

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, DECEMBER 5, 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 December 5, 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  
Anna Georgiou, Counsel to Board  
Les Steinman, Counsel to Board  
Bill Gerety, Building Inspector

**ABSENT:** Dave Neufeld, Board Member

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 7:37 p.m. He noted for the record that Mr. Neufeld would be absent for tonight’s meeting, but that there was a quorum to hear applications.

**PUBLIC HEARINGS**

1. Adjourned Application #15A-2013, SALVATORE CIRIGLIANO, 1035 Old Boston Post Road (Section 9, Block 56, Lot 12), for area variances to obtain Certificates of Occupancy for Building Permit #14252 (issued in 1971 for a two-story addition) and Building Permit #15449 (issued in 1979 for a second floor addition) for a multi-family home. The second story addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant has a lesser side yard setback of .4 feet and 30 feet is required and a combined side yard setback of 30 feet where 60 feet is required. The second floor addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant has a lesser side yard of .9 feet and 30 feet is required. (RM-1 District)

It was noted for the record that the applicant had submitted a request to adjourn the application.

2. Adjourned Application #17A-2013, BARRY AND PATRICIA MELANCON, 580 Shore Acres Drive (Section 4, Block 67, Lot 16B), for area variances to add an outdoor sink and

generator where the proposed generator violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the side yard setback is 5.9 feet and 10 feet is required. The proposed outdoor sink violates Article V, Section 342-27 where the combined side yard setback is 19.6 feet and 25 feet is required. (R-10 District)

John Scarlato, Jr., the architect for the applicant, addressed the Board. Mr. Scarlato stated that per the Board's request he submitted an updated survey. He noted that per the survey, it was discovered that the generator sits 7.7 feet from the property line, not 5.9 feet as was originally thought. Ms. Georgiou asked if there was any change with the sink's location and Mr. Scarlato said there was no change; that variance request stays the same.

Mr. Weprin stated that the main concern the Board had at the last meeting was that the application did not have an updated survey. That issue has been satisfied, Mr. Weprin indicated.

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

Mr. Sullivan moved to close the public hearing on Application #17A-2013, seconded by Mr. Weprin.

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

3. Adjourned 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.; Lot A total side yard 16 ft. required, insufficient by 1.6 ft. and a variance from Section 342-11D (Lot requirements; subdivision and non-conforming lots), subdivision of an existing lot shall not cause the resulting lots to be non-conforming (R-4F District)

Paul Noto, the attorney for the applicant and Michael Mastrogiacomo, the applicant's engineer, addressed the Board. Mr. Noto stated that this application has had several public hearings and that he will address the issues mentioned in Sue McCrory's November 21<sup>st</sup> letter to the ZBA. Mr. Noto stated that the street consists of non-conforming lots. Mr. Mastrogiacomo showed the Board the tax assessment maps of the Village and the Board reviewed them. Mr. Mastrogiacomo noted that all lots are not 5,000 square feet.

Mr. Noto stated for the record that after meeting with the Building Inspector, an additional variance was added to the application and it was properly re-noticed to neighbors. Mr. Noto went on to say that the variances requested are small and he outlined them for the Board.

Mr. Noto indicated that because the neighborhood is comprised of non-conforming lots, this proposed plan won't be changing the character of the neighborhood. He went on to say that the complaints neighbors have regarding the property revolve around the current conditions of the property. The new house, he said, will be much nicer and won't have the issues that have been previously mentioned. Mr. Noto also stated that the applicant is not requesting a parking variance. Mr. Mastrogiacomo addressed parking for the existing home and said that the parking requirements are now satisfied.

Mr. Weprin asked if Mr. Noto had seen Ms. McCrory's email dated today. Mr. Noto said he did see it. Mr. Weprin asked about Ms. McCrory's suggestion that instead of sub-dividing, why not add another dwelling unit to the existing lot. Mr. Noto stated that the owner wants to live in the new house, that's why they are sub-dividing. And, with respect to parking, Mr. Noto stated that the matter has been rectified, but he can't control how others park on the street.

Ms. Kramer stated that the parking troubles her. She questioned whether having three cars parked tandem is code compliant. Mr. Gerety stated that in a one and two-family zone it is not regulated, so the stacking is okay. Ms. Kramer asked if the applicant would be averse to not sub-dividing. Mr. Noto said that adding a unit wouldn't be big enough for the owner.

