

In The Matter Of:
Town of Mamakating
Zoning Board of Appeals

Giovanni Mennella
1-26-17
January 26, 2017

Jeric Corporation
Court Reporting Services
P.O. Box 385
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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

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Giovanni Mennella (Giovanni's Inn)
Tax Map Section 66; Block 1; Lot 13.1
Mountain Greenbelt Zone

----- X

Town Hall
Town of Mamakating
January 26, 2017
7:29 P.M.

ZONING BOARD MEMBERS :

MATTHEW MORDAS, Chairman

BEVERLY MARTIN, Board Member

CATHERINE DAWKINS, Board Member

KENT FINDLEY, Board Member

LINDA FRANCK, Secretary

STEVEN MOGEL, ESQ., Attorney

Also Present: Julie Mennella,
on behalf of Applicant

JERIC CORPORATION
Court Reporting Services
P.O. Box 385
Narrowsburg, New York 12764

Reported By: Rosemary A. Meyer

1 - GIOVANNI MENNELLA -

2 CHAIRMAN MORDAS: Our last applicant for the evening,
3 Mr. Giovanni Mennella. Please come up and tell us your
4 story.

5 MS. MENNELLA: Hi. I'm Julie, his wife. He wants me
6 to do the speaking.

7 CHAIRMAN MORDAS: Yes.

8 MR. MENNELLA: I'm very upset.

9 MS. MENNELLA: I'm in confusion and I don't know what
10 we need to do. We're in violations with the Building
11 Department, I believe. We need to fix everything. I don't
12 know what exactly we need to do to get everything done. I
13 don't know where to start. We're starting here.

14 BOARD MEMBER DAWKINS: Why don't we walk through the
15 things we know and you can give us a little background.

16 MS. MENNELLA: Yes.

17 MR. MOGEL: Well, there's a preliminary issue. It's a
18 procedural jurisdictional issue.

19 BOARD MEMBER DAWKINS: Okay.

20 MR. MOGEL: So what you requested here, and I'm sure
21 it's just based on your best guess, was an area variance
22 and interpretation.

23 MS. MENNELLA: Okay.

24 MR. MOGEL: Actually, your issue was a Notice of
25 Violation dated February 20th of 2015.

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2 MS. MENNELLA: Uh-huh.

3 MR. MOGEL: Those violations, very quickly, are
4 construction with no permits for the addition on the rear
5 of the restaurant; the site plan approval, failure to get a
6 site plan approval for the rear of the restaurant pizza
7 oven; a building permit for the pizza oven. This is
8 indication that the accessory structure is Violation 1, and
9 then the illegal kennel.

10 What you're actually asking the Board to do with
11 regard to this violation is an appeal. You're asking to
12 appeal those violations. The requirement in the code, and
13 that is 199-57(A)(1), the second sentence says: Such
14 appeal shall be taken within 60 days after the filing of
15 the officer from whose action the appeal is taken. So this
16 violation, I did call, briefly, the Building Department to
17 determine when this Notice of Violation was actually filed.
18 I was told that it was, in fact, filed on February 20th,
19 2015. So it is my position, and my advise to the Board,
20 that this appeal is untimely, and with regard to this
21 Notice of Violation, that this Board does not really have
22 jurisdiction to hear the appeal of the violation. That
23 goes for all of the violations, even for the kennel.

24 Now, the kennel is slightly different. The violations
25 for building without a building permit or in violation

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2 without site plan approval, it is my opinion, and the Board
3 obviously can deviate from that opinion, it is my opinion
4 that those are pure appeals. They don't involve any sort
5 of interpretation and there is no variance that could
6 properly be granted to allow someone to violate the site
7 plan or to build without a building permit. I believe
8 that's beyond the powers that the Board was granted.

9 If you notice, where it says, just for clarification,
10 you look at the first page, it says an area variance, it's
11 a request to locate structures in a manner not permitted by
12 zoning. That's about locating a structure, not about
13 building it without a permit. And a use variance is a
14 request to use land for a purpose that's not permitted by
15 zoning. That does not apply to the pizza oven or the rear
16 of the restaurant either. So that's my opinion.

