



**VILLAGE OF SUFFERN
ZONING BOARD OF APPEALS MINUTES
DECEMBER 5, 2024**

Attendance: Cary Adwar, Member
Steven Marks, Member
Bruce Simon, Acting Chairman
Lisa Wilson, Member
Andrew Zavoski, Member
Dennis Michaels, Acting Village Attorney
Melissa B. Reimer, Village Clerk

Absent: Barry Tesseyman, Chairman
Robert Magrino, Village Attorney

CALL TO ORDER

Board Member Simon called the meeting to order at 7:05 P.M., had the audience members lead everyone in the Pledge of Allegiance.

MOTION to select an Acting Chair of the Board, Board Member Simon was moved by Board Member Wilson and seconded by Board Member Adwar, and all in favor, except Board Member Simon recused himself.

**Suffern Auto Service - 20 Wayne Avenue – Z2024-03
Interpretation - Parking Lot**

Acting Chairman Simon read the Notice of Public Hearing into the record.

MOTION- to open the public hearing moved by Ad Hoc Board Member Marks and seconded by Board Member Wilson, with all in favor.

Mr. Richard Ellsworth of Balsamo, Byrne, Cipriani, & Ellsworth represents Suffern Auto Service/Pincus Neiman and approached the podium. He stated that he wanted to address procedural issues first. This, he said, is an interpretation of a building inspector determination found under section 266-54(E) of the Suffern Village code. He mentioned that a GML was completed and no recommendations were recommended, public notice was properly given, type II and no SEQRA is required.

Mr. Michaels told the Board that procedurally it is not subject to General Municipal Law or “GML” section 239L, because it is an application for an interpretation. Similarly, under the State Environmental Quality Review Act, it is type II and it is exempt from environmental review.

Mr. Ellsworth said that the GML was sent out by the Village.

Mr. Michaels said that it is done as a matter of course. It does not do any harm to send it out, but legally it is not required.

Mr. Ellsworth admitted that he is not before the ZBA very often and an interpretation is not an everyday occurrence. He stated that the code and the interpretation under 266-55 of the Village code requires a record on appeal from the agency that we're appealing from. He stated that he is not sure what this Board has been given by the Building Department and what the record on appeal is that this Board is reviewing. He asked if the Board has a record on appeal for this matter.

Mr. Michaels answered that the Board definitely has a record on appeal, and he has been involved in many e-mails. He stated that he saw a few, at least, in which Mr. Ellsworth was sent correspondence and records. Most recently, yesterday Mr. Ellsworth was sent additional photographs and information that was to be made part of the record. The record is a living thing in the sense that it is being updated right now, your testimony is being made part of the record. There is not a record that was written in concrete sometime in the past and we can hand it to you now, or yesterday, or a week ago. There is going to be testimony perhaps from one of your clients, a neighbor, or correspondence, reports, letters, or other documents that we receive tonight during the public hearing, etc.

Mr. Ellsworth stated that he appreciated that, but the code is clear that there is a record that is used by the underlying agency and that is transmitted to this Board for its determination on the interpretation. It's the record that Mr. Cyril Geoghegan created when he interpreted the code that you have to further interpret whether it was proper. I disagree that it's a living and breathing record. It lives and breathes for a further review by another agency, but not for your review here. You have a record that you need to review.

Mr. Michaels stated, "Rich, there is a record right now, at this moment, that exists and you, through Freedom of Information Law, which you didn't have to submit to get a copy of the record by the way – you could just walk in and say, 'I'd like the record for this application – for this appeal' so are you saying..."

Mr. Ellsworth interrupted and said, "Dennis, that's my point.

Mr. Michaels continued, "...that you have not received any correspondence and nothing that is related to this application? You have not received any paperwork?"

Mr. Ellsworth responded "The paperwork that I received is minimal and after the decision most of it is created after the decision. In fact, an e-mail I received today from the Village Clerk is a printout of a website from today. That can't be before this Board, if it was not before Mr. Geoghegan because you are interpreting Mr. Geoghegan's determination, and he did not have that to interpret. I am making a record now for further review obviously, but we obviously have a difference, but the code is very clear that a record has to be submitted to you by the underlying agency for your review. It has to be the record that the underlying agency used to make its determination."

Mr. Michaels interrupted Mr. Ellsworth and said that it was so noted.

Mr. Ellsworth said that Mr. Michaels's comment was very telling because he asked for the records that Mr. Geoghegan used to interpret this code and the file was void of anything. He stated that he received documents afterwards that should have been in that file, that should have been foible that I should have been able to look at.