Chairman Gutterman asked Ms. McCrory to address the Board. Ms. McCrory stated that this is a pre-existing conforming lot that can handle three dwelling units, but that a fourth would require a variance. She said she didn't understand the need to sub-divide the property and that creating an additional dwelling unit on the current lot would require no new variances. Ms. McCrory said that it doesn't appear that alternatives have been addressed to reduce the variances. Ms. McCrory said she doesn't believe the code stipulates how the houses should be set up on the property. She suggested that if one took those alternatives, a lot width variance wouldn't be needed. Ms. McCrory said she wanted to present alternatives to the proposed plan.

Chairman Gutterman asked if anyone else wished to address the Board.

Patree Limardi addressed the Board. She stated that the existing homes on the street have been here for years and she feels they are grandfathered in. Ms. Limardi said that she doesn't understand the parking because the applicant still does not appear to have enough parking for the dwellings. Ms. Limardi also noted that she has concerns about a large rock that is on the property and how that rock is going to be removed in order to build the foundation. She stated that these are her concerns.

Mr. Noto stated that the existing home is non-conforming and that there is enough parking; the applicant is not asking for parking variances. With respect to the large rock on the property, Mr. Mastrogiacomo stated that a machine will chip away at the rock as is done on other construction sites.

Ms. Kramer asked if the applicant considered building a double lane (side by side) for the existing house. To do that, Mr. Noto stated that an easement would be needed. Ms. Kramer asked if one of the cars of the proposed parking area (with three front to end cars) is moved over,

would that be feasible. Mr. Mastrogiacomo stated that it would be something that could be done. Mr. Gerety stated that it probably would not create more variances.

Chairman Gutterman asked about alternatives to sub-dividing. Mr. Noto stated that the applicant would still need a variance, but not as many. He also stated that the owner wouldn't want to do it that way because it wouldn't be financially advantageous.

Ms. Georgiou reminded the Board that there is a current sub-division application before the Planning Board and that the Planning Board previously circulated their intent to be lead agency.

Mr. Sullivan moved to close the public hearing on Application #14A-2013, seconded by Mr. Weprin.

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

4. Application #11A-2013, ROBERT AND ANGELA HOLTON, 951 Orienta Avenue (Section 9, Block 104, Lot 28A), for an area variance to expand front yard driveway for a parking space where the front yard parking violates Article VIII (Off-Street Parking and Loading), Section 342-54(B)(1) (Layout, location and maintenance) where parking in a required front yard other than a driveway is not allowed. (R-10 District)

Rick Yestadt, the architect for the applicant, addressed the Board. He stated that the applicant is requesting a variance for front yard parking. He handed out copies of drawings. He stated that the original submission depicts parking on the right side of the property and he is amending that to place the parking on the left side. Mr. Yestadt stated that the request and extent of the variance remains the same.

Mr. Sullivan asked if parking will be in the garage or outside. Mr. Yestadt stated that the parking outside is for guests. He said that the reason why the variance is being requested is because of the driveway location and that there is mature shrubbery that blocks views backing out of the driveway. That situation facilitated the curb cut, he noted. This proposed plan is providing the owners with a t-turn so that they can exit onto the street going forward instead of backing out, Mr. Yestadt said. Mr. Yestadt stated that the garage fits two cars and the parking outside is for guests.

Ms. Kramer asked what the final outcome is. Mr. Yestadt indicated that the current garage will be closed up and the new garage will be located to the other side of the house. Ms. Kramer asked why guest parking can't be placed on the side of the house. Mr. Yestadt noted that placing the parking on the side of the house would increase the paving surface. Mr. Yestadt also stated that the owners would be amendable to planting tall plants to hide the cars.

Chairman Gutterman asked if the applicants have been before the Planning Board/BAR. Mr. Yestadt stated that they are not before the Planning Board, but did go before the BAR and showed them the plan.

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

Mr. Weprin moved to close the public hearing on Application #11A-2013, seconded by Ms. Kramer.

