

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, MAY 5, 2011 AT 7:00 P.M. IN THE COURTROOM AT 169 MT. PLEASANT AVENUE, MAMARONECK, NEW YORK.

These are intended to be "Action Minutes" which primarily record the actions voted on by the Zoning Board at the meeting held May 5, 2011. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board's Records

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VILLAGE OF MAMARONECK  
NEW YORK

**PRESENT:** Clark Neuringer, Chairman  
Barry Weprin, Vice Chairman  
Robin Kramer, Secretary  
Greg Sullivan, Board Member  
Dave Neufeld, Board Member  
Kathy Zalantis, Counsel to Board  
Rob Melillo, Deputy Building Inspector

Kathleen McSherry, Court Reporter, was present at the meeting to take the stenographic minutes, which will not be transcribed unless specifically requested.

**CALL TO ORDER**

The meeting was called to Order by Chairman Neuringer at 7:10 p.m. and he introduced everyone and detailed the procedures for the meeting. He noted for the record that Mr. Weprin would be slightly late. The next meeting is scheduled for Thursday, June 2, 2011.

**1. Application #1SP-2008, HAIKU ASIAN BISTRO, 265 Mamaroneck Avenue**

Hsing-Ya Chiang, the owner, addressed the Board. He stated that he was applying to renew an existing special permit to operate an Asian restaurant. Mr. Chiang stated that there are no changes to the hours of operation, how the restaurant is managed and the services provided.

Ms. Kramer noted that the restaurant was cited with numerous violations such as fire problems and sanitation problems. Mr. Chiang stated that he was in the process of installing a Knox-Box. Mr. Melillo, Deputy Building Inspector, explained that a Knox-Box is used to store a key to the restaurant should there be an emergency and emergency personnel have access to get into the building. Mr. Melillo stated that Knox-Boxes are in the process of being installed with businesses throughout the Village.

Mr. Neufeld stated that there are also violations for illegal discharge. Mr. Chiang stated that he was not aware of the violations because he is not at the restaurant all the time. The manager of the restaurant handles these matters. Mr. Chiang stated that the garbage issue was rectified.

Mr. Melillo asked if the application could be held over until next month so that he has an opportunity to speak with the Fire Inspector regarding these issues. Chairman Neuringer noted that the dates of the violations seemed odd. Mr. Melillo stated that there were some grease issues last year which he believes were remedied.

Mr. Neufeld stated that he has concerns that the owner was unaware of these issues and should be held over as well. Ms. Kramer concurred with Mr. Neufeld. Chairman Neuringer wants to know if there are still any active violations.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

The matter was adjourned until June 2, 2011.

**2. Adjourned Application #3SP-2008, MOLLY SPILLANE'S RESTAURANT, 211 Mamaroneck Avenue**

Chairman Neuringer stated that he wanted to hold off on this application until Mr. Weprin joined the meeting.

**3. Adjourned Application #4SP-2008, DUNKIN DONUTS, 427 E. Boston Post Road**

Paul Noto, Esq. appeared on behalf of the applicant who is before the Board with a special permit renewal to operate a donut shop and also requesting a sign pole variance. The Board decided to review the special permit renewal application first. Mr. Noto stated that the Dunkin Donuts has been at the Boston Post Road location since 2008. The donut shop is in compliance with the special permit and there have been no changes to the operation of the shop.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Sullivan, seconded by Mr. Neufeld.

Ayes: Neuringer, Sullivan, Neufeld, Kramer

Nays: None

Absent: Weprin

**4. Adjourned Application #7A-2011, DUNKIN DONUTS, 427 E. Boston Post Road**

Mr. Noto stated that the second application is for a variance for a sign. He noted that Dunkin Donuts was before the Board in the fall of 2010 requesting a variance to erect a free-standing sign, which was subsequently denied. This application is a modification of the previous application, Mr. Noto indicated.

Mr. Noto stated that the building is setback 39 feet from Boston Post Road and that there is a lack of visibility. People driving on Boston Post Road don't notice the Dunkin Donuts until they have already passed it, he said. Mr. Noto stated that the applicant wants a pole sign to increase visibility. The code states that a building must be setback 50 feet. Also, the code prohibits free standing signs from being within 15 feet of a side property line and the proposed sign is 2 feet in from a side lot line, Mr. Noto indicated.

