

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, OCTOBER 3, 2013 AT 7:30 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 October 3, 2013. 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:** Larry Gutterman, Chairman  
Barry Weprin, Vice Chairman  
Robin Kramer, Secretary  
Greg Sullivan, Board Member  
Dave Neufeld, Board Member  
Anna Georgiou, Counsel to Board  
Lester Steinman, Counsel to Board  
Bill Gerety, 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 Gutterman called to order the Regular Meeting at 7:34 p.m. He noted for the record that Mr. Weprin and Mr. Neufeld would be late, although the Board did have a quorum to open the public hearing.

**PUBLIC HEARINGS**

1. Application #14A-2013, BB & G CONSTRUCTION CORP., 209 Grand Street (Section 8, Block 64, Lot 32), for variances to subdivide an existing lot into two lots and construct a new two-family residence on lot B where the property in an R-4F zone per Article V, Section 342-27 of the Schedule of Minimum Requirements for Residential Districts requires the following: 2,500 sq. ft. lot area per dwelling unit required, lots A and B insufficient by 170.76 sq. ft.; 5,000 sq. ft. lot area required, lots A and B insufficient by 170.76 sq. ft.; lot B width 50 ft. required, insufficient by 1.71 ft.; lot B depth 100 ft. required, insufficient by 1.46 ft.; lot A depth 100 ft. required, insufficient by 5.39 ft. and Lot A total side yard 16 ft. required, insufficient by 1.6 ft. (R-4F District)

Chairman Gutterman noted for the record that the Board had received correspondence from Paul Noto, the attorney for the applicant, requesting an adjournment of this application. Mr. Noto addressed the Board. He apologized for the lateness of the adjournment request, but was retained by the applicant this past Monday and would like to review the application and address comments from Sue McCrory as well. He noted that he did not believe it would be an issue to adjourn the application for other members of the public who came tonight.

Chairman Gutterman stated that other conditions for the application may need to be added and the applicant will then need to re-notice should that happen. Mr. Noto stated that he would be in touch with the Building Inspector to make a determination on whether other variances will be required.

Mr. Sullivan addressed the individuals who came out about the application and explained that the application would not be heard this evening.

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

The application is adjourned to November 7, 2013, however Mr. Noto stated that based on his anticipated conversation with the Building Inspector, if the applicant can't make the November meeting, they will come back in December.

2. Adjourned Application #3I-2013, SHORE ACRES PROPERTY OWNERS ASSOCIATION, ET AL., regarding 700 S. Barry Avenue a/k/a 555 S. Barry Avenue - Mamaroneck Beach & Yacht Club (Section 4, Block 37, Lot 1) for an appeal of the determination of the Building Inspector, made on April 5, 2013, finding that the amended site plan application of Mamaroneck Beach & Yacht Club is zoning-compliant. (MR District)

Chairman Gutterman stated that this application was adjourned last month. He stated that the first issue before the Board is which zoning code (pre-2006 or post-2006) should be applied. The Board will vote on that matter first, he said.

Mr. Sullivan stated that at his first ZBA meeting seven years ago, he voted for the pre-2006 zoning code for a previous MB&YC application; he said he would be inclined to do the same tonight.

*At 7:40 p.m., Mr. Weprin joined the meeting.*

The Chairman updated Mr. Weprin before moving on. The Board agreed to table the discussion until Mr. Neufeld joined the meeting.

### **OTHER BUSINESS**

1. Application #3SP-2013, WILLIAM VITALE D/B/A ANDREA'S 25 OF WESTCHESTER, LLC., 974 E. Boston Post Road (Section 4, Block 63, Lot 4A), for a special permit to operate a restaurant. (C-1 District)

Ms. Kramer asked if the Zoning office had received the required survey from the owner. Chairman Gutterman stated that a survey was not provided, but that the Board received an email from Joe Messina, attorney for the applicant, that a survey was in the process of being performed. The Board decided to hold over the matter until the November 7<sup>th</sup> meeting, at which time they expect to receive the survey.