17 The only thing that I believe the Board could properly
18 hear would be a use variance for the illegal kennel. The
19 handwritten note, which I believe is from Mary Grass, it
20 says that the kennel and restaurant would be a mixed use.
21 That would be a mixed commercial residential use, so that
22 means a use variance would be required. That would leave
23 you with a request, here, for a use variance.

24 If you look in the criteria in this statement, it says
25 if you're requesting a use variance you have to prove that

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2 there is no -- let's see. That the granting of the
3 variance is necessary in order to realize a reasonable
4 return on the property, that the lack of a variance is
5 causing a substantial hardship, and it has to be
6 demonstrated by competent financial evidence and tax
7 documentation. You would have to show that the only use
8 you could put that property to would be a mixed use. Okay?
9 It is a very high standard. A few boards grant use
10 variances often. This board, in my three years with the
11 Board, I believe three years, has given one.

12 Additional, the alleged hardship has to be unique to
13 the property. It has to be not applicable to the remainder
14 of the district, the neighborhood. And then you have to
15 see whether it alters the essential character of the
16 neighborhood, and then if it's self-created. It's a very
17 high standard. And competent financial evidence, that you
18 can't realize a reasonable return on the property means, is
19 it means that you must obtain an appraiser or something
20 that is substantial to show that if you don't get this use
21 variance you will not be able to realize a reasonable
22 return on the property. It's a high standard.

23 I mean I leave it to the Board. If the Board does not
24 agree with my interpretation that the appeal of the
25 violation is untimely, I'd welcome any questions which you

1 - GIOVANNI MENNELLA -

2 might have on that.

3 BOARD MEMBER DAWKINS: I have one question, real
4 quick. In reading the documentation that I was provided,
5 this kennel has been there. Is it being operated as a
6 commercial kennel?

7 MS. MENNELLA: Is it being operated as a commercial
8 kennel.

9 CHAIRMAN MORDAS: Is it a source of income?

10 BOARD MEMBER DAWKINS: Do people leave dogs there and
11 pay money for leaving? Are any dogs that are in that
12 kennel owned by you or are they owned by other people?

13 MS. MENNELLA: They're all our dogs.

14 CHAIRMAN MORDAS: How many dogs do you have?

15 MS. MENNELLA: Twelve.

16 CHAIRMAN MORDAS: Twelve.

17 MS. FRANCK: You own the dogs; right?

18 MS. MENNELLA: Yes.

19 BOARD MEMBER FINDLEY: I have a few questions.

20 When I was in the office Linda had mentioned that they
21 had been to court.

22 MS. MENNELLA: Yes.

23 MS. FRANCK: You have to ask them. Yes, they've been
24 to court.

25 BOARD MEMBER FINDLEY: What effect does that have on

1 - GIOVANNI MENNELLA -

2 us? Did the Court send you back here?

3 MS. MENNELLA: No. We've been dealing with Judge
4 Dolan in court and she just wants us to let her know what's
5 happening with all of our meetings and what we're doing to
6 try to fix the violations and everything. So I saw her
7 this morning and now we're going back to her again in
8 February. I'm going to write her a letter to tell her what
9 went on tonight so she's apprised of the situation.

10 MR. MOGEL: Do you want me to just elucidate a little
11 bit as to how that process works?

12 BOARD MEMBER FINDLEY: Yes, because it seems like
13 you're trying to resolve the issue somehow.

14 MS. MENNELLA: Yes. I was in total confusion. I need
15 to know what to do.

16 BOARD MEMBER FINDLEY: That's what I'm asking, yes.

17 MR. MOGEL: So the way the code works, and it is very
18 common in municipalities in New York State, is it provides,
19 when there is a Notice of Violation that's issued by a
20 building inspector, the Zoning Board of Appeals can act in
21 an appellate capacity. So the Zoning Board of Appeals can
22 do one of four things. It can interpret the code, it can
23 issue a use variance, it can issue an area variance and it
24 can act like an appeals court, reviewing any decision by
25 the building inspector. This code specifics that if an

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2 applicant is bringing a matter before this board in its
3 appellate capacity in reviewing a decision by a building
4 inspector, that that applicant must file the appeal within
5 60 days of the date that the violation was filed with the
6 building inspector. I did call to find out that filing
7 date. I was advised it was February 20th, 2015. The Board
8 could also certainly find that out on its own. Again, if
9 the violation wasn't filed until last week, if it sat
10 around, which happens, it happens, then it's a timely
11 appeal. But I was advised by the building inspector's
12 office that it was, in fact, filed on February 20th, 2015.