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

5. Application #19A-2013, ERIC AND LISA MANDELL, 1314 Franklin Avenue (Section 4, Block 15, Lot 64), for an area variance to build a second floor addition over the existing one story portion of the residence where the proposed addition violates Article V, Section 342-27 of the Schedule of Minimum Requirements, where the applicant has a lesser side yard setback of 3 feet and 6 feet is required. (R-2F District)

Fred Grippi, the architect for the applicant, addressed the Board. Eric Mandell, the applicant, was also present. Chairman Gutterman asked when the house was built. Mr. Grippi said it was built in 1934. Mr. Grippi demonstrated how the second floor will be structured.

Mr. Grippi noted that the applicant looked at other ways to do the project that didn't involve variances, but those options made the rooms too small. Chairman Gutterman asked if there is adequate room to the neighbor's property and Mr. Grippi indicated that the neighbor's house is off-set by the location of the adjacent driveway.

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

Mr. Sullivan moved to close the public hearing on Application #19A-2013, seconded by Ms. Kramer.

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

### **CLOSED APPLICATIONS**

1. Application #6SP-2013, SHORE ACRES POINT CORP., 504 The Parkway (Section 4, Block 76A, Lot 1), for a special permit as required by Article V, Section 342-21A (7) for a club and reconstruction of a clubhouse. (R-10 District)

Chairman Gutterman recused himself from the application. Ms. Georgiou referred the Board to the draft resolution prepared by counsel at the Board's request. Ms. Kramer stated that she didn't understand why the applicant needs a special permit. Ms. Georgiou stated that the issue arose due to Hurricane Sandy; the club sustained a lot of damage and was required to rebuild the clubhouse. It was during the process of obtaining the required permits from the Building Department that it was determined that a special permit was required, she said. Mr. Gerety stated that the code says so and the use in the zone requires a special permit.

Ms. Kramer asked if the site plan is part of the special use permit. Ms. Georgiou stated that site plan is before the Planning Board and the ZBA can issue the special permit. Mr. Weprin stated that it is similar to when someone is a new owner of a restaurant and the Building Inspector feels it needs a special permit.

On motion of Mr. Sullivan, seconded by Mr. Weprin, the application for a special permit is approved for an initial probationary period of two (2) years and allowing for one year in operation after completion of construction.

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

8:23 p.m. - Recess

8:26 p.m. - Reconvened

### **PUBLIC HEARING, (continued)**

6. 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 reminded the public that tonight's focus is on the Club's use. Paul Noto, attorney for the applicant, addressed the Board. The following documents were submitted into the record: 1. Allen Weinstein, CPA letter, 2. Lisa Rosenshein's address to the ZBA, 3. Tennis Pro Gustavo Goncalves' letter, 4. Peter Gross (Club Member) letter and 5. I.D. Luckower's letter. Mr. Noto stated that a memorandum was filed by the Club on November 1, 2013 as requested by the Board and on November 22, 2013, he received SAPOA's memorandum in response to the Club's submission. Mr. Noto stated that he would address SAPOA's points.

Mr. Noto stated that he would address the issue of use per the pre-2006 code. He said that in 2010, the stipulation stated that the Club was zoning compliant. Prior to entering into the 2010 stipulation, Village Attorneys and the Building Inspector had access to the depositions of Mr. Rosenshein and Ms. Rosenshein. Mr. Noto reminded the Board that what is before this Board tonight is whether the Building Inspector erred in his April 2013 determination.

Mr. Noto went on to say that the Club has been in operation since 1953 and the Club has never been violated for non-conforming use. Mr. Noto referred to the pre-2006 code definition of a "club" and stated that all clubs have to act in a manner to provide activities and amenities to its members.

With respect to the 990's, Mr. Noto stated that Beach Point Club and Orienta Beach Club, per their 990's, show money coming in. He noted that clubs have struggled over the years as the economy has worsened. Mr. Noto also reminded the Board that the burden of proof is on SAPOA as the applicant and based on what they have submitted Mr. Noto said SAPOA has not met that burden of proof.

Mr. Noto stated that the Club has four or five types of memberships; he noted that Orienta Beach Club has 14 or 15 different types of memberships. He also stated that there is no definition in the code as to what a "business" is. One could define it as an exchange of goods and services for money, Mr. Noto said. All clubs act in a similar fashion, he noted. A member can pay for dues and then for extra services, Mr. Noto stated.

