

STATE OF NEW YORK : COUNTY OF ULSTER

TOWN OF MARLBOROUGH ZONING BOARD

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In the Matter of

CHARLES GIAMETTA

#1500 Route 9W, Marlboro, New York 12542

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WORKSHOP MEETING TO REVIEW VARIANCE DECISION
FOR BALCHUNA'S AUTO

Date: March 8, 2018

Time: 7:00 p.m.

Place: Town of Marlborough

Town Hall

#21 Milton Turnpike

Milton, New York 12547

BOARD MEMBERS: WILLIAM GIAMETTA, CHAIRMAN
JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN, Absent
GEORGE SALINOVICH

ALSO PRESENT:

THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT

REBECCA A. VALK, ESQ.

PENNY E. CASHMAN, ZONING BOARD SECRETARY

CHARLES GIAMETTA, APPLICANT

GIAMETTA - WORKSHOP MEETING

CHAIRMAN GIAMETTA: Welcome to the March 8, 2018 meeting of the Zoning Board of Appeals, Town of Marlborough. I ask you to join me to the pledge of the flag.

(Pledge of Allegiance)

CHAIRMAN GIAMETTA: Thank you very much. Our last ZBA meeting was from 2017, August 29th, our minutes have come forth, and board members, have you had a chance to review them, and if so, are there any changes needed?

MR. MEKEEL: No.

MR. ZAMBITO: No.

MR. SALINOVICH: No.

CHAIRMAN GIAMETTA: I'd ask for an approval of those minutes.

MR. MEKEEL: I'll make a motion that we approve the minutes from August 29, 2017.

CHAIRMAN GIAMETTA: And a second?

MR. ZAMBITO: I will second.

CHAIRMAN GIAMETTA: And a

GIAMETTA - WORKSHOP MEETING

vote?

MR. SALINOVICH: Aye.

MR. MEKEEL: Aye.

MR. ZAMBITO: Aye.

CHAIRMAN GIAMETTA: And aye.

Approval of the minutes of the prior meeting.

We have a matter on the agenda this evening, Charles Giametta. I wish to disclose, for the record, I am a relative of Mr. Giametta's, but I feel that I could be fair and impartial about these proceedings. And having said that, we welcome Rebecca Valk, our attorney, Building Inspector Corcoran here, and Secretary Cashman, and Ms. Rosso.

And Mr. Giametta, would you briefly explain why you're here tonight?

MR. GIAMETTA: Yeah, I made a complaint about a neighboring use to my property to Building Inspector Tom Corcoran, and Tom replied to my complaint and cited a couple of reasons why he felt that it was a permitted change use and that site plan

GIAMETTA - WORKSHOP MEETING

review is not required. And I disagree with that finding, and that's why I'm here today.

CHAIRMAN GIAMETTA: Okay. I would like to know if this matter has come before the Zoning Board Appeals prior for anything at all?

MS. CASHMAN: Not that I have a record of.

CHAIRMAN GIAMETTA: Okay. I see in the minutes of the planning board reference to setbacks. Do you know, Mr. Giametta, if that's come before, because I wasn't here for it.

MR. GIAMETTA: Actually, back in 1978, this was originally a vacant piece of land back then, and someone wanted to build a commercial building and have a commercial use on the property. At that time the zoning was residential on the property, and I guess back then, the way they sited these commercial entities along 9W is they went for a variance, a use variance. And in this case, there was also an area variance.

GIAMETTA - WORKSHOP MEETING

CHAIRMAN GIAMETTA: Were you present for that meeting?

MR. GIAMETTA: Yes, I was.

CHAIRMAN GIAMETTA: Okay. And that was the Zoning Board of Appeals; correct?

MR. GIAMETTA: Correct.

CHAIRMAN GIAMETTA: Okay. So there should be findings on that meeting somewhere.

MR. GIAMETTA: There are minutes.

CHAIRMAN GIAMETTA: There are minutes to that?

MR. GIAMETTA: Yeah.

CHAIRMAN GIAMETTA: Okay. Now, beyond that, I understand the zoning was changed along the way. Inspector Corcoran, do you know when that zoning was changed?

MR. CORCORAN: It's in the book. If you go to 155.12E, I believe it is. E4A, right there, 2014. January 2014 by Local Law Number 1 -- 8/25/14, sorry.

GIAMETTA - WORKSHOP MEETING

8/25/14 by Local Law Number 1.

CHAIRMAN GIAMETTA: So the past use was residential, I understand?

