

Village of Chestnut Ridge
Zoning Board of Appeals
January 29, 2018

Present: Stephen Liebman-Chairman, Susan Silverman-Deputy Chairperson, Duane Penister,
Stanley Waldbaum, Michael Grossman

Also Present: Walter R. Sevastian-Village Attorney, Mary Ballek-Secretary to the Board,
Cheryl Sluys-Recording Secretary

Absent: AllyThorne, Ed Manning, Bruce Goldsmith-Alternate

The meeting was held at the Chestnut Ridge Middle School auditorium, 892 Chestnut Ridge Road at
7:30 P.M.

1. **3 Spring Hill Terrace- Continuation of Public Hearing to consider the application of 3 Spring Hill Terrace (Applicant Hilda Kogut and Carole Goodman).** The application is seeking to appeal the Building Department's determination on the following conditions:
To appeal the decision made by the Building Department to issue a Certificate of Occupancy (C/O) for a structure at the above-mentioned address.
Tax designation: 67.08-1-70, Zone R-25

Steven Mogel, Esq. (Attorney for Applicant) and Hilda Kogut, Applicant appeared.

Mr. Mogel said a lot of information was presented at the December 18, 2017 meeting concerning the September 20, 2017 issuance of a CO by the Chestnut Ridge Building Inspector and he won't repeat himself. Mr. Mogel then said there is abundant evidence the structure is being used as a synagogue: a two story building larger than the primary house with men's and women's toilets, three sets of French doors rather than garage doors, a storage mezzanine separated by a physical divider and a magazine advertisement calling this a synagogue. Mr. Mogel continued a time and date stamped video taken on Rosh Hashanah had been presented to Mr. Liebman and the Board members and asked if it was reviewed and if there were any questions.

Mr. Liebman said the Board has seen the video and asked if the public was interested.

The public indicated interest and the video was shown.

Mr. Mogel began to describe scenes in the video.

Mr. Sevastian said the video speaks for itself; you're editorializing.

Mr. Mogel said he will comment after completion of the video.

Following the video Mr. Mogel said Jerry Liebelson indicated in a letter that he filmed the video. Mr. Mogel then said applicants take no joy in the voyeurism of the video. People should be allowed to worship as they desire but they (applicants) have been pushed into a corner because the application is patently false. There has been no admission that this is a garage. Mr. Mogel's clients have foiled the

Building Department file which included photographs of cars parked inside the structure. Mr. Mogel would like these photographs added to the record.

Mr. Liebman described a photograph showing a truck and car in the structure forwarded to Russell Gliniecki, Building Inspector, by Rabbi Fish.

Mr. Sevastian asked what is probative of the aspect that cars and people can be in the structure.

Mr. Mogel said that does not make a synagogue a garage. These self-serving photos were taken after the fact to show this is a garage.

Mr. Sevastian asked Mr. Mogel's meaning other than what he describes as staging.

Mr. Mogel said this brings up questions from the last meeting. Mr. Mogel then said the International Residential Code (IRC) has no definition of garage or place of worship. The ZBA has the duty, responsibility and power to interpret the meaning of those terms in the New York State Building Codes. Mr. Mogel continued there is a single family house on the property. The IRC governs construction of single and two family houses. Mr. Mogel distributed copies of the 2015 IRC with Sections R101.2 (Scope) and R104.1 (General) highlighted. Mr. Mogel read aloud both sections. Mr. Mogel then distributed a copy of Section 202 from the International Building Code (IBC) to Mr. Liebman and the Board members.

Mr. Liebman and the Board members read the definition of private garage and place of religious worship.

Mr. Mogel referred to "intended" in the place of religious worship definition and said that's why we're applying. The intention of this building was never a garage. It was intended as a place of worship and operates as a place of worship.

Mr. Liebman asked if this particular definition was adopted in New York State in the absence of a definition in the Village Code.

Mr. Mogel replied yes. It is definitely binding upon a municipality.

Mr. Sevastian said at the point in time when the building permit was issued the administrative official looked at the plans and determined the structure was a garage.

There was an outburst from a member of the public.

Mr. Liebman said we can't have people calling out and requested the gentleman return to his seat.

Mr. Sevastian continued when that determination was made and a building permit was issued the determination was never appealed. That same determination was also made when the CO was issued. In Mr. Sevastian's opinion an applicant who receives a building permit and gets a CO has a right to build what was applied for. That this structure is being used for other than what is on the CO is not the issue in front of the Board.