Mr. Noto stated that every club can offer non-member events; however, it is not clear from the code how a non-member event is defined. He went on to state the appellants are saying the use of the Club is not conforming and not used for the benefit of the members, but they don't show who is benefiting. Mr. Noto stated that the Rosensheins are not benefiting as they have used substantial amounts of their own money toward the Club. Mr. Noto referenced the affidavit of attorney Chad Klasna who stated in 2010 that the Club has run at a deficit for years and the Rosensheins have supplemented money.

Mr. Noto said that the appellants mention the tennis instruction at the Club. He said that the tennis program is very popular and there is also a pro shop on site. Mr. Noto stated that the tennis pro is compensated by the Club and that other clubs have tennis programs and pro shops. Mr. Noto said that the tennis pro is providing a critical service and his service benefits the members. He went on to say that the clubs in this area have been operating for 60 years and there doesn't seem to be any complaints.

Mr. Noto said that the code does not say a club can't have a commercial business, it only states that it must benefit the club/members. Mr. Noto stated that the Club does a lot of membership drives to showcase its facilities and that helps the Club gain new members. He noted that all clubs do this and it is not a violation of the code to have a membership drive. Mr. Noto noted that clubs need to do this in order to survive. Everything that goes on at the Club benefits the members and the Club, he said. Mr. Noto stated that the Building Department never has nor does it now have issues with the operation of the Club.

With respect to the corporate structure of the Club, Mr. Noto acknowledged that it is an unorthodox corporate structure. He stated that in 1953 the Club was named Mamaroneck Cabana, Beach and Yacht Club, Inc. and Marbarry Associates, Inc. was formed to run the operations. Mr. Rosenshein purchased Marbarry Associates, Inc. and renamed it Taylor Point Associates, Mr. Noto stated. Mr. Noto went on to say that MB&YC and Taylor Point operate jointly.

In 1995, Mr. Noto stated that Mamaroneck Beach and Yacht, LLC. was formed to purchase the property on which the Club is located from the Schuberts and since that time Mamaroneck Beach and Yacht, LLC. has owned the land where the Club is situated.

Mr. Noto said that in 1991 the companies were audited and there were no issues raised. He said that this Board is not the IRS; the ZBA is tasked with zoning matters. He went on to say that the Club has never asked for a variance to do something different, it has always been and wishes to continue to be a club.

With respect to the 1985 resolution which the appellants raised noting that the Club's operations were not zoning compliant, Mr. Noto stated that that part of the resolution was set aside and rendered null and void in an amended resolution due to a lawsuit. Mr. Noto also stated that the Marine District was created after the 1985 resolution was adopted. Mr. Noto asked the Board to focus on what is going on at the Club, its use, who benefits and is it compliant with that code with respect to commercial activity benefiting the Club.

Allen Weinstein, the Club's accountant, addressed the Board. He stated that he has been a licensed CPA for forty years and that he has taught auditing and accounting classes. He stated that the firm has continuing education for all CPA's and accountants at the firm.

Chairman Gutterman asked what Mr. Weinstein's relationship was with the Club. Mr. Weinstein stated that a colleague at his firm was the accountant for the Club; he became ill and Mr. Weinstein took over the account in 2009. Mr. Weinstein read from his December 5, 2013 letter responding to Peter Goldman's, CPA, letter regarding the activities at the Club.

Regarding the food operations at the Club, Mr. Weinstein stated that Mr. Goldman's letter provides analysis of 2011 Gross Food Operations stating that it represents 54% of the total gross receipts, but he fails to indicate that it was also 57% of the total net disbursements which was greater than the total receipts which had to be funded by the Rosenshein family.

Mr. Weinstein went on to say that there is no such thing as a certified audit and that the AICPA refers only to an audit of financial statements; only an independent audit is recognized. As for Mr. Goldman's reference of Rev. Rul. 68-74, dues are the same for all Mr. Weinstein said.

Mr. Weinstein went on to say that sales tax is not a transaction that is income or expense. He stated that sales taxes of any entity represent an obligation to collect the tax and report it to the state authority and it is not part of the gross sales reported on a tax return. Mr. Weinstein stated that sales tax is not reported to the IRS on form 990 or form 1120. With respect to workman's compensation, Mr. Weinstein stated that it is required whether or not an entity has employees.