MR. CORCORAN: But it got a variance though. 1978 it got a variance in front of the planning board.

MR. GIAMETTA: For the record, I don't think the zoning was changed in 2014. I think there was an amendment to the zoning in 2014. The actual zoning was changed from residential to higher development, I believe, maybe back around 2000. I'm not sure of the date, but it was prior to the amendment Tom is referring to.

CHAIRMAN GIAMETTA: Okay.

MR. GIAMETTA: And also, my recollection is, there was a zoning board matter back in 1978. And back then, when you went for a variance, that was your site plan, whatever the conditions of the variance were was your site plan. There was no second trip back to the planning board back then. That's my recollection of it and so, Tom is stating that there is or was site

GIAMETTA - WORKSHOP MEETING

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2 planning. I did FOIL the minutes back in
3 2007, the zoning board minutes, and I got a
4 copy from Kristy Lapolla back then, and I
5 got the entire minutes and that's all that
6 came back on my FOIL. But for somehow, some
7 way, when I asked Tom about the minutes, you
8 know, in connection with my complaint
9 recently, he layered in an additional
10 document that I've never seen before, and
11 that was a site plan, some handwritten site
12 plan. And I was part of all of the
13 proceedings back then, and this is the first
14 time that I've ever seen that document.

15 CHAIRMAN GIAMETTA: Is that
16 document here tonight?

17 MR. CORCORAN: You have it.

18 CHAIRMAN GIAMETTA: Is it
19 handwritten or hand typed?

20 MR. GIAMETTA: It's a site
21 plan. It's a one-page site plan.

22 CHAIRMAN GIAMETTA: It
23 wouldn't be this document?

24 MR. CORCORAN: That is the
25 planning board when they voted on the site

GIAMETTA - WORKSHOP MEETING

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2 plan. That is it. So it got planning board
3 approval, Hondat, September 7, 1978, right
4 around the time that you say it was a
5 variance. So you're calling it a variance,
6 I've got planning board approval. Hondat,
7 Mondello, Kramer, Diehl acreage on 9W.

8 MR. GIAMETTA: I guess, to
9 clarify, what I'm saying is on this site
10 plan, there was never this proposed storage
11 building forwarded into the site plan, and
12 I've never seen that before.

13 CHAIRMAN GIAMETTA: Let's ask
14 Attorney Valk to interject her thoughts.

15 MS. VALK: Yeah, I just want
16 to step in on the procedure. I understand
17 this evening is a workshop meeting, but the
18 one thing that's concerning me, we're
19 getting into some specific facts and the
20 property owner has not been notified yet of
21 this discussion and they have the right to
22 respond to everything. So procedurally,
23 what should be occurring is, as you're aware
24 Mr. Corcoran, is the first interpreter of
25 the code in these issues, and he's issued

GIAMETTA - WORKSHOP MEETING

his interpretation. Mr. Giametta has now submitted an appeal. It is now his burden to convince this board that Mr. Corcoran's decision is incorrect, and it's his burden to gather the evidence and the other things that are being talked about and presented to you. You're acting in a quasi judicial nature. And in that sense, instead of you kind of asking, finding the documents, it really is the burden of Mr. Giametta to submit it. Mr. Corcoran can be in attendance as well, and obviously, respond if he feels anything is factually incorrect and so on, and they will speak and the property owner would be given notice of that hearing and also have the opportunity to interject in the matter.

So I would limit how much into the nitty gritty you're getting this evening, because I don't want to be in a position where the property owner is claiming that they didn't have a full opportunity to address all of these concerns.

CHAIRMAN GIAMETTA: Okay. I

GIAMETTA - WORKSHOP MEETING

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2 see. So the property owner is a critical
3 part of the matter?

4 MS. VALK: Yes, they are a
5 necessary party to this proceeding. So I
6 understand this was set for a workshop
7 tonight, and I think there has been some
8 discussion of what the issues and concerns
9 are, but I think everything needs to be
10 reorganized and presented in an orderly
11 fashion at your next meeting, and then the
12 property owner would obviously be given
13 notice that the hearing is going to be held
14 on that application on that date.

15 MR. GIAMETTA: Okay. Let me
16 say then why I disagree with the finding.

17 MS. VALK: Okay. But just so
18 you know, you have to repeat this at the
19 next meeting.

20 MR. GIAMETTA: I get it. So
21 anyway, Tom has said that this is -- the
22 change of use from what the use of the
23 property used to be, which was, it was a
24 retail auto part store, and the nursery
25 changed from a retail auto part store to a

GIAMETTA - WORKSHOP MEETING

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2 auto body shop, a new car sales lot and a
3 junkyard.

