

**MINUTES  
VILLAGE of ARDSLEY  
ZONING BOARD of APPEALS  
REGULAR MEETING  
WEDNESDAY, NOVEMBER 25, 2015**

**PRESENT:** Patricia Hoffman, Chair  
Jacob Amir  
Mort David  
Michael Wiskind

**1) Call to Order**

The Chair called the regular meeting to order at 8:05 pm.

**2) Announcements**

The Chair announced that the next meeting of the Zoning Board of Appeals will be on Wednesday, December 16, 2015 at 8:00 pm.

**3) Emendation of previously adopted Minutes**

Mr. Wiskind moved, and Mr. Amir seconded, that the previously adopted minutes of the Village of Ardsley Zoning Board of Appeals meeting of September 25, 2015 and the Resolutions contained therein be amended as per the “Amended Minutes, Village of Ardsley Zoning Board of Appeals, Regular Meeting, September 25, 2015.” **Vote:** 4 in favor, none opposed, none abstaining.

The Chair noted that the motion to amend something previously adopted is per Robert’s Rules of Order.

**4) Continuation of Public Hearing**

**Application for a Variance to Extend an Existing Non-Conforming Use**

**Cross Town Motor Inn d/b/a Apple Motor Inn a/k/a Apple Motel,  
775 Saw Mill River Road, Ardsley, New York.**

**Section 6.50, Block 19, Lot 2, in the B-1 General Business District.**

**For a proposed second story motel addition, extending an existing non-conforming use. (§ 200-100C)**

**Present:** Patricia Hoffman, Chair, Michael Wiskind, Jacob Amir, Mort David.

**Attendees:** Mr. Sudhail Marfatia, owner.

Mr. Ravi Gheewala.

Mr. Joseph Ricciuti, of Lawless & Mangione, Architects & Engineers, LLP,  
480 North Broadway, Yonkers, New York,

Mr. David stated that the applicant's profit and loss statement shows \$350,000 as rent, and asked why rent is included if the partners own the property. Mr. Marfatia replied that the rent predates their purchase of the property. Mr. Amir asked when they closed on the property. Mr. Marfatia answered that they closed on the property on August 31, 2015.

Mr. David also noted that the electric charges are \$65,000, and asked if they heat with electricity. Mr. Marfatia replied that they do.

Mr. Amir asked if the owners estimated what the change in the financials would be if they were able to add on the proposed ten rooms, and pointed out that 2014 shows a net loss. Mr. Wiskind remarked that 2015 shows a gain, but noted that real estate taxes were way down, which might be a timing issue.

Mr. Wiskind explained that to obtain a use variance, one must be able to demonstrate that the property cannot achieve an appropriate financial return without the change. He stated that whereas the 2015 statements show a profit, which was not the case in 2014, it was not known how representative the data on the 2015 statements are, as the statement is only through September. Mr. Marfatia replied that there had been a lot of maintenance and repairs in 2014, but not much in 2015.

Mr. Wiskind noted that in 2015, the occupancy rate also was higher. Mr. Wiskind reinforced Mr. Amir's question about anticipated future return, and stated that one would presume that they would have considered potential future return before contemplating an addition with construction costs. Mr. Gheewala replied that business went up twenty to twenty-five percent when the Tuckahoe Motor inn closed, which was approximately the end of May 2015, and that the overflow from the former Tuckahoe Motor Inn has resulted in higher

demand for rooms at the Apple Motor Inn. Mr. Gheewala stated that the addition would help overall revenue increase because of the demand for the rooms.

Mr. Amir stated that he still would like a projection for that anticipated increase in revenue. Mr. Gheewala replied that they can get something for the Board, perhaps an educated estimate. Mr. Wiskind asked again if they did not project financial impact before deciding that expansion was desirable. Mr. Gheewala replied that they had planned for the expansion of the Apple Motor Inn in anticipation of an increase in demand for rooms as a result of the closing of the Tuckahoe Motor Inn, but stated that they do not have an actual number or an estimate as to how much more.

Mr. Wiskind asked about the occupancy rate and average daily rate. Although the materials provided by applicant show an increase, they do not convey how it changed since the Tuckahoe Motor Inn closed. He also pointed out there might be normal seasonal variation, and suggested that a chart that looked month by month would show seasonal variation last year and how it has changed since the other property closed in May.