Mr. Michaels stated, "Okay, if you think that entitles you to some legal remedy, by all means you may pursue that.

Mr. Ellsworth interrupted and said that he had not stated that nor implied that.

Mr. Michaels continued, "Your objections are noted for the record."

Mr. Ellsworth stated that with respect to the documents that were sent to him today, he wanted to make that record that they are inadmissible for the purposes of this hearing. We can address them if this Board thinks otherwise.

Mr. Michaels stated, "So noted, but I legally disagree." He stated to the Board, "You may consider the correspondence received yesterday, I believe it contained photographs that were submitted by Ad Hoc Member Steven Marks, and any other information that you receive related to this application, in my legal opinion, you may consider and review. Mr. Ellsworth will object to that, and he has noted that for the record."

Mr. Ellsworth stated, "That's fine." He then commented on the submissions and said that they were not in their entirety. He said that he believed that whoever printed this wanted to show that the company Deals on Wheels was selling out of the Suffern address, but the front page of the website, which was not circulated, says otherwise. It shows the address at 65 Ramapo Valley Road, Mahwah, New Jersey. He said that the record should be clear in the beginning and not supplemented. He submitted a seven (7) page document depicting the front of the website and invoices from the repair shop. He handed it to the Clerk, and it was given to each ZBA member as well as Mr. Michaels.

Mr. Michaels stated, "By all means the ZBA will consider this correspondence. The record that Mr. Ellsworth has submitted some documentation to be made part of the record is to be considered by the Zoning Board of Appeals and its deliberations and review of the application and it is my legal opinion that those are acceptable to be made part of the record. What weight you give them is up to the board as with any document or any information that's made part of the record or testimony."

Mr. Ellsworth stated, "Submitting them is not an indication of waving my objection." He said that if you are going to overrule his objection then you should see the entire record.

He then started to speak about the narrative of May 20th and the history of the property. Mr. Ellsworth said that the property has been used for the last thirty-five years as an auto repair parking/storage of vehicles. Whatever the definition of storage obviously that is your obligation to

interpret or decide.

The prior owner, Mr. Dunado, had both lots. Mr. Ellsworth's client purchased the property several years ago. His client found out that there was a violation on the property. His client rectified the situation. He beautified the parking lot, received a site plan, fixed the wall along Route 202, and complied with all the requirements of the Village.

The two lots are permitted in the zone. On the south side of Route 202 contains a garage where auto repair is conducted. A special use permit was granted to Mr. Dunado, and accessory use for the zone is permitted as outdoor storage of vehicles incidental to the business which would be a requirement for accessory use. This parking lot is on the north side of Route 202.

The Planning board referred the matter to the Building Inspector. This was because there were alleged additional cars parked on the lot. The Building Inspector made many requests for information from his client and none of them were in the file. His client will testify to what he discovered from the Building Inspector's investigation. Despite the Building Inspector's intimation that the lot was used property, Mr. Ellsworth stated that, the interpretation came down contrary to that stating that the cars were stored there unlawfully. "We submit that the use by the owner is lawful in the zone. It is an automobile shop. Across the street with the adjacent lot and it complies with the code. The code is clear that outdoor storage of vehicles are permitted."

He stated that the owner has a separate business in New Jersey. He does sell automobiles. He sells them from New Jersey, not from Suffern. It is not a secret that he thought that he could sell them from Suffern, but when he was told that he could not, he ceased to do so. The lot across the street stores the vehicles for the repair shop to repair them.

Deals on Wheels in New Jersey are used cars, and they require service and testing. He uses his repair shop to do those things. These vehicles are not sold until they are road worthy and ready to be driven. They need to be tested again before they are passed to a new owner. After the first set of testing, they remain on the lot, someone buys the car in New Jersey, and now Deals on Wheels takes it away. Prior to them taking it away, they do the final test, and they do the inspection for New York State. The whole purpose of the lot is the service and repair, not for sale.

Acting Chairman Simon swore Mr. Pinchas Neiman, owner of Suffern Sales & Service, in. He said that he was there to give top-notch service to his clients. He inspects vehicles and ensures that every vehicle is in the best and safest condition possible.

After he purchased the property, he found out that the parking lot at 20 Wayne Avenue was never approved. He said that he had to submit a site plan. He has been using it as a lot for the mechanic's shop at 23 Wayne Avenue.

On May 15, 2022, Mr. Neiman received a complaint that used cars were being sold at 20 Wayne Avenue. He said that the code enforcement complained that he had 50 cars parked on his lot instead of 35. He submitted plans for 50 spots to the Planning Board. They referred him to the Building Inspector about selling cars on his property.