## CLOSED APPLICATIONS

1. Application #9A-2013, EAST COAST NORTH PROPERTIES, LLC., 416 Waverly Avenue a/k/a 560 Fenimore Road (Section 8, Block 111, Lots 29-42), for four variances to construct a new four-story (40,620 sq. ft.) self-storage facility, and site and existing building improvements where the proposed plan violates Article VI, Section 342-38 of the Schedule of Minimum Requirements where the applicant proposes a Floor Area Ratio of 1.34 where no more than 1.0 is allowed and a new building of four stories where no more than three stories are allowed. The proposed plan also violates Article VIII, Section 342-57 of the Schedule of Off-Street Loading Requirements where the applicant proposes zero loading spaces and five loading spaces are required. The proposed plan also violates Article VIII, Section 342-56 of the Schedule of Off-Street Parking Requirements where the applicant proposes 52 parking spaces and 89 parking spaces are required. (M-1 District)

Mr. Weprin noted for the record that he had viewed the DVD of the September meeting (as he was absent) and feels that applicants don't need to adjourn their applications if a full Board isn't present because it is quite easy for a Board member to view the DVD of the meeting on line. He went on to say that the Board could then vote on a matter once there is a full Board. He said he felt it wasn't necessary to adjourn applications if a Board member is not present.

The Board discussed the two draft resolutions provided by counsel. Chairman Gutterman asked which resolution the Board would like to go with. Mr. Sullivan stated that he did not have a problem with granting the variances without the setback. Ms. Kramer disagreed, stating that the building is too large and it would change the character of the neighborhood as there are no other buildings of that size that close to the street.

Mr. Weprin stated that his preference would be to have a setback, but would go along with whatever this Board decided and whatever the Planning Board recommends. Chairman Gutterman stated that he would be in favor of a setback. He added that the building does bring a use to the area. He said he was also okay with approving the variances as is because of the site plan application which is still before the Planning Board. Chairman Gutterman went on to say that if this application was in a different area, he would be more concerned. This is an industrial area and the building works within the area, he said. Mr. Weprin stated that he concurs with Chairman Gutterman's comments.

Ms. Kramer stated her concern that she does not believe the Planning Board can stipulate a setback. Mr. Steinman said that the Planning Board can, in fact, stipulate a setback for the building.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application, as proposed, for variances is approved.

Ayes: Gutterman, Sullivan, Weprin  
Nays: Kramer

Absent: Neufeld

2. Application #2I-2013, SUZANNE MCCRORY, regarding 818 The Crescent (Section 9, Block 85, Lot 34B), for an appeal of the issuance of a Certificate of Occupancy for Building Permit #22476 and seeking a determination that the Certificate of Occupancy is invalid. (R-15 District)

The Board discussed the draft resolution prepared by counsel. Mr. Weprin stated that this has been litigated many times before and the Board should not be considering the flood plan aspect in this application and that the FAR issue was dealt with before.

Ms. Kramer stated that there is gratuitous information about prior litigation mentioned in the draft resolution which she does not feel is necessary. Mr. Weprin stated that he had no issue with removing those portions from the resolution. Ms. Kramer stated that the 2006 matter shouldn't be included in the resolution. Mr. Steinman stated that it is part of the history and it also shows that the same parties have been proceeding on this matter in multiple occasions and part of the history that should be included. Ms. Kramer stated that the Board is making a determination on what is currently before it, not what happened in the past. Ms. Georgiou stated that the past decisions relate to the FAR currently before the Board. Mr. Steinman noted that the small reference at the bottom of the second page could be taken out. The other portions are directly related, he said.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the instant appeal is denied.

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

### **MINUTES**

On motion of Mr. Sullivan, seconded by Mr. Weprin, the June 6, 2013 meeting minutes are approved.

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

The minutes for the July 23, 2013 meeting and September 12, 2013 meeting were tabled until the November 7, 2013 meeting.

### **OTHER BUSINESS, (Continued)**

1. Proposed Local Law N-2013 (Chapter 342-61 & 342-92 – Fee in Lieu of Parking)

The Board discussed the draft memo to the Board of Trustees. Ms. Kramer asked about the comment of the law being pre-empted by NYS law. Ms. Georgiou stated that this provision

supplements and adds to the NYS law which is not permissible. Chairman Gutterman asked that the memo include a sentence stating that the Board supports the proposed law.

