

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD 5/7/13**

Present: Allen Firstenberg, Chairman, Frank Barresi, Vice Chairman, Rachel DiGrazia, Kristina Costa, Bridget Gannon, Hilda Duque (Alternate), Lisa Cobb (Attorney) and Mary Ann Loncto, Secretary.

Others Present:	Isaac Gutierrez	Isaac Gutierrez, Jr.
	Eric Redl	Frank Redl
	Nazmi Berisha	Elmi Berisha
	Kevin Ward	Bob Relyea
	Chris Relyea	Cathy Relyea
	Meghan Mossey	Brian Mossey
	Mark Day	Mary Jo Kelly

Meeting was called to order at 7:30 p.m. Mr. Firstenberg announced that there were a few procedural items that needed to be taken care of. The Board needed to elect a Chairperson and Vice Chairperson. Ms. Gannon made a motion to nominate Mr. Firstenberg as Chairman, seconded by Mr. Barresi. On roll call vote – Ms. Costa – Aye, Ms. DiGrazia – Aye, Mr. Barresi – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Abstain.

Mr. Firstenberg made a motion to nominate Mr. Barresi as Vice Chairman. Motion was seconded by Ms. Costa. On roll call vote – Ms. Costa – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye, Mr. Firstenberg – Aye and Mr. Barresi – Abstain.

### **ISAAC GUTIERREZ, 2676 W. MAIN STREET**

First on the agenda was the continuation of a public hearing on the request of Isaac Gutierrez, 2676 W. Main Street seeking the following area variances to be able to convert the street level of his building into an apartment (1) Lot coverage – required is 5,000 sq. ft. and existing is 2,178 sq. ft., (2) Minimum livable first floor area – required is 5,000 sq. ft. and provided is 4,629 sq. ft. and (3) research on open space issues. The applicants were not present. Mr. Firstenberg asked if there were any comments from the audience and there were not. At this point Mr. Firstenberg made a motion to close the public hearing, seconded by Ms. Costa. It was stated that the hearing is being closed for the following reasons: (1) the current moratorium that is in place restricting first floor apartments in a business zone, (2) there is no representation by the applicant and (3) there is no need for further discussion on this subject. On roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye.

### **REDL'S TOWING, 7 DELAVERGNE AVENUE**

Next on the agenda was the continuation of a public hearing on the request of Redl's Towing seeking an interpretation to Section 151-16(B) of the Zoning Ordinance for the General Business Zone. They are proposing to maintain and operate an office and secure vehicle storage at 7 Delavergne Avenue. There is no provision in the GB zone for this type of use. Mr. Eric and Frank Redl were present. Mr. Frank Redl gave a small presentation for anyone who was not at the meeting last month. He stated that at 7 Delavergne Avenue there is an empty space that is approximately 33' x 50'. They are proposing to screen this area and use it for the storage of disabled vehicles. They made application to the Planning Board and the Zoning Administrator

denied the application because this is a GB zone and in a GB zone Automobile sales and service and motor vehicle repair is permitted; however, automobile storage is not. They are coming before the Board for an Interpretation that their use can be classified as automobile service and if they get a favorable decision on the Interpretation – they are looking for a couple of area variances. They respectfully request that the Board deem their use Automobile Service. Redl's Towing anticipates using this area for the storage of motor vehicles; however, that is not all of the work they do. Redl's Towing does have a repair license for the state of New York. Redl's Towing has contracts with 48 Road Side Assistance Programs. The contracts with Road Side Assistance Programs for which this lot will be used requires Redl's Towing to perform certain repairs – not on the site but at difference locations. Some of these services include: jump starts, no fuel, lock outs and flat tires – nothing major but all part of automobile service. Also it is their position whenever a vehicle becomes disabled, the service of that automobile begins with towing. It is all interrelated. If the road side assistance does not work, they will tow the vehicle to a garage and if time does not permit they will tow it to the proposed lot on Delavergne Avenue for it to be delivered to the repair shop. Mr. Firstenberg asked applicants how long they have been in business and he answered his father started the towing business in 1954 and his brother has been in business since 1996. Mr. Firstenberg then asked how the father's business differs from his brothers operation today and he answered that when his father started his towing business it was just a side business to support his automobile sales business. Times have changed and municipalities want a more orderly scene at “wrecks”, etc. Now they all have rotation lists. His brother started his operation in 1996 as a specialized company that only did towing. Ms. Costa asked why this particular property and he answered that some of his road side assistance programs have mentioned is presence down in this portion of Dutchess County. Many of the dealers that they tow for are in Wappingers – Acura, Nissan and Toyota. The property appealed to him because of the size and location. They will only have 6 cars max at any given time. Because of the size of the lot – they are also getting a very reasonable rent. They will have fencing along the rear of the property with privacy slats. Ms. DiGrazia asked where their next closest lot was and Mr. Eric Redl answered they have one in the Town of Poughkeepsie and the Town of LaGrange. Ms. Gannon asked if they would be putting wrecked vehicles in this lot and Mr. Redl answered – they average 600 calls a month – and the majority of them are for road side assistance but if they have to store a wrecked vehicle overnight until the next day yes they would store it there. They would not be stacking wrecks – you will see nothing above the fence. They will only be storing disabled vehicles on site – no tow trucks. They will also be putting up (if they get all approvals) a small building for paperwork. Ms. Gannon noted that this business will not generate a Village jobs. Mr. Redl pointed out that the Village's definition of public garage is “A building or part of a building used for the storage, service or repair of motor vehicles for remuneration, including the sale of motor vehicle parts and accessories or where motor vehicles are kept for hire or sale.” According to this definition all things are “lumped” together under one category. Mr. Redl feels they are all related in one form already. The Village has already included storage in the definition of public garage. Mr. Redl stated they would add nothing to the existing parking lot – all of their vehicles and small building would be within their 33' x 50' area. Mr. Firstenberg asked the applicants why they would not consider what they are doing as warehousing and they answered because they perform a service – they are a service oriented business. The other definition that the Board wanted to raise with the applicants is a “junkyard”.

