

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, DECEMBER 6, 2012 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 December 6, 2012. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board's Records.

**PRESENT:** Gregory Sullivan, Chairman  
Barry Weprin, Vice Chairman  
Robin Kramer, Secretary  
Dave Neufeld, Board Member  
Lawrence Gutterman, Board Member  
Lester Steinman, Counsel to Board  
Joe Angiello, Assistant 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**

Chairman Sullivan called to order the Regular Meeting at 7:04 p.m. Chairman Sullivan stated that the applicant for #2I-2012 (418 North Barry Avenue) had sent an email requesting an adjournment to the next ZBA meeting. He stated that the nature of the situation appears to be a civil matter, not a Zoning matter. Mr. Sullivan asked counsel that if the application is heard next month, would Mr. Steinman be able to provide an opinion on the matter. Mr. Steinman stated that he would provide an opinion. Mr. Sullivan noted that the next ZBA meeting will be on January 3, 2013. He went through the procedures of the public hearing.

**PUBLIC HEARINGS**

1. Application #16SP-2009, MAMARONECK BEACH & YACHT CLUB, LLC., 700 South Barry Avenue (Section 4, Block 77, Lot 31), to renew a special permit to host non-member events. (R-10 District)

Paul Noto, attorney for the applicant, addressed the Board. He stated that the Club wished to renew their special permit to host non-member events. He noted that the applicant is in compliance with the 2009 resolution. Mr. Noto went on to say that all four clubs in the Mamaroneck host non-member events.

Mr. Weprin asked how many events are non-member events. Mr. Noto stated that he didn't have a number, but knew that it was less than 20%. Ms. Kramer asked if the Club had submitted the filed tax paperwork to the Village and Mr. Noto indicated that all tax paperwork was submitted to the Clerk-Treasurer's office.

Chairman Sullivan asked if anyone wished to address the Board.

Sue McCrory addressed the Board. She stated that based on the code, the Board can deny the Club's request for the renewal of their special permit to host non-member events. She indicated that the Club is not a not-for-profit organization; it's a business. Ms. McCrory read from the code definition which, she said, does not allow financial or business activities to occur.

Ms. McCrory noted that the tax returns the Club submitted show a modest return of \$185,000 in 2011. She went on to say that the Club does not report employees, land or building or lease costs on their tax returns. They show \$7,700 for entertainment expenses and those numbers are similar to their 2010 tax returns, Ms. McCrory noted.

Ms. McCrory said that the Club settled with the Village in 2010 and received an \$825,000 settlement. That amount was not indicated on the Club's tax return, she said. Ms. McCrory stated that the forms are not indicative of what is going on at the Club. She stated that the Club is a commercial entity.

Ms. McCrory distributed a packet which included a DVD of the depositions of Lisa Rosenshein and Bernie Rosenshein which illustrates the commercial activity. She noted that in order for the Club to host non-member events, the Club needs a use variance or zoning change.

Ms. McCrory read from Section 342-35B(9) of the Zoning Code which states, in part: "In order to obtain or renew a special permit, there must be a showing that, in addition to compliance with all applicable provisions of Article X and all other requirements of the Zoning Code, not more than 20% of the events or activities of any one of the foregoing accessory uses, in any calendar year, have been non-member events."

Ms. McCrory continued by stating that the Club recently auctioned off seven off-season weddings for a price of \$35,000 each. She noted that the weddings are more than what was reflected on the 990's.

Ms. Kramer asked where the language in the code that Ms. McCrory was referencing was. Ms. McCrory said it was Section 342-3 (Terms defined) for Club, Membership.

There was some discussion as to who owned the property (Mamaroneck Beach and Yacht Club or Taylor Point Associates) and Ms. McCrory stated that Mamaroneck Beach and Yacht Club owns the property. Ms. McCrory also left with the Board a copy of the last two years of tax returns for the Club.