He said that he had many discussions with the Building Inspector, Mr. Cyril. He said that he

learned from the conversations that his operations comply with all necessary regulations. He even mentioned that he doesn't understand why he was being given such a hard time.

Suffern Sales does not sell cars at 23 Wayne Avenue. The cars that you see there are from his main customer, Deals on Wheels. He owns that company. They bring the cars to Suffern Service to repair them before they can sell them.

As soon as Deals on Wheels buys a car, they bring it to Suffern Service. Suffern Service does the body work or anything wrong with the car will be fixed. When they are ready to sell them, the car goes through a full diagnostic. It is rechecked, oil change, New York safety inspection, brakes, etc. for delivery to the retail customer. Every single car is gone through at least twice, if not more at the shop. It is important that every car stays at the lot throughout the fixing process so we can make sure everything is done right. It also allows them to work at their own schedule. They don't have to call it back, it is there. The operation this way is crucial to stay in business, serve the community and provide jobs for the local mechanics.

Mr. Neiman said that he has noticed a difference in the way he is respected compared to Mr. Dunado when he had his shop. It is hard for him to understand. Mr. Neiman presented two (2) poster-sized sheets depicting photos of the shop and parking lot comparing how it looks now compared to when Mr. Dunado owned the property.

Mr. Neiman stated that he does not understand why he should be treated differently, when all he is trying to do is run a "...respectful business and make positive contributions to the community. I am looking forward for your understanding and support to this matter so we can continue serving our customers, our local community with a professional and honest approach, and making sure our local cars are safe on the road."

The public was invited to come to the podium to speak.

No one commented.

Mr. Ellsworth returned to the podium. He said, "I do want to intimate that the actions toward my client compared to the prior owner could be determined to be arbitrary capricious. They could be determined to be contrary to the lawful statute. The statute that we are dealing with is very clear; it says storage in the lot. There are no other lots in the CB zone that are similar to Mr. Dunado's. The code applies to that lot almost entirely and he is storing cars in that lot for the purpose of repairing them, which is a lawful purpose under your code. We take the position that the Building Inspector's interpretation was incorrect and should be overturned by this fine Board."

Board Member Zavosky asked how the vehicles get to New Jersey without being licensed. He asked if they were being taken in a tow truck or if they were being driven.

Mr. Neiman answered that most of the time they were driven.

Board Member Zavosky asked that customers do not come over the New Jersey line to have any type of transactions with the vehicle.

Mr. Neiman answered that it was correct.

Board Member Adwar stated that it was approximately 1.2 miles from 65 Ramapo Valley Road to 23 Wayne Avenue and he wondered if there was a lot on 65 Ramapo Valley Road where the cars for sale can be stored.

Mr. Neiman answered that there is a big lot, but it is not separated as a showroom lot. "It is a big lot, and we always have cars at 65 Ramapo Valley Road as well."

Board Member Wilson said that Mr. Ellsworth's narrative said that the cars are an accessory to the use. She stated that the use at Suffern Auto Service is auto service. In her opinion, she stated that, the car should be owned by a third party. It should come there for engine work, body work, etc. When that is completed, it gets returned to the owner, but in this case, there is no owner. Once you have completed the work, you are now storing the car for sale, which is the indicative thing that is against the code.

Mr. Ellsworth stated that there is a third-party owner and that it is Deals on Wheels. The same person is affiliated with both corporations. It is still a third-party seeking a car repair service. When someone wants to buy them, they need to be serviced one last time. "He is allowed to store if it is incidental to the business that the accessory parking is there for. I respect your position, but I take exception to it because I believe we fall within the parameters of the code."

Board Member Wilson said that she believed that they were arguing about storing and parking. Parking a vehicle would be there while it was waiting for parts, etc. She asked if these cars were unregistered.

Mr. Ellsworth said that the cars were registered with Deals on Wheels.

Board Member Wilson said that if the cars were registered, they would have plates on them.

Mr. Neiman corrected Mr. Ellsworth and said that the cars were not registered. "We have a customer with unregistered cars that service their vehicles at the shop."

Board Member Wilson repeated that it was unregistered cars.

Mr. Neiman said that was correct.

Board Member Wilson said that it was being stored not parked.

Mr. Neiman said, "It is being serviced at the shop."

Board Member Wilson said, "Okay, your words; my words."

Mr. Ellsworth said that parking and storage are permitted under the code as long as it is incidental to the primary use. As we said, the primary use was auto service shop.

Board Member Wilson stated that they are stretching the truth by saying that it was being serviced and then we are going to wait four months or six months until someone wants to buy the car. Then they would take it back into the shop because maybe it was not serviced right the first time. Now we will make sure it's ready and then it will go to this person.