Mr. Redl stated that the definition of the word junkyard (in today's day and age) like to be called dismantling operations – is the storage of wrecked vehicles where the junkyard owns the vehicles and sells parts from them - and that is not what they do. Ms. Costa asked how long the vehicles would remain on site and Mr. Redl answer anywhere from 2 to 10 days depending on how long it takes the insurance company to process the claim. The area variance issues were brought up. Mr. Firstenberg stated that some of the points that the Board has to consider are will there be undesirable changes to the neighborhood – and Mr. Redl stated part of the application is that they are going to erect a small fence along the back of the property with privacy slats in it and along the fence there will be a chain link fence with. Behind them is a blacktopping operation, Contelmo's lot already has Community Care Care. There will not be an increase in vehicular traffic (maybe a few trips a day), it is a safe intersection for them to come in – the entrance to the lot is quite wide (no danger of hitting any pedestrians). The plan is to come in in front of Contelmo's and then to back in to the spot. They feel it will not have any adverse effect on the general character of the neighborhood, it is not going to have any effect on the residents or visitors to the area. Mr. Kevin Ward, 22 S. Mesier Avenue stated he is concerned about the fuel/oil leaks from vehicles being towed, environmental issues, additional worries about theft of auto parts. He stated that the applicants are looking for the cheapest spot and the Board should be concerned about the Village residents and not the applicants. Mr. Firstenberg stated the issues about fuel/oil leaks from vehicles and environmental issues are all Planning Board issues and the Planning Board takes these issues very seriously. Mr. Barresi asked if area was paved and applicant stated it is not paved it is all Item #4. Ms. Gannon stated she did not see the dimensions for the shed on the plan. Applicant stated they have not decided yet what size they were looking for but probably 8' x 10' or 8' x 12' and about 8 ft. in height. There will be no electric or water running to the shed. There will be no maintenance done on site. Ms. Costa made a motion to close the public hearing, seconded by Mr. Barresi. On roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye. At this point Ms. Costa made a motion to reopen the public hearing to accept additional information from the applicants, seconded by Ms. Gannon. On roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye. The applicant submitted a three page letter highlighting all the points he made in tonight's presentation and copies of all Redl's Towing Contracts – the ones highlighted in yellow are all the road side assistance contracts. Ms. Costa made a motion to close the public hearing, seconded by Ms. Gannon. On roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye.