Mr. Noto went on to state that the two sign applications cited in the denial resolution are not relevant to this matter. The Bank of America building is visible from all sides and the Fred Astaire Dance Studio has a sign. Mr. Noto stated that this is an issue of safety as people stop short to make the turn into the donut shop.

John Canning, traffic consultant for the applicant, stated that the Dunkin Donuts building is setback 39 feet and other buildings on both sides are setback five feet and bracket the Dunkin Donuts building. Mr. Canning submitted photos to the Board outlining this. Mr. Canning reviewed the photos with the Board illustrating how the applicant's building is not visible from the street, nor are signs which don't require a variance. Mr. Canning noted that the average speed on Boston Post Road is 35 miles per hour.

(At 7:30 p.m., Mr. Weprin joined the Board.)

Mr. Canning stated that there are other signs in the area and that this would not impact the area. Chairman Neuringer asked Mr. Canning if he is aware that the code does not allow pole signs and Mr. Canning indicated that he is aware of that. Chairman Neuringer suggested that the applicant petition the Board of Trustees to make a change with respect to pole signs. Mr. Noto reiterated that the applicant's building is bracketed by other buildings as opposed to other buildings in the area. He went on to say that this is a unique piece of property and the law has a significant impact on the applicant's business.

Mr. Neufeld asked why the applicant needs a pole sign now. And he inquired as to whether business had diminished. Mr. Noto stated that he does not have any way of knowing that. He said that it is the unique situation of the building that has warranted the request for a pole sign.

Mr. Neufeld asked Mr. Canning asked if he was saying that all buildings have the same requirement. Mr. Canning stated that he did not look at all the buildings.

Chairman Neuringer stated that the Board came to a certain set of findings the last time the applicant was before this Board. He asked Mr. Noto if the Board was wrong at that time. Mr. Noto answered that the Board could have made a better decision. Chairman Neuringer asked, if that was the case, why Mr. Noto didn't challenge the Board's previous decision. Mr. Noto stated that challenging is a difficult thing to do and he spoke with his client and it was determined that amending it would be the better way to go. Mr. Noto indicated that the applicant is not looking to be adversarial with the Village. He said that he does not believe it would have a negative impact on the neighborhood and it is not self-created. Chairman Neuringer stated that it was self-created when the applicant chose that particular building. Mr. Noto stated that either way, his client can't move the building. Chairman Neuringer suggested that the applicant submit an application to put a sign on the roof of the building as was suggested before. Mr. Noto stated that he does not believe a roof sign is attractive. Chairman Neuringer stated that the Village does not think a pole sign is attractive.

Mr. Neufeld asked if other properties had similar signs, would that make the applicant's sign less visible. Mr. Canning stated that was possible. Discussion arose as to the size of the sign and how high it would be placed above ground. Mark Maday stated that signs six or eight feet above the

ground are allowed. Ms. Kramer noted that for someone walking by the sign, it will almost be in their face. She suggested putting the sign in the middle of the property and not request the second variance. Mr. Maday stated that a sign is already there and Ms. Kramer said that isn't a good enough reason. Mr. Sullivan stated the Board's original denial was based solely on the size of the sign.

Mr. Joseph Adelphi, representing the owner of the property, stated that he wanted to speak about the historical part of this property. He said it was previously a service station, owned since 1978. He stated that the service station became the Dunkin Donuts operation. Mr. Adelphi stated that a sign has always been maintained at that property. He said the layout of the building is what it is. We are community people, Mr. Adelphi said. The property had come into some disrepair when he took it over from his father. Mr. Adelphi stated that Men at Work is a family group, not a big corporation. He concluded by stating that he hoped Mr. Noto had shown the Board the benefit of a sign and how it would benefit the property, traffic flow and neighbors.

Chairman Neuringer read for the record the findings from the original resolution denying the applicant a variance for the pole sign. He stated that the first three findings do not mention the size of the sign. The majority of the findings addressed the proliferation of pole signs, Chairman Neuringer stated. Other applicants have come before this Board and the Board has denied them. Mr. Noto stated that every application and property is unique. The Board evaluates each application with these five factors, Mr. Noto said. He went on to state that he did not think it was fair for the Board to compare this building to the Bank of America building. The Bank of America building is a massive structure and sits at the corner, he said. Mr. Noto stated that the applicant's location has had a sign there for several years, so it wouldn't impact the neighborhood.