Mr. Ellsworth said that he doesn't know if they are stretching the truth. They were defining the code as they saw it. They believe the Building Inspector interpreted it improperly. They believed what we were saying.

Board Member Wilson believed that they believed what they were saying, but they were interpreting the storing differently than she was.

Mr. Ellsworth said that there was nothing in the code that defines storage of vehicles. It was specific to that zone, and it was interpreted in the past, not specifically for Mr. Neiman.

Board Member Zavoski asked about the cars not being registered, how were they being driven.

Mr. Neiman said that they have dealer plates for that. He addressed Board Member Wilson, that certain services cannot be done before the vehicles are sold (i.e., batteries die by sitting, NYS safety inspection).

Ad Hoc Board Member Marks asked about Deals on Wheels dealer license location.

Mr. Neiman said that Deals on Wheels is a brokerage.

Ad Hoc Board Member Marks confirmed that it was not a dealership.

Mr. Neiman said that it was correct, and it had a broker license.

Ad Hoc Board Member Marks said that while viewing the website, he saw pictures of cars that had been taken. He asked if the pictures were taken at the lot in question.

Mr. Neiman said that it was correct.

Ad Hoc Board Member Marks asked about the purpose of taking pictures of cars for sale on the Suffern lot.

Mr. Neiman said that the cars were physically there, and this was where they took the pictures from. They want to move cars quickly to make more money. They look the best when they come out of the body shop. Most customers don't see the cars in person before they buy them. If they did want to see the car, they were never told to come to 23 Wayne Avenue. They would be invited to 65 Ramapo Valley Road to be shown the car.

Ad Hoc Board Member Marks said that he was concerned about the website saying, "Call for address Suffern, New York. Stop by our lot. Which lot are they referring to?"

Mr. Neiman said that it was not referring to any lot. “My lawyer told me about it today and I already changed it.”

Ad Hoc Board Member Marks asked why the Ramapo Valley address was not listed there.

Mr. Neiman said that it was listed on the main page of the website, but he did not want people to come to Ramapo Valley to see cars, because they are not always there.

Ad Hoc Board Member Marks asked about trade-in vehicles and how they work.

Mr. Neiman said that it was not done at 20 Wayne Avenue, and he explained it quickly.

Ad Hoc Board Member Marks asked where the trade-in took place.

Mr. Neiman said that it would be at 65 Ramapo Valley or at the customer’s place. They only take a trade-in when a person buys a vehicle from them.

Ad Hoc Board Member Marks asked that they never invite customers to come to the lot in Suffern.

Mr. Neiman answered, “Never.”

Mr. Ellsworth said that years ago they did have sales in the Suffern location, but then they were notified that it was not permitted, and they ceased operations.

Acting Chairman Simon said that the code in the Village of Suffern was very clear about vehicles that do not have registrations and license plates on them. He asked Mr. Ellsworth if he agreed to that.

Mr. Ellsworth said that he was not testifying. He also said that he did not have the code in front of him. He said that he cannot be cross-examined by the Board.

Acting Chairman Simon said that he did not mean to cross-examine Mr. Ellsworth. He asked Mr. Neiman if New York inspections were valid in New Jersey.

Mr. Neiman said that they were not, and his clients live in New York (Brooklyn and Monsey) and not in New Jersey.

Acting Chairman Simon said that he heard Mr. Neiman and Mr. Ellsworth say that the use of the lot was for storage for Deals on Wheels.

Mr. Ellsworth said that he never said that. The lot is for storage for Suffern Auto Service.

Ad Hoc Board Member Marks said that intending to service these vehicles was one thing, but they are taking pictures of the vehicles on the lot and advertising the vehicles with prices on the same lot.

Mr. Neiman said that he did not believe that anyone would notice by the pictures where the address was – it didn't say the address – it's just a background picture.

Ad Hoc Board Member Marks reiterated that the intent is not to store, but to repair, clean, and all things of that nature. He asked about photos of vehicles being taken on the Suffern lot for Deals on Wheels, with other cars there too, but the intent was to advertise for sales from that Suffern property. He said that was what he saw from the pictures alone. He said that he knew that the applicant said that was not the purpose. The purpose was to repair, fix, clean, but it seemed that the applicant was advertising the sales from that property.

Mr. Neiman said that he disagreed with Ad Hoc Board Member Marks.

Mr. Ellsworth said that the majority of the pictures on the website were those from the New Jersey lot and not from Suffern. "The three or four that you have, I acknowledge that that is the Suffern lot." He said the pictures on the website were taken from Deals on Wheels and not Suffern Auto Service.