Dan Natchez addressed the Board. Mr. Natchez referenced Section 342-35B(9) and said that if the Club doesn't know how many non-member events it held, how do they know if they are below or above the 20%. Mr. Natchez stated that he agreed with Ms. McCrory's comments.

Mr. Natchez went on to say that, while on the surface, this appears to be a simple application, it is not. He suggested that the Board do some investigation before making a decision.

Mr. Noto stated that the Club is compliant with the resolution because they filed the appropriate tax forms and stated that the Club has been in compliance for years. He noted that the settlement money is not income, so it wouldn't be reflected on the 990's.

Mr. Noto went on to say that the Club expects to be treated the same way as all the other Clubs in Mamaroneck are. He said that Hampshire Country Club is similar to MB&YC in that it is also run by a business. He reminded the Board that they granted the special permit to host non-member events in 2009 to the Club and the Club has not done anything differently since. Mr. Noto said that if anyone doesn't like the tax returns, they can take it up with the IRS.

Mr. Neufeld stated that the applicant is required to file the 990's and these 990's were filed by MB&YC, Inc., not LLC. Mr. Weprin asked if it was the Club's intention that it was grandfathered in before any zoning changes. Mr. Noto answered no. Mr. Weprin stated that the corporation is a not-for-profit. Mr. Neufeld asked how it is that the filings don't reflect the income from activities. Mr. Noto said that these forms are what were filed for the IRS and he didn't expect to have the forms dissected by the Board. Mr. Noto went on to say that there have been no complaints with the Club running the non-member events. Mr. Weprin stated that the income appears to be going to the LLC. Mr. Noto stated that he was not qualified to answer that.

Ms. Kramer stated that while the Board may have not asked for documentation in the past with respect to showing proof of the number of non-member events, it doesn't mean the Board can't ask for it now. She asked Mr. Noto if the Club could provide the Board with a list indicating that the Club is below the 20% threshold for non-member events. Mr. Noto said he would provide the documentation as long as it was asked also of the other clubs. He wants the club to be treated fairly, he noted.

Discussion arose as to what the definition of an event is. Ms. Kramer read from the code the provision that any club event not restricted to members only events are considered non-member events. Mr. Neufeld stated that his issue is the not-for-profit component. Mr. Noto stated that this is not how the term has been interpreted in the past. Mr. Noto stated that the Club has filed the non-profit tax forms for years and has never had a problem with them. Mr. Neufeld stated that upon review of the tax forms, he sees an income level that doesn't make much sense. It's very little money, \$180,000 per year, he stated.

Mr. Noto stated that Mr. Neufeld is suggesting the Club under reported its income.

With respect to why the Board asked for the 990's, Mr. Weprin stated that the thought may have been that the form would show the non-member component. Mr. Noto stated that he believed the Board wanted to demonstrate that the Club is not-for-profit. Mr. Weprin stated that he would like to see how many member and how many non-member events the Club hosts each year. Chairman Sullivan stated that he did not understand why the sworn affidavits wouldn't suffice for the Board. He said he felt the affidavits were sufficient.

Mr. Gutterman stated that he understands both sides, but doesn't see how it will matter one way or another. There don't appear to be any violations, he said. Per the code, Ms. Kramer stated,

the Board should request that the Club submit documentation showing the member and non-member events. Mr. Noto stated that he would submit numbers for the 2012 year.

Ms. McCrory addressed the Board. She reiterated that the only clubs that may host non-member events are not-for-profit organizations. She stated that she believed the IRS forms should reflect all the activity on the site. She noted that the code has a strict definition of a club and stated that Equinox is a club, but it is not a not-for-profit. Ms. McCrory went on to say that MB&YC and Hampshire are operating as commercial businesses.

Mr. Weprin asked if Ms. McCrory could be specific with respect to the Rosenshein depositions that she would like the Board to focus on. Ms. McCrory stated that she attached transcripts to the letter she submitted.