Discussion arose regarding other signs in the Village with the same size and placement as the one the applicant is requesting. Mr. Maday will make a mock-up for the Board to review. Kathy Zalantis noted for the record that the notice of disapproval cited the incorrect section; the proper section is 286-11(B)1.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

The meeting is adjourned until June 2, 2011.

**5. Adjourned Application #3SP-2008, MOLLY SPILLANE'S RESTAURANT, 211 Mamaroneck Avenue**

Michael Hynes, the owner and applicant, addressed the Board. He stated that he is renewing a special permit to continue the operation of a restaurant. He stated that there have been no changes to the hours of operation or how the restaurant is run.

Chairman Neuringer asked if Mr. Hynes was aware of the complaints against the restaurant. Mr. Hynes indicated that he is aware. Chairman Neuringer asked how the complaints have been addressed. Mr. Hynes stated that the big issue is noise. He has put up shrubbery. Mr. Hynes wanted to note for the record that he has never received a ticket for noise from the police. He said

he has tried to address all the concerns of the neighbors. Mr. Hynes stated that there is a lot more business on the avenue today and the noise generated is not all coming from Molly Spillanes.

Chairman Neuringer polled the audience to see who wished to speak about the application and also if the audience members were from the Regatta Condominium, which all were. Mr. Hynes believes the condominium's issue is that of noise. Chairman Neuringer asked Mr. Hynes if there is anything he can do to mitigate the noise outside the restaurant. Mr. Hynes indicated that he closes the outdoors early on some nights and bring the patrons inside.

Ms. Kramer asked if music is piped outside. Mr. Hynes noted that there are speakers and a television outside. Ms. Kramer asked if the windows of the restaurant are kept open. Mr. Hynes stated that the windows are kept open on nice days/evenings and he has live music indoors. Seating is for 40 people outdoors and most people sit, while others stand, Mr. Hynes said.

Mr. Neufeld asked what the level of occupancy is and Mr. Hynes answered 40-60 people. The capacity for the first floor indoors is 178 and 90 on the upper level. Mr. Hynes said he does not rent out the outdoor area for private parties. There is no bar outside, but people can buy a drink inside and then walk out to the back. Mr. Hynes stated that there is also seating outside in the front of the restaurant for 20 people.

Chairman Neuringer asked if anyone wished to address the Board.

Jane Albore addressed the Board. She stated that she is concerned and opposes the renewal of the special permit. Ms. Albore stated that Mr. Hynes has not been a good neighbor. She can hear the music that is playing when her windows are closed, she said.

Lucia Tatautto addressed the Board. She stated that she can hear the noise from Molly Spillanes on her balcony and that Mr. Hynes does not bring the crowds in by 2:00 a.m. as was stated by Mr. Hynes. She stated that she keeps a log of all calls made to the police. Ms. Tatautto stated that she and her neighbors would like to keep their windows open and sit out on their balconies. She indicated that she had met with the Mayor, Village Manager and Mr. Hynes in the past. She went on to say that Mr. Hynes put up bushes to buffer the sound, but that hasn't been enough.

Young Min Song addressed the Board. He stated that conversation, as it gets later into the night, echoes and comes through his windows. He also stated that there is a television outside and he can hear people reacting loudly when they are watching sports programs. Mr. Song said that the residents of the Regatta can't enjoy the spring weather with all the noise. The umbrella/awning is only used when the sun is out and has never been up during the evening, Mr. Song noted. He said it was very difficult to sleep and the noise comes mostly from people outdoors. He also stated that a DJ plays on the weekends, is very loud and plays late into the night.

Mr. Song stated that the residents of the Regatta have tried to be neighborly. He said that he has called police many times between the hours of 11:00 p.m. and 2:00 a.m. The police would come to the apartment to hear the noise for themselves; that was the original agreement with the Village Mr. Song stated. Ms. Kramer asked if anyone had measured the decibel level.

Dominick Ruggiero, Regatta Condominium Board President, addressed the Board. He stated that his assignment was to look at noise levels. After 10:00 p.m. or 11:00 p.m., the decibel level should be no greater than 60 and when he measured the noise it was over 100 decibels. He noted that the Village's cabaret license allows 100 decibels until 2:00 a.m. It does not match the other code, Mr. Ruggiero stated. As for noise, Mr. Ruggiero stated that what bothers him might not bother another person. However, he went on to say, a limit should be set. After 11:00 p.m. the noise level should not go beyond 60 decibels. Mr. Ruggiero went on to say that he and the other residents of the Regatta are not looking to put anyone out of business and that perhaps this Board can make a recommendation. Chairman Neuringer cautioned Mr. Ruggiero that this is a Board that deals with zoning issues only. He also stated that he felt there was a consensus by the Village, Mr. Hynes and the Regatta residents to move forward.

