

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, September 8, 2016**

MEMBERS PRESENT: MICHAEL BERNSTEIN, CHAIRMAN
 LAURIE DIFRANCESCO
 ARTHUR KATZ
 MARTY KIVELL
 CHARLES PICARELLI
 PETER BLUNNIE, AD HOC

OTHERS PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
 LOUIS ZUMMO, BUILDING INSPECTOR
 SUZANNE CARLEY, ZONING CLERK

The meeting was called to order at 8:00 pm by Chairman Bernstein which was followed by the pledge of allegiance and roll call. Marty Kivell made a motion to approve the minutes from August 11, 2016. Arthur Katz seconded it. All in favor. Motion carries.

**Interstate Toyota
411 Route 59
Continued Public Hearing**

Ryan Karben was present for the applicant. Ryan noted they needed to return as there were three more days left for a GML response from Rockland County planning on the GML. The GML was received and remanded for local comments from DOT and RC Highway. RC Highway deemed no issues as long as they are subject to any county DOT permits. County saw no issues as well.

They are here to discuss improvement and modernization of the site, reduce lighting and to improve traffic and parking circulation.

Chairman Bernstein read into the read letters from:
RC Planning GML letter dated 8/16/16
RC Highway Letter dated 8/31/16
DOT Letter no date on it but received via email on 9/8/16 after 6pm

Ryan Karben noted that site plan issues in the letters and do not relate to the variance issues. He noted that they had not received comments prior to this for the PB Hearings. Chairman Bernstein asked Ryan Karben if he would consent to comply with the letters when they seek approval from the PB. Ryan Karben responded that he would.

Charlie Picarelli noted that there was an error on page four of the application and it needed to be amended. In the location section it should read the current location as the south side of Route 59 and east side of New County Road. This affects the mailings, the public hearing notice and newspaper posting.

Ryan Karben noted it was a technical error on the application. The P & Z Clerk noted she used what was submitted on the application as she does with all applications. Ryan Karben stated that affidavits of notification were noted, posters posted and he would think to the extent anyone who had an issue would be here tonight.

Laurie DiFrancesco asked the clerk to review the list of who was notified. Clerk read the addresses into the record. Laurie noted that the streets mentioned were in fact on the south side.

Marty Kivell agreed with Ryan Karben. The notification was done properly notwithstanding any legal ramifications and any reasonable person can see where Interstate Toyota is situated on the map visually. Marty stated that he did not feel this was a fatal issue and they should be able to proceed.

Dan asked where the list was gathered from. Ryan Karben stated for the record that they get it from Town of Ramapo Based on section block and lot on the computer and then use an affidavit.

Chairman Bernstein asked the Attorney if it is a rule on the application or can they forgive an administrative error or as a matter.

Ryan Karben – appropriate people were notified its the description that was not advertised properly. He noted that in reality it was identified as abutting properties and those properties received the notice however the legal notice was therefore done incorrectly. This was not caught at the PB stage or CDRC and it was copied over and this application has been heard before the Village for over a year and a half now.

Charlie Picarelli stated that its a formal application and its a legal mistake.

Dan Kraushaar noted that what is most important thing in terms of notice is the newspaper. The Village Code Law requires the mailing, the State Village Law only requires the publication. The publication is the most important element – the name, address and the only piece that was incorrect is the description of the location. Yet the application is incorrect. The question is whether or not is the description of the location of the property; is it more of a ministerial change based on the size of the variance? This would impact if someone were to oppose it and balancing tests would have to apply and get into the showing. If that were a mistake it clearly would need to be re-done. No problem in changing the application description of which side of the road it is on or not. The issue is whether or not a reasonable person who received the notice that stated the name of the property, read Interstate Toyota (well known) which is one of the largest car dealerships. The notices states the correct section block and lot, states the correct zoning and the correct acreage. What's located across the street a strip shopping center, clearly not a dealership. Therefore there is no competition. We give notice for those that could clearly be affected. The reason we give notice is that people could be affected by the application. I can not say with one hundred with legal certainty, but feel if there is enough logic to give all those affected and they gave adequate notice of where property is, for what the application is for and what they applied for in terms of variances. That said I would feel comfortable defending a Board decision to allow the application to be amended North to South for the correct location and for the Board to act tonight. It is a ministerial error as stated by the applicant's attorney. Written notice to the adjacent property owners would put them on actual notice. If anyone one who is hear tonight wants to speak tonight please do so.