Mr. Weinstein stated that Taylor Point Associates d/b/a MB&YC, Inc. pays the real estate taxes for Mamaroneck Beach and Yacht, LLC. in lieu of rent, approximately \$135,000.

Chairman Gutterman asked if Mr. Weinstein could comment on the use of the short 990 form instead of the longer form. Mr. Weinstein stated that it was done that way before he took over the account. He said that the membership dues are low enough so that the short form can be used. Any amount in excess of \$250,000 would require the long form, he said.

Mr. Weinstein noted for the record that the Club was audited in 1990 by the IRS and there were no changes and that in 2010 there was a potential audit, but after supplying documentation, the



audit did not occur. Ms. Kramer clarified that passing an audit means there are no issues with paying taxes and Mr. Weinstein stated that was correct.

Lisa Rosenshein, the owner of the Club, addressed the Board. She read from a December 5, 2013 memo to the ZBA. Ms. Rosenshein provided some background stating that her father and family were members of MB&YC before her father purchased the Club in 1978 and that after he purchased the Club it became a labor of love.

Ms. Rosenshein stated that the corporate structure of the Club has remained substantially the same since the 1950's. Both Mamaroneck Beach and Yacht Club Inc. and Taylor Point Associates were formed and have continually operated the Club since the Club's inception. She stated that the entities were set up and utilized long before her father got involved with the Club and she can't explain why it was set up that way and perpetuated.

Ms. Rosenshein stated that the Rosenshein Family has never sought personal economic gain from the membership club. She noted that as was confirmed through numerous sources, including the Club's accountant, and the attorney representing the Village in a previous lawsuit, several millions of dollars have been advanced to the Club from the Rosenshein family without the guarantee of repayment.

Ms. Rosenshein said that the appellants have not proven their case, and after hundreds of pages of filings and months of claiming that the Membership Club is not operating as a club, the most damaging thing they can offer is that MB&YC is allowing a commercial operation at the tennis courts and the dining room. She said that the pre-2006 zoning code requires that all activities on the site be for the benefit of the membership.

Ms. Rosenshein stated that based on statutory rules of construction, the use of the property satisfies the definition of a "Club" in the pre-2006 code. She stated that the club is an annual membership organization, the Club engages in marketing campaigns in order to increase membership, the Club is not used for an activity commonly conducted as a business, the facilities cater exclusively to its members and/or their guests for recreational, athletic or social purposes, except as required generally for the membership and purposes of the Club, and no vending stands, merchandizing or commercial activities are conducted at the Club except as required generally for the membership and purposes of the Club.

Ms. Rosenshein stated that for all the appellants' arguments, little facts have actually come to light in their submissions. She went on to say that there are so few facts, that one needs to wonder what their actual accusations are.

Ms. Rosenshein stated that in Ms. Cohen's memo, she claims that MB&YC generates over three million in revenues which constitutes pursuing commercial activities. She stated that if this is true, Beach Point Club and Orienta Beach Club would be pursuing commercial activities even more so than MB&YC as both have revenues higher than MB&YC.

Ms. Rosenshein asked the Board to look at the substance of the issues rather than the form. Substance clearly shows that this membership club has not been run as a for profit commercial activity, she stated.

With respect to the accounting procedures, Ms. Rosenshein stated that while they are slightly unorthodox, they are not designed to commit fraud as claimed by the appellants. She said that what is evident is that the Rosenshein family has allowed this membership club to operate at great cost to its family's economic resources.

Ms. Rosenshein stated that all monies collected by MB&YC for any services rendered go into one bank account, the bank account of MB&YC Inc. She stated that all monies expended (excluding payroll) come out of the same account. She noted that the payroll of MB&YC Inc. is from a segregated bank for ease of bookkeeping.

Ms. Rosenshein said that the appellants claim that the three separate Gilt offerings throughout the last few years are not zoning compliant. She stated that this is completely untrue and that the offer the Club made on Gilt City for the 2012 membership was a campaign for a full membership at a discounted rate.

Ms. Kramer asked what the social membership and the Gilt membership were. Ms. Rosenshein stated that the social membership is for dining facilities in the clubhouse and that the Gilt City offerings was a onetime offer which one could buy up to three weekends. Ms. Rosenshein went on to say that the Gilt City promotion was done as a drive to get new business for the Club.