Allen Wood addressed the Board. He stated that there have been numerous instances where there have been issues with Otter Creek and the Club. He said that the Club has not been a good neighbor. Mr. Wood stated that he feels it is wrong to give approvals to a club that is breaking the law with respect to the environment. Mr. Allen also stated that he has personal friends who wanted to have a wedding at the Club. The Club, he said, had exceeded their number of non-member functions, so the Club offered a year membership to Mr. Wood's friend so that they could have the wedding.

Mr. Natchez addressed the Board and stated that the issue before the Board is to follow the code. If not, it should be rectified, he said.

The application was adjourned to the January 3, 2012 meeting.

2. Application #26SP-2006, ORIENTA BEACH CLUB, 1025 Rushmore Avenue a/k/a 1054 Walton Avenue (Section 9, Block 98, Lot 1), to renew a special permit to host non-member events. (R-15 District)

Lisa Smith, a representative for the Orienta Beach Club addressed the Board. She stated that the Club wishes to renew their special permit for non-member events. Ms. Smith noted that the Club runs about 4% of the 20% allowed for non-member events.

Mr. Weprin asked if the Club could provide a list of the member/non-members events, and Ms. Smith stated that the Club would provide them. He also asked if the violations had been remedied. Ms. Smith stated that the violations were remedied. Mr. Weprin requested copies of the 990's for the last two years.

Chairman Sullivan asked if anyone wished to address the Board. None did.

The application was adjourned to the January 3, 2012 meeting.

3. Application #17SP-2012, RADA CORP. D/B/A VILLAGE KITCHEN, 628-630 Mamaroneck Avenue (Section 8, Block 95, Lot 1), for a special permit to operate a new restaurant. (C-1 District) **AND** Application #34A-2012, RADA CORP. D/B/A VILLAGE KITCHEN, 628-630 Mamaroneck Avenue (Section 8, Block 95, Lot 1), to

renovate the interior of the existing one story commercial space for a new restaurant where the applicant proposes zero parking spaces and 8 parking spaces are required pursuant to Article VIII, Section 342-56(A) (Schedule of Off-Street Parking Requirements). (C-1 District)

Donald Mazin, attorney for the applicant addressed the Board. He requested that both applications be heard at the same time. He stated that the store has been empty for quite some time and that the applicant wishes to open the establishment as a restaurant. Mr. Mazin corrected for the record that the name of the restaurant will be Village Kitchen and not Village Chicken and Pie.

Mr. Mazin stated that the applicant has received temporary approval of site plan from the Planning Board. He said that the Planning Board is waiting for the approval from the ZBA on the parking variance. Mr. Mazin noted that none of the neighboring restaurants have a parking variance and that the applicant is requesting a variance for eight parking spaces.

Mr. Gutterman asked if take-out would be offered. Mr. Mazin stated that there would be take-out only if people are dining and wish to take leftovers with them. Ms. Kramer asked what type of establishment was in the building before. Mr. Mazin said the building housed a thrift shop. Ms. Kramer stated that this use would have different parking requirements and Mr. Mazin stated that was correct.

Mr. Steinman stated that the applicant applied for a change of use and the Planning Board deemed this to be a Type II action. The Planning Board has not otherwise acted on the application and is awaiting a decision from the ZBA, he noted.

Chairman Sullivan asked if anyone wished to address the Board. None did.

Mr. Weprin moved to close the public hearing on Application #17SP-2012 and Application #34A-2012, seconded by Mr. Gutterman.

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

4. Application #13A-2012, JOSEPH TARDIO & ROSEANNE TARDIO, 520 Fifth Street (Section 4, Block 15, Lot 87), to receive a Certificate of Occupancy and legalize an addition built under Permit #21767 and a rear shed where the addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the front yard setback is 19.3 feet and 20 feet is required. The shed violates the combined side yard setbacks where the applicant has 9.5 feet and 16 feet is required. (R-2F District)

Fred Grippi, the architect for the applicant, addressed the Board. He noted that the applicant, Joseph Tardio, was also present. Mr. Grippi stated that there are two issues: 1) front yard setback and 2) side yard setbacks. He noted that an error was made during construction with respect to the addition of the house and it was not discovered until a survey was performed. The second issue, Mr. Grippi noted, was that the original shed was in poor shape and was rebuilt. In

the past, the setback was not an issue, but now that the code has changed, the applicant violates the combined side yard setbacks, Mr. Grippi said.

