

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING
WEDNESDAY, JANUARY 27, 2016**

PRESENT: Patricia Hoffman, Chair
Jacob Amir
Ellen Slipp
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, February 24, 2016 at 8:00 pm.

3) **Approval of Minutes**

The approval of the November minutes was adjourned.

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
Jacob Amir
Ellen Slipp
Michael Wiskind

Attendees: Mr. Sudhail Marfatia, owner
Mr. Ravi Gheewala
Mr. Joseph Ricciuti, of Lawless & Mangione, LLP (Architects and Engineers, 480 North Broadway, Yonkers, NY)

Mr. Ricciuti stated that he believes applicant has provided everything the Zoning Board requested at the last [November] meeting.

Mr. Amir asked when the Tuckahoe Motel closed, and Mr. Gheewala replied June 1, 2015. Mr. Amir asked if there was a change in occupancy at the Ardsley Motor Inn after the Tuckahoe Motel closed, pointing out that the second page of daily occupancy looks consistent for three years including 2015. Mr. Gheewala replied that the next page shows that profit went up five percent. Mr. Amir questioned applicant's claim that occupancy increased approximately fifteen percent, and Mr. Gheewala replied that occupancy went up about eight percent. Mr. Amir asked if that means that for 2015 the daily occupancy rate would effectively be seventy-eight percent, and Mr. Gheewala confirmed that.

Ms. Slipp asks what "other rooms" means, as distinct from "overnight" and "weekly"? Mr. Gheewala stated that most people who take weekly rooms either work for construction companies or are families from out of town. The Chair stated that the question had been what "other" means. Mr. Gheewala stated that that refers to rooms with Jacuzzi tub or a specialty room type of thing, and Mr. Ricciuti added that it might also refer to rooms that are a little bit bigger. Ms. Slipp then asked if these rooms are not overnight or weekly, how does applicant charge for them. Mr. Gheewala answered that these rooms would also be overnight or weekly, but they are not a basic room. He explained that a basic room has a microwave, a refrigerator, and a king size bed, whereas these other rooms might have two double beds or a Jacuzzi, something a bit different.

Mr. Amir asked if this refers to occupied rooms or total rooms in the motel. Mr. Gheewala stated that it refers to occupied rooms. Mr. Amir then asked if these are occupied rooms, how many rooms are in the motel. Mr. Gheewala replied that there are 49 rooms in the motel. Mr. Amir noted that the information provided shows that in the first quarter there were 30 out of 49 rooms occupied, and that in the third quarter there were 40 out of 49 rooms occupied rooms, so Mr. Amir suggested that there must be more than 40, and Mr. Gheewala confirmed that there were.

The Chair asked how the rates of these "other" rooms affect bottom line. Mr. Gheewala replied that there is a premium for those rooms, perhaps \$90 per night instead of \$80. Ms. Slipp asked why the "other" rooms are not captured in the "overnight" or "weekly" totals, and why there is a third line item of the "other" rooms. Mr. Gheewala replied that he does not know, "just a breakdown of the rooms, like the way the rooms are set up." Mr. Amir sought clarification that these "other" rooms would also be "overnight" or "weekly," but have some additional feature to them, and Mr. Gheewala confirmed this.

Mr. Amir asked if any of the ten additional rooms applicant proposes to add, would any be “other” rooms. Mr. Gheewala and Mr. Ricciuti replied that all ten rooms would be standard rooms. Mr. Wiskind asked if applicant proposed converting some of these to handicapped rooms. Mr. Ricciuti replied that they have to convert the existing rooms below the proposed rooms and make them handicapped accessible, noting that there is no elevator at the motel, so there would be no other way to comply with New York State handicapped code.

Ms. Slipp asked if we know the breakdown of ambulance and police calls to the motel. Mr. Amir added his question of what “aided” means on police report. Mr. Gheewala suggested that this referred to incidents where police aided an ambulance.

