

A Zoning Board of Appeals Work Session Meeting was held on Thursday, June 17, 2021 at 7:00 P.M. at Village Hall, 9 Fairlawn Drive, Washingtonville, New York.

PRESENT:

Chairperson Maureen DeVinko, Zoning Board Members Denni Lozza, James Kiernan and Merald Drayton.

ABSENT:

Zoning Board of Appeals Member Steven Presser.

ALSO PRESENT:

Attorney Elizabeth Cassidy, Building Inspector and Code Enforcer John Terry.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Chairperson Maureen DeVinko led the Pledge of Allegiance to the Flag.

OPEN PUBLIC HEARING – REGARDING APPLICANT OF 61 EAST MAIN STREET:

Chairperson Maureen DeVinko announced that the Public Notice for 61 East Main Street states as follows:

“Given that the Zoning Board of Appeals of Washingtonville hold a Public Hearing on Thursday, June 17, 2021, at 7:00 P.M. in Village Hall, 9 Fairlawn Drive, Washingtonville, New York on the application of 61 East Main Street LLC for an appeal of the determination of the Building Inspector dated November 18, 2020 an interpretation as to whether the code allows only one building to house a permitted use on a single tax lot, located at 61 East Main Street, SBL 114-1-3.22 / 113-2-3.0-1. The application and plans are available for review Monday through Friday from 8:00 A.M. to 4:00 P.M. and all interested parties may be heard at the same time and place by order of the Zoning Board of Appeals.”

Zoning Board Attorney Elizabeth Cassidy indicated that we recently discussed this matter with the applicant at our last meeting when we set the Public Hearing, and the applicant has requested two forms of relief on the consent of the application. We are bifurcating the process so that we are going to address the interpretation this evening and will then prepare the plans for the Planning Board.

Chairperson Maureen DeVinko explained what the Attorney is speaking about is we are trying to work more closely with our Planning Board so that the applicant process is done in a more timely manner.

Neal Frishberg from Fabricant, Lipman & Frishberg and representing 61 East Main Street LLC added there is no request to have an interpretation concerning anything about office or offices. This is a limited interpretation and essentially what we claim is that the Building Inspector’s interpretation was somewhat incorrect.

Neal Frishberg added that the issue is whether the provisions of the Washingtonville Zoning Ordinance regulating uses in the O-R Zoning District and the Zoning Code Section 175 has 47D creating a combination of office and dwelling, permit the placement of more than one building containing dwellings on a single lot. The Building Inspector relies on what appears to be sections that corresponds to the E-

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Codes so when he refers to Section 315-48D in E-Codes that 315 is actually 175. I have attached as part of the package, copies of the E-Code Training.

Neal Frishberg stated the single dwelling can be multiple because it can be more than one dwelling and more than one building. The Building Inspector ignores the Towns and Villages on Section 175-381 that provides the singular intense terms which should be construed to include the plural so it says dwellings and buildings. Words used in the present tense include the future. Section 35 provides words in the singular number including plural numbers. The State Statutes under the General Construction Code under Singular Number include the Plural and the Plural Number includes the Singular. Under the Interpretation of Statute Section 97, the Statute of Legislative Act is to be construed as a whole and all parts of an act are to be read and construed together to determine the legislative intent and in that Section 98 all parts of the statute must be harmonized with each other so using that statutory interpretation in conjunction with section 175-3, gives the fact that the zoning code says the singular which means the plural. When you look at the intent of the statute in the original combination of office and building, office can be more than one office in a building and with due respect to the Building Inspector, his interpretation is incorrect. The General Law that Zoning Ordinances are in derogation of common law and should be interpreted in favor of the landowner, even if there is an ambiguity, then it has to be interpreted in favor of the applicant. I will draw your attention to Ms. Cassidy's Letter, she says that the Lot Plan shall show separate lot for each main building, provided however that where development consists of an integrated arrangement of dwellings, multiple dwellings or other buildings designed and intended to be obtained in a single ownership, the Building Inspector may waive the requirement of showing separate lots for each separate building. This authorizes the Building Inspector to determine whether a Plot Plan containing more than one (1) building on a lot must be subdivided after such Plot Plan has been presented. For that provision to have any meaning or application the Planning Board must have first granted a Plot Plan with more than one main building, in other words for more than one office. When you look at Section 175-467D the combination of office and dwelling, office means more than one office.