#### **NAZMI BERISHA, 21 S. MESIER AVENUE**

Next on the agenda was the public hearing on the request of Nazmi Berisha, 21 S. Mesier Avenue seeking a Special Use Permit from Section 151-15(C) of the Zoning Ordinance to be able to have an accessory apartment and seeking an area variance from Section 151-16(A) of the Zoning Ordinance to be able to have three stories where only 2 ½ stories are allowed by code at 21 S. Mesier Avenue. Mr. Nazmi Berisha and Mr. Elmi Berisha were present. Mr. Berisha presented to the Board his proof of mailing and notification of publication from the Poughkeepsie Journal. Secretary also stated that Dutchess County Dept. of Planning had responded to the Zoning Referral with a “matter of local concern” comment. It was also stated

that there are no outstanding violations or debts owed to the Village. Mr. Robert Relyea who is neighbor of Mr. Berisha's stated he has not seen the 10 day posting that is supposed to be posted on the property. Mr. Elmi Berisha stated that the signs had been posted in the window from April 27, 2013 through May 7, 2013. Mr. Barresi asked which window and Mr. Elmi Berisha stated the first window to the right – he posted them himself. Mr. Robert Relyea stated he had pictures of the house and it did not show any signs on the house. Ms. Cost made a motion to open the public hearing, seconded by MR. Firstenberg. Unanimously carried. Mr. Firstenberg stated that we will continue the Public Hearing next month but in the meantime the Berisha's should repost another notice on their property to assure that all bases have been covered. Ms. Costa made a motion to open the public hearing, seconded by Mr. Firstenberg. Unanimously carried. Mr. Firstenberg, after questioning the applicants, concluded that there are three floors in the house, all three floors occupied - the basement and two floors above. They are proposing to build a single story three car garage on the property. The garage will be accessed through the right of way in the rear of the property. The façade will match the house and there are windows planned for the wall facing S. Mesier Avenue. Currently the families are occupying the entire house (all three floors) and will continue to use all three floors. Except for the addition of the garage – there will be no change to the outside of the house. Much discussion followed on the interior layout of the house. Mr. Firstenberg read from Chapter 151-15 of the Zoning Ordinance regarding accessory apartments. Mr. Elmi Berisha will be occupying Unit #1 and Mr. Nazmi Berisha will be occupying Unit #2 – they are brothers. There will be separate entrances. The garage will have three doors and there will be space for four cars. There is also a 5<sup>th</sup> parking spot on the property. Mr. Barresi stated the Board has heard this case before and issued Special Use Permit in the past and the applicants have not followed through. Why should this time be different and Mr. Elmi Berisha stated they have weighed all their options and the house is so large that it just seemed the right thing to do and the right time to do it. Mr. Robert Relyea, 15 S. Mesier Avenue, stated that his main concern is the changing of the neighborhood once this is done. It will then be a two family structure. He stated that the Planning Board has written a letter to the Board of Trustees requesting that a moratorium be placed on all accessory apartments in a residential zone. As of this writing, this moratorium has not been done. Mr. Relyea also stated that when Mr. Gutierrez was asked for his second apartment there was a moratorium against all first floor apartments in a business district. Mr. Gutierrez was told about the moratorium and the Board waited until the moratorium was passed. Ms. Cobb stated that the Village now has the ability to terminate the accessory apartment immediately upon the transfer of title that was not in the law previously. They are currently listed on the tax roll as a single family. Mr. Berisha stated he has always paid taxes for two families up until this year when it was changed to a single family on the tax roll. Mr. Ward also thinks with the topography of the land – the only thing you will see from S. Mesier Avenue is the roof of the garage. He also stated he is concerned about fire safety for the residents on the third floor. Mr. Firstenberg stated that all fire safety concerns is in the prevue of the Code Enforcement Officer. Mr. Firstenberg made a motion to continue the Public Hearing until the June meeting, seconded by Mr. Barresi – on roll call vote – Ms. Costa – Aye, MR. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye.