Mr. Amir pointed out that the information provided shows an increase in occupancy during the third quarter [July through September] and a downtick in the fourth quarter, after the Tuckahoe Motor Inn closed, and asked if applicant projects the same pattern in 2016. Mr. Gheewala replied yes, stating that the summer is the busiest season.

The Chair asked the applicant to explain the need for ten additional rooms when the occupancy rate is only 75 percent, noting that if the need for the rooms is ostensibly that they are turning people away, this is not demonstrated on the information provide. Mr. Gheewala replied that it is not shown because it is a quarterly report. Mr. Ricciuti added there are times that applicant does turn people away, so there could be a period of time during the quarter that it is happening, and suggested that it would show on a bigger [sic: smaller] than quarterly breakdown. Mr. Amir asked if applicant was suggesting that if the occupancy report was on a daily or weekly basis, there would be times when the report would show a 95 or 98 percent occupancy rate. Mr. Gheewala replied yes, and Mr. Ricciuti stated that he is certain that this would be seen more on a weekly report. Mr. Amir pointed out the accounting perspective that if the occupancy rate in the first quarter is only 60 percent, even if applicant is theoretically losing during the third quarter, they are not losing on average over the year. Mr. Ricciuti stated that this chart does not display that they are turning people away, but this chart was provided in response to the request for a quarterly report. Mr. Gheewala added that the report takes Mondays into account as well as peak times such as the Fourth of July weekend or Thanksgiving weekend.

Ms. Slipp expressed concern over the number of ambulance calls responded to by local volunteers, and therefore inquired about applicant’s marketing plan and the typical clients to whom they market. Mr. Gheewala replied that it was mostly construction people, commuters, and people travelling through. Ms. Slipp stated her concern that the number of calls would increase proportionate to the number of proposed additional rooms. Mr. Ricciuti expressed his opinion that the report documents every phone call received, but not the issue called about, and his belief that this occurs in every motel. Ms. Slipp suggested that this would only be exacerbated by the addition of new rooms.

Mr. Wiskind asked what establishments applicant considers its competition. Mr. Gheewala replied Elmsford Motor Inn and Ardsley Acres. Mr. Wiskind then asked about the requested “return calculation,” showing the rate of return that motel operators would expect. Mr. Wiskind asked the applicant for the basis of the 30 percent figure provided, noting that it seemed pretty rich. Mr. Gheewala stated that it is based on owner’s experience in different corporations or groups of investors through which he owns other motels. Mr. Wiskind asked if any of the other motels are in Westchester, and Mr. Gheewala replied that most of them are on Long Island and a few are in the Bronx. Mr. Wiskind asked if these other motels were of comparable size and in similar types of localities. Mr. Gheewala replied that the owner’s other motels used for the basis of the return calculation included ones in Huntington and Jericho, the Clarion on Park Avenue in Manhattan, a Super 8 in the Bronx, and a Days Inn near Yankee Stadium.

The Chair inquired about the “Sales and Occupancy” data provided by applicant, which covered 2014 and 2015 through September 30th. The Chair stated that according to the small chart on page 4 of the “Apple Motor Inn Sales and Occupancy” report, the income for 2015 was \$750,000, and asked if applicant had an update through December 31st, and asked if the income was an additional \$250,000. Mr. Marfatia said yes. The Chair noted that the Sales and Occupancy rate for the fourth quarter is 75%, and asked what the income for this period was. Mr. Gheewala stated that there was \$270,000 of income in the fourth quarter. Mr. Wiskind remarked that this would mean that the 2015 income was 1,020,000, rather than the \$920,000 applicant had previously estimated. The Chair noted that this is also in contrast to the \$850,000 income of the year before.

Mr. Wiskind stated that applicant had mentioned that the Tappan Zee Bridge project was a significant factor in driving occupancy, noted that the Tappan Zee Bridge project is slated for completion in 2017, and asked where applicant expects future occupancy to come from. Mr. Ricciuti stated that wherever you turn, there are construction projects going on, and that the people who work on these projects come from far places and do not like to go back and forth. Mr. Gheewala added that they often take the room for a week, go home for the weekend, and leave their belongings in the motel while they go home for the weekend, and that this means that they become familiar with a place and build a relationship, so if they are working elsewhere in Westchester, the hope is that they will come back to this establishment.

