used technically as a formal parking space per the town code. So what we did, the easement that we got from our neighbor next door was backing into our driveway so wouldn't be backing into ongoing traffic.

MR. BEDETTI: You had three spaces, you got two from an easement, okay?

MR. GARRITY: Yeah, and the property's mostly building.

MR. BEDETTI: Thank you, I'm good.

MR. CHANIN: Board members?

MR. HAMEL: No, I'm good.

MR. CHANIN: You want to open the public hearing, invite all the crowds of people?

MR. SCHEIBLE: Does anyone out there have any questions to be asked on this occasion? Is there anyone there? No, no one present.

MR. CHANIN: Stephanie?

MS. RODRIGUEZ: So on the 9th day of August 2016, there were 26 addressed envelopes containing public hearing notice, sent them out and got no response.

MR. CHANIN: Any other comments, questions from the board? Is there a motion?

MR. BEDETTI: I'll make a motion that we grant--

MR. CHANIN: Stephanie is right, there's a section in State Law, General Municipal Law Section 239 I think it is and what it says is that certain properties if they qualify and I'll tell what you qualifying means. The application before a planning board or zoning board in every town must first be referred to the Orange County Department of Planning, a property that qualifies in other words is required to go through this process, a property that meets any one of a different number of criteria including is it within 500 feet of a municipal boundary, is it within 500 feet of a water course that's listed on the official county map, et cetera. There's different aspects. The purpose of the law just so you know is so that there's a process in place to

try to protect people against the situation where your house is right on the border of the next town and the next town wants to build an industrial plant there and you can't do anything about it cause it's in the next town, not in your town. So in a weak and meager effort to bring regional planning concepts to the current State of New York State Law, there's this additional procedure so that if a property qualifies, also if it's within 500 feet of a state highway is another criteria, so if a property qualifies, the application must be referred to the County Department of Planning where there does exist an entity called the County Planning Board. Now, if for whatever reason the County Planning Board recommends against the application, that doesn't stop it, but what it does do it has the legal affect of imposing on the zoning and the planning boards a super majority requirement for approval. Instead of needing three out of five votes, you would need four out of five votes. So what Stephanie has correctly pointed out is that your property qualifies. And this application has to be referred to the county. Now, what happens in most cases is that the county either has no objection or they never respond. And if they never respond after 30 days that's the same thing as no objection and then it comes back to either this board or the planning board for a vote.

MR. GARRITY: Very well explained.

MR. CHANIN: So since this qualifies we shouldn't vote on this tonight because the application should be submitted to the County Planning Board and then they'll either say okay or they'll say nothing or they'll say we object. And if they object, you can still get your approval but you would need four votes instead of three.

MR. GARRITY: Gotcha.

MR. CHANIN: So I think if I'm not mistaken, correct me if I'm wrong, you'd like the board to go through that procedure before we vote. The reason why that's probably a good idea is because if the board votes before that procedure is followed, technically there is a legal flaw in the procedure and somebody could contest and overturn so you probably don't want to risk that.

MR. GARRITY: No.

MR. CHANIN: In which case you're done for tonight but you should consult with the department so that the referral to the county is made and your next appearance will be scheduled.

MR. GARRITY: Stephanie, is there anything we need to do?

MS. RODRIGUEZ: It's already been referred, we referred it to the planning board prior, didn't realize that we had to send it to zoning as well cause it's the same project, it already went out on Thursday. So hopefully we'll hear something soon or we let the 30 days run out.

MR. GARRITY: Will you then put it on the next agenda?

MS. RODRIGUEZ: Yes, I'll shoot you an e-mail and let you know what date that is.

MR. CHANIN: Do you have any questions?

MR. GARRITY: No, very well explained and all makes sense.

MR. BEDETTI: Counsel, could we vote pending the approval of Orange County and if we in fact met even on this vote met four out of the most stringent requirements then the variance should be granted?

MR. CHANIN: I suppose you could, hypothetically you could say we vote contingent on whatever the county decides. Frankly, personally, I don't recommend it. But if you did it and nobody challenged it, there's an old saying if nobody challenges it then it's okay. I don't practice law that way but it's up, I would leave it up to you guys.

MR. GARRITY: We followed your lead from day one.

MR. CHANIN: Not mine.

MR. GARRITY: The board's lead, including the planning board and have been very well guided by you guys.

MR. CHANIN: So you want to wait?

MR. GARRITY: Whatever way, if proper protocol is to wait then so be it. If you guys would like to take a tentative vote we're okay with it.

MR. BEDETTI: I defer to counsel.

MR. CHANIN: I do so many things so wrong every day so on the rare occasion when I get a chance to do something right I try to do it that way.

MR. GARRITY: We have a lot of work to do which we're doing right now.

MR. CHANIN: So the time won't be wasted.

MR. GARRITY: Even in the rush of changing the zoning on the building as much as we'd love to see it done yesterday, the reality is is that we're trying to meet a lot of stuff and our plates are full. So we're just going forward as fast as we can and, you know, Stephanie hears from me on a daily basis.

MR. CHANIN: Stay in touch with the building department.

MR. GARRITY: Definitely.

MR. CHANIN: They're great over there and they'll guide you through it.

MR. GARRITY: This whole process the best thing we ever did well was what do you recommend, that was the best thing we've ever done. And we continue to do that. And reality is that the advice we've been given has pretty much gone the way everybody said it would go so we really appreciate that.

MR. CHANIN: Stay in touch with Stephanie and we'll see you later.

MR. GARRITY: Thank you very much.

MR. SCHEIBLE: We appreciate your being so cooperative.

MR. GARRITY: No problem.

MS. GUIFFRE: Thank you.

FORMAL DECISIONS

1. Thomas Palmer
2. Dahlin/Pushman
3. Bohmann

MR. CHANIN: Formal decisions. If it's the board's pleasure we can collectively vote on the three formal decisions which are before you. I just want you to know only if all five of you agree you should vote collectively. One of them is Mr. Palmer, if anyone wishes to vote separately, you should make that known. If you don't want to vote separately, you can all vote collectively on all three. What's your wish?

MR. TORPEY: I think we should make them all separate.

MR. CHANIN: Mr. Torpey has no objections to collectively voting. Then may we have a motion to vote, approve all three as written collectively?

MR. BEDETTI: I'll make a motion that we accept the formal decisions as written, three of them listed as Thomas Palmer, identified as 16-12, Dahlin/Pushman identified a 16-11 and Bohmann identified as 16-15 as written and distributed by e-mail.

MR. TORPEY: I'll second that.

ROLL CALL

MR. BIASOTTI	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. SCHEIBLE	AYE

MR. CHANIN: Next meeting, September 12. Motion to adjourn?

MR. HAMEL: So moved.

MR. TORPEY: Second it.

ROLL CALL

MR. BIASOTTI	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE

August 22, 2016

27

MR. SCHEIBLE

AYE

Respectfully Submitted By:

Frances Roth
Stenographer