4 MR. ZAMBITO: Can I ask you a
5 question?

6 CHAIRMAN GIAMETTA: Yes.

7 MR. ZAMBITO: You're talking
8 about Eddie Kramer?

9 MR. GIAMETTA: Eddie Kramer,
10 Hondat.

11 MR. ZAMBITO: Eddie Kramer
12 did everything that you just listed or no?

13 MR. GIAMETTA: No, Eddie
14 Kramer, he did the auto parts store only.

15 MR. ZAMBITO: So he
16 disassembled?

17 MR. GIAMETTA: He
18 disassembled cars inside the building,
19 and --

20 MR. ZAMBITO: Sold parts?

21 MR. GIAMETTA: Sold parts.

22 MR. ZAMBITO: Is it okay for
23 me to ask?

24 MS. VALK: I was just going
25 to say, also the property owner should be

GIAMETTA - WORKSHOP MEETING

given voluntarily a copy of the minutes tonight so they are fully aware of what was discussed and can respond to it.

CHAIRMAN GIAMETTA: Are we going too far without the property owner here?

MS. VALK: Well, they may claim there was too much of a discussion, and has swayed your opinion. So to the extent that you state the grounds for your objection, I think that is fair. But I think all of these questions should be asked in the hearing format where we have all three -- when I say all three parties, the property owner, Mr. Giametta and Mr. Corcoran in attendance.

MR. ZAMBITO: So tonight the main thing is Mr. Giametta stating his case and that's it?

MS. VALK: Yes, I would say so because it wasn't scheduled for a hearing. You go through a hearing with appeals just like you would an area or use variance.

GIAMETTA - WORKSHOP MEETING

MR. ZAMBITO: It's almost kind of a waste of the meeting. I mean, I hate to say it, but I've been up for two days, I wasn't even coming tonight, and if I would've known this, I wouldn't have come.

MR. GIAMETTA: Well, not a public hearing night, we can say that. It's a workshop. It's not a public hearing night.

MR. ZAMBITO: I would have liked to have gained a little more information for myself so at the next meeting I am more -- I would've liked to interject a little bit and ask questions, datewise, what the previous owner did, what the new owner is doing. You know, it would have been a little more --

MS. VALK: I understand.

MR. GIAMETTA: I think I can generically state my case and it might shed light on why I disagree with Tom's finding.

MS. VALK: Well, at this point, I think that's something that you need to put in at the hearing. We have to

GIAMETTA - WORKSHOP MEETING

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2 schedule this for a full hearing. It's an
3 evidentiary hearing, it's going to be done
4 in an orderly fashion, and based upon your
5 preference, either Mr. Corcoran will respond
6 or the property owner will respond to those
7 comments. He would then reply to anything
8 that he disagreed with these individuals,
9 but because, you know, there is a
10 significant property interest for these
11 individuals that you're claiming they don't
12 have a legal possession to, so they really
13 need to be a part of this proceeding.

14 MR. ZAMBITO: Understood.

15 CHAIRMAN GIAMETTA: Okay.

16 Now, when we meet, we normally meet for
17 workshops and public hearings. You're
18 stating that a hearing is different then a
19 public hearing?

20 MS. VALK: No, it's a public
21 hearing. You would notice it the same way
22 under your code, and it's not limited to
23 these individuals, another neighbor could
24 come out and speak about what their
25 recollection of the past is, or what they

GIAMETTA - WORKSHOP MEETING

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2 know to have been the use in 1978 because
3 they were here.

4 CHAIRMAN GIAMETTA: I hope we
5 have enough facts to review before that
6 public hearing.

7 MS. VALK: Well, see, I don't
8 think you're going to be making a decision
9 that evening because I think you're going to
10 be given a lot of facts that evening that
11 you're going to need to weed through, you
12 may need my assistance in doing that in some
13 part and that evening you may have some
14 decisions to make as to, you know,
15 occasionally you will have speakers that
16 kind of go off point and you need to reign
17 them in, but it needs to be done in a full
18 due process hearing fashion.

19 CHAIRMAN GIAMETTA: Okay.
20 That sounds like our legal advise.

21 MS. VALK: Now, do you
22 normally do a workshop, then a hearing
23 meeting; is that your normal custom and
24 practice?

25 CHAIRMAN GIAMETTA: Yes, we

GIAMETTA - WORKSHOP MEETING

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2 normally do because this is all new to the
3 board.