Mr. Weprin asked who the Building Inspector was at the time of construction and Mr. Grippi said it was Mr. Poccia.

Chairman Sullivan asked if Mr. Tardio was aware of a complaint from his neighbor regarding the shed. Mr. Tardio stated that he was not and he was provided with a copy of the neighbor's letter.

Chairman Sullivan asked if anyone wished to address the Board. None did.

Mr. Weprin moved to close the public hearing on Application #13A-2012, seconded by Mr. Neufeld.

Ayes: Sullivan, Kramer, Weprin, Neufeld, Gutterman

Nays: None

5. Application #33A-2012, PAUL WILLIAMS, 307 Frank Avenue (Section 4, Block 31, Lot 110), to receive a Certificate of Compliance and legalize a deck built in 2000 under Permit #20387 where the deck violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the deck is setback 15.2 feet from the front yard and 20 feet is required and where the deck is setback 5.7 feet for its side yard setback and 6 feet is required. (R-5 District)

Paul Williams, the applicant, addressed the Board. He stated that he has lived at the premises sixteen years. He stated that he is in the process of selling his home. In 2000, the deck was built, Mr. Williams said. At the time, everything was approved by the Building Department, he said. Mr. Williams noted that he failed to close out the permit for the deck. When he went to the Building Department to close out the permit, he was told that the deck was not built as it was approved, Mr. Williams indicated. The difference is minor, Mr. Williams said.

Chairman Sullivan asked if this issue was before the ZBA because the property was a corner lot. Mr. Angiello stated that was correct; the issue is it is a corner lot. It would not be an issue otherwise, Mr. Angiello noted.

Chairman Sullivan stated that he visited the site and he doesn't see an issue with situation. He feels it's a minor mistake. Ms. Kramer asked about the prior variance granted for the deck. Mr. Williams said the deck that had the variance no longer exists.

Chairman Sullivan asked if anyone wished to address the Board. None did.

Mr. Weprin moved to close the public hearing on Application #33A-2012, seconded by Mr. Gutterman.

Ayes: Sullivan, Kramer, Weprin, Neufeld, Gutterman

Nays: None

6. Application #2S-2012, SMASH PARTNERS MAMARONECK, LLC. D/B/A SMASHBURGER RESTAURANT, 448 Mamaroneck Avenue (Section 9, Block 18, Lot 11B), for a sign variance to erect a third façade sign where a façade sign and accessory sign have been previously installed. The proposed sign violates Chapter 286-12B(1) (Signs) where a business establishment shall be limited to one façade sign and the applicant proposes an additional façade sign. (C-2 District)

Jennifer Gray, attorney for the applicant, addressed the Board. She stated that Smashpartners are the operators of Smashburger Restaurant. She stated that the applicant is requesting a sign variance at 448 Mamaroneck Avenue. Ms. Gray noted that the building is located at the intersection of several streets. Due to its unique shape, she said, there is a third façade to the building.

Ms. Gray stated that in March of 2012, Smashburger Restaurant received a special permit to operate the restaurant. She noted that there are two existing signs which are permitted by code. Ms. Gray indicated that Smashburger wants a sign on the rotunda portion of the building. She said the sign will be illuminated and in character with the other signs. The sign was already approved by the BAR in October.

Ms. Gray stated the following points:

1. The sign will have no adverse effect.
2. It is one unified sign.
3. It will provide for a more attractive landscape.
4. The sign will aid visibility for the restaurant.
5. There is little risk that the approval will increase the demand by others for more signs.

In terms of impact, Ms. Gray said that she doesn't feel it will have any impact on the neighborhood. There is no land disturbance and the sign will improve the view of the building, she noted. Ms. Gray said the hardship is more the issue of the shape of the building.

