Minutes - Board Meeting 09/17/2014

Minutes of the meeting of the Board of Trustees of the Incorporated Village of Mineola held Wednesday, September 17, 2014 at Village Hall, 155 Washington Avenue, Mineola, New York 11501.

PRESENT:	Mayor Scott P. Strauss Trustee Paul S. Cusato Trustee Paul A. Pereira Trustee George R. Durham Trustee Dennis J. Walsh
ALSO PRESENT:	Village Attorney John M. Spellman Deputy Village Clerk Cora T. Kelly Village Treasurer Giacomo A. Ciccone
Press Observer:	*Mineola American* *Williston Times*
Sunshine Observers:	4 Observers

Mayor Scott P. Strauss called the Work Session to order at 6:45 PM.

Resolution No. 268-14

Resolved to approve bills and payroll.

Motioned by Trustee Paul S. Cusato
Seconded by Trustee George R. Durham

Vote:

Yes	No	Abstain
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Resolution No. 269-14

Resolved to approve a request from Senator Jack Martins for the use of the Wilson Park parking lot to reschedule a Child Car Seat Safety Program in conjunction with the Nassau County Traffic and Safety Board, previously approved on July 9 for Saturday September 20, to October 18, 2014 from 10:00 AM – 1:00 pm.

Motioned by Trustee Paul A. Pereira
Seconded by Trustee Paul S. Cusato

Vote:

Yes	No	Abstain
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Resolution No. 270-14

Resolved to approve the membership of the following candidate as recommended by the Mineola Fire Department:

Chase Pagnani Company #1

Motioned by Trustee Paul S. Cusato
Seconded by Trustee Dennis J. Walsh

Vote:

Yes	**No**	**Abstain**
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Resolution No. 271-14

Resolved to authorize the Justice Court Clerk to submit a grant application for Justice Court improvements under the 2014 New York State Justice Court Assistance Program (JCAP) Grant.

Motioned by Trustee Paul A. Pereira
Seconded by Trustee George R. Durham

Vote:

Yes	**No**	**Abstain**
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Resolution No. 272-14

Resolved to accept the resignation of Court Clerk Margaret Babyatzsky in Justice Court effective September 30, 2014.

Motioned by Trustee Dennis J. Walsh
Seconded by Trustee Paul S. Cusato

Vote:

Yes	**No**	**Abstain**
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Resolution No. 273-14

Resolve to authorize the following payment totaling $797.45 from Development Incentive Bonus Funds in FY 2014-2015.

Vendor	Amount	Project
Dvirka & Bartilucci Consulting Engineers	$797.45	Memorial Park
Total	$797.45	

Motioned by Trustee Paul A. Pereira
Seconded by Trustee George R. Durham

Vote:

Yes	**No**	**Abstain**
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Village Attorney John M. Spellman recommended the following resolution:

Resolution No. 274-14

BOARD OF TRUSTEES
INCORPORATED VILLAGE OF MINEOLA
----------X
In the Matter of the Application of

CVS ALBANY, LLC

For a Special Use Permit pursuant to Chapter 550, Section 550.27(C) of the Code of the Incorporated Village of Mineola, at premises known as 17 East Jericho Turnpike, Mineola, New York, known and designated on the Nassau County Land and Tax Map as Section 9, Block 342, Lots 28, 36.
----------X

DECISION

NAME OF APPLICANTS:	CVS Albany, LLC
SUBJECT PROPERTY:	Section 9, Block 342, Lots 28, 36
STREET LOCATION:	17 East Jericho Turnpike Mineola, New York 11501
ZONING DISTRICT:	Business "B-1" District
RELIEF REQUESTED:	Application For a Special Use Permit pursuant to Chapter 550, Section 550.27(C) to maintain a free standing outdoor metal storage container upon the property.
PUBLICATION & POSTING:	All in accordance with applicable laws, rules and regulations.
DATE OF HEARING:	July 9, 2014
APPEARANCES:	Rachel Scelfo, Esq.
IN SUPPORT:	Walter Soho, District Manager Richard Vonbuttgereit, Store Manager (17 East Jericho Turnpike) Lorie Palmirotto, Store Manager (410 Jericho Turnpike)

CVS Albany, LLC (hereinafter, "Applicant") is before this Board pursuant to Chapter 550, Section 550.27(C) of the Municipal Code of the Incorporated Village of Mineola for a special use permit for an outdoor metal storage container located upon the property known as 17 East Jericho Turnpike, Mineola, New York (known and designated on the Nassau County Land and Tax Map as Section 9, Block 342, Lots 28, 36) (hereinafter, the "Property").

By Notice of Disapproval, dated December 2, 2013, Applicant's building permit was denied. The Building Inspector determined that the proposed application is contrary to the Village's zoning regulations in that an outdoor metal storage container upon the Property requires

a special use permit. As a result of the application's noncompliance with zoning code regulations, Applicant was entitled to seek relief before the Board of Trustees for a special use permit.