Paolo Strino addressed the Board. He stated that he and his family moved to the Regatta in 2008. They were used to living in an urban environment and love to be near restaurants. However, when the restaurant set up business, things have changed and it has impacted the area, Mr. Strino stated. The noise and disturbance is continuous and he stated that he has not seen any remedial changes to address the noise. He noted that he will be moving out of the Regatta and won't miss the noise. He is renting out his apartment and moving to a single-family home. Mr. Strino stated that there is a reputation that it is very loud if you live near Mollys. He said the operation of the business should be contained and that the level of noise at such a late hour is not indicative of other restaurants in the area.

Lucy Hammer addressed the Board. She stated that she agrees with everything that was said and that she wished to address comments from Mr. Hynes. She noted that the outdoor speakers are on at 1:00 a.m. and 2:00 a.m. on the weekends. The speakers stay on until there are numerous complaints. No matter what the residents have done, she said, nothing changes. She went on to say that she has lived at the Regatta for ten years and before the restaurant opened up, she never heard the traffic and only sometimes heard people walking to their cars. The loud music is the issue, she stated.

Ms. Kramer stated that she is concerned that the people who spoke this evening are saying that Mr. Hynes hasn't done much to fix the situation. She questioned whether Mr. Hynes needed a television outside. Mr. Hynes stated that there is a need for the television outside and indicated that it has no sound. Ms. Kramer clarified that it is the reaction to the television by the patrons that is the issue. Mr. Hynes stated that he does not allow parking of patrons in the Regatta. He also stated that he has provided shrubbery and a canopy to help with the noise issue. He reiterated that there is no noise coming from the speakers after 11:00 p.m. He stated that any issues that have arisen have been addressed with the police. Mr. Hynes stated that if there are complaints, he closes the windows. He feels he has addressed the noise issues. He also disagreed with the opinion that the restaurant is bringing the neighborhood down. He said that real estate people bring their clients into the restaurant as a selling point. He also stated that people living behind the restaurant don't complain; it is only the residents of the Regatta who have an issue.

Chairman Neuringer asked if there was anyone living closer than the Regatta and Mr. Hynes stated there are places closer to the restaurant. Mr. Hynes stated that he does view this as a serious issue

and that the residents of the Regatta are his neighbors and customers and he respects them. He went on to say that he continuously answers the issues that come up.

Mr. Neufeld ask that with respect to the DJ, is there dancing and Mr. Hynes stated that sometimes there is dancing. He also said that he has signs displayed asking patrons to be considerate of the neighbors. Discussion arose regarding functions on the upper level of the restaurant and the capacity.

Mr. Weprin asked what the effect would be if there were no speakers outside. Mr. Hynes stated that this coming weekend is the Kentucky Derby and on Sunday there are baseball games. The speakers will be on for his patrons to enjoy the sports.

Chairman Neuringer asked if Mr. Hynes has any proposals to give to the Board to address the problems outlined this evening. Mr. Hynes stated that he has listened to everyone. He noted that three years ago Mamaroneck was ranked 25 for best places to live and today is ranked 4 because of the redevelopment of the business district. He noted that the restaurant is in a C-2 district.

Chairman Neuringer stated that Mr. Hynes is permitted to run a restaurant, but conditions can be imposed to receive a special permit. This is why Chairman Neuringer asked Mr. Hynes what he is going to do to address the issues. Mr. Hynes stated that he does not have control over what happens out on the street. He stated that he can control things on his property. He went on to say that there is a certain group of people that he feels he won't please no matter what he does.

Mr. Weprin asked when the awning is used. Mr. Hynes stated that he never thought to use the awning at night, but he will do it moving forward. Mr. Weprin questioned the audience as to whether it was true or not that the speakers are turned off after 11:00 p.m. By a show of hands, the audience members showed they had heard noise from the speakers after 11:00 p.m.

Mr. Noto addressed the Board. He stated that he represented Molly Spillanes three years ago and does go to the restaurant on occasion. He stated that he is speaking as a resident of the Village. Mr. Noto stated that Mr. Hynes indicated he had never been cited for noise.