Laurie DiFrancesco asks if its ok to ask the applicant to amend this so that going forward it reflects the correct information.

Dan noted he can amend on record and re-submit. Notice under NY State is the notice in the newspaper. If a non-resident owner didn't live here he may not get the newspaper anyway. The primary concern is the publication.

Chairman Bernstein – Anyone who lives here in Airmont knows who Interstate Toyota is. Are we as a Board all ok to move forward with an administrative error and have discretion to act? If not then we need to know that too. If notice needs to be specific, accurate and correct and re-noticed please advise.

Ryan Karben – stated that there was a case that was before ZBA's back in 1957 where the newspaper notice contained the wrong date of the hearing. Court found that the paper was distributed in a sufficient amount of time. Site is 11 miscellaneous 2nd 84.

Chairman Bernstein asked if anyone was present to be heard on the application as part of the continued public hearing? No one responded. Chairman Bernstein closed the public hearing at 8:34.

Marty Kivell made a motion to close the public hearing at 8:34 pm Laurie DiFrancesco seconded it. All in favor.

Chairman Bernstein asked the ZBA if they had any other questions for the applicants.

Arthur Katz – do we have the application? He asked the clerk who made the mistake us or them? The clerk advised that they submitted the application and that is what she uses for the publications and notices.

Laurie DiFrancesco advised that we need to ensure that it is corrected before it goes back to PB for final approval. Clerk advised she would do so.

Dan Kraushaar noted for the record that PB adopted a Negative Declaration under SEQRA.

Laurie DiFrancesco requested that they a vote. She made a motion to approved the application for parking along the south of the lot line for parking in the rear lot line on the South Side of route 59 east of New County Road. Marty Kivell seconded the motion.

Chairman Bernstein noted the conditions of the variance:

- 1) comply with all conditions in the three letters read into the record today
- 2) for the record for PB final approval – revise and amend the application to be corrected and submitted to state the correct location. So that the same mistake is not made.

Laurie made a motion to amend the motion to include these items. Marty Kivell seconded it.

For findings of fact Arthur Katz – noted that in the 8/16/16 RC GML and they do indicate that its states south side so they knew what we were talking about and there was no mention of this error in their letter and people really do understand the location of what they are talking about. He also noted the application was discussed the way it was submitted for PB as well. In light of precedent that counsel cited that is site is 60 years old and its still logical today that the location remains.

Roll Call Vote:

Arthur Katz – yes for reasons previous reasons listed.

Marty Kivell – yes as the request is consistent with general use of the property. No adverse impact, and I believe its a good endeavor to our region.

Charlie Picarelli – yes I concur with Marty Kivell’s comments

Laure DiFrancesco – yes also referring that all comments regarding drainage do not to affect the area. I believe the usage is a plus to the community. I do not see a negative by granting the variances. I vote yes assuming PB and drainage issues are covered.

Chairman Bernstein - yes for all the above noted reasons. Also note for record that he has lived in RC for his entire life and Interstate Toyota is improving Route 59 and has demonstrated the hardships required and it improves the property overall.

Vote in unanimous. Motion carries. Variance is approved.

**Avrohom Drew
28 Besen Parkway**

The next agenda item was the continued public hearing on the application of Avrohom Drew. Chairman Bernstein read into the read the email from Stanley Mayerfeld to the Airmont P&Z Clerk on August 29th requesting an adjournment to the October 13, 2016 ZBA Meeting.

Marty Kivell made a motion to continue the application of Avrohom Drew 28 Besen Parkway to October 13, 2016 at 8:00pm at Village Hall. Arthur Katz seconded it. All in favor. Motion carries.

Marty Kivell made a motion to adjourn the meeting at 8:50pm. Laurie DiFrancesco seconded the motion. All in favor. Motion carries. Meeting adjourned.