Chapter 550, Section 550.55 of the Municipal Code of the Incorporated Village of Mineola provides that the Board of Trustees, after notice and public hearing, may issue special use permits, after considering the following non-exclusive general standards:

1. The purpose of zoning, as set forth in the Village Law of the State of New York, and uses permitted in the District in which the property is located.

2. Whether the proposed use is of such character, size, location, design and site layout as to be appropriate to and in harmony with the surrounding properties.

3. Whether the proposed use will provide a desirable service, facility or convenience to the area or otherwise contribute to the proper growth and development of the community and to its general welfare.

4. Whether the proposed use will be hazardous, conflicting or incongruous to the immediate neighborhood by reason of excessive traffic, assembly of persons or vehicles or proximity to travel routes or congregations of children, pedestrians or others.

5. Whether the proposed use will be of such nature as to be objectionable to nearby residential dwellings by reason of noise, lights, vibration, odor, size, color or other factors of impact.

6. Whether the proposed use will be a harmonious use in the district in which it is to be situated and to hinder or discourage the appropriate use and development of adjacent uses or impair the value thereof. In addition to the foregoing, the location and size of a proposed use in a business or industrial district, the nature and intensity of the operations proposed and the site layout and its relation to access streets shall be considered by the Board to determine whether the vehicular traffic resulting from such use will be more hazardous than the normal traffic of this district, taking into account such factors as street intersections, traffic flow, sight distances and pedestrian traffic.

7. The conservation of property values and the encouragement of the most appropriate uses of land.

8. The availability of adequate and proper public or private facilities for the treatment, drainage, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.

9. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise.

Discussion

A referral of the application was made to the Nassau County Planning Commission. The Nassau County Planning Commission has recommended that this Board take whatever action it deems appropriate. Based upon the evidence adduced at the public hearing, and the documentation submitted to the Board in support of the application, the Board makes the following findings of fact:

1) Applicant is seeking a special use permit to maintain an outdoor metal storage container upon the Property known as 17 East Jericho Turnpike;

2) The container is located at the rear of the Property behind the building and measures eight (8') feet wide, forty-two (42') feet long and eight feet six inches (8'6'') high;

3) The fence at the Property is six (6') feet high;

4) The lot is currently improved by a CVS Pharmacy constructed in 2010 and totals 12,900 sq.ft.;

5) Applicant received a summons for the installation of the outdoor metal storage container without receiving a special use permit from the Board of Trustees;

6) Applicant is seeking to store "seasonal" items in the storage container; and

7) No other CVS in the area has an outdoor storage container.

Based upon the entire record, the Board is particularly concerned about the reasons for the existing outdoor storage container (the "Container"). Applicant indicated that it requires the Container for "additional storage space for seasonal merchandise". Applicant stated that the Container was needed in order to handle the increased business at the Property. However, Applicant also indicated that the Container is not "something that they will need forever" and it will not be "permanent". Further, the need for a temporary container has resulted in this Container being on the Property for an extended period of time, currently in excess of three (3) years. The Board finds Applicant's reasons for additional outdoor storage space to be unpersuasive. In fact, Applicant acknowledged that another container had been located at a much less busy CVS within the Incorporated Village of Mineola located at 410 Jericho Turnpike. The reason provided for the Container at this location was not because it was a busy store, but rather its "back room space is very small". Applicant had originally applied for a Special Use Permit for the container at 410 Jericho Turnpike. Applicant removed the container at 410 Jericho Turnpike and withdrew its application. Ironically, Applicant removed the container on July 8, 2014, the day before this Hearing.

The Board was further troubled by Applicant's past representation with respect to the Property. In 2007, the First Hartford Realty Corp, on behalf of CVS, applied for a special use permit for the sale and storage of food and beverage products associated with construction of a CVS Pharmacy upon the Property. The Board of Trustees granted a Special Use Decision, dated January 18, 2008, and filed in the Village Clerk's Office on January 30, 2008, for the sale and storage of food and beverage products associated with construction of a CVS Pharmacy subject to a number of conditions. Specifically, the Board was concerned with the maintenance of the Property, specifically snow and landscaping. The applicant at the time stated that "CVS realizes if

they allow one of their stores to go into disrepair or allow the landscaping to become overgrown, it diminishes from the CVS name". The applicant also spoke to the Board about the need to exceed the permitted zoning in the B-1 Zone as to height in order to achieve the proper amount of storage within the building. At the November 14, 2007 Public Hearing, the applicant stated that:

> [t]he reason for that additional height is not to get additional store floor here, it's for the mezzanine space which is used for storage... it accommodates the mezzanine space used for storage.

The Board relied upon the representations made by the applicant at the Public Hearing. The Board relied upon the applicant to know how to properly design, build and manage a successful CVS Pharmacy. The Board intentionally included Condition No. 15 in its 2008 decision. Condition No. 15 provides that:

> The representations made by Applicant on the record in this proceeding have been deemed material to this application and have been relied upon by the Board of Trustees in its deliberations and decisions. Said representations are deemed to be part of the conditions of this special permit.