Mr. Ruggiero addressed the Board again. He said that there are noise engineers that can evaluate the situation and make recommendations to fix the problem.

Chairman Neuringer stated that the Board has before it an application for a renewal of a special permit. He said the Board can limit the hours of operation; request the removal of the television and speakers, etc. Chairman Neuringer stated that his feeling is that the Board does not close the hearing and that Mr. Hynes comes back to make a presentation to the Board on what he can do to remedy the issues. He went on to say that the Board can make specific conditions, but that isn't what the Board wants to do at this time. Discussion arose regarding the fact that the Board can impose conditions on Mr. Hynes' establishment if it sees fit to do so.

Mr. Hynes reiterated the fact that he has no violations and has done the right thing. Chairman Neuringer stated that the Board has before it documentation that shows the police have been to the restaurant and there have been reports. Mr. Hynes stated that he did not know where to start and

that he would like the Board to tell him what to do. Chairman Neuringer stated that he does not think Mr. Hynes wants the Board to make stipulations. Mr. Neufeld stated that Mr. Hynes should think about what he can do to fix the problem because this is Mr. Hynes' problem. Mr. Hynes is the one who wants the special permit, Mr. Neufeld stated. He suggested Mr. Hynes come up with a plan because it is not the Board's issue to deal with this matter.

Mr. Hynes stated that his biggest fear is protecting his rights. Chairman Neuringer stated that the Board is attempting to give him enormous leeway and he suggests Mr. Hynes take the Board up on it.

Ms. Kramer asked if the awning can be up at night. Mr. Hynes stated that except for windy times, he will keep the awning up. Mr. Weprin suggested that Mr. Hynes turn off the speakers by 11:00 p.m. and Mr. Hynes said he would comply with that. Mr. Weprin stated that it would impress him if no one has a complaint when the application comes before the Board again. Mr. Hynes stated that he plans to get a sound engineer.

Ms. Tatautto wanted to clarify that it is not the customers who are parking behind the parking lot, it is the employees.

Mr. Song stated that it is not just the speakers; they have a lot of other complaints. He stated that he wants Mamaroneck to flourish, and doesn't want impinge on people's rights.

Sheila Streno addressed the Board and questioned why it is necessary to have a restaurant open to 4:00 a.m. in a suburban community.

Mr. Streno stated that he believes limiting the hours of operation will help greatly. There is a large population of the Regatta that is deeply affected, he said.

The Board suggested adjourning the matter until the July calendar as the June calendar is very heavy. Mr. Hynes stated that July is a difficult month for him as he is away on vacation. Discussion arose regarding the Board looking at what happens between the meetings as far as the noise issues.

**6. Adjourned Application #3I-2011, #4SP-2011 & #12A-2011 ACTION AUTO MART, INC., 416 Mamaroneck Avenue**

Joseph Messina, Esq. appeared on behalf of the applicant. Mr. Messina explained that the applicant is not a car dealership; he only picks up the phone and handles financing for customers of commercial buses. The buses never come to Mamaroneck, Mr. Messina stated. The Department of Motor Vehicle mandates that the applicant be listed as a dealer. The DMV also requires that the applicant have three parking spaces and signs. As a result of the signage, the Building Department came to the applicant's establishment, Mr. Messina said.

Mr. Messina went on to say that as a car dealership, there is a requirement by the code to have ten parking spaces. The applicant has three parking spaces in the rear as is required by the DMV, he stated. Mr. Messina emphasized that there are no repairs, deliveries or a showroom at the location.



The DMV, Mr. Messina stated, requires that the applicant have three spaces with signs reading “display” even though there are no vehicles parked at that location. Mr. Messina stated that he has a denial, from the Building Inspector, of the sign permit and this is how the situation came to light. Lawrence Jacobs, the applicant, addressed the Board. He stated that four people work in his office and they use the parking spaces. He noted that he is a paper office which handles the financing. Mr. Jacobs likened his job to a real estate agent. He said he arranges the paperwork.

Mr. Sullivan wanted a clarification as to what the applicant was requesting since he had applied for a special permit, variance and/or interpretation. Mr. Messina stated that he wishes the Board make an interpretation and therefore, the applicant would not need the special permit or variance. Mr. Messina also stated that the signage may not be needed; he will look into that himself.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Sullivan, seconded by Ms. Kramer.