Mr. Amir asked if the Tuckahoe Motor Inn closed in 2014 or 2015, noting that the chart shows an eight percent increase in the daily occupancy rate from 2014 to 2015. Mr. Ricciuti pointed out that the chart is missing three months of 2015, as it is only through September 2015. He suggested that if you average the rate for the first nine months of 2015 and add that average for the remaining three months, the figure would be close to one million instead of \$850,000.

Mr. Amir explained that he is asking about the daily occupancy rate, which is 78% through September. He stated that if the occupancy rate is 78%, there is no spill over that the proposed extension would resolve, because at that occupancy rate, there should still be rooms available. Mr. Gheewala said that the average daily occupancy (ADO) is an average. He stated that demand is higher at some times more than at others, and that when demand is high, people do not want to wait because of lack of space, they go elsewhere, which is a loss of customers. Mr. Amir then asked Mr. Gheewala if he was suggesting that 78% is not representative because some days it is above 90% and other days it is down to fifty percent. Mr. Wiskind added that this is why it would be useful to get occupancy data by the day of week.

Mr. Wiskind asked how often are they at the point where they have to turn people away. Although he realizes that it will vary week to week, but a day of the week occupancy chart would give the Board a sense of what demand they are unable to capture due to lack of capacity. Mr. Marfatia replied that Fridays are one hundred percent full all the time, and that weeknights are sometimes seventy, eighty or ninety percent full.

Mr. Wiskind asked if the high occupancy rate on Fridays represented people visiting relatives for the weekend. Mr. Marfatia replied that most of those people are out-of-state from, for

example, Canada and Massachusetts. Mr. Wiskind referred to the registration list provided, which had only 39 entries, and pointed out that the out-of-state entries was only twenty percent of that list, and Westchester was the biggest. Mr. Marfatia stated that most of the guests are from Bronx and Westchester. Mr. Amir noted that a large percentage is from lower Westchester, primarily Yonkers.

Mr. Wiskind asked if the occupancy was spur of the moment stays or if people make reservations. Mr. Marfatia replied that most of the time they do not take reservations because of the overflow. He said that Friday and Saturday especially is walk in business.

The Chair referred to the 2013 and 2014 tax returns, noting that the 2013 return showed a \$37,000 profit, whereas the 2014 ordinary business income showed a \$90,000 loss on line 22. The Chair asked what portion of the \$89,000 was a one-time capital improvement type of clean up. She suggested that the significant difference of \$130,000 between the two years' profits demonstrates the significance of Mr. Amir's question about projected profit. Mr. Marfatia explained that a tree fell on the building, so that the \$89,000 loss is an anomaly. Mr. Ricciuti stated that much of the interior had to be redone, and that all the beds and all the carpets in the 10 rooms in that wing had to be removed and replaced. Mr. Marfatia added that they also needed a whole new roof

The Chair explained that the applicant has burden to demonstrate to the Board that their investment cannot get a reasonable return on investment without relief. She added that the \$89,000 loss is not due to not being able to get business, but is due to significant incidents, be that be flood, damage, maintenance. She noted that on a daily business, their business is making money and will continue to make money.

Mr. Ricciuti stated that the reason for the ten new units is overflow, and that they do not want to turn people away. Mr. Amir summarized that the reason for the new units is the potential to make more money. Mr. Gheewala answered that when you turn people away a couple of times because you do not have rooms available or people have to wait for rooms, then they stop coming, which means the loss of business for a longer period of time. He states that this loss of business is what they are trying to avoid with the addition.

Mr. David explained that for the Board to approve the expansion, the applicant must demonstrate that you cannot make a profit under the existing situation. He noted, however, that the profit and loss statement for January 2015 through September 2015 shows a net income of \$111,000, which suggests that the enterprise is profitable. Mr. Marfatia replied that, yes the business is profitable.

Mr. Wiskind asked if the \$111,000 is representative, so that it could be pro-rated for the full year, or if there was anything about this period that make it not representative of 2015. Mr. Gheewala replied that it is representative.

The Chair advised that the issue confronting the Board is the difference between “we are not making any money in our present circumstance” and “we are making money now and we want to make more money.” She explained that in order for the Board to grant this use variance for a non-conforming use, the Board has to have proof that applicant is not making money, and that the business is not profitable without the relief sought. If it is profitable without the relief, then the Board is not permitted to grant the relief.

Mr. Ricciuti asked if the Chair’s explanation applies even if they are turning people away, which could jeopardize their business. Mr. Amir answered that it is a question of reasonableness. Mr. Wiskind stated that the terms of a use variance are fairly stringent about what qualifies.