Mr. Gutterman asked if the sign will be illuminated. Ms. Gray stated the sign will be illuminated. Ms. Kramer asked about the sign standards. Ms. Gray stated that the sign on Mamaroneck Avenue is 13 feet wide by 1.10 feet high; the rear sign is 6.6 feet wide by 11 inches high and the proposed sign is 11.5 feet wide and 2.25 feet high.

Ms. Gray stated that the BAR granted the approval with two conditions: 1) approval by ZBA and 2) removal of existing window sign which has already been removed.

Chairman Sullivan asked if anyone wished to address the Board. None did.

Mr. Weprin moved to close the public hearing on Application #2S-2012, seconded by Ms. Kramer.

Ayes: Sullivan, Kramer, Weprin, Neufeld, Gutterman

Nays: None

7. Application #35A-2012, SRN CORP. D/B/A SARAH NEUMAN CENTER, 845 Palmer Avenue (Section 9, Block 3, Lot 3B), for a variance to facilitate renovation and expansion of a nursing home facility, including a two-story 19,108 square foot addition with additional parking where the applicant proposes 30% land area coverage and 25% maximum land area coverage is allowed pursuant to Article VII, Section 342-52.1(D) (Building Coverage) (RM-2 District)

Paul Noto, attorney for the applicant, addressed the Board. He indicated that the applicant submitted a large binder to the ZBA. Mr. Noto stated that Sarah Neuman has been in the community for many years providing elder care. The applicant would like to move forward with a greenhouse design for 24 units which will not increase residents or staff, Mr. Noto stated.

Mr. Noto went on to say that the applicant needs to increase lot coverage to 30%. He stated that the applicant has appeared before the Planning Board for an amended special permit and the Planning Board has issued a negative declaration and has made recommendations which are reflected in the packet provided to the Board.

Lisa Feiner, Chairwoman of Sarah Neuman Center, addressed the Board. She noted that the center has had an association with the neighborhood for twenty years. Ms. Feiner stated that the center is seeking zoning approval for a new free-standing building offering state-of-the-art accommodations. She went on to say that the center is committed to this type of model of care.

With respect to admission, Ms. Feiner stated that the criterion for admission is the same that currently exists. She stated that there will not be an increase in charge, residents or staff. She did note that the expansion will increase parking by eleven spaces.

Ms. Feiner briefly reviewed the history and objectives of the organization. The new building and renovation of the pavilion will be for the frail elderly, Ms. Feiner noted. She stated that the organization wants to change the culture of nursing homes in order to create choice and autonomy for its residents. Ms. Feiner described what the new area will be like walking in and how residents will go about their daily activities. She indicated that this will be a home that has skilled nursing and that the model is endorsed by The Robert Wood Johnson Foundation. Ms. Feiner stated that the center has been in contact with the neighbors and that two wine and cheese sessions were hosted to discuss the project.

Lee Pellegrino, the architect for the project, addressed the Board. He said that the campus is located on the corner of Palmer Avenue and Rockland Avenue. Mr. Pellegrino noted that the pavilion has 80 plus residents, with two individuals sharing one room.

He noted that the project will increase the footprint by 20% of the direct care portion of the pavilion. He noted that removing beds, would take the facility below the 300 bed threshold which is critical with the Department of Health and reimbursements to the center. So as not to lose the beds, a decision was made to build a new building, he indicated. The original location



of the building would affect the parking, so a decision was made to build at the corner location, Mr. Pellegrino stated.

Mr. Pellegrino indicated that the 28 parking spaces have been relocated by changing the entry and creating a new entryway. He said that the applicant is looking to change parallel parking to angled parking and that will increase the number of spaces by seven. Mr. Pellegrino noted that the construction is within the setback and height limits, per the code.