Ayes: Neuringer, Neufeld, Kramer, Weprin, Sullivan

Nays: None

#### **7. Application #6A-2011, LARCHMONT AVENUE PRESBYTERIAN CHURCH**

Ned Stoll, the architect, appeared on behalf of the applicant. Julie Emery, the applicant, was also present. Mr. Stoll stated that the applicant wishes to build a garage in place of an existing garage and the setbacks are closer than is allowed by the code. He went on to say that the Emerys offered to show all the neighbors their plans and have letters from neighbors indicating no objection to their plans.

Chairman Neuringer asked if the garage is being built in the same location and Mr. Stoll indicated that it was. Chairman Neuringer asked if the same foundation was going to be used and Mr. Stoll stated that he won't know until he begins the work. Chairman Neuringer stated that the plans look like the applicant is building something new and questioned why it had to be placed so close to the side yard. Chairman Neuringer stated that the garage is oversized by 64%; the applicant has other options. Mr. Stoll answered that the Emerys would like more run for their children to play. Chairman Neuringer stated that unless there is a mitigating factor, 2 ½ feet is very close to the property line. Mr. Stoll stated that he created the plans showing a new foundation, not knowing until we begin construction, if it will be needed.

Ms. Kramer asked if the dimensions of the garage are exactly the same.

Roberto Leira addressed the Board. He stated that he lives next door to the applicant and opposes the variance. He said that the existing garage is 20 feet and the new garage is 22 feet. It is wider and longer, Mr. Leira said. Chairman Neuringer stated that a portion will be a new foundation.

Ms. Kramer asked that assuming the applicant is doing a new foundation, why not move the garage over 4 feet. Mr. Stoll stated there is no reason it can't be built further away from the

setback. Chairman Neuringer stated that the documentation is clear in showing that the applicant won't be using the current foundation.

Mr. Neufeld asked if the applicant is expanding toward the setback and Mr. Stoll answered no, he is making the garage longer. Chairman Neuringer asked why the applicant was making the garage bigger. Mr. Stoll answered that 20 feet is a tight space for today's vehicles. Chairman Neuringer asked why the non-conformity was not being reduced. Mr. Stoll stated that applicant wanted a larger yard.

Mr. Leira addressed the Board again and distributed photos of the applicant's back yard. He stated that the applicants have a large back yard to begin with and now they are increasing the size of the garage.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Weprin, seconded by Mr. Neufeld.

Ayes: Neuringer, Neufeld, Kramer, Weprin, Sullivan

Nays: None

#### **8. Application 16A-2011, ANTHONY PECORA, 1005 Nine Acres Lane**

Marion Maye, an audience member, addressed the Board and requested an adjournment of the application until next month so that she could review the application. Chairman Neuringer stated that the Board does not grant adjournment requests to the public. It is the applicant who may request an adjournment.

Tim Leonard, the architect, appeared on behalf of the applicant. He stated that the applicant is before the Board to construct a new four bedroom single family house. He stated that the applicant had to move out of his home and wishes to build a home on this lot. Mr. Leonard displayed a map for his presentation. He stated that the neighbor has undersized lots. Ms. Kramer noted that all the lots on the street in question are conforming.

Mr. Leonard stated that the house the applicant is proposing slides the house 12 feet from the next door neighbor. He said that the bulk of the house does not require a variance; the small portion facing Orienta is what requires a variance. Mr. Leonard stated that the applicant also went before the Board of Architectural Review and received approval.

Chairman Neuringer stated that every house built on Orienta was conforming, but when the zoning changed, it made them non-conforming. Mr. Weprin stated that his concern is not what is being built, it's beautiful. His concern is that the applicant has other choices.

Chairman Neuringer said his concern is that the applicant wants to decrease the setback and increase the FAR. Chairman Neuringer stated that the applicant has a lot with too big a house. Mr. Leonard stated that he looked at the orientation of the house when he first started. The house could have been rotated to face Skibo, but that would reduce the back yard, he said. Mr. Leonard

said that part of the reason for moving the driveway was to prevent people from turning in the driveway. Ms. Kramer noted that modern design and planning have the garage in the back of the house.