2. Proposed Local Law M-2013 (Chapter 342-3 – Definition of Floor Area, Gross)

With respect to PLL M-2013, the Board agreed that the word “room” be taken out and replaced with the word “space” in order to prevent overly large utility and mechanical rooms from being excluded to circumvent the FAR requirements.

Discussion arose regarding parking and FAR. Ms. Kramer stated that she did not believe parking should be excluded from FAR. Mr. Weprin agreed with Ms. Kramer on the FAR issue. The Board directed Ms. Powers to revise the correspondence and send to the BOT for the October 7<sup>th</sup> work session.

**PUBLIC HEARINGS, (continued)**

1. Adjourned Application #3I-2013, SHORE ACRES PROPERTY OWNERS ASSOCIATION, ET AL., regarding 700 S. Barry Avenue a/k/a 555 S. Barry Avenue - Mamaroneck Beach & Yacht Club (Section 4, Block 37, Lot 1) for an appeal of the determination of the Building Inspector, made on April 5, 2013, finding that the amended site plan application of Mamaroneck Beach & Yacht Club is zoning-compliant. (MR District)

Debra Cohen, attorney for the applicant, addressed the Board. She stated that there were some people who wanted to speak about the pre-2006 and post-2006 zoning code while waiting for Mr. Neufeld.

John Hofstetter, 304 Prospect Avenue, addressed the Board. He noted that he was a former trustee of the Village. He stated that part of the reason why he wanted to be here tonight was because he was in the room when discussions were happening in 2010 about whether or not this was to be a final settlement and that is exactly what the intention of the BOT was when they signed the settlement agreement.

*Mr. Neufeld joined the meeting at 8:10 p.m.*

Mr. Hofstetter continued, saying that it was the BOT’s intention that this would be a final and global settlement. Mr. Hofstetter noted that he had a memo dated January 22, 2010 from then Village Attorney Christie Derrico to attorney Steve Silverberg that enumerated various points: 1) there would be no mediator, 2) any settlement must be global and a full resolution of all other matters. Mr. Hofstetter went on to say that the letter was prepared shortly after Mayor Rosenblum was elected, presumably to settle this matter. He said that Mayor Rosenblum then sent an email blast out to the public stating that the matter was settled, the Club had been paid and the matter was finalized.

Mr. Hofstetter stated that there have been discussions numerous times to modify the stipulation and during those times, the Club still could not finalize their plans. He asked what the Village is

to do now. Mr. Hofstetter said that the BOT specifically directed its attorneys that the stipulation would finalize and settle the entire matter.

Mr. Hofstetter read from an email sent to the BOT from attorney Steve Silverberg stating that the check settling the matter had been received by the MB&YC. Mr. Hofstetter said that the Club had no problem accepting the money. He said the Village is now continuing to chase goal posts. Mr. Hofstetter indicated that he would be happy to provide the Board with any documents it may want.

Chairman Gutterman asked if Mr. Hofstetter was suggesting that this current discussion is not in line with the stipulation. Mr. Hofstetter answered that in order for the Building Inspector to make a determination of zoning compliance, he has to use documents to support that. Mr. Hofstetter said he believes the documents were not correct. He went on to say that the Building Inspector has to determine zoning compliance and in order to do that, he needs a survey. The documents and survey were not available, he said. Mr. Hofstetter said he voted for a stipulation that didn't have a survey. After the stipulation was finalized, Mr. Hofstetter said that Mr. Silverberg was still asking for the Club to provide a survey. He concluded by stating that every member of the BOT told its attorneys that it was to be a global settlement. Chairman Gutterman thanked Mr. Hofstetter for his comments.

Chairman Gutterman stated that the Board needs to make a determination as to which zoning code, the pre-2006 or the post-2006, should apply with respect to this matter. Ms. Kramer asked what happened to the amended site plan that was part of the stipulation. Mr. Noto, attorney for MB&YC, explained that the Club filed an application in September of 2010 and were before the Planning Board from September through December of 2010. During the process, he said the plan was modified based on comments from the Planning Board. Mr. Noto went on to say that the Club also appeared before the HCZMC in November and December of 2010 and the plan was found consistent with the LWRP.