Representative of 61 East Main Street, Ryan Gibson, added that generally the most favored development of this property is whole residential. Once your whole interpretation is made, we will go back to the Planning Board and then come up with a plan. To be clear, we aren't talking about the interpretation of a dwelling, we are talking about the interpretation of a building. That term, building, can define where a dwelling can be.

Susan Walski, 24 South Street, commented that the applicant stated the code has definitions of the word dwelling, dwellings, office, offices. I did not hear where the Code could find buildings subject to a particular lot and multiple buildings on lots all along, up and down main street. There are no other lots that have multiple usage buildings other than accessories such as sheds on them, and I asked this Board to take that into consideration. When this goes before the Planning Board there will be questions as to why there is a 30 (thirty) foot height on this building, how many sewer and water units are allowed for this particular lot, what type of traffic will there be with up to fifty-six (56) cars turning left on Main Street and fifty-six (56) cars can not fit between the crosswalk and the light at Brotherhood Plaza Drive. Ms. Walski questioned will there be a traffic study done for this? Traffic on Main Street is arduous enough as it is, and with twenty-eight (28) units with the potential of three (3) bedrooms in each unit, this creates potential for a significant impact on

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transportation to the School District that would have buses stopping for long extended periods of time to load and unload children. The site plan does not allow for any mechanicals in this building so where are the mechanical units going to go for each individual unit.

Paul Kazdan, 35 East Main Street stated he is not in favor of high density on Main Street.

Chairperson DeVinko added many of Susan Walski's statements were Planning Board Questions. I just want to make a point that our job is not to side with anyone, our job is to take into consideration the entire neighborhood.

RESOLUTION – CLOSE PUBLIC HEARING – REGARDING 61 EAST MAIN STREET:

Zoning Board of Appeals Member Denni Lozza made a motion, seconded by Zoning Board of Appeals Member Steven Presser and adopted to close the Public Hearing held for the application regarding 61 East Main Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

OPEN PUBLIC HEARING – ORANGE COUNTY BAGELS – 32 WEST MAIN STREET:

Chairperson DeVinko stated Public Notice is hereby given that the Zoning Board of Appeals of Washingtonville will hold a Public Hearing on Thursday, June 17, 2021, at 7:00 P.M. in Village Hall, 9 Fairlawn Drive, Washingtonville, New York regarding the Application of Orange County Bagels, 32 West Main Street Section 112 Block 4 Lot 18 for the following area variances: Lot area variance of 53.223; 80,000 square feet to 26,777 square feet. The lot width variance of 82.2 feet from 250 Feet to 167.8 Feet. Front yard setbacks variance of forty (40) feet, sixty (60) Feet, twenty-two (22) feet including a two (2) foot overhang. One (1) side yard back variance of 35.5 foot, 40 foot to 6.5 foot including a two (2) foot overhang; both side yard set back variants of 15.8 Feet, 80 feet to 66.2 feet including a 2 foot overhang, lot coverage variance of 5%, 25%-30% and the applicant further seeks a use variance interpretation from the requirements of 315-53H of the Village Code Permitting business center development and permitting two primary business uses on one lot and further seeks variances pursuant to 315-16.C.8 permitting the use of municipal parking lot to satisfy six (6) parking spaces needed for the project. The applications and plans are available for review Monday through Friday from 8:00 A.M. – 4:00 P.M and all interested parties may be heard at said time and place by order of the Zoning Board of Appeals.

Zoning Board of Appeals Attorney Elizabeth Cassidy stated for the record the affidavit of publication was received. In addition, just so everyone is aware of the procedural history, this application was before the Washingtonville Planning Board and as part of that process has conducted a coordinated SEQRA review so the planning board has conducted a SEQRA at their meeting on May 25. The Board issued a negative declaration and since they have issued a negative declaration we are now permitted under procedure to take action and rely on the negative findings and statements as the declaration is part of your consideration. In addition, the Planning Board also did a coordinated 239 Review to Orange County Department of Planning which put both the Planning Board application as well as the area variance application on that referral because it was within 500 feet of the State highway. That was received on May 6.