Mr. Mogel said the law provides for the ability to appeal a CO. The statutes don't have superfluous purposes. We have presented a great deal of evidence. The Board must make a determination if the structure was intended to be a garage or house of worship.

Ms. Silverman said a signed/sealed statement from an architect saying the structure is a garage has been presented. Are you reporting subterfuge on the architect's part?

Mr. Mogel said we're not here to bring ethical charges against the architect. Putting his or her stamp on that statement is skirting close if not crossing the line.

Mr. Sevastian asked Mr. Mogel if he agrees the Building Inspector (BI) made a decision on what was before him.

Mr. Mogel said the BI is not here but I would ask him what were you thinking. Do you think there are garages with urinals? Did you make the determination because you issued a Building Permit and CO? Mr. Mogel then said the BI could make an assumption that the applicant was lying. Did he feel so constrained that he couldn't ask questions or is he grossly incompetent?

Mr. Sevastian asked are you conceding the BI's role under the law is to make a determination.

Mr. Mogel replied the BI is to enforce the law.

Mr. Sevastian said the state code mirrors the village code. Anyone who wants to use land puts in an application for a use permitted in the code.

Mr. Mogel said that happens in every case. If the BI makes a complete error it is back before this Board.

Mr. Sevastian said at the end of the day that determination was never appealed.

The audience reacted loudly to Mr. Sevastian's statement.

Mr. Liebman requested quiet and said we are all members of the Chestnut Ridge community and are here to serve. The ZBA doesn't make the law. This issue is original and very complicated. We have to be careful going forward. We want to be objective. Mr. Liebman then requested the public refrain from interruption.

Mr. Mogel referred to Article XIV of the Chestnut Ridge local law and read the highlighted statements concerning powers and duties of the BI. Mr. Mogel said the BI has the duty and obligation to enforce the local law. In that sense he is law enforcement. Mr. Mogel questions the veracity of what was presented and said there is abundant evidence that the wrong decision was made by the BI.

Mr. Mogel then read 10C of the local law (highlighted) and said if there is not compliance with the rules and regulations a CO must not be issued. That is what we're appealing. It's the issue of latches. Did the applicants wait too long to appeal to the detriment of the person putting up the structure? They can't raise the issue of latches; they lied.

Mr. Mogel then presented a list of eleven cases from Westlaw and said there is no case in NYS where unclean hands can still benefit from laches per Appellate Court opinions.

Mr. Sevastian said if the Building Permit was appealed at the time it was issued by the BI the property owner would have had to come before the ZBA to prove what he was building. We are left with the ZBA in the position to re-determine what the BI did.

Mr. Mogel said the appeal of the CO is absolutely timely. There are no cases in the state that say you're protected by the court if you lie on the application. The only issue is the determination of the BI. The enforcement official was very wrong and my clients must appeal to you. Your obligation is to determine the intention of the applicant.

Mr. Sevastian said why isn't changing the use or occupancy of the structure an enforcement issue? Write a ticket and go to court.

Mr. Mogel said you can't do an Article 78 proceeding to make the BI do his job. An administrative appeal is unusual. What is the evidence that this was done properly? That opposes all the evidence we've provided to the contrary.

Mr. Sevastian said the applicants observed what was going on but did not appeal.

Mr. Mogel said my clients weren't savvy about how the zoning law works. They frequently went to the Mayor and to the Village Board. Elected officials are expected to listen to residents. The most effective thing would have been to call a lawyer but they were not so advised.

Mr. Mogel then distributed parts of Board of Trustees minutes from May 18, 2017, July 20, 2017, and August 17, 2017 to Mr. Liebman and the Board members.

Mr. Sevastian explained the process if the Building Permit had been appealed when issued.

Mr. Mogel said the law is clearly the issue; the structure was built as a synagogue and was always intended to be a synagogue.

Ms. Silverman asked if the ZBA overturned the CO, where would we go from there.

Mr. Mogel said no one alleges a synagogue can't be here but officials and neighbors must be given a voice.

Ms. Silverman said in the interim, what is the status of the structure.

Mr. Sevastian said if the Building Permit had been appealed the structure wouldn't have been built. Now that it's built, it's a bad place for the Zoning Board to be in. The Building Permit was issued, the building was built and occupied and now a revocation of the CO is requested. That's why the appeal needs to happen before the building is built.

Mr. Mogel said my clients appealed the CO in a timely manner. How can you appeal a CO before the structure is built?