Mr. Gutterman asked if the purpose was to have an institutional structure with sloping roofs to reflect a more residential prototype of the use of the building. Mr. Pellegrino stated that was correct; it's an eye towards institutional use but with the character of the architecture reflecting more residential use.

Mr. Gutterman asked with respect to the new entry canopy, how the vehicular flow would work in that area. Mr. Pellegrino stated that all traffic flows in a clockwise fashion. He noted that it's already the general flow of the traffic; that's not changing.

Ms. Kramer asked whether by putting more paving and adding a building, the applicant was simply putting a lot of impervious surface on? Mr. Pellegrino stated that the green roof along the two street sides have sloped roofs to create the character of the building and that represents about 4,000 sq. ft. of the footprint of the building. The other 4,000 sq. ft. is a flat roof (green roof), Mr. Pellegrino stated. In addition, there are portions of the parking that are impervious pavement, Mr. Pellegrino said. Mr. Noto indicated that the Village Engineer and the Planning Board went through what Mr. Pellegrino just discussed in terms of storm water.

Mr. Noto stated that one of the issues in the Village is that if you look at the code and the definition of lot coverage, it uses the terms structures and buildings. For some reason, over the years, this definition has evolved a little, Mr. Noto said. The interpretation is sometimes not entirely consistent with the code where canopies and other things are now considered structures when in the past they weren't, he stated. In terms of calculating lot coverage, Mr. Noto said he wanted to make the Board aware that looking at the definition and the way the applicant calculated lot coverage, some of these structures weren't always considered structures in the code. Mr. Noto indicated that they did the calculations as instructed by the Building Department.

Mr. Gutterman stated that this is a significant variance in lot coverage the applicant is seeking and asked what impact this interpretation of the code would have on the lot coverage. Mr. Noto said that it would not bring the percentage down to 25%. Mr. Pellegrino stated that it's a difference of 2%.

Mr. Steinman stated that the applicant should go through the five factors in determining whether to grant a variance or not.

Mr. Noto stated that the new campus will be an improvement; the additional parking will be beneficial; there is no alternative to doing this without impacting lot coverage; it will be more efficient for traffic flow and the benefits outweigh any detriment.

Chairman Sullivan asked if anyone wished to address the Board.

Joan Silver addressed the Board. She stated that she shares a border with the center (Abington Square Condominiums). Ms. Silver noted her concern that if the parking is changing, how that will affect the run-off as she is located at a lower level than the center. She also stated that she is concerned about ambulances coming by at all hours of the night.

Jerry Schwalbe, the engineer, stated that the applicant has an extensive landscaping plan, as well as fencing, to provide necessary screening. He noted that the applicant still needs to go before the Planning Board for finalization. As for run-off, Mr. Schwalbe stated that the plan is to re-direct the flow of water to the front of the property so Ms. Silver's location won't be impacted. He assured the Board that the run-off issues are being addressed.

Mr. Weprin asked if the entrance change will affect Abington Square Condominium. Mr. Schwalbe stated that there will still be an entrance for ambulances at that location; that configuration stays the same. Chairman Sullivan indicated that Ms. Silver and others could also attend the Planning Board hearings because these comments would be more under their purview.

Lynn Bueller addressed the Board. She stated that she is a nearby property owner and she is concerned about parking. She indicated that she never saw a newsletter or information from the center about the meetings. Ms. Bueller said that people are not aware of what the center purposes to do.

Mr. Weprin asked if Ms. Bueller was happy with the increase in parking spaces. Ms. Bueller stated that she is concerned the center is losing 32 spaces during construction for construction vehicles plus parking for the construction workers.

Mr. Steinman noted that these issues have been discussed at prior meetings with the Planning Board and the applicant has been directed to modify plans to address these concerns.

Ms. Kramer asked in light of the lot coverage going from 25% to 30%, of that increase, net/net, how much new impervious surface is the net? Mr. Schwalbe stated that the existing lot coverage is 64,114 sq. ft. and the proposed lot coverage is 72,183 sq. ft. and 12,000 sq. ft. is the new increase in impervious surface. Between the green room and the pervious pavement, it more than covers the impervious increase, Mr. Schwalbe stated.