The Chair asked what applicant’s current rate of return is. Mr. Gheewala stated that it is about fifteen percent. Mr. Wiskind asked what the Tuckahoe Motor Inn’s rate of return was. Mr. Gheewala stated that he did not know. The Chair asked why applicant believes that the addition of ten more rooms will move the rate of return from fifteen percent to thirty percent. Mr. Gheewala replied that it is not just the ten more rooms, and noted that the motel needs renovation, and stated the opinion that people tend to come back when they see that you are making improvements, and will ask for one of the newer rooms.

Mr. Amir and Ms. Slipp pointed out that the renovations could be done to existing rooms. Mr. Gheewala replied that that would require putting rooms out of business while they are being renovated, which would hurt the bottom line even more. Ms. Slipp suggested that the renovations could be done during the periods when the occupancy rate is at its lowest. Mr. Gheewala stated that the renovations envisioned include painting, redoing wallpaper and carpet and redoing bathrooms, and noted that it is not cost efficient to renovate one room at a time. Mr. Gheewala went on to state that even during January, which is traditionally slower, some days such as weekends during that period are at 100 percent occupancy, and if you've blocked off ten rooms to renovate, you would lose the profit on those rooms for the peak occupancy days. Mr. Amir asked if applicant envisioned adding the ten rooms to have them in place before renovating the existing rooms. Mr. Gheewala replied that this is how they want to proceed, as they do not have many rooms to begin with before taking some of those out of service for renovations.

The Chair asked how long it takes to renovate a room. Mr. Gheewala suggested that it might take five to seven business days for each room. Mr. Ricciuti added that it takes longer if you do bathrooms and have any plumbing work.

Ms. Slipp asked when they last renovated. Mr. Gheewala and Mr. Ricciuti stated that it was in 2006. Mr. Amir noted that applicant purchased the motel only in August 2015, and now claims to require expansion and renovation in order to get a sufficient rate of return. Mr. Amir suggested that this was known to applicant when the property was purchased, and Mr. Gheewala confirmed that it was.

The Chair summarized applicant's position as "we can't make a reasonable return on 49 rooms, we need 59 rooms, we're making fifteen percent on our dollar now and we want to make thirty percent, and in order to that we need to expand and add ten more rooms and we need to upgrade the 49 rooms we have now." The Chair asked what the connection is between the additional ten rooms and the renovation of the existing rooms.

Mr. Ricciuti stated that applicant has tried to show hardship, and asked if there is any way for applicant to show the Board hardship. The Chair stated that she has tried to explain both applicant's burden and the Board's obligation and responsibility. Although it may have seemed like the Board is grilling the applicant, the Board's obligation is to get applicant to show that there is hardship, and that applicant can't make a decent living. The Chair cited the example of Carvel, which years earlier had sought a variance to partition their store and add Subway to it, stating that they could not make a living selling only ice cream. On that matter, applicant came to six different meetings and provided documentation of what they had to charge for an ice cream cone. They received the requested variance because they demonstrated that they could not make a reasonable return selling ice cream. The Chair explained that this is what the Board is required to ask of the present applicant.

The Chair stated that if applicant is stating that they want to renovate and that making it look better will improve the occupancy rate, ok, but that does not show why making the motel larger by expanding the non-conforming use will increase the rate of return. For all the Board knows, you may still make a fifteen percent return on your investment. You have not shown that making the motel larger will change either the rate per room or the occupancy rate. So far, the Board has been shown an eighty percent occupancy rate and a sixty percent occupancy rate, and has been told that on some weekends the motel is full. The Board has not been provided information about the number of times you have had to turn business away; you have not shown that you are losing business because the motel is not big enough. The Board needs to see that you are losing money. You have told us that you are not making the industry standard, but, other than telling us, you have not provided any facts to support the statement that the industry standard is thirty percent.