Mr. Amir asked how the collection about individual guests was gathered and whether it was random. Mr. Marfatia stated that the collection was random. Mr. Amir asked if it was for a specific period. Mr. Marfatia stated that he took a month and made a copy, explaining that when guests come, they fill out those cards. Mr. Amir commented that there was a wide range from June through September or November. Mr. Marfatia stated that they have a card and he made a copy, and that is how he selected the cards.

Mr. Wiskind asked if this (guest list) was representative of the overall population over time, noting that of the group presented, the largest segment is one-day stays and the second largest is one week or longer. Mr. Marfatia stated that seventy percent of stays are for one night, twenty percent are weekly, and that there are some long term stays, specifying that some people stay for six or eight months.

Mr. Amir asked what percentage of the stays are for less than one day. Mr. Marfatia replied that sixty-five percent are for three to four hours. Mr. Amir asked if those stays are typically during the day or the evening. Mr. Marfatia replied that they are during daytime hours.

Mr. Amir asked if Mr. Marfatia knows where this sixty-five percent come from. Mr. Marfatia stated that they come from the Bronx, Yonkers, White Plains, Connecticut and New York City. Mr. Amir asked how these guests end up in Ardsley. Mr. Marfatia replied that they like his place. He notes that some people are driving and stop for 6 or 8 hours to take a rest. He sees this often in the morning.

The Chair asked if different rates are charged daily and hourly. Mr. Marfatia said yes. Mr. Wiskind noted that that according to the cards, \$90 was a common rate, but there were also were rates of \$60, \$80 and \$75. Mr. Marfatia explained that those lower rates are for stays of five or six hours, and that \$90, \$100, \$120 and \$150 are the overnight rates, adding that \$475 and 500 are weekly rates.

Mr. Amir asked how the length of stay was regulated or monitored. Mr. Gheewala replied that the guest is called from the office to inform them that their time is up, but added that most people leave before then.

Mr. Wiskind stated that to address the question of how much parking would be necessary, he would inquire further about guests walking in versus driving in. Mr. Marfatia stated that some guests walk in, some drive, and others arrive by taxi. Mr. Wiskind asked what the percentage of each was. Mr. Marfatia stated that forty percent bring a car and thirty percent arrive by taxi. Mr. Ricciuti reminded the Board that applicant offered to provide tandem parking with a valet behind the office, if the Board allowed that, and Mr. Marfatia confirmed this.

Mr. Wiskind asked how large the Tuckahoe Motor Inn was. Mr. Marfatia stated that there were ninety-two rooms. Mr. Ricciuti stated that they were adding rooms to that before they sold it, and that he thinks it was up to ninety-nine rooms.

The Chair reiterated that the Board is constrained by case law and by New York State statute, which she quoted:

*“No such variance shall be granted by a Board of Appeals without a showing by the applicant that the applicant’s zoning application and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate*

- 1) That the applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by complete financial evidence;*
- 2) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;*
- 3) The requested use variance if granted will not alter the essential character of the neighborhood; and*
- 4) That the alleged hardship has not been self-created.”*

The Chair explained that the burden is on the applicant to demonstrate through financial evidence that without this addition, the applicant will suffer financial hardship, and that the Board is powerless to grant the variance without this demonstration. She stated that the two years of financial information provided have not demonstrated that, pointing out that one year shows a profit of \$37,000, and the other shows a significant loss, but a loss due to an anomaly, and not a failing business. The Chair noted that they are not seeking to improve the quality or size of the rooms to be competitive in the area, but rather to add rooms so as not to turn people away. She believes that the Board will need additional financial information to demonstrate that this is going to be a trend and that you are not going to be able to make a profit.

The Chair added that the Board also needs police reports to ascertain what kinds of incidents occur at that location, ambulance reports to know how many medical emergencies there are in the facility, and if there have been fire calls to that location.

The Chair asked if there are any long-term or permanent residents. Mr. Marfatia stated that four people have stayed for one year.

Mr. David noted that the balance sheet shows significant liabilities, of which \$2,738,000 are bank notes, and asked what the term of the bank loan is, and asked if it is a partnership, why is there a bank loan. Mr. Gheewala stated that the loan was to purchase the property. Mr. Amir pointed out that there is also a note to Wells Fargo for \$145,000 in 2014. Mr. David reiterated his question about the term of the loan. Mr. Marfatia stated that he can provide the paperwork, and that the loan terms are ten years at 4.5 percent interest. Mr. David pointed out that the cost of that loan does not appear in the paperwork. Mr. Wiskind remarked that if the property closed in August, as of September there might be only one month of interest appearing.

