

Special Meeting of the Village of Pawling Zoning Board of Appeals Minutes

Meeting Date: February 3, 2022

Present: Michael Keupp, Chairman
Freddy DiVitto, Member
Ann Hardeman, Member
Nicholas Vorolieff, Member

Absent: Tom Zarecki, Member (Recused)

Also Present: Diana Tomassetti, Main Corner Properties
Mike Barnett, Main Corner Properties
Ben Gailey, Jacobowitz and Gubits, LLC
Lauri Taylor, Mayor

On, **Thursday, February 3rd, 2022 at 7:00 PM**, the **Zoning Board of Appeals** met in the meeting room at the Village Hall on 9 Memorial Avenue, Pawling NY. The Meeting was called to order by Mike Keupp, Chairman and began with Roll Call as indicated above and The Pledge of Allegiance.

Applicant: Main Corner Properties
Diana Tomassetti
146 East Main Street Appeal

Village Attorney Jonathan Bardavid explained that the matter in front of the Board is to hear the appeal of Main Corner Properties of the December 22, 2021 decision by the Building Inspector to issue a Stop Work Order and to revoke permits. Mr. Bardavid presented documents to the Board (all records are on file at the Village of Pawling Planning Department) and noted that the applicant's failed to mail the Public Hearing Notices to neighboring residents and to ensure Open Meeting Laws are properly followed, the Public Hearing will be continued during the February 23, 2022 ZBA meeting.

Ben Gailey, Applicant's attorney made the following three arguments:

1. The Building Inspector does not have the authority to issue the Stop Work Order or to revoke the Building Permit stating that there is absolutely no reference in the Zoning Code Section 98-65, Site Plan Approval to revoking a Building Permit or issuing a Stop Work Order yet that was the authority under which the Stop Work Order was issued.
2. Mr. Gailey further stated that the building permit revocation letter refers to Section 10-10 of the Building Code which claims that the Building Inspector has the authority to revoke a

Special Meeting of the Village of Pawling

Zoning Board of Appeals Minutes

Building permit when the work that was done is not in accordance with the application plans or specifications. He said this leaves off a portion of the sentence which states, "Applications, plans or specifications on which the building permit is issued." He explained that the letter does not cite a single plan, specification or building permit application that was violated. Therefore, he claims, there's no authority under Section 10-10 to revoke the Building Permit.

3. Mr. Gailey asserts that shingle color is not specified in the building plans only the type of material. Mr. Gailey presented the Board with a letter from an engineer that confirms that the shingle material is an architectural fiber glass shingle which is exactly what the building plans specify. He stated that the issue here pertains to aesthetics stating that there are no safety issues or fire safety issues.

Chairman Keupp referred to the Board for comments.

Member Freddy DiVitto referred to the letter from the engineer and asked the Applicant to provide an official letter that is stamped and certified from a professional engineer which states that the roof is architectural fiber glass shingles as the Applicant claim.

Mr. Gailey replied that the Applicant will do that.

Member Vorolieff questioned Mr. Gailey's claim pertaining to the lack of authority under the Code, Section 10-10 -C pointing out that it states specifically that the Building Inspector has the authority if the work performed is not being done in accordance with plans and specifications. Mr. Vorolieff emphasized that fact that there were specific plans that were brought across multiple Boards about the look and feel of this particular building stating that there are quite a few areas where it is not complying with what was submitted to the Board. He explained that Mr. Johnson, the Applicant's Architect at the time, actually spent quite a bit of time speaking to the Board about copying the many architectural details in the surrounding area because one the main concerns of the Boards was that a large building of this size, much larger than the original one was if the building was going to blend in with the look and feel of the other buildings in the community. Further elaborating that the issues being cited by the Building Inspector have to do directly with the fact that the Applicants have veered greatly from the many characteristics that were discussed as part of the Building Plan and were an essential part of the decisions granting the Variances specifically from the ZBA as well as the concessions made by the Planning Board.