Mr. Sevastian said your point in appealing the CO is going back to the question is it a garage.

Mr. Mogel said all provisions of the law should have been validated. There is no possibility when you build on lies.

Mr. Sevastian said at the last meeting we asked for case law which wasn't provided. There may not be a legal answer. A CO certified that what was built was per the application.

Mr. Mogel responded look at the code. The issue of liability is not my clients' concern. If it's just a garage, why not tear it down. The Board of Trustees meeting minutes give indications by individuals who brought up the issue.

Mr. Liebman asked for comments or questions from the Board members.

Ms. Silverman asked for a definition of unclean hands.

Mr. Mogel read the definition of unclean hands from NY Jurisprudence 2nd.

Ms. Silverman said your definition of unclean hands is that the property owner never intended to build a garage, rather a house of worship. You can't cite case law re: unclean hands but that would be your argument in court.

Mr. Mogel said he searched for all cases in the Appellate Division Second Department and found no cases concerning allegations of unclean hands. There is no case law to defend them because the structure is already built.

Mr. Liebman said the BI is not present this evening but he was deposed on January 29, 2018.

Mr. Mogel said that document was withheld from a FOIL request on January 29, 2018.

The affidavit of Russell Gliniecki, BI, was read into the record by Ms. Silverman. A copy of the affidavit was provided to Mr. Mogel.

Mr. Liebman asked if the Board members had any additional questions. There were none.

Mr. Liebman then opened the meeting to the public.

Lee March Grayson of 52 Wilshire Drive was reminded he is still under oath. Mr. Grayson said this situation is like the commercial for Hebrew National hot dogs – we answer to a higher authority. It seems clear this garage is not kosher and shouldn't be allowed, however, no one has mentioned common sense. We know a garage isn't stairs, a mezzanine and urinals. Mr. Grayson requests the Board apply common sense and require the structure to be taken down; end its current use. Mr. Grayson said remember Mayor Presti said if the structure is used as a synagogue we'll do something.

Tony Averso of 40 Wilshire Drive was reminded he is still under oath. Mr. Averso said 17 to 20 cars are parked along Spring Hill Terrace every morning. An accident will happen at the end of the block.

Mr. Averso was told the bath house on the property is for the Rabbi's use but he has questions about the five inch pipes on the existing building. Mr. Averso noted there are now three garages on the property.

Hilda Kogut of 20 Pine Knoll Court was reminded she is still under oath. Ms. Kogut said several months ago the issue of wetlands came up and the ZBA acted on behalf of the residents. Ms. Kogut said Mr. Sevastian is doing a noble job representing the village. This is a precedent setting issue; do your job. Everything in this structure is for use as a schul. The Mayor said it is a garage until we know otherwise. We trusted the Mayor who never suggested we seek an attorney. Don't lay this off on me; it's not my responsibility. Represent me and protect my rights.

Joel Celestin of 46 Spring Hill Terrace affirmed to tell the truth and asked for clarification of the plans showing a three car garage.

Mr. Liebman said there was a one car garage and an accessory two car garage which was previously used as a workshop. The original plans were for a two car garage.

Mr. Celestin said it is disheartening to hear that as a resident the burden is on me, not the village. As a taxpayer, resident and someone who voted for the Mayor he questions what the ZBA should do. Article XIV, Section 8A and Section 12 were read; it's all there. This situation is in the purview of the ZBA; the law is on your side.

Ed Sheridan of 46 Pascack Road was reminded he is still under oath. Mr. Sheridan said the Board is concerned about the law. Let the BI make the decision.

Mr. Cohen of 11 Aberdeen Avenue affirmed to tell the truth and asked what kind of heat inspection was carried out. That should have been checked out. This is a process of discovery. This building is used as an enlargement of the house and their taxes should go up.

Jerry Liebelson of 31 Midway Road was reminded he is still under oath and said we are here appealing the decision of the BI. Mr. Liebelson mentioned other areas of contentious construction he sees in Chestnut Ridge and said there is never any opportunity for the public to speak. How do we appeal? The laws of Chestnut Ridge need to be changed so all single family houses come before the Planning Board.

Mr. Liebman suggested Mr. Liebelson address the Board of Trustees.

Dennis Kutsin of 315 Ackertown Road was reminded he is still under oath. Mr. Kutsin said there are different safety codes to be enforced in a schul and a garage. Mr. Kutsin is concerned about the safety of people and first responders.