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(CONTINUED)**

Representative Ryan Fellenzer of Fellenzer Engineering spoke on behalf of Orange County Bagel, 32 West Main Street, and stated Orange County Bagels is proposing a 5400 square foot single-story structure with three units inside which would be 1800 square feet. We received initial approval for a list of variances and subsequent to that approval we received an updated survey on the property. The next step will be the Public Hearing. There is a possibility of adding a crosswalk from the parking lot to sidewalk across the street per New York State – Department of Transportation (N.Y.S. – D.O.T.).

Chairperson Maureen DeVinko questioned what will the third office be, and Mr. Fellenzer responded potential office space.

Chairperson DeVinko added she is concerned about the extra spots because from six (6) to twenty (20) is a big jump. The Farmer's Market is not at the Municipal Lot anymore, and spots are available.

Susan Walski, resident of 24 South Street commented the plans were available for public view. The accessory building only had one spot assigned to it with an unknown business and I think it is unfair to claim that the business will only need one spot. The other is utilization of the crosswalk is crucial because children are walking in this area, and the High School students are parking in this location so a crosswalk needs to be in place to ensure safety concerns.

Chairperson Maureen DeVinko indicated with regard to Route 94, Washingtonville is one of the only Villages that has two (2) State roads crossing through it. We as a Village are not able to make those crosswalk determinations so that is up to the State.

Caitlyn P., resident of 120 Round Hill Road stated twenty (20) Parking Spaces seems a bit extreme. I keep looking at this plan and am wondering why we have a third office if we already have a lot of empty rental businesses throughout Washingtonville.

RESOLUTION – CLOSURE OF PUBLIC HEARING – 32 WEST MAIN STREET:

Chairperson DeVinko made a motion, seconded by Zoning Board of Appeals Member Merald Drayton and adopted to authorize approval to close the Public Hearing regarding the application for Orange County Bagels; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

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Zoning Board Attorney Elizabeth Cassidy explained the Board originally adopted a determination dated February 8, in which it set out the findings as to the variances, and to question whether an undesirable change to the character of the neighborhood or a detriment to nearby properties would be produced by the area granting variances. The answer is no, the proposed variances will permit the construction of a business center with three (3) businesses located therein. The purpose of the neighborhood business district is to promote the creation of business and to allow foot traffic to exist. This location will provide the same, and additionally the neighborhood consists of a utility company, a School District, a Municipal Parking Lot and other businesses.

ORANGE COUNTY BAGELS – 32 WEST MAIN STREET – (CONTINUED):

The proposed project fits in exactly with the types of buildings and uses in this area. Additionally, the building as it currently exists would need to be demolished as result of a fire. The building presents limited uses for which a future owner could use it, as such, the new construction provides the best alternative. Whether the benefits sought by the applicant can be achieved in some method other than in area variances, the answer to this is yes and no. The applicant stated the building can be remodeled. The current use of a bed and breakfast presents limited options for future uses because of its layout. The Village Board determined that the applicant could not accomplish his goal of having a business center development with the property in its current conditions. Due to the rising cost of construction it is necessary to have a certain amount of units to make the project profitable. The Neighborhood Business District wants business center development but it only permits it on lots of almost two acres in size. There are no properties in the zone that would satisfy this requirement. As such the applicant's proposal to create the business center could not happen anywhere else in the zone. The substantial nature of the reductions are minimized by the project's location. If this property were located in a residential neighborhood with people living next door and possible daily effects on everyday life, the outcome would be much different, however its location in a commercial zone with no neighbors except for those of corporate nature make the proposed variances less substantial. Whether the proposed variance would have an adverse effect or an impact on the physical or environmental conditions of the neighborhood or district, the board finds the answer to be no. I will also note for the record that you have the benefit of the negative declaration issued by the Planning Board.

Zoning Board Attorney Elizabeth Cassidy stated whether the alleged difficulty is self-created, the board finds this answer to be yes, there could be no dispute that the applicant self-created the request to construct the proposed building however, the board determines that the current code in essence makes the construction of a business center impossible under the current zoning, which zoning requires almost two (2) acres to create such a center and there are no such ones in the neighborhood district to accomplish the same. As such even though it is self-represented by the applicant's proposal this factor reviewed against the current zoning code does not adversely affect the impact.