Ad Hoc Board Member Marks reiterated that what he heard was that the intent was for repair and cleaning, not for storing for their vehicles and doing other things.

Mr. Ellsworth said that his client, Suffern Auto Service, was repairing and servicing...

Ad Hoc Board Member Marks, while holding up the advertisement, said, "This is not repairing and servicing."

Mr. Ellsworth said, "and that's pictures for Deals on Wheels. It's a separate entity."

Ad Hoc Board Member Marks said, "That's on the lot that is meant for repair and servicing."

Mr. Ellsworth said, "Deals on Wheels has every right to go on the lot and take a picture while the car is sitting there."

Mr. Neiman said that they take pictures at many places.

Board Member Zavoski asked if Mr. Neiman would comment on the volume of vehicles going out of the lot on a monthly basis.

Mr. Neiman said, "...most ten on average."

Mr. Michaels explained procedural steps to take next.

Board Member Zavoski said that he visited the lot.

Board Member Zavoski asked about the operation of both businesses. He asked if both were open five days a week.

Mr. Neiman responded that Suffern Sales and Service and Deals on Wheels were closed on Saturdays, Sundays, and one-half day on Fridays.

Mr. Ellsworth said that there were other clientele that brought their vehicles to be serviced.

Mr. Ellsworth submitted four (4) sheets of black and white photographs which were added to the record for the Board's consideration.

Mr. Ellsworth said that he would be okay with the Board leaving the public hearing open, visiting the site or closing the public hearing and deciding this night.

Mr. Michaels continued to discuss the procedural steps.

Acting Chairman Simon asked that before the public hearing was closed, did any Board Member feel that they would like legal advice from counsel.

Board Member Adwar – "I do."

Ad Hoc Board Member Marks – "I do."

Acting Chairman Simon – "I do as well."

Mr. Michaels said, "Under New York State Open Meetings Law allows you to go into a private attorney/client confidential discussion. It is not an Executive Session."

The Board went into the attorney/client confidential discussion at 7:57pm.

The Board came back from the attorney/client confidential discussion at 8:18pm.

MOTION- to close the public hearing moved by Board Member Wilson and seconded by Board Member Adwar, with all in favor.

Acting Chairman Simon took a non-binding survey of the Board members, how they feel right now about this process.

Ad Hoc Board Member Marks – "The report given by Mr. Cyril Geoghegan, Building Inspector on April 22, 2024, and the testimony that was given today regarding this, I'm feeling that I will affirm his decision."

Board Member Wilson – "My opinion, after reading Inspector Geoghegan's letter of 4/22/24, I agree with his interpretation of the storage of cars."

Board Member Zavosky – "Yes, after reading the letter from Cyril Geoghegan, on April 22, 2024, I more or less concur with his findings."

Board Member Adwar – "After reading Cyril's April 22, 2024, memo and hearing from Mr. Ellsworth and his client, I agree with the Building Inspector's interpretation."

Acting Chairman Simon – "I will agree with my fellow Board members."

Mr. Michaels told the Board that it was an informal poll, and it is non-binding. He asked the Board if they wanted to vote tonight or if they wanted to ask legal counsel to draft a resolution reflecting what the consensus was tonight for consideration at the next meeting.

MOTION for Counsel to Draft a Tentative Draft Proposed Non-Binding Resolution Reflecting, What Appears to be a Unanimous Feelings Expressed Tonight About Affirming Building Inspector Cyril Geoghegan's April 22, 2024, Determination, moved by Acting Chairman Simon and Second by Board Member Zavosky, with all in favor.

Mr. Michaels directed the Clerk with the wording for the January 9, 2025, agenda.

Mr. Michaels added that 21 Cypress Road application will be continued, and the public hearing will be held, open, and be reviewed at the next meeting, January 9, 2025, 7:00pm at Village Hall.

MOTION TO APPROVE MINUTES FROM OCTOBER 17, 2024, ZONING BOARD OF APPEALS MEETING.

MOTION to approve the Zoning Board of Appeals minutes of October 17, 2024, was moved by Board Member Wilson, seconded by Board Member Adwar, with all in favor, except Ad Hoc Board Member Marks abstained.

MOTION to approve Zoning Board of Appeals meeting for January 9, 2025, and February 20, 2025, at 7pm and to adjourn the Zoning Board of Appeals meeting Ad Hoc Board Member Marks, seconded by Board Member Zavoski, with all in favor.

Respectfully,

Melissa B. Reimer, CPA
Village Clerk