Mr. Leonard stated that the applicant will put planting as a buffer by the driveway as well as by Skibo Lane. Mr. Weprin asked why the applicant can't meet the FAR. Mr. Leonard stated that it was designed to meet his client's requirements. Chairman Neuringer asked why a 4400 square foot house couldn't meet the client's needs. Mr. Leonard said he understands what the Chairman is saying. Chairman Neuringer said that Mr. Leonard designed a house that was too big for the undersized lot.

Mr. Neufeld stated that he does not think the applicant met the standards. Chairman Neuringer suggested the applicant built a house that fits the lot. Mr. Weprin stated that he understands the applicant can start from scratch, but it should conform to the FAR.

Anthony Pecora, the applicant, addressed the Board. He stated that his mother had a horrific accident and will have to live with him. He stated that he moved out of a home that was substantially bigger than what he is proposing. Mr. Pecora stated that he requires three garages, one of which will be for a handicapped vehicle. He stated that the rooms are big, but nothing is extravagant.

Ms. Kramer stated that the applicant is saying he needs a three car garage, but he has a driveway. Ms. Maye spoke up again and said that she wants the zoning ordinances kept as is and that all Nine Acres Lane setbacks are the same.

Mr. Leonard stated that Ms. Maye submitted a letter supporting the variance request. Ms. Maye stated that she has changed her mind and hopes the Board will keep the setbacks as is. She said she signed without fully understanding the implication.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Weprin, seconded by Mr. Neufeld.

Ayes: Neuringer, Neufeld, Kramer, Weprin, Sullivan

Nays: None

## **9. Adjourned Application #9A-2011, STEVEN & JENNIFER MARGOLIS**

Michelle Lee, architect, appeared on behalf of the applicant. She stated that the applicant is seeking a variance to construct a second story addition over an existing garage. The garage received a variance back in 1982 because it was too close to the property line, Ms. Lee stated. She said that the current roof is flat and the applicant wants to add more architectural structure. Ms. Lee submitted alternate plans as was requested by the Board. She stated that the BAR approved the alternate design. She noted that the applicant still prefers the original design. She said that the alternate plan builds out toward the back. One of the members of the BAR stated that they felt the original plan was better, Ms. Lee stated. She said that there was concern at the last meeting that

the applicant needed more variances, but Mr. Melillo stated that was not the case after all. She noted that the garage is compliant.

Chairman Neuringer commending the architect on the amended plan and stated that he feels the second scheme is much better.

Ms. Margolis stated that the balcony is superfluous and she does not wish to build the roof up. She also stated that she has no interest encroaching on the neighbors and vice a versa.

Ms. Lee stated that John Winter, the Building Inspector, said that the roof overhang doesn't go further out. Option A would need to be tweaked based on Mr. Winter's comment.

Chairman Neuringer asked if anyone in the audience wished to address the Board.

Robert Mann addressed the Board. He stated that he has examined the alternate scheme. He said that shrubbery won't hide the second floor and that the second option is much more desirable to him.

A motion to close the public hearing was made by Mr. Weprin, seconded by Mr. Neufeld.

Ayes: Neuringer, Neufeld, Kramer, Weprin, Sullivan  
Nays: None

**10. Application #17A-2011, MELINDA & OLIVER WINTERMANTEL, 655 Shore Acres Drive**

Paul Walter, architect, appeared on behalf of the applicant. He stated that the applicant wants to build a second story addition on their house. He said this is a non-conforming combined side yard setback issue. This addition will increase the non-conformity, Mr. Walter stated.

Chairman Neuringer asked if anyone in the audience wished to address the Board. None did.

A motion to close the public hearing was made by Mr. Weprin, seconded by Mr. Neufeld.

Ayes: Neuringer, Neufeld, Kramer, Weprin, Sullivan  
Nays: None

**APPLICATIONS CLOSED**

**1. Application #3I-2011, #4SP-2011 & #12A-2011 ACTION AUTO MART, INC., 416 Mamaroneck Avenue**

The Board discussed the merits of the application. The Board determined to interpret that this applicant is not a dealership based on their current operation, which does not include the sale, storing or maintaining of vehicles.

A motion to make the interpretation that this is not a dealership was made by Mr. Weprin for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Sullivan.

Ayes: Neuringer, Kramer, Weprin, Sullivan  
Nays: None  
Absent: Neufeld (Mr. Neufeld had stepped out of the room)

**2. Application #6A-2011, LARCHMONT AVENUE PRESBYTERIAN CHURCH**

The Board discussed the merits of the case. The Board found the within application was a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA).