Sheryl Mitzner of 33 Wilshire Drive affirmed to tell the truth and commented on the common sense of the BI who we trust to do the right thing. Many elements of this structure are not common to a garage. Most of us would know it is not a garage.

Tom Zeller of 4 Christine Drive affirmed to tell the truth and said he would like the property owner to affirm to tell the truth. The BI is very inexperienced and overlooked people's concerns. Everyone in this

room knows this is not a garage; it has been a lie from day one. Mr. Zeller then said maybe it's time for the Mayor to go.

Joel Guadagnino of 5 Continental Court affirmed to tell the truth and said look at the process of the BI. He's made many mistakes and rubber stamps everything. The BI needs to be held accountable. Mr. Gundadino suggests a change in the approval process. Have a second person review the paperwork, decisions, etc.

Mr. Friedman of 6 Amber Road affirmed to tell the truth and thanked the ZBA for allowing the public comments. Mr. Friedman said the village is a beautiful place to live and raise a family but the real problem here seems to be how to stop an influx of a certain group of people. The videos taken from a nearby property show the length residents will go to.

Mr. Sevastian said this is a diverse community to which everyone is welcomed. There is no need to bring up discrimination. The ZBA has to follow the law and uphold code enforcement. There is no reason why a municipality can't go by the rules, liked or not.

Sabrina Martin of 2 Ronwood Road affirmed to tell the truth and said we're asking the Board to do the right thing. At times you have to stand alone or be uncomfortable. The Board is sworn to follow the law. Several people have asked the Board to protect us. If this is not a garage, rescind the CO. Do the right thing for the people of Chestnut Ridge.

No one else from the public wished to speak.

Susan Silverman made a motion seconded by Michael Grossman to close the public hearing. The following vote was taken: Stephen Liebman-yes, Susan Silverman-yes, Michael Grossman-yes, Duane Penister-yes, Stanley Waldbaum-yes.

Mr. Sevastian said to clarify for the public; the Board will hold a discussion, come to a decision and direct counsel to write a resolution.

Mr. Mogel said this is not about religion, not about a schul, not about a bar. It is predicated on misrepresentation. The law of the land is the law for all.

Mr. Liebman said item #2 on the agenda (10 Pine Knoll Court) will not take place tonight; it will go on the February 12, 2018 agenda.

Mr. Lieberman asked for a discussion and motion to appeal the decision of the Building Department to issue a CO for a structure at 3 Spring Hill Terrace if the Board is in agreement.

Mr. Sevastian said a motion is subject to adoption of the resolution.

Mr. Grossman referred to photographs, the number of lighted exits and said it seems the use for public gathering was premeditated.

Ms. Silverman said it is very obvious there are unclean hands. It is clear from the evidence there was no truth in the intent of the application. Common sense tells us what a garage looks like; this does not look like a garage.

Mr. Waldbaum said he is proud of Chestnut Ridge and his residency. This is a community that prides itself on diversity and welcoming everyone. This has nothing to do with religion. This was not truthful. We need to fight for the dignity of the truth.

Mr. Sevastian said in his opinion the decision to appeal was untimely. Even if the Board felt the appeal was timely the CO reflects the submitted plans. If the issue was a Building Permit appeal we would be having a different discussion.

Susan Silverman made a motion seconded by Michael Grossman to grant the appeal of the decision made by the Building Department to issue a CO for a structure at 3 Spring Hill Terrace. The following vote was taken: Stephen Liebman-yes, Susan Silverman-yes, Michael Grossman-yes, Stanley Waldbaum-yes, Duane Penister-yes.

3. MINUTES

Approval of the December 18, 2017 meeting minutes was postponed until February 12, 2018.

4. Other Business

Stephen Liebman made a motion seconded by Susan Silverman to approve the Resolution entitled "In the Matter of the Application of Alister Renwick, for a determination of Zoning Board to impose Bulk Table Requirements on the premises identified on the Town of Ramapo Tax Map as parcel 57.17-2-27, located at 245 Old Nyack Turnpike, Chestnut Ridge, New York 10977, in the PO Zoning District".

The following vote was taken: Stephen Liebman-yes, Susan Silverman-yes, Duane Penister-yes, Stanley Waldbaum-yes, Michael Grossman-yes.

Stephen Liebman made a motion seconded by Susan Silverman to adjourn the meeting. The following vote was taken: Stephen Liebman-yes, Susan Silverman-yes, Stanley Waldbaum-yes, Michael Grossman-yes, Duane Penister-yes.