13 CHAIRMAN MORDAS: All right. So they're up here.
14 They were just asking for an area variance and
15 interpretation.

16 MR. MOGEL: Well, they asked for an area variance
17 interpretation, but that's not, in effect, what they're
18 asking for. They're asking for a use variance.

19 BOARD MEMBER FINDLEY: Well, a use variance for the --

20 MR. MOGEL: Kennel.

21 BOARD MEMBER FINDLEY: -- for the kennel.

22 MR. MOGEL: Yes.

23 BOARD MEMBER FINDLEY: But going to the brick oven,
24 let me go back to this one violation. The brick oven is
25 not a violation of the area variance. It's not a front

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2 yard, it's just a building without permits.

3 MR. MOGEL: Yes. Again, this is my interpretation. I
4 feel that, that is not appropriate. It's not within the
5 powers of the Zoning Board of Appeals to get rid of,
6 obviate the need for a building permit. A building permit
7 is required and unless an error was made in issuing the
8 violation and that appeal was timely, I don't see how the
9 Board of Appeals could say: We're saying don't worry about
10 it. You don't need to get a permit. We're giving you a
11 variance from the requirement of a building permit. I
12 don't see that as a proper exercise in the Board's power.

13 Area variances are where they're located, not about --

14 BOARD MEMBER FINDLEY: I agree with that. I agree.

15 MR. MOGEL: So if the oven is too close to the lot
16 line or too far from the house or too close to the house,
17 that would be one thing. That would be an appropriate
18 application for a variance.

19 BOARD MEMBER FINDLEY: Just in reference to whether
20 the violation is accurate or not, do we have anything in
21 the code about pizza ovens? Is it discussed that you need
22 a permit for a pizza oven? I'm just asking because we
23 don't, too often, get pizza ovens in front of this board.

24 MR. MOGEL: I have no idea. I don't know.

25 BOARD MEMBER FINDLEY: So --

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2 MR. MOGEL: I don't know if it qualifies as a
3 structure. I'd have to look at the definition of a
4 structure. I mean I don't believe there is a specific -- I
5 think there's a provision in there for wood burning
6 devices.

7 Is it a wood burning?

8 BOARD MEMBER FINDLEY: So potentially -- I'm just
9 talking now. Potentially, this violation could be an
10 error. I'm just saying because I don't know, and I'm no
11 expert in this code, but we don't know if a pizza oven
12 requires a building permit. Then what you discuss, we'd be
13 talking about it.

14 CHAIRMAN MORDAS: That's a good question, Kent. Thank
15 you.

16 MR. MOGEL: It's a good question. I would tell you
17 that all courts consider appeal times and those appeal
18 times are strict.

19 BOARD MEMBER FINDLEY: Agreed.

20 MR. MOGEL: The Board could decide that they will hear
21 this appeal. At that point, I would direct the Board's
22 attention --

23 BOARD MEMBER FINDLEY: I want to back up one more time
24 because Linda did mention that they have been to court.
25 The judge obviously, or at least it appears, sent them back

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2 to a board, us. It seems like if we don't talk about
3 something, we don't go anywhere.

4 MR. MOGEL: Well, I --

5 BOARD MEMBER FINDLEY: And I'm all --

6 MR. MOGEL: The two systems, there's a little bit of
7 an overlap. This is an administrative appeal, on a basic
8 level, an administrative appeal, which can reverse
9 something before, you could either take it away from the
10 Court if it's already there, or it can occur even before
11 you get to court. But there are rules how that appeal
12 proceeds.