Mr. Wiskind reiterated that he has requested a better breakdown on occupancy information, seasonally and by day of the week, to understand how the 78% really works, toward applicant's demonstration of financial need. The key point is at the margin when you are busy and have the issue of turning people away. He noted that applicant has stated that they expect to make a profit in 2015.

The Chair explained that the use variance requirement is not that you make at least a dollar, but it is up to the applicant to provide a baseline of what is a normal return for this type of business, and to show that you cannot achieve that return without a variance. The Chair added that the standard is a reasonable return, and not that one has to lose money, and explained that if a normal business makes a twenty percent profit and applicant is making only ten percent, that would not be reasonable, but if a normal business makes twenty percent and applicant makes thirty percent that would be different. Therefore, the Board needs additional financial information about this business, and more information about what is standard in the industry.

Mr. Gheewala stated that they will provide the fire, police and ambulance reports. Mr. Ricciuti asked if the Police Department would have those reports. Mr. Marfatia stated that he filled out a FOIL form. Mr. Ricciuti asked if the ambulance report could be obtained from the Police Department. The Chair stated that she believes so.

Mr. Wiskind added that the reports are useful information, but that the key thing is financial hardship.

The Chair outlined the two stage demand necessary to meet. First, the applicant must show that the business needs the variance in order to be profitable and earn a reasonable return.

Next, applicant must show that the expansion of the business will not have a detrimental impact on the neighborhood. She noted that neighbors appeared before the Board at its last meeting to state that they are not interested in having the motel expand. If financial need is demonstrated, the Board must then make sure that the expansion will not have a negative effect, and that is when the Board will look at issues such as traffic, parking, neighbors, etc. Mr. Ricciuti asked if this is what would be shown in police and other reports, and the Chair replied in the affirmative. Mr. Wiskind added that it is not just the police, fire and ambulance calls, which are hopefully very rare events, but also the parking, traffic, lights, noise and visual impact on neighbors that the Board will consider.

Mr. Ricciuti asked if the financial information was the most important. Mr. Wiskind replied that it is needed for the first qualification. The Chair reminded applicant that if that first hurdle is not overcome, the Board will have no discretion.

Mr. Amir asked if there was a change of occupancy rate seasonally. Mr. Marfatia stated that in January and February, business goes down, that in March it starts building again, that from June on it is overflowing, that September is slow, and that October, November and December again get busy. Mr. Gheewala added that weekly rentals in off seasons helps pay the bills. He gave the example that in September a lot of construction companies come for a couple of months, and then they go and come back later, noting that they had guests who were working on the Tappan Zee Bridge.

Mr. Amir asked applicant to update the occupancy rate to include October 2015. Mr. Wiskind asked that the occupancy information also include monthly information to see seasonal variation and perhaps impact from the Tuckahoe Motor Inn closing, and also day of the week information.

The Chair asked if applicant had any questions. Mr. Marfatia replied no.

Mr. Ricciuti stated that as soon as they have the police report, it will be provided, and that as soon as they have the other information gathered, that will be provided too. The Chair stated that the Board needs to receive it a week before the next meeting. She added that it would be useful to do some projections, as Mr. Amir has suggested, to show what you think your growth rate and profit margin would be, and what you hoping these extra ten units will do for your balance sheet.

Mr. David stated that applicant has made a good faith effort to provide information, and that the Board simply needs more information.

The Chair reiterated that the requirements of a use variance is very difficult standard to achieve.

The Chair asked if anyone wished to speak in support of the application. No one responded.



The Chair asked if anyone wished to speak in opposition to the application.

Mr. Ken Lalli, of 22 Powderhorn Road, Ardsley, stated that he had voiced his concerns at the last meeting, and that he now wanted to echo what the Board said at this meeting.

Mr. Wiskind moved, and Mr. David seconded, that the matter be continued to the next meeting. **Vote:** 4 in favor, none opposed, none abstaining.

5) **Approval of Minutes**

Mr. Amir moved, and Mr. David seconded, that the Zoning Board of Appeals approve the Minutes of its meeting of October 28, 2015. **Vote:** Four in favor, none opposed, none abstaining.

6) **Adjournment**

There being no other business before the Zoning Board of Appeals, on motion of the Chair, seconded by Mr. David, which motion passed unanimously, the meeting was adjourned at 9:00 PM.

Respectfully submitted,

Judith Calder  
Recording Secretary