Subsequent to the Planning Board and HCZMC approvals, Mr. Noto said that SAPOA and Mr. and Mrs. Golub filed an appeal with the ZBA regarding parking and FAR. Additionally, Mr. Noto stated that SAPOA and Golub filed an Article 78 for SEQRA and site plan. He noted that those lawsuits are still pending. The ZBA found that the plan was not compliant for parking and FAR, Mr. Noto said. Once the ZBA made that determination, the Club filed an Article 78 which is also still pending, Mr. Noto indicated.

Mr. Noto stated that the Building Inspector had also issued building permits which are currently on hold. During the course of these litigations, Mr. Noto stated that the Club came to an agreement with Mr. and Mrs. Golub by stipulation in 2013 which this Board was involved with. At that point, SAPOA obtained other counsel, he said. Mr. Noto stated that the Club agreed to reduce the number of units and reduce the height of the Yacht Master building. He said that the Club then went through the standard pre-submission conference and based on that conference, the Club filed an amended site plan application in early 2013. The Building Inspector at the time, Rob Melillo, left the Village and the Club was advised that there was no one to review the application until the new Building Inspector was hired, Mr. Noto stated. Mr. Gerety became the Village Building Inspector in April 2013, reviewed the application, made his determination and

sent it to the Planning Board, Mr. Noto said. The Planning Board commenced a site plan review process and a SEQRA process, he said. He noted that HCZMC is also in the process of reviewing for LWRP consistency. Because the Planning Board has yet to adopt findings, HCZMC can't make a determination of consistency. SAPOA then filed an appeal which is before this Board now, Mr. Noto said.

Chairman Gutterman asked if building permits were issued on site plans that were approved but held in abeyance pending the Article 78 proceedings in January 2011, how are these plans an amended version of those plans.

Mr. Steinman stated that this Board determined that the building permit should be revoked and the judge enjoined the Village from revoking the building permit. Due to all the litigation, the judge stayed the proceeding, Mr. Steinman noted. Ms. Kramer then asked for clarification as to whether the building permits have been revoked. Mr. Steinman answered that the permits have not been revoked, but they can't be utilized. Mr. Neufeld stated that, but for the stay, the permits are revoked. Mr. Noto stated that to answer Chairman Gutterman's question, this Board found the plan not zoning compliant, so changes had to be made to the plan.

Mr. Neufeld said that the Board revoked the building permit because of the issue with the title. Mr. Noto acknowledged that the permit was revoked for several reasons. Mr. Neufeld stated that because the building permit had been revoked, it made it that the Club could not effectuate. Mr. Noto stated that had an appeal not come before the ZBA, the Club would have moved forward with construction. The Planning Board had essentially approved it, he said.

Ms. Kramer asked how the current site plan differs from the site plan that was attached to the stipulation. Mr. Noto stated that there are fewer units, the parking has been reconfigured (50% paved/50% unpaved) and the square footage has been reduced. The Club addressed the deficiencies, Mr. Noto stated. The Club made the recreation building a little taller and proposed to make the Yacht Master building larger (although the Planning Board will probably not approve that), Mr. Noto said.

Mr. Neufeld spoke to the responsiveness of the Club regarding the appeals. He stated that although the Club reduced square footage and redid the parking, the Club also increased the size of buildings. Mr. Neufeld stated that in order for the Club to comply, they could have simply made the project smaller to make it fit. What appears to have happened is that the Club had an opportunity to go back and make other changes not in connection with the appeals, he noted. Mr. Noto stated that the Club had to reduce square footage because they are using less land without the half acre parcel; many things needed to be reconfigured and because of the reduction of square footage and reconfiguration of the parking, other changes were made. Mr. Noto stated that the Club has to work under the parameters of what is architecturally feasible and from a planning perspective.

Mr. Neufeld asked what the net square footage was that needed to be reduced. Mr. Noto stated that it was approximately 5,000 square feet. Mr. Neufeld asked how many parking spaces had to be reduced. Mr. Noto stated that it was reduced by eight spaces and reconfigured paving and non-paving. Mr. Steinman clarified that parking was a paving issue. Mr. Neufeld asked what

the total square footage is of this plan versus the 2010 plan. Mr. DeAngelis, the architect, said that the existing is 55,000 square feet and proposed under the 2013 plan is 79,800 square feet.