13 Just anecdotally, a lot of justice courts would be
14 happy to shoo as many cases as possible that involve issues
15 of zoning violations over to a board so they don't have to
16 deal with it on a criminal level, quasi-criminal level. It
17 is a messy business. I think many judges take the position
18 that a violation -- and maybe it shouldn't be regarded as a
19 quasi-criminal matter and it should be just a matter of
20 compliance and potentially fines. I can't speak for what
21 Judge Dolan wants in this case, just a basic reading of the
22 code. And like I said, I think the Board could, I believe,
23 deviate and decide that it is going to hear the violations,
24 but I would caution the Board in doing so because the
25 Notice of Violations is now almost a year ago and --

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2 CHAIRMAN MORDAS: And that includes the brick oven?

3 BOARD MEMBER FINDLEY: Almost two years ago.

4 MR. MOGEL: I'm sorry. I apologize. Almost two years
5 ago.

6 I think that the Board, in exercising its discretion,
7 if we were talking about 65 days after the filing of the
8 violation or something like that, I think that you might be
9 on more solid legal footing. I think in the event of a
10 challenge, to deviate by two years, it's pretty
11 substantial. But that's your choice.

12 BOARD MEMBER FINDLEY: I do understand that, and it is
13 a long time, but I think I'd like to think about the pizza
14 oven. I mean an addition to the rear of the restaurant,
15 that's pretty clear. I mean our code has things about
16 conditions, you do whatever you have to do. The violation
17 about the addition is pretty clear. The code has specific
18 things in it about that. The pizza oven without Planning
19 Board approval, I mean the addition obviously, without
20 Planning Board approval or a building permit, is a
21 violation; I agree. But the pizza oven, it comes up a
22 couple of times. I think that's one maybe we should
23 discuss. One of the reasons I say that is because it
24 appears that the judge sent it back so that tells me that
25 they want us to do something.

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2 MR. MOGEL: You're certainly entitled to that opinion.
3 I don't know if we know what the judge wanted to happen.

4 BOARD MEMBER FINDLEY: No, we don't.

5 MR. MOGEL: Let's just for the sake of argument, if
6 the Board elects and says that is an untimely appeal, the
7 matter just continues in front of the same judge. The
8 violations don't disappear, it goes in front of the same
9 judge. Now these individuals would say to the judge and to
10 the town prosecutor: We went to the ZBA. They said the
11 appeal was untimely. We have to resolve it here. The town
12 prosecutor, I don't know, I won't speak for the town
13 prosecutor here, in general, town prosecutors work to get
14 compliance. They work to get compliance and they do that
15 in conjunction with the building inspector. So there are
16 occasions when things are built without a building permit.
17 The question is what does the Building Department want to
18 do. I will say as a general rule, this is all generally
19 speaking, I'm not speaking for this specific case, but most
20 building departments don't require that these things be
21 torn down. They require engineering reports to make sure
22 that they are built properly, they require the payment of
23 fines for building without a permit, and then after, those
24 violations are released.

25 BOARD MEMBER FINDLEY: Right. And we'd probably be

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2 back here with the pizza oven.

3 MR. MOGEL: You might be back here with the pizza
4 oven.

5 BOARD MEMBER FINDLEY: I do think we should look at
6 the code. If we have a little time we should look through
7 and see if there's anything because it doesn't say an
8 accessory structure.

9 BOARD MEMBER DAWKINS: But it is. I mean it would. I
10 checked. I couldn't find the definition for an oven, but I
11 would assume it's an accessory structure. Is that a
12 reasonable assumption?

13 MR. MOGEL: What's the definition of accessory
14 structure within the code?

15 BOARD MEMBER DAWKINS: I'm assuming the pizza is
16 outside?

17 MS. MENNELLA: Yes.

18 BOARD MEMBER DAWKINS: And it's not attached.

19 MS. MENNELLA: No.

20 CHAIRMAN MORDAS: That was --

21 MS. MENNELLA: We've had a survey and site plan done.

22 BOARD MEMBER FINDLEY: Do you have it? I didn't see
23 that in your ...

24 MS. MENNELLA: No.

25 Do you have a copy of the site plan?

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2 MS. FRANCK: The survey?