Mr. Noto concluded by stating that under the old calculations, the center was at 25% lot coverage, under the new calculations the center is at 27% lot coverage and the center is asking for 30% lot coverage.

Ms. Kramer moved to close the public hearing on Application #35A-2012, seconded by Mr. Weprin.

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

## CLOSED APPLICATIONS

1. Application #24A-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), for an area variance of Article VIII, Sections 342-54 (Layout, Location & Maintenance) and 342-56 (Off Street Parking Requirements) for a Certificate of Occupancy for additional seating where the applicant proposes zero on-site parking spaces and 28 on-site parking spaces are required. (C-1 District)

The Board discussed the merits of the application and agreed to review the resolution for the parking variance before moving on to the special permit. The Board reviewed the draft resolution prepared by counsel. Mr. Neufeld made some comments with respect to the 11 parking spaces used versus the 12 parking spaces and to omit the portion of the resolution that states "as approved by the Building Inspector."

Ms. Kramer stated that the lease is referenced in the resolution, but it is not attached. She also noted that the applicant didn't do a parking analysis; they conducted a survey. Discussion arose as to whether documents should be attached to resolutions. Ms. Kramer stated that she would be fine with a reference in the resolution to the lease and mention that it is part of the ZBA record.

On motion of Mr. Weprin, seconded by Mr. Gutterman, the application for a parking variance is approved.

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

2. Application #14SP-2012, F & B LLC. D/B/A CLUB CAR RESTAURANT, 1 Station Plaza (Section 9, Block 2, Lot 2A1), to amend a special permit to operate a restaurant in order to increase seating inside the restaurant and add seasonal outside seating. (C-1 District)

The Board discussed the merits of the application. Mr. Neufeld stated that Condition F iii should state that seating should be located so as to not interfere with parking and roads. Chairman Sullivan added the language that outdoor dining shall not be utilized and must be made unavailable after a pre-determined time.

Mr. Steinman noted that the applicant does not need a café license, but does need a cabaret license. Mr. Weprin suggested limiting the outdoor seating to the same conditions as the Village's café license.

Chairman Sullivan stated that he was concerned because in the past the ZBA has approved outdoor seating for restaurants. Mr. Neufeld feels the applicant is different from other restaurants and feels the approvals should be done in stepping stones. Deny without prejudice and then institute it next year, Mr. Neufeld stated.

Chairman Sullivan stated that the resolution needs to indicate that this is a unique situation and is inclined to grant the outdoor seating with limitations. Ms. Kramer noted that this is the first time

the Board has denied something like this. She noted that the 11:00 p.m. time limit can't be enforced. Mr. Steinman suggested that the Board may want to consider how it handled Molly Spillane's application. Mr. Gutterman stated that this is a different application because it is a unique site.

Mr. Steinman stated that the special permit resolution will need to be re-written so that it sets forth justification as to why the outdoor dining is being denied. Ms. Kramer stated that weekend outdoor dining would be fine for her. Mr. Weprin suggested seating up to 7:00 p.m. and outdoor dining finished by 9:00 p.m. Saturday and Sunday. The Board agreed that the outdoor dining would occur from 11:00 a.m. to 9:00 p.m. with the last seating at 7:00 p.m. and that there would be no outdoor entertainment.

The Board put off the vote to the January 3, 2013 meeting so that the resolution could be redrafted. A question arose regarding the 62 day period and Mr. Steinman stated that as a special permit, there is no default denial.