Debra Cohen, attorney for SAPOA, addressed the Board. She stated that the representatives for the property owner would like to believe they are still entitled to the pre-2006 code; that is not the case. Ms. Cohen stated that by looking at the language of the stipulation it ends when the Club receives final site plan approval and is granted the building permit. She noted that the Club took the settlement money and never gave it back. The Club could have made the decision to allow the currently stayed litigation to move forward, Ms. Cohen said. The Club voluntarily agreed to put it on hold in the hopes of negotiating a settlement, she stated.

Ms. Cohen stated that there is also the issue of the disputed parcel which the state is looking at; this is when the Club revised their plan. Ms. Cohen said that this plan revision includes more changes than were asked of by this Board. The plan language in the stipulation lays out the condition of when there is a final site plan approval, Ms. Cohen said. Ms. Cohen went on to say that even if the Board doesn't agree with the assertion of the plan language in the stipulation, the applicants have laid out why the stipulation is not binding on this Board.

Ms. Cohen went on to say that there was information that the Club withheld about business activities at the Club until a resident brought it to the Village's attention. Because documents were withheld, it makes the stipulation non-enforceable, she said.

Ms. Cohen concluded by stating that the Board has to make a decision on this issue and all the issues based on what is right and fair. She said that the Club had their opportunity to litigate regarding their site plan and they chose not to.

Dan Natchez, the applicant, addressed the Board. Mr. Natchez stated that at the Planning Board meetings when the application was filed, the Club said that priorities with the project had changed and they were re-thinking what to do. Mr. Natchez also noted that there was litigation with the Golubs and SAPOA. The Club made an agreement with the Golubs and SAPOA did not. He stated that the agreement with the Golubs involved removing the third floor of the beach seasonal residence building.

Mr. Natchez went on to say that what the Club is currently proposing is a re-designed beach seasonal residence, a much larger yacht club building, a vastly changed and increased recreational building, an entirely changed swimming pool area, and a change to the cabanas. In addition, there is a change in terms of the marine dependent uses, he said. He stated that these changes were not done to comply with the mandatory changes. What is before this Board is not to correct what the Board had denied, but to make other changes, he said.

Mr. Natchez stated that with the previous finalized site plan, the Club received a settlement and a reduced tax assessment. What the Board found with the previous plan that was not in compliance is not what is before this Board today.

Paul Noto addressed the Board. He stated that there are four modifications to the plan: 1) smaller site, 2) reduced number of residential units, 3) reduced height of two proposed building



(Beach Seasonal Residence and Recreation Building), 4) 82,436 sq. ft. proposed in 2010 and 79,800 sq. ft. proposed in 2013. Mr. Noto stated that comments from Mr. Natchez and Ms. Cohen are incorrect, not relative and somewhat inflammatory.

Mr. Steinman stated that this matter has gone on for some time and that he would like to remind the Board of the Village Attorney's opinion in this matter. Mr. Steinman read from Village Attorney Linda Whitehead's letter dated June 6, 2013 regarding why the pre-2006 code should apply. Mr. Steinman also noted that a stipulation was signed by the ZBA in the spring of 2013. Mr. Steinman stated that the Village Attorney indicated that the amended site plan is an amendment to the stipulated plan. Mr. Steinman then read from Ms. Whitehead's letter dated July 9, 2013 stating that the consent judgment stipulates that the pre-2006 code should be utilized and that the amended plan is in accordance with the stipulation. Mr. Steinman concluded by noting that the Village Attorney's letter states that there are several provisions of the stipulation that illustrates that there is continued responsibility of both parties and continued Court oversight.

Ms. Kramer asked if this proposed plan is part of the final site plan approval or is it something else. At what point does the application stop being an amended site plan application, she questioned. Mr. Steinman stated that the Village Attorney felt that the answer is that it is part and parcel. He said that the Court has jurisdiction over the stipulation to adjudicate the matter. Mr. Neufeld asked if the Planning Board application was re-noticed and Mr. Steinman said yes, absolutely. He said it is not uncommon to have changes to a plan and multiple public hearings.