3 MS. MENNELLA: Yeah, the survey that we had done.

4 MS. FRANCK: No, I don't have a copy of the survey.

5 BOARD MEMBER DAWKINS: And what are we looking for?

6 MR. MOGEL: Accessory structure, or structure.

7 CHAIRMAN MORDAS: I mean what's the setback? How far
8 from Route 209 is?

9 BOARD MEMBER FINDLEY: I agree that's probably a
10 potential issue, most likely, but that's not the discussion
11 here. I do agree it's probably a problem.

12 BOARD MEMBER DAWKINS: A use or structure subordinate
13 to the principal use on the same lot and serving a purpose
14 customarily incidental to the use of the lot.

15 MR. MOGEL: Which it would be accessory.

16 BOARD MEMBER DAWKINS: So this is clearly an --

17 MR. MOGEL: Well, it's clearly an accessory. The
18 question is is it a structure.

19 BOARD MEMBER FINDLEY: But I'm not even sure it's an
20 accessory because it's saying it's incidental --

21 MR. MOGEL: It's incidental, it's a use.

22 BOARD MEMBER FINDLEY: But it's a restaurant.

23 MR. MOGEL: Correct. So it's a connected use.

24 BOARD MEMBER DAWKINS: Structure: Anything
25 constructed, the use of which requires permanent location

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2 on the ground or attachment to something having permanent
3 location on the ground, including but not limited to
4 buildings, fences, tanks, towers, swimming pools and
5 stationary and portable carports. So, having a permanent
6 location on the ground.

7 MR. MOGEL: Or a structure that then has permanent
8 location on the ground.

9 BOARD MEMBER DAWKINS: But it is.

10 MR. MOGEL: That sounds to me like --

11 BOARD MEMBER DAWKINS: So it's an accessory structure.
12 Frankly ...

13 CHAIRMAN MORDAS: Let me ask you something. If we
14 decide to go with the statute of limitations, responding,
15 us rendering a decision on this, do we have a need for a
16 public hearing?

17 MR. MOGEL: I believe if you were to decide that this
18 is an untimely appeal you would not have to have a public
19 hearing to make that determination. You're simply saying
20 this is untimely and we're not going to hear it. Now, if
21 they elect to continue with the application for a use
22 variance on the kennel, then you could go schedule a public
23 hearing on that basis.

24 BOARD MEMBER DAWKINS: Now, I do want to say one
25 thing. I'm a little concerned, you could hear it in the

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2 questioning, about were they operating a commercial
3 kennel --

4 MR. MOGEL: Correct.

5 BOARD MEMBER DAWKINS: -- or were they housing other
6 people's pets.

7 MR. MOGEL: Then they wouldn't have a mixed use --

8 BOARD MEMBER DAWKINS: Right.

9 MR. MOGEL: -- if they were doing commercial.

10 BOARD MEMBER DAWKINS: Right. But then I found the
11 definition, the keeping of more than four dogs or cats,
12 indoors or outdoors, shall constitute a kennel for the
13 purposes of this chapter. So even if they're not accepting
14 the payment, and the dogs are theirs, it still constitutes
15 a kennel.

16 MR. MOGEL: It is a kennel, yes.

17 BOARD MEMBER DAWKINS: So I --

18 MR. MOGEL: If --

19 BOARD MEMBER DAWKINS: I was questioning, so I just
20 wanted to make sure you understood.

21 CHAIRMAN MORDAS: I'm leaning towards Counsel Mogel's
22 advise, the statute of limitations. There's multiple
23 violations here. I need to err on the side of Mary Grass'
24 judgment in regards to the pizza oven.

25 Do you want to go forward with a request for a use

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2 variance? If so, we would have to set up a public hearing.
3 As Counsel Mogel explained, the threshold is very high for
4 a use variance. I'm of a mindset of trying to kind of cut
5 your losses pursuing possibly one pathway and concentrate
6 your resources to pursuing another pathway that might be
7 more attainable for you. Am I saying that correctly?

8 MR. MOGEL: I would say so.

9 CHAIRMAN MORDAS: Outside of that, I can't advise you
10 as to what to do in regards to the use variance. But if
11 you decide to not go that route, we would not subject you
12 to a public hearing. That's where I have to leave it at.