Mr. Wiskind suggested that if applicant renovated the existing 49 rooms, so that they could be rented for the \$80 that you are looking for down the road, taking the occupancy rate below 47 (which is eighty percent of 59), and kept expenses where they would be with the expansion, that this would improve the rate of return to about 25 percent. Mr. Wiskind added that doing the renovation improves the prospects for all 49 rooms, whereas doing the expansion has only a smaller, incremental affect.

Mr. Riccuiuti asked if applicant should come back with breakdowns to show where they are 100 percent full and are turning customers away. Ms. Slipp stated that those occurrences are moments in time, not a pattern or practice. Mr. Riccuiuti acknowledged that it is an occasional, not constant, occurrence. Mr. Wiskind noted that another motel will be opening in Rivertowns Square, and though it may not attract the same clientele, it will be there. Mr. Wiskind also pointed out that someone working on another construction project on the East side of the county is less likely to want a motel room on the West side of the county. Ms. Slipp suggested that renovating seems a better alternative, and Mr. Wiskind added that the cost to do that relative to the return seems to be quite a bit lower than building ten additional rooms.

Mr. Wiskind advised applicant that if you renovate and find that you are full and turning people away, there is nothing to prevent you from coming back to this Board and presenting the kind of evidence we are talking about. Mr. Gheewala asked how that would show hardship, as applicant reported to the Board at the prior meeting that they got busier and had to turn people away, and the Board said that there was no hardship. The Chair stated that hardship can also be shown by not making a viable return on investment now that they've invested more money, and suggested that every business has a break-even point, and costs and return can increase at different rates.

The Chair restated that the Board is unable to approve a non-conforming use variance unless an applicant says "this is what my business is, I am unable to earn a reasonable return unless you grant me relief." If instead an applicant says, "we are making a reasonable return on

investment, we don't have a hardship, but we want a bigger motel," the Board is limited, as it does not have the flexibility to give approval without hardship or an unreasonable return.

Mr. Amir suggested that renovating is a less intrusive way to improve applicant's rate of return. Mr. Amir stated that if applicant is not getting a reasonable rate of return after doing the renovations, the applicant can state "I did everything I could on my end, and I still cannot get a reasonable rate of return, so now I need the variance." Mr. Amir also pointed out that applicant's numbers are confusing, in that the requested increase in rooms is 17 percent, but the conclusion is that this will yield a 100 percent increase in rate of return, which does not seem to add up. The Chair supported Mr. Amir's remarks, adding that applicant should consider whether it is reasonable to expect a 17 percent increase in the number of rooms to cause the rate of return to go from fifteen percent to thirty percent.

Mr. Ricciuti stated that he would confer with his client, and that they would talk to the Building Department after their conference. Mr. Ricciuti stated his present inclination to suggest that applicant pull the application, do the renovations, see if the expansion is needed thereafter, and if so, will crunch the numbers and revisit this application then.

The Chair informed applicant that the non-conforming use variance is the one that is the most difficult to obtain, because business hardship must be demonstrated and it is not always easy to do that. Mr. Ricciuti asked if having an attorney would make a difference. Applicant was assured that whether or not they retained an attorney, for counsel or representation, was up to applicant.

The Chair ask if anyone present wished to speak in favor of or in opposition to the application. Mr. Ken Lalli, of 22 Powderhorn Road, Ardsley, stated his agreement with what the Board had expressed.

The Chair announced that this matter would be moved to February at applicant's request, and assured applicant that if more time was needed, applicant could adjourn the matter to March.

5) **Adjournment**

There being no other business before the Board, on motion of Mr. Wiskind, seconded by Ms. Slipp, which motion passed unanimously, the meeting was adjourned at 8:46 PM.

Respectfully submitted,

Judith Calder
Recording Secretary