Chairman Gutterman stated that he regards this plan as an amended site plan that is continuing its process of approval and that the pre-2006 zoning code applies. He went on to say that the changes are part of the normal process of an application.

Mr. Sullivan stated that the very first meeting he attended, the Board decided on the 2004 zoning code and he feels that he would follow the Village Attorney's opinion.

Mr. Weprin stated that this matter is complicated because things have happened that were not contemplated in the stipulation. He said that given the appeal and the result, had the Club made only the few required changes, the pre-2006 zoning code would apply. Mr. Weprin stated that the one concern he has is that the Club made additional/more changes. He said he would be inclined to accept the Village Attorney's opinion, however.

Mr. Neufeld stated that he is concerned with making an exception and that he is also concerned with when it stops; when does the old code become non-effective. He said he feels the Club wants it both ways. Mr. Neufeld went on to say that the Board is being asked to apply an old code that is no longer in effect and that this may open up a larger issue.

Mr. Weprin stated that he understands Mr. Neufeld's position, but residents have made this appeal that is before the ZBA. He said that had the Club simply taken off one story of the building, he would be more comfortable with proposing the pre-2006 zoning code.

Ms. Kramer stated that the stipulation clearly anticipates that there will be changes to the plan. She said that had SAPOA/Golub not appealed Building Inspector's determination on parking and FAR, and the Club had wanted to make additional changes, that may have been okay. Ms. Kramer noted that the stipulation says that no other changes other than what was attached to the stipulation should apply. She said that the Club received final site plan approval and their permits; had the Club wanted to change the height of the building after that, that would not have been a revision of the amended plan and the pre-2006 code would not have applied. She asked if the ZBA's determination mandated that the Club could make changes.

Chairman Gutterman stated that all of the changes discussed, he feels, falls within the amended plans. Ms. Kramer stated that she feels that the Club wouldn't be allowed to change the height of the building, and if they did so, it would be subject to the post-2006 code. Chairman Gutterman stated that he wasn't sure height requirements changed much from the 2006 code to the present code.

Ms. Kramer stated that the question is what applies to what. She said the height of the building should conform to the current code and other points could conform to the pre-2006 code. Chairman Gutterman stated that he feels the height issue should be addressed by the Planning Board. Ms. Kramer said she didn't think that the change in height of the building would conform to the pre-2006 code.

Mr. Neufeld expressed his concern as to how long this will continue with respect to when the amended site plan is no longer considered an amendment to the stipulation site plan. He said that the stipulation has nothing to do with when the building is actually completed; there is nothing in the stipulation that mentions the future. Mr. Neufeld went on to say that the Club received approval and building permits. He asked when the process will be considered final.

Mr. Steinman stated that the stipulation mentions the Certificate of Occupancy, so the Court is involved through that process. Ms. Kramer noted that whether the Court has jurisdiction does not answer when final is final. Mr. Weprin asked if absent the stipulation, is there an argument for using the pre-2006 code.

Mr. Steinman stated that this is an unusual situation. He said the Courts found that action taken by certain Boards and Village staff prevented the Club from building and that is why the Court said the pre-2006 code should be applied. Mr. Weprin stated that he agrees except for the other changes the Club has made to the project. He went on to say that he can't say he is not troubled, but understands that the stipulation took into consideration that the Club was held up by the Village.

Mr. Neufeld stated that the special facts exception isn't applicable to the plans being changed. Mr. Steinman stated that he never said that this Board was responsible for the delays to the project.

Ms. Kramer stated that the pre-2006 code, per the stipulation, applies because the Court found that because of the delays by various Boards and the Village, the project couldn't move forward. She said that if the plan was processed in a timely manner in 2005 and the neighbors raised the

same issues they challenged in 2013, the matter would have been decided based on the pre-2006 code.

Chairman Gutterman stated that he wanted to get a sense of the Board at this time with respect to voting. Discussion arose as to whether the ZBA was the cause of the change in scope of the project based on its determination in 2011. Mr. Sullivan asked if the Board needs to vote on the matter. Mr. Steinman answered yes.