**MEGHAN MOSSEY FOR 5-13 FRANKLINDALE AVENUE**

Next on the agenda was the public hearing on the request of Meghan Mossey, 19 Hilltop Drive, Wappingers Falls seeking an area variance from Section 151-16(A) of the Zoning Ordinance to be able to subdivide the lot at 7-9 Frankindale Avenue into two separate parcels. Minimum lot size for parcel designated as Lot #1 is 20,000 sq. ft. (there are four dwelling units on lot #1) and existing is 11,301 sq. ft. Secretary stated that applicant had presented to her affidavit of mailing legal notices and proof of publication in the Poughkeepsie Journal Dutchess County Department of Planning responded to the zoning referral with a “matter of local concern” comment. Mrs. Meghan Mossey, Mr. Brian Mossey, applicants and Mr. Mark Day (Engineer) were present. It was also stated that there are no outstanding violation/debts against this property. Mr. Firstenberg made a motion to open the public hearings seconded by Mr. Barresi. Unanimously carried. It was further stated that there is a consent form on file from Mr. John Gabriel, owner of the property. Meghan Mossey and Brian Mossey are contract vendees for the property. They are here for a variance to be able to subdivide their property. Currently there is a piece of property with two houses on it – one fronts on Franklindale Avenue and one fronts on Elm Street. There is a lane that currently serves as egress to Franklindale Avenue. What they are proposing is to subdivide the property. There is an existing four family house on Lot #1 and a single family house on Lot #2 and what they are proposing is a potential lot line to separate the houses. Mr. Firstenberg stated there are two Board members (himself and Ms. Gannon) that are neighbors of another one of Mr. Gabriel’s properties – he does not believe there is a conflict of interest but he wanted the applicants to be aware. Ms. Cobb asked both Mr. Firstenberg and Ms. Gannon if they felt that they would be able to make a fair and impartial determination on this hearing and they both answered yes they would. Applicants stated they would move forward. Presently the properties are existing non-conforming – by subdividing it will make the single family residence conforming. Mr. Barresi asked the applicants why they wanted to subdivide and they answered it was for investment purposes. They are planning on spending between 30K to 40K to renovate the existing four family on the lot and Mr. Barresi stated that would be a big improvement of the neighborhood. Applicants also stated that their offer to the owner is contingent upon receiving the variances. It was stated if the applicants receive their variances – their next step is to go to the Planning Board for the actual subdivision. Mr. Barresi made a motion to close the public hearing, seconded by Ms. Costa. On roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye.

#### **ISAAC GUTIERREZ, 2676 WEST MAIN STREET**

The public hearing is closed. The Board has 62 days to take action and is taking no action at this time.

#### **MEGHAN MOSSEY, 7-9 FRANKLINDALE AVENUE**

Mr. Firstenberg stated if they pushed the lot line back to make it level with the neighboring lots they would be getting just under 3,000 sq. ft. – still not conforming. The Board then reviewed the tests for an area variance: (1) Would there be an undesirable change to the character of the neighborhood – no, (2) Could the benefit sought by the applicant be achieved by some other method other than an area variance – no because under no mathematical calculation can you get the required 30,000 sq. ft. which is needed to bring both lots into conformance, (3) Is the variance substantial – yes, (4) Would the proposed variance have an adverse effect or impact

upon the physical or environmental conditions of the neighborhood or district – no and (5) Is the action self created – no it is not self created but the applicants are going into this aware of the situation. Mr. Firstenberg made a motion to approve the variance as proposed, seconded by Mr. Barresi – on roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye.

### **REDL'S TOWING FOR 7 DELAVERGNE AVENUE**

What is before the Board is a definition of auto sales and service – motor vehicle garage. Mr. Firstenberg's opinion is that the act of towing does not itself constitute a standalone service. Certainly not auto sales and service/motor vehicle garage. Ms. Cobb stated that the proposed use is not for towing – the proposed use is to be able to fence in a portion of the property for the purpose of short term storage of vehicles that are waiting to be repaired or to be picked up. The Board is being asked to interpret the Code to determine whether a use that consists of the space with a small building on it falls within the definition of auto sales and service/motor vehicle garage or is it an accessory use to auto sales and service/motor vehicle garage. Ms. Gannon made a motion that the applicant's proposed use for the property located at 7 Delavergne Avenue does not fall within the definition of any of the permitted uses in the General Business Zone. Mr. Barresi seconded the motion. On roll call vote – Ms. Costa – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Gannon – Aye and Mr. Firstenberg – Aye.

The area variance request is now moot.

### **GENERAL BUSINESS**

Mr. Firstenberg made a motion to approve the minutes of the March 12, 2013 meeting, seconded by Ms. Costa. On roll call vote – Ms. Costa – Aye, Ms. DiGrazia – Aye, Mr. Barresi – Abstain, Mr. Firstenberg – Aye and Ms. Gannon (Was not a member of the ZBA at that time).

Mr. Firstenberg made a motion to amend the minutes of the April 9, 2013 meeting as follows: (1) Page 1 Paragraph 1, Line 4 should be "...needing a variance of 4 sq. ft. ...", (2) Line 5 should be, "...needing a variance of 7,822 sq. ft., (3) Page 4, 6<sup>th</sup> line from the bottom the words "grant a variance" should be deleted. Motion seconded by Mr. Barresi. On roll call vote – Mr. Firstenberg – Aye, Mr. Barresi – Aye, Ms. DiGrazia – Aye, Ms. Duque – Aye, Ms. Costa – Abstain (absent) and Ms. Gannon (Not yet a voting member).

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

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MARY ANN LONCTO, Secretary  
Zoning Board of Appeals

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