13 BOARD MEMBER FINDLEY: I have one more question. Your
14 property, is there more than one lot?

15 MS. MENNELLA: We own three lots. And attached -- the
16 restaurant is on four acres and then immediately behind, up
17 the hill, is 45, almost 50 acres that's attached. And then
18 there's another lot two houses down that we own.

19 BOARD MEMBER FINDLEY: Is the kennel on the restaurant
20 lot?

21 MS. MENNELLA: Yes.

22 MS. FRANCK: Yes. I already mentioned that. We
23 tried. We tried everything.

24 BOARD MEMBER FINDLEY: I have one more question.

25 MS. MENNELLA: Yes.

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2 BOARD MEMBER FINDLEY: The pizza oven, is that a major
3 part of your business?

4 MS. MENNELLA: It is. It's a large part. It's a
5 large of the business. We only do it once a week, but that
6 one day equals, like, three days of income.

7 CHAIRMAN MORDAS: And especially with the good weather
8 coming.

9 MS. MENNELLA: Yes. We only do it five months of the
10 year. We do it May through September, from the beginning
11 of May to the end of September, once a week. It's a large
12 part of the income as opposed to the other days that we're
13 open.

14 BOARD MEMBER FINDLEY: I'll make one more statement.
15 Incidental, by definition, means not a major part.

16 MS. FRANCK: What did you say, Kent?

17 BOARD MEMBER FINDLEY: Incidental, by definition,
18 means not a major part.

19 MR. MOGEL: Well --

20 BOARD MEMBER FINDLEY: I'll just --

21 MR. MOGEL: Ancillary.

22 BOARD MEMBER DAWKINS: I was going to say I think --

23 BOARD MEMBER FINDLEY: Yes. But --

24 MS. FRANCK: Incidental, by definition?

25 BOARD MEMBER FINDLEY: The definition -- I'm all

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2 screwed up here. Give me one second.

3 BOARD MEMBER MARTIN: While he's looking for that, do
4 you live on the premises?

5 MS. MENNELLA: We live upstairs over the restaurant.

6 BOARD MEMBER MARTIN: Over the restaurant.

7 MS. MENNELLA: Yes.

8 MR. MOGEL: You do.

9 MS. MENNELLA: Uh-huh.

10 BOARD MEMBER FINDLEY: More mixed uses.

11 MR. MOGEL: Mixed use.

12 BOARD MEMBER FINDLEY: How long has the restaurant
13 been there?

14 MS. MENNELLA: Giovanni bought the place in 1991,
15 opened the restaurant in September of 1991. So it'll be 26
16 years this September.

17 BOARD MEMBER MARTIN: You've been there since 1991.

18 MS. MENNELLA: Uh-huh.

19 BOARD MEMBER FINDLEY: Definition one: Accompany, but
20 not a major part of something.

21 MS. FRANCK: What?

22 BOARD MEMBER FINDLEY: And that's why I was not saying
23 it's not necessarily an accessory structure.

24 CHAIRMAN MORDAS: Let's just leave things the way they
25 are.

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2 BOARD MEMBER FINDLEY: So untimely.

3 CHAIRMAN MORDAS: Pardon me?

4 BOARD MEMBER FINDLEY: Untimely.

5 MS. FRANCK: Untimely?

6 CHAIRMAN MORDAS: Okay.

7 BOARD MEMBER FINDLEY: That's where we're going?

8 CHAIRMAN MORDAS: Yes.

9 All right. I'm going to make a motion that the appeal
10 on Parcel 66-1-13.1 is --

11 MS. FRANCK: 13 dash what?

12 CHAIRMAN MORDAS: Oh, I'm sorry.

13 Violation No. 15-0037 -- what was the date of that --
14 February 20th, 2015 has expired past the statute of
15 limitations in regards to Code 199-57(A)(1).