Ms. Kramer asked what the criteria is to become a member. Ms. Rosenshein stated that the manager meets with the perspective family and that the Club likes to be inclusionary. Mr. Noto stated that Orienta Beach Club has a similar program called a house membership.

Discussion arose regarding if the Club meets the 2012 code definition of a membership club. Mr. Noto indicated that the Club does meet the 2012 code definition. He went on to say that the LLC owns the land and Inc. owns the Club.

Ms. Rosenshein stated that she also wanted to set the record straight regarding the Club's relationship with 410S Corp. She said that 410S Corp. is an entity solely owned by the Club's tennis pro of ten years, Gustavo Goncalves. It exists to direct and operate the tennis program for the benefit of the MB&YC membership, she stated. Ms. Rosenshein indicated that 410S Corp. and MB&YC Inc. have a contractual agreement to manage the tennis program at MB&YC and is completely zoning compliant.

In conclusion, Ms. Rosenshein stated that everything done at MB&YC is done and provided for the members' benefit; the membership club has been operating in a zoning compliant manner for years. She thanked the Board for their time.

Ms. Cohen, the applicants' attorney, addressed. She stated that she had a procedural question as to how the Board wanted her to respond to MB&YC's presentation this evening. She asked if it would be appropriate to take it to the next meeting because she was not prepared to answer what

was brought up this evening by MB&YC. Mr. Steinman stated that the response could be made orally and that would be considered the same as handing in documentation. Ms. Cohen stated that she feels the applicant should have the final word in the presentations. Mr. Noto stated that he feels the Club should have an opportunity to respond if something new is brought up and that he will use his best judgment in determining that.

Chairman Gutterman suggested that any materials be provided to the Zoning office within two weeks of the January meeting or to be presented orally. He asked that submissions be made by December 19, 2013, end of business day for both parties.

Sue McCrory, the appellant, addressed the Board. She stated that she doesn't see the word "benefit" in the code as defining a club. She stated that the Club is setting a standard that doesn't appear in the code.

She stated that Ms. Rosenshein said that income comes from membership dues, but asked about the expenses. Mr. Weinstein stated that expenses are allocated by percentage and entertainment goes toward membership. Ms. McCrory inquired about service fees. Mr. Weinstein stated that he would have to look into that and that the Club will respond in writing.

With respect to the issue of benefiting members, Mr. Noto referenced Ms. Cohen's letter and also the code. Ms. McCrory stated that membership organization without voting rights is an unanswered question. She went on to say that there are no governors or voting rights that she has seen and feels that it hasn't been addressed.

Sarah Robertson addressed the Board. She stated that her son attended summer camp in 2007; she was not a member and neither were any of her friends whose children went to the camp. She stated that people didn't need to be members of the Club to participate in the camp. Ms. Robertson said that in 2012, she took tennis lessons during the week with half a dozen friends and that all payments were made to the tennis pro. She went on to say that there appear to be conflicts with matters that are being addressed this evening.

Bill Shaner addressed the Board. He stated that he belongs to the Bonnie Briar Country Club, a not-for-profit club. He stated that his club can't have more than 15% of its income coming from non-member events per the tax requirements. He submitted a letter from Condon O'Meara McGinty and Donnelly, LLP. Regarding unrelated business income as it relates to a tax-exempt private social club under Section 501(c)(7) of the Internal Revenue Code.

Gabrielle Cohen addressed the Board. She stated that the wedding give-away being discussed earlier was not a one-time event. She said that she has googled MB&YC and has found that it is listed as a wedding venue. She then read from comments posted on the website by people that had had their weddings at the Club. Based on the posts, Mr. Cohen stated that there have been seven weddings at the Club since May 2013. She noted that on October 10, 2013 the Club hosted another non-member event. Ms. Cohen noted that Beach Point Club and Orienta Club aren't found on these types of websites. Ms. Cohen read descriptions from the various clubs, with MB&YC being touted as a wedding venue. She said that the zoning code says that a club must cater to its members.

Lorna Waitt addressed the Board. She submitted for the record a log of vehicles at off hours at MB&YC. She stated that she has lived for many years in Orienta and never saw this type of traffic/parking congestion from Orienta Beach Club. She noted that this log has been presented before at Planning Board meetings. She stated that she has taken photos from her property and observed the activities first hand.