On motion of Mr. Sullivan, seconded by Mr. Weprin, the Board approved applying the pre-2006 code to this matter.

Ayes: Gutterman, Sullivan, Weprin

Nays: Kramer, Neufeld

Mr. Noto addressed the Board. He stated that he has asked the Board to pare down the 26 appeal points made by SAPOA. Mr. Noto said that if the Club spends 30 minutes on each point, the meeting will run for 13 hours. He said the Club has to respond to each point and suggested the Club respond to four points per meeting. Chairman Gutterman stated that he did not wish to get into this at this time. Mr. Weprin suggested Mr. Noto make his arguments and the Board can ask questions.

Mr. Noto went on to say that this appeal has a direct impact on the operation of the Club. He said this will cost the Club and the Village substantial money, and this will also cost the taxpayers of the Village money. Mr. Noto stated that the applicant isn't required to pay an escrow like other applicants are. He also asked that the applicant speak in one voice like the Club does with attorney Eric Gordon. Mr. Noto concluded by asking the Board how it would like the Club to proceed. Chairman Gutterman stated that Mr. Noto made his point and that he would now like to hear from the applicant.

Ms. Cohen addressed the Board. She stated that the Board decides its practices and that the Club can submit any materials they wish. Ms. Cohen said she feels that Mr. Noto is trying to constrain the applicant and other members of the community from participating. She stated that the threshold issue now is the Building Inspector's determination that the Club's use is a permitted use and code compliant.

Sue McCrory, the applicant, addressed the Board. She stated that she believes the use issue is the paramount issue regardless of the pre-2006 code. Ms. McCrory suggested that the Board start there. She also suggested that the property owner and applicant stipulate that the property is commercial in nature. Mr. Weprin stated that based on the reaction of the respondents, they won't agree to that.

Ms. McCrory stated that the Club is a commercial entity and she would like to ask the property owners for their 990 tax forms since they aren't on line. She said that she also wanted to note that there is a 1985 resolution regarding the ZBA's belief that the Club is a business entity. Ms. McCrory read from the 1985 resolution. She noted that the 1985 resolution stated that the Club

wasn't a permitted use and therefore could not be altered. Mr. Steinman advised the Board that the resolution referred to by Ms. McCrory had been superseded.

Chairman Gutterman asked if anyone from the public wished to comment.

Dan Natchez, the applicant, addressed the Board. He said that SAPOA has come prepared to discuss the use issue; there are 28 appeals, one of which was decided tonight. He stated that if the Board is prepared to hear the use issue, SAPOA is prepared. If not, he said the public may want to wait to speak. Mr. Natchez also respectfully requested that all materials should be submitted two weeks in advance.

Chairman Gutterman stated that the zoning code issue was a critical threshold determination which was completed tonight. Mr. Steinman stated that there has been a substantial amount of information presented. He suggested that the Club present their materials, then the applicant will have an opportunity to respond and then there can be oral presentations. He also suggested that the Board give people time and put the matter on the December calendar. Ms. Kramer noted that the annual organizational meeting will be before the December ZBA meeting. Chairman Gutterman stated that he will be absent for the November meeting.

Mr. Neufeld asked that the submission be concise and that the Board has already received a tremendous amount of information. The Board discussed how much time to allot for submissions on both sides. Mr. Noto requested four weeks to respond as the Club's financial person is very busy right now. Mr. Weprin stated that if the Board decides on the non-conforming issue, that will determine whether the matter proceeds or not. The Board decided to give the Club four weeks to submit their materials and two weeks for SAPOA to respond. Ms. Cohen voiced her concern that the property owners have one extra week and attorneys for SAPOA will have a lot to review. The Board determined that MB&YC's submissions are due by November 1, 2013 and SAPOA's submissions are due by November 22, 2013. Chairman Gutterman also directed both the applicant and property owner to provide sixteen copies of any submissions.

## **ADJOURN**

On motion of Ms. Kramer, seconded by Mr. Sullivan, the meeting was adjourned at 10:25 p.m.

Ayes: Gutterman, Kramer, Sullivan, Neufeld, Weprin

Nays: None

ROBIN KRAMER  
Secretary

Prepared by:  
Ann P. Powers