16 BOARD MEMBER DAWKINS: Second.

17 MS. FRANCK: You made the motion, Matt?

18 CHAIRMAN MORDAS: Any seconds?

19 BOARD MEMBER DAWKINS: Second.

20 BOARD MEMBER MARTIN: Second.

21 CHAIRMAN MORDAS: All in favor?

22 BOARD MEMBER MARTIN: Aye.

23 BOARD MEMBER DAWKINS: Aye.

24 BOARD MEMBER FINDLEY: Aye.

25 CHAIRMAN MORDAS: Aye.

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2 (The motion was approved and carried.)

3 MS. FRANCK: What violation was that?

4 MR. MOGEL: That is with regard to all violations on
5 the Notice of Violation.

6 MS. FRANCK: All of them.

7 MR. MOGEL: All of them, yes.

8 MS. FRANCK: So they have no violation.

9 MR. MOGEL: No, no, no. It wasn't dismissed. It's
10 stated that the appeal of the violation was untimely.

11 MS. FRANCK: Okay, all right.

12 MR. MOGEL: So there's still a violation for the
13 kennel. You still could seek a use variance if you want to
14 go that route.

15 MS. FRANCK: But they can keep the pizza oven?

16 MR. MOGEL: That's not up to --

17 CHAIRMAN MORDAS: They have to work that out with the
18 Building Department.

19 MR. MOGEL: Let me just add that what the Board is
20 doing, if the Board is not hearing these violations --

21 MS. MENNELLA: Yes.

22 MR. MOGEL: -- it doesn't mean you are guilty of these
23 violations.

24 MS. MENNELLA: Okay.

25 MR. MOGEL: It means that the appeal to the violations

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2 is not timely and this board won't hear it.

3 MS. MENNELLA: Okay.

4 MR. MOGEL: The violation themselves are still in
5 front of the Court --

6 MS. MENNELLA: Uh-huh.

7 MR. MOGEL: -- and they are subject to anything.
8 They're subject to a possible trial, they're subject to a
9 plea bargain, they're subject to some other arrangement
10 that you would make with the Building Department. I'm
11 confident, the Building Department is there, they issued
12 those violations. I'm sure they have in mind some means of
13 rectifying this one way or the other.

14 MS. MENNELLA: Uh-huh.

15 MR. MOGEL: So really, that's all that the ZBA is
16 saying at this time, that it's just that the appeal is too
17 old.

18 MS. MENNELLA: Okay.

19 MR. MOGEL: And you can decide whether you want to ask
20 for a use variance, which the chairman mentioned and I
21 mentioned the standard is very, very high and it's rarely
22 granted. So at this point, I would say you have the choice
23 of asking the Board to schedule a public hearing and move
24 forward on the use variance or you could ask that the
25 matter be put off until next month and you'll decide at

1 - GIOVANNI MENNELLA -

2 that point.

3 MS. MENNELLA: Okay. I think we need to decide later.
4 Undecided right now on the mixed use variance.

5 CHAIRMAN MORDAS: All right. A motion to table this
6 until our next scheduled meeting.

7 BOARD MEMBER DAWKINS: Motion.

8 BOARD MEMBER MARTIN: Second.

9 CHAIRMAN MORDAS: All in favor?

10 BOARD MEMBER MARTIN: Aye.

11 BOARD MEMBER DAWKINS: Aye.

12 BOARD MEMBER FINDLEY: Aye.

13 CHAIRMAN MORDAS: Aye.

14 (The motion was approved and carried.)

15 CHAIRMAN MORDAS: I thank you for your time.

16 All right. A motion to close our Zoning Board meeting
17 for January 26th.

18 BOARD MEMBER FINDLEY: I object.

19 BOARD MEMBER DAWKINS: Motion.

20 BOARD MEMBER MARTIN: Second.

21 BOARD MEMBER MARTIN: Aye.

22 BOARD MEMBER DAWKINS: Aye.

23 BOARD MEMBER FINDLEY: Aye.

24 CHAIRMAN MORDAS: Aye.

25 (The motion was approved and carried.)

- GIOVANNI MENNELLA -

(Time noted: 8:15 p.m.)

* * * * *

REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Giovanni Mennella, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.

A handwritten signature in cursive script that reads "Rosemary A. Meyer".

ROSEMARY A. MEYER

Date Transcribed: February 20, 2017

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