Mr. Weprin asked if Ms. Waitt had any knowledge that the Club instructed individuals to park there. She said she did not, but observed people parking on the street and then walking to the Club. Ms. Waitt said that there is no room to park at the Club.

Scott Dufault addressed the Board. He stated that he is an attorney and review the stipulation. Regarding the fact that the Club shouldn't operate a business out of the Club, he stated that the Village was well aware those activities were going on and that nothing tonight demonstrates that a business is not being run out of the Club.

Gretta Heaney addressed the Board. She submitted a petition of 318 signatures from residents asking to investigate the alleged zoning violations in the MR Zone and enforce zoning laws throughout the Village.

Dan Natchez addressed the Board. He asked if the Club would enumerate the different classes of membership and how many there are. He also asked for information on who owns the other entities involved in the Club.

Michael Goldberg addressed the Board. He stated that according to the pre-2006 code, no more than 20% of a club's business can be from holding non-member events. He said that he felt there are more than 20% non-member events at the Club. He asked that the Club provide an annual list of member vs. non-member events.

The application was adjourned to January 2, 2014.

**CLOSED APPLICATIONS, (continued)**

1. Application #17A-2013, BARRY AND PATRICIA MELANCON, 580 Shore Acres Drive

The Board discussed the merits of the application and felt that the variances requested were minimal.

On motion of Mr. Weprin, seconded by Ms. Kramer, the application for variances is approved.

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

2. Application #19A-2013, ERIC AND LISA MANDELL, 1314 Franklin Avenue

The Board discussed the merits of the application and felt there were no issues and that the house adjacent is off-set by the location of the adjacent driveway.

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

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

3. Application #11A-2013, ROBERT AND ANGELA HOLTON, 951 Orienta Avenue

The Board discussed the merits of the application at length. Ms. Kramer noted that a vast majority of people in the Village have to back out of their driveway onto the road and was uncomfortable with the precedent the Board may be setting. She also asked if the Board would be setting a precedent of allowing more parking on the property. With respect to the shrubs, Ms. Kramer noted that there should be a minimum of eight feet for shrubbery.

Chairman Gutterman stated that he was ambivalent about allowing parking in the front yard and the appearance it may create. He also said he would require more substantial screening. Mr. Weprin agreed, but noted that it is still a driveway though. Mr. Sullivan stated that he doesn't have a concern with cars parked in the front yard.

With respect to shrubbery, Chairman Gutterman suggested eight foot tall screening using perennial shrubs. Mr. Steinman suggested that the Planning Board has a consultant available which the ZBA could use. Discussion arose regarding using the consultant at a cost to the Village. It was determined the Board would not use the consultant.

Chairman Gutterman asked Ms. Georgiou to prepare a draft resolution which the Board would review at the January meeting. He asked that Ms. Georgiou mention the curve on Orienta Avenue.

4. Application #14A-2013, BB & G CONSTRUCTION CORP., 209 Grand Street

The Board discussed the merits of the application. Ms. Kramer stated that parking is an issue. She said she would be more comfortable approving the application with a condition that the applicant shows angled parking toward the back of the house and space for entering and existing the property.

Ms. Georgiou will prepare a draft resolution for the Board to review at the January meeting.

### **OTHER BUSINESS**

Per the Board of Trustees, the Board discussed Proposed Local Law P-2013 (Amend Zoning Code Chapter 342-60 with Regard to the Use of Alternative Surfaces for Parking). Ms. Kramer questioned what the word “improve” means. Mr. Steinman said that paving was previously used and the word was taken out to use a more general term. Ms. Kramer stated that anything can be deemed an improvement and that the term is very broad. Mr. Steinman stated that the Village Engineer and the Building Inspector would make those determinations. Ms. Powers will forward the Board’s comments to the BOT.

A brief discussion arose regarding the January meeting date. It was noted that the meeting is scheduled for January 2, 2014, the day after the New Year holiday. Mr. Weprin noted that he will not be able to attend the meeting. All other members present said they would be at the meeting.

### **ADJOURN**

On motion of Ms. Kramer, seconded by Mr. Sullivan, the meeting was adjourned at 10:34 p.m.

Ayes: Gutterman, Weprin, Sullivan, Kramer

Nays: None

Absent: Neufeld

Prepared by:

Ann P. Powers