Chairperson Maureen DeVinko added that she does not believe this would have gone through in any other location in the Village.

RESOLUTION – GRANTING VARIANCES – 32 WEST MAIN STREET:

Zoning Board of Appeals Member James Kiernan made a motion, seconded by Zoning Board of Appeals Member Merald Drayton and adopted to grant approval of the variances for 32 West Main Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – BUSINESS CENTER DEVELOPMENT – 32 WEST MAIN STREET:

Zoning Board of Appeals Member James Kiernan made a motion, seconded by Zoning Board of Appeals Member Merald Drayton and adopted to approve the building at 32 West Main Street as a business center development; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – APPROVAL OF VARIANCE FOR 20 PARKING SPACES – 32 WEST MAIN STREET:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals Member Denni Lozza and adopted to authorize approval of the variance pursuant to the Village Code which allows offset of the parking calculation within five-hundred (500) feet of the municipal space and allowance of granting the variance of twenty (20) parking spaces for the applicant of 32 West Main Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

OPEN PUBLIC HEARING – 61 EAST MAIN STREET:

Chairperson Maureen DeVinko questioned how far is the Moodna Creek from the buildings and are you elevating the properties?

Engineer Michael Morgante, representing 61 East Main Street responded the buildings are three-hundred (300) to four-hundred (400) feet away from the Moodna Creek, and are situated outside the one-hundred (100) year flood zone.

Chairperson DeVinko questioned how many parcels along Route 94 have the ability to do the same thing, and traffic is a nightmare during certain times of the day and adding more vehicles is a concern.

Engineer Michael Morgante added a review of five-hundred (500) feet surrounding the property was done, and all of those parcels are small.

Zoning Board Attorney Elizabeth Cassidy stated several parcels in a row would have to be acquired.

The Zoning Board of Appeals members and Zoning Board Attorney Elizabeth Cassidy step out of the meeting for a discussion of interpretation.

RESOLUTION – 61 EAST MAIN STREET – OVERTURN DETERMINATION OF CODE:

Zoning Board of Appeals Member James Kiernan made a motion, seconded by Zoning Board of Appeals Member Denni Lozza and adopted to authorize approval to overturn the determination of the Building Inspector regarding 61 East Main Street and the Village of Washingtonville's Zoning Code which allows for two buildings on one property; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – APPROVAL TO ACCEPT MINUTES OF JANUARY 20, 2021:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals Member Denni Lozza and adopted to accept the January 20, 2021 meeting Minutes; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – TABLE THE ACCEPTANCE OF MINUTES OF JANUARY 27, 2021:

The Zoning Board of Appeals tabled the Resolution regarding acceptance of January 27, 2021 meeting Minutes since Chairperson Maureen DeVinko was absent on January 27, 2021, and Zoning Board of Appeals Member Steven Presser is absent from today's meeting.

RESOLUTION – APPROVAL TO ACCEPT MINUTES OF FEBRUARY 3, 2021:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals Member Denni Lozza and adopted to accept the February 3, 2021 meeting Minutes; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – APPROVAL TO ACCEPT MINUTES OF MARCH 3, 2021:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals Member Denni Lozza and adopted to accept the March 3, 2021 meeting Minutes; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – APPROVAL TO ACCEPT MINUTES OF MARCH 25, 2021:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals Member James Kiernan and adopted to accept the March 25, 2021 meeting Minutes; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – APPROVAL TO ACCEPT MINUTES OF MAY 6, 2021:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals Member James Kiernan and adopted to accept the May 6, 2021 meeting Minutes; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – ADOPTION OF THE CALENDAR FOR MEETINGS:

Chairperson DeVinko made a motion, seconded by Zoning Board of Appeals Member James Kiernan to authorize the adoption of the calendar for the Zoning Board of Appeals Meetings; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESOLUTION – EXECUTIVE SESSION:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals member Denni Lozza and adopted to authorize the Zoning Board of Appeals to enter into Executive Session to discuss litigation; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

RESPECTFULLY SUBMITTED,

SOPHIA FOLEY

CLERICAL ASSISTANT