3. Application #17SP-2012, RADA CORP. D/B/A VILLAGE KITCHEN, 628-630 Mamaroneck Avenue (Section 8, Block 95, Lot 1), for a special permit to operate a new restaurant. (C-1 District) **AND** Application #34A-2012, RADA CORP. D/B/A VILLAGE KITCHEN, 628-630 Mamaroneck Avenue (Section 8, Block 95, Lot 1), to renovate the interior of the existing one story commercial space for a new restaurant where the applicant proposes zero parking spaces and 8 parking spaces are required pursuant to Article VIII, Section 342-56(A) (Schedule of Off-Street Parking Requirements). (C-1 District)

The Board discussed the merits of both applications. Mr. Steinman noted that the application received consistency from the Planning Board and that the Planning Board made a Type II determination. Mr. Weprin stated that this type of variance is routinely granted and that there is no place to put parking.

On motion of Mr. Weprin, seconded by Mr. Neufeld, the application for a parking variance is approved.

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

On motion of Mr. Weprin, seconded by Mr. Gutterman, the application for a special permit is approved with a three-year term.

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

4. Application #13A-2012, JOSEPH TARDIO & ROSEANNE TARDIO, 520 Fifth Street (Section 4, Block 15, Lot 87), to receive a Certificate of Occupancy and legalize an addition built under Permit #21767 and a rear shed where the addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the front yard setback

is 19.3 feet and 20 feet is required. The shed violates the combined side yard setbacks where the applicant has 9.5 feet and 16 feet is required. (R-2F District)

The Board discussed the merits of the application. Mr. Weprin stated that the applicant demonstrated the home addition was consistent with the character of the community.

On motion of Mr. Weprin, seconded by Mr. Gutterman, the application for area variances is approved.

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

5. Application #33A-2012, PAUL WILLIAMS, 307 Frank Avenue (Section 4, Block 31, Lot 110), to receive a Certificate of Compliance and legalize a deck built in 2000 under Permit #20387 where the deck violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the deck is setback 15.2 feet from the front yard and 20 feet is required and where the deck is setback 5.7 feet for its side yard setback and 6 feet is required. (R-5 District)

The Board discussed the merits of the application. Ms. Kramer stated that it bothers her that individuals do whatever they want and then come to the ZBA for approval after the fact. She noted that if the applicant had come to the Zoning Board for a variance originally, he would probably have been approved for it. Mr. Steinman indicated that there had been a variance for the previous deck. Chairman Sullivan said he felt that this was a minor variance.

On motion of Mr. Sullivan, seconded by Mr. Gutterman, the application for area variances is approved.

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

6. Application #2S-2012, SMASH PARTNERS MAMARONECK, LLC. D/B/A SMASHBURGER RESTAURANT, 448 Mamaroneck Avenue (Section 9, Block 18, Lot 11B), for a sign variance to erect a third façade sign where a façade sign and accessory sign have been previously installed. The proposed sign violates Chapter 286-12B(1) (Signs) where a business establishment shall be limited to one façade sign and the applicant proposes an additional façade sign. (C-2 District)

The Board discussed the merits of the application. Mr. Weprin stated that he was inclined to grant the sign variance because of the uniqueness of the building and that the BAR has ruled favorably on the sign.

On motion of Mr. Gutterman, seconded by Ms. Kramer, the application for a sign variance is approved.

Ayes: Sullivan, Kramer, Weprin, Neufeld, Gutterman

Nays: None

7. Application #35A-2012, SRN CORP. D/B/A SARAH NEUMAN CENTER, 845 Palmer Avenue (Section 9, Block 3, Lot 3B), for a variance to facilitate renovation and expansion of a nursing home facility, including a two-story 19,108 square foot addition with additional parking where the applicant proposes 30% land area coverage and 25% maximum land area coverage is allowed pursuant to Article VII, Section 342-52.1(D) (Building Coverage) (RM-2 District)

The Board will hold off on voting until the applicant goes before the HCZM for consistency.

### MINUTES

On motion of Mr. Sullivan, seconded by Mr. Weprin, the minutes for the September 6, 2012 meeting are approved.

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

### ADJOURN

On motion of Mr. Sullivan, seconded by Ms. Kramer, the meeting was adjourned at 9:45 p.m.

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

ROBIN KRAMER  
Secretary

Prepared by:  
Ann P. Powers