Mr. Gailey said I understand but my point is that it does comply with the building plans and specifications. There's the allegation that it doesn't comply with plans submitted to the Planning Board but Code Section 10-10 is about the Building Permit, not about the Planning Board. Mr. Bardavid pointed out that the portion highlighted relates to false statements and misrepresentations of material fact pointing out that Code 10-10-A relates to false statements

Special Meeting of the Village of Pawling

Zoning Board of Appeals Minutes

And misrepresentations of material fact and that's not what was alleged in the memo from the Building Inspector.

Mr. Gailey said all of Chapter 10 deals with building permits.

Chairman Keupp asserted that it was made clear that building was not supposed have a completely different look than other buildings in the Village. The intent of the Board was to ensure that this building was to incorporate similar elements of other buildings. Stating, for example, there are no other buildings in the Village that have an orange roof supporting the view that the building doesn't take in any of the architectural aspects of other buildings in the Village. That's a very big issue.

Mr. Gailey said, "I don't really think that's within your jurisdiction. Your jurisdiction is whether or not the building permit was properly revoked and whether the stop work order was properly issued. I pointed out the sections of the Code here where the Building Inspector didn't have the legal authority to do that."

With no further comments from the Board the Chair referred to Village of Pawling Building Inspector Ed Larkin for his remarks.

Mr. Larkin explained why the Stop Work Order was issued and the timing of when it was issued. He said that in addition to the code citations that have previously been identified, Section 98-44 of the Village Code is another citation of reference. Which states that if Building Permit plans or Building Permit construction does not comply with Site Plan Approval, it is therefore, invalid. This indicates a direct tie back to the Planning Board explaining that the reason for this is so that a building official can't go rogue and approve construction that doesn't meet the previous Board's approval, in this case the Planning Board. As to the timing of this, this first came to the attention of the Building Department in late August/September. In September/October it was my determination, as the Building Inspector, that I cannot make any judgements or approvals on the changes to the architectural finishes of the building stressing to the Applicant the necessity for them to go through the formal process with the Planning Board to obtain the necessary approvals for the changes to bring them in compliance. In November, the Applicant was put on Official Notice as a formal referral to the Planning Board because work was progressing despite the fact that the Applicant does not have the proper approval from the Planning Board to do so. In December the Applicant appeared before the Planning Board where it was established that the architectural character of the building was in fact critical to Planning Board approval. Subsequent meetings with the Applicant did not yield any progress or compromise, yet work was still advancing so it was at that point in December that a Stop Work Order was issued by the Building Department. Mr. Larkin also expressed that the citations listed in the Stop Work Order

Special Meeting of the Village of Pawling

Zoning Board of Appeals Minutes

Are not associated with any safety issues or quality of construction. Mr. Larkin then referred to renderings he presented (see attached) to the board which describe the architectural details that have been deviated from including the following:

- Hardy board siding as opposed to brick.
- Stone knee walls that have put in place of railing and open space.
- Original plan show a pitched roof versus a flat roof to hold mechanical equipment.
- The planning Board approval shows a small wooden sign versus the larger brick structure which the Applicant was asked to come back for Planning for approval.

Mr. Larkin noted that the applicant has been providing updated details to verify energy code compliance and structural compliance to ensure that as the project advances it is safely.

With no further questions or comments, Member Vorolieff made a Motion to Open the Public Hearing for comments. Member Hardeman seconded the motion. All Members were in favor.

Attorney Bardavid reminded the Board that the ZBA has authority to rule only on whether or not the decision by the Building Inspector was in accordance with the Code.

Mike Rendich stated, "He agrees with the Board that the Applicant has not met the intent of what we all thought we were getting and hopefully something can be done that is a compromise that works everybody."

Mr. Joe Sorrentino commented that the people who called into the Public Hearing via Conference Call were not able to hear the proceedings at all.

Mr. Drew Montgomery confirmed Mr. Sorrentino's claim that proceedings were not audible on the Conference Call claiming the meeting, "needs to be redone."

With no further comments, Chairman Keupp made a motion to close the Public Hearing until the next ZBA meeting scheduled for Wednesday, February 23, 2022. Member Vorolieff seconded the motion. All Members were in Favor.

Adjournment

Member Hardeman made a Motion to Adjourn. The Motion was seconded by Member Vorolieff. All Members were in Favor.

Submitted by:

Vivian Nikolatos, Secretary