Ms. Kramer stated that if the applicant was replacing the structure with the exact same size and structure, she would have no problem approving it. Mr. Weprin agreed with Ms. Kramer. Chairman Neuringer stated that this is a foundation issue. He said that if the applicant is pouring a new foundation, they can do that anywhere on the property. Mr. Weprin stated that it was a bigger garage.

A motion to deny the variance was made by Mr. Weprin for the reasons stated on the record and recorded in the verbatim transcript, seconded by Ms. Kramer.

Ayes: Neuringer, Kramer, Neufeld, Weprin, Sullivan  
Nays: None

**3. Application #2I-2011, THE SHORE ACRES PROPERTY OWNERS ASSOCIATION AND BENNETT & CYNTHIA GOLUB, 700 S. Barry Avenue**

The Board discussed the merits of the case. Ms. Kramer had a question regarding paving. She did some additional research and she read through parts of the code. Discussion arose regarding having less than 50% of the area paved and that the plans show more than 50%. Mr. Neufeld reminded the Board that MB&YC say gravel is paving. Both Chairman Neuringer and Mr. Neufeld stated that they do not believe gravel is paving.

Mr. Sullivan stated that the Board held a special meeting on April 28<sup>th</sup> to discuss these issues. Ms. Kramer countered that she wanted to do more research on the matter. She stated that she does not believe gravel is paving. The Board went through the draft resolution point by point.

On motion of Ms. Kramer, Seconded by Mr. Weprin, the Board finds the Building Inspector was in error in determining that the "Lot" was zoning compliant for the purpose of calculating lot area and floor area ration application to MB&YC's applications to the Building Inspector.

Ayes: Neuringer, Kramer, Neufeld, Weprin  
Nays: Sullivan

On motion of Mr. Neufeld, seconded by Mr. Weprin the Board does not find that the Assessor's expression of intention to modify the map affects the Board determinations not considered in reaching its decision in this matter.

Ayes: Neuringer, Kramer, Neufeld, Weprin  
Nays: Sullivan

On motion of Ms. Kramer, seconded by Mr. Weprin the Board finds the Building Inspector was correct in the manner in which he established the required number of parking spaces for the property at issue.

Ayes: Kramer, Neufeld, Weprin, Sullivan  
Nays: Neuringer

On motion of Ms. Kramer, seconded by Mr. Neufeld the Board finds the Building Inspector was incorrect in determining that the proposed surfacing of the parking areas is compliant with the Zoning Code.

Ayes: Neuringer, Kramer, Neufeld  
Nays: Sullivan, Weprin

**4. Application #1I-2011, DAVID LARUSSO, 1648 Mamaroneck Avenue**

There was some confusion as to whether a vote was taken at the special meeting on April 28, 2011. Ms. Zalantis stated that the Board was making some minor corrections to the resolution.

On motion of Mr. Weprin, seconded by Mr. Sullivan, in accordance with the vote of this Board taken on April 28, 2011, adopting the above findings the application is hereby denied.

Ayes: Sullivan, Weprin, Kramer, Neufeld  
Nays: Neuringer

**5. Application #13A-2011, MCMICHAEL BOATING CENTER, 447 E. Boston Post Road**

The Board discussed the merits of the case. Mr. Sullivan stated that he did not view the videos and will not be voting on this application. The Board, based upon a review of the EAF accompanying the application and all other relevant materials, deemed this as an unlisted action and issued a negative declaration requiring no further action under the State Environmental Quality Review Act (SEQRA).

A motion to approve the variance was made by Mr. Neuringer for the reasons stated on the record and recorded in the verbatim transcript, seconded by Mr. Weprin.

Ayes: Neuringer, Kramer, Weprin, Neufeld  
Nays: None

Abstain: Sullivan

**MINUTES**

A motion to approve the minutes of March 3, 2011 was made by Mr. Neuringer, seconded by Mr. Sullivan.

Ayes: Neuringer, Kramer, Sullivan, Weprin, Neufeld  
Nays: None

**ADJOURN**

A motion to adjourn the meeting was made by Mr. Neufeld, seconded by Mr. Weprin.

Ayes: Neuringer, Kramer, Neufeld, Weprin, Sullivan  
Nays: None

On motion duly made and carried, the meeting was adjourned at 11:30 p.m.

ROBIN KRAMER  
Secretary

Prepared by:  
Ann P. Powers