4 MS. VALK: Yeah.

5 CHAIRMAN GIAMETTA: This
6 particular matter.

7 MS. VALK: Then I also agree
8 with Dave, we could have just gone right to
9 a public hearing if we can't talk about the
10 matter.

11 CHAIRMAN GIAMETTA: Yeah, see
12 for your typical variances, getting a little
13 bit of background probably isn't a bad
14 thing, but when you're -- this is
15 adversarial right from the start, that's the
16 difference with this appeal. And that's my
17 concern about having too much discussion
18 without the property owner present, or the
19 property owners, at least ability to be
20 present. I can't guarantee they're going to
21 show up at the hearing, that's their
22 decision, however, they need to be on
23 notice.

24 MR. GIAMETTA: And can we
25 talk about zoning in general?

GIAMETTA - WORKSHOP MEETING

MS. VALK: Yeah, I mean, if it's not specific to this application to the extent -- I mean, if it's zoning code issues. I don't know what this board would have the authority to do, other than making recommendations back to the town board. So I guess it depends on what your comment is and then I will be able to say whether or not I think it's something the board has the authority to address.

MR. GIAMETTA: Yeah, okay. You tell me then. Tom has said that this is a principal permitted use in the HD Zone.

MR. CORCORAN: No, I didn't.

MR. GIAMETTA: Well, why did you highlight that (indicating)?

MS. VALK: I mean, that I can answer because it's in the documents. Also when we sent to the property owner a copy -- have they received a copy of your determination, the property owner?

MR. CORCORAN: No.

MS. VALK: Okay. They need to get a copy of that with the notice.

GIAMETTA - WORKSHOP MEETING

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MR. CORCORAN: Okay.

MS. VALK: I believe he highlighted 4A, which is a special permitted use; is that correct?

MR. GIAMETTA: Right.

MR. CORCORAN: Yes.

MR. GIAMETTA: And you're stating, from how I read your reply to my complaint here, you're saying that it's a permitted use.

MR. CORCORAN: Not only is it a permitted use, but it has site plan approval, and under 155.31 any change of use is my determination, whether it's an additional impact or not, whether it was a used parts store and became a restaurant, it would be my determination whether it went to the planning board or not. It doesn't automatically go.

MR. GIAMETTA: Right. So why is this highlighted the automobile service repair and filling station?

MR. CORCORAN: Just to let them know it's a special use now.

GIAMETTA - WORKSHOP MEETING

MR. GIAMETTA: Right. And special uses are -- site plan review is required for special uses.

MR. CORCORAN: It has one. And also -- because, after it goes to 155.12, it goes to 155.31 under site plan review, give immediate authority under change of use that doesn't have to do it --

CHAIRMAN GIAMETTA: Hondat was not an automobile service repair station.

MR. CORCORAN: Excuse me?

MR. GIAMETTA: The previous use was not an automobile service repair station.

MR. CORCORAN: Well, that is your determination, mine isn't. I've frequented that place. So it was an automobile service repair, even though it was for the owner, there is no additional impact. He did repair, he did auto body, he did car sales.

MR. GIAMETTA: No, he did not.

GIAMETTA - WORKSHOP MEETING

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2 MR. CORCORAN: If Dennis
3 Diehl shows up, then we will see what he
4 says.

5 MR. GIAMETTA: It's in the
6 minutes what he did and what he does.

7 MR. CORCORAN: No, it was in
8 the minutes what he said they were going to
9 do. What he did there and got approval for,
10 and what the use was was automotive repair,
11 automotive service, automotive sales, with
12 automotive --

13 MS. VALK: I'm sorry, I'm not
14 trying to cut you off. So, this is one
15 issue I think that can help narrow the
16 board's focus. This is one dispute that's
17 occurring between the two individuals. Mr.
18 Corcoran has determined that it fits within
19 that definition under section 4A and Mr.
20 Giametta is disagreeing. So just -- and
21 separately, because it's an attorney/client,
22 I can provide the board with an outline of
23 where I see the questions you need to be
24 looking at for this appeal.

25 CHAIRMAN GIAMETTA: Please

GIAMETTA - WORKSHOP MEETING

do.

MS. VALK: Yeah.

CHAIRMAN GIAMETTA: Yeah,
because, you know, it's multifaceted it
seems, and we have to, like you stated,
focus on the matter at hand to come to a
conclusion.

So beyond that, is there
something general, not specific, that you may
want to bring up?