Based upon the Findings listed above and the issues contained in the above Discussion, it is the decision of this Board that the instant application for a special permit to maintain an outdoor metal storage container upon the Property is **DENIED**.

The approval of this application would not be in the best interest of the health, safety and welfare of the community. Such a grant would not be in harmony with the surrounding properties. The Container is objectionable, especially to the nearby residential dwellings that face directly towards the Container. The Container's location and size diminish the number of on-site parking spaces that service the building. As discussed above, the Board questions the justification for the temporary outdoor storage container that has existed upon the Property without approval for a period of time in excess of three (3) years. Further, the Board found that no other special use permit has been issued for a similar outdoor storage container within the B-1 Zone. In fact, the Board found that no other CVS in the District (excluding the container removed from 410 Jericho Turnpike, Mineola) had a similar outdoor storage container. Applicant's need for additional seasonal storage can be achieved by applying for a special use permit to expand the existing facility. At this time, Applicant's current application is not in the best interest of the health, safety and welfare of the community.

IT IS THEREFORE RESOLVED, that the special use permit is **DENIED**.

Dated: Mineola, New York
October 20, 2014

Motioned by Trustee Paul A. Pereira
Seconded by Trustee Paul S. Cusato

Deputy Village Clerk Cora T. Kelly polled the Board:

Vote:

Yes	**No**	**Abstain**
Trustee George R. Durham		
Trustee Paul A. Pereira		
Trustee Paul S. Cusato		
Trustee Dennis J. Walsh		
Mayor Scott P. Strauss		

Mayor Scott P. Strauss requested a motion to close the Work Session at 6:55 PM.

Motioned by Trustee Dennis J. Walsh
Seconded by Trustee Paul S. Cusato

Vote:

Yes	**No**	**Abstain**
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		

Mayor Scott P. Strauss called the Public Meeting to order at 7:35 PM.

PRESENT: Mayor Scott P. Strauss
Trustee Paul S. Cusato
Trustee Paul A. Pereira
Trustee George R. Durham
Trustee Dennis J. Walsh

ALSO PRESENT: Village Attorney John M. Spellman
Deputy Village Clerk Cora T. Kelly
Village Treasurer Giacomo A. Ciccone

Press Observer: *Mineola American*
Williston Times

Sunshine Observers: 4 Observers

Mayor Scott P. Strauss thanked those that participated in and attended the 9/11 Remembrance; commended the Mineola Chamber of Commerce on another successful Mineola Street Fair stating that it was well attended and a great event. Mayor Strauss reminded residents that the Child Car Seat Safety program originally scheduled for Saturday September 20 has been rescheduled to October 18 from 10:00 AM – 1:00 PM at the Wilson Park parking lot; that the Mineola Bicycle Safety Day program sponsored by the Mineola Kiwanis Club and Mineola Bicycle shop is being held Sunday September 21 from 10:00 AM – 4:00 PM. Mayor Strauss extended Best Wishes to all those celebrating Rosh Hashanah.

Trustee Paul A. Pereira reported on the 9/11 Remembrance ceremony and the Mineola Street Fair stating that while very different both events were well attended, well organized, and a credit to the community. Trustee Pereira stated that he and the Board attended a ribbon cutting ceremony for a new restaurant called Spaghettini, commenting that the owners are Mineola residents and wished them well.

Trustee Paul S. Cusato reported on Chaminade homecoming football game and on the renaming of their stadium to "The Gold Star Stadium" honoring all Chaminade alumni who made the ultimate sacrifice on behalf of their country; reported on the 9/11 Remembrance event and the participation by all facets of our community. Trustee Cusato congratulated the Mineola Chamber of Commerce

on the wonderful Mineola Street Fair, thanking all involved for their hard work; announced that Mineola High School will have its annual reunion on October 18; and thanked the Mineola Fire Department for its efforts on behalf of our community as well as our neighboring communities, such as their recent assistance and participation at the Williston Park fire.

Trustee George R. Durham congratulated the Mineola Chamber of Commerce on a successful street fair commenting that it was estimated that there were approximately 3,000 people in attendance making this event an overwhelming success.

Trustee Dennis Walsh reported on the Mineola Street Fair and reiterated the importance of adhering to the Village regulations regarding putting out trash before collection pick-ups, especially on weekends.

1 Speaker addressed the Board

Mayor Scott P. Strauss requested a motion to close the Public Meeting at 7:55 PM.

Motioned by Trustee Paul S. Cusato
Seconded by Trustee Paul A. Pereira

Vote:

Yes	**No**	**Abstain**
Mayor Scott P. Strauss		
Trustee Paul S. Cusato		
Trustee Paul A. Pereira		
Trustee George R. Durham		
Trustee Dennis J. Walsh		