MR. GIAMETTA: I guess it can
really wait until the public hearing. I
don't think there is really too much we can
go into tonight without creating some kind
of legal issue, so maybe it's best for all
that we wait for the public hearing and make
our presentation then.

CHAIRMAN GIAMETTA: Okay.
Ms. Valk, does that sound okay?

MS. VALK: Yes.

CHAIRMAN GIAMETTA: Go into a
public hearing?

MS. VALK: What would be the
date that you would probably --

GIAMETTA - WORKSHOP MEETING

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MS. CASHMAN: April 12th.

MS. VALK: I just want to
make sure that I'm available.

CHAIRMAN GIAMETTA: That may
be short. Attorney is checking her
calendar.

MS. VALK: Yeah, that's fine
for me, and there is nothing improper if you
want to make a written submission in advance
to summarize your argument.

MR. GIAMETTA: Sure.

MS. VALK: That would be
shared with the property owner and Mr.
Corcoran in advance if you feel that would
help the board focus in on what your
concerns are.

MR. GIAMETTA: Sure.

MS. VALK: So that they have
time to review that and because there has
been concerns about how much information may
come in, that would be helpful, but there is
no requirement.

MR. GIAMETTA: No, I'd like
to do that. Thank you.

GIAMETTA - WORKSHOP MEETING

MS. VALK: So how many days in advance of the meeting would you like that, if he would like to make a written submission?

CHAIRMAN GIAMETTA: Well, our certified's go out when, Penny?

MS. CASHMAN: They have to be out like 10 days before.

MR. CORCORAN: Ten days prior, 500 feet.

CHAIRMAN GIAMETTA: Okay. So we're looking approximately five weeks ahead from tonight, more or less?

MS. CASHMAN: No, one month from today. So it's the second Thursday of the month is the meeting.

CHAIRMAN GIAMETTA: Can you have those comments and questions in, say, ten days, two weeks?

MR. GIAMETTA: Two weeks.

CHAIRMAN GIAMETTA: Is that okay, Attorney Valk?

MS. VALK: Yes, that will give the board time to be familiar with it.

GIAMETTA - WORKSHOP MEETING

So we're saying, today is the 8th, so we're saying he will have it in around the 22nd, two weeks from today.

MR. GIAMETTA: Sure.

CHAIRMAN GIAMETTA: Okay.

Ms. Valk will get a copy, of course.

MR. GIAMETTA: Yes.

CHAIRMAN GIAMETTA: And the building department and whomever.

MR. GIAMETTA: And then, I guess, the property owner should be notified of my complaint that I made and Tom's response?

MS. VALK: Yes. I mean, I would recommend that they should get the complaint, Tom's response, a copy of tonight's minutes, is that going to be available by the end of this month?

(Addressing court stenographer)

STENOGRAPHER: Yes.

MS. VALK: And I would send that all out to them and notify them that there is a hearing on a complaint that's been filed.

GIAMETTA - WORKSHOP MEETING

CHAIRMAN GIAMETTA: Any
comments, board members?

MR. MEKEEL: No.

MR. ZAMBITO: No.

MR. SALINOVICH: Inspector
Corcoran, anything else?

MR. CORCORAN: No.

MR. SALINOVICH: I got
something to say, but I don't know if I want
to say it now or wait.

MS. VALK: Well, I was going
to ask if the board wants to do an
attorney/client session with me separately
if you have any procedural questions to ask,
because I know appeal applications are not
common here in Marlborough. I would be
happy to offer attorney/client advice that I
can offer for tonight. You would go into
executive session for that purpose if you
feel you need it. I'm just offering it
since I'm here.

MR. SALINOVICH: Might make
things go quicker next time.

MR. ZAMBITO: I think you're

GIAMETTA - WORKSHOP MEETING

right.

CHAIRMAN GIAMETTA: Let's disclose for the record that there is going to be a meeting attorney/client.

MS. VALK: Entering into executive session for the purpose of an attorney/client meeting.

CHAIRMAN GIAMETTA: Okay. Thank you.

MR. GIAMETTA: Thanks for everyone's time.

(Entering executive session for the purpose of attorney/client discussion)

(Time noted: 7:25 p.m.)

(Discussion off the record)

MR. MEKEEL: I'll make a motion to close the meeting.

MR. ZAMBITO: I'll second.

MR. SALINOVICH: And I'll third.

CHAIRMAN GIAMETTA: Thank you. The meeting is now closed.

(Time note: 7:55 p.m.)