

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON TUESDAY, JULY 23, 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 July 23, 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

Tinamarie Vega, 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 7:36 p.m. He asked that anybody wishing to address the Board this evening fill out the sign-in sheet at the front table before speaking.

**PUBLIC HEARINGS**

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)

William Vitale, the applicant, addressed the Board. He stated that he is requesting a special permit to operate a restaurant on Boston Post Road. Mr. Weprin asked what is currently on the site. Mr. Vitale said that the space is empty now, but it was a restaurant before. Chairman Gutterman asked about the hours of operation and Mr. Vitale stated that they were the hours indicated on the application (12:00 p.m. and 3:00 p.m. Monday through Friday for lunch, 5:00 p.m. to 10:00 p.m. Sunday through Thursday and 5:00 p.m. to 11:00 p.m. Friday and Saturday for dinner). Mr. Vitale also indicated that take-out service will be available.

With respect to parking designated on the neighbor’s premises, discussion arose on how to prevent a problem should the neighbor break the agreement or decides to sell his property. Ms. Kramer asked if this is a concern for the Board and whether a condition should be included in the special permit.

Ms. Georgiou referenced Section 342-55 and asked the Building Inspector if it was his view that this section would apply. Mr. Gerety noted that it would and so would Section 342-54A, but the applicant would need to provide certification to the ZBA and the Village Attorney. Chairman Gutterman indicated that the parking on the adjacent lot is being offered after 5:00 p.m., accommodating 15 spaces.

Further discussion arose regarding prior special permits for restaurants at this location. Ms. Kramer referenced a prior application and noted that the resolution was not in the applicant's application. Mr. Vitale stated that Grand Central Restaurant never opened and that is why he took it over.

Chairman Gutterman asked if anyone wished to address the Board.

Dan Natchez addressed the Board. He stated that he has appeared the last two times a restaurant was proposed for this location. He noted that he supports the concept of a restaurant, but has some issues with parking. Mr. Natchez stated that the previous owner had said the motel behind the restaurant was going to be torn down to provide parking. He also said that he does not believe 15 cars can park on the adjacent lot.

Mr. Natchez continued by stating that there are also site plan issues. When a portion of the motel was torn down, a deck was built which now prohibits parking in that area. Mr. Natchez noted that he is not opposed to the owner or the restaurant. He said he has concerns about the Board approving the special permit before the other issues are resolved. Mr. Natchez said the issues need to be straightened out. There is no site plan in the Building Department and no outline of parking, he stated. Mr. Natchez urged the Board not to close the hearing until the issues are resolved.

Ms. Kramer asked that the Board be provided with the resolution for the prior restaurant (Grand Central Restaurant) so that they can review the conditions set forth in that special permit with respect to parking. Ms. Powers stated she would provide the resolution to the Board.

Chairman Gutterman asked if the deck has a permit. Mr. Gerety indicated that it did not and informed the Board that the applicant was also going to the Planning Board for site plan review and approval. He noted that the previous tenants built the deck.

Robert Caputo, owner of the building, addressed the Board. He said that the matter before the ZBA is that of a special permit. This is the same request that has been approved for years, he noted.

Mr. Caputo stated that with respect to the neighbor's concern about the back deck, he removed the tenants from the motel; however, they continued to return. He then removed the wood structure to keep the tenants out. When he removed the windows and doors to the motel, he saw the structural damage underneath, Mr. Caputo said. He stated that he worked with the Building Department to remove a portion of the section of the building because it was a safety issue. He also stated that concrete was poured over an existing area and nothing was raised. Mr. Caputo stated that he is working with the Building Department to correct any outstanding issues. He

indicated that the rear deck was poured by previous tenant and he would like to use that deck for outdoor dining during the summer months. He said that these issues have not yet been addressed. Chairman Gutterman asked what the status of the motel was. Mr. Caputo stated that the motel is in good shape and he doesn't know what he will do with the building as of yet.

Ms. Kramer noted that the survey the applicant submitted is from the 1980's and she said that the Board requires an updated survey (within the past 12 months). Mr. Caputo stated that he understands that and that is why the applicant is going before the Planning Board. Chairman Gutterman stated that the Planning Board matter is a separate application. Mr. Caputo stated that he was not aware a survey was needed. Mr. Neufeld referenced the application's checklist, which indicates a survey is needed. He noted that someone also checked off that item on the checklist.

Chairman Gutterman stated that the Board needs an updated survey and the last three resolutions for the prior establishments. Discussion arose as to whether the hearing could be closed. Ms. Georgiou suggested keeping the application open.

Mr. Caputo stated that he has concerns about not closing the hearing. He noted that he has been waiting two years for someone to occupy the building. He said that he has a tenant that is ready to take over a vacant building.

Mr. Sullivan explained to Mr. Caputo that as a Board, if they close and vote on the application, there are some members who are not comfortable with approving and the application could be denied. Mr. Caputo stated that nothing about the property has changed except for the back deck. Mr. Caputo went on to say that they have completed the application and special permits have been granted in the past to this location. Ms. Kramer noted that not all the resolutions are included in the application and therefore the application is not complete. Mr. Vitale stated that he is prepared to open the restaurant on Monday and that he has hired staff and everything is ready to go.

Joseph Messina, attorney for the owner, addressed the Board. He stated that he represents the landlord, not the tenant. He said that as he understands it, there is a special permit currently in existence and asks the Board to utilize the conditions of that special permit so that the restaurant can open and then the Board will be provided with the proper documentation.

Ms. Powers suggested that she and the Building Inspector go up to the Building Department and locate the missing resolution from the Building Department file. The Board agreed and tabled the application until the resolution was provided.

2. Application #4SP-2013, MARY JIMENEZ D/B/A DOMINICAN KITCHEN, 443 Mamaroneck Avenue (Section 9, Block 11, Lot 5), for a special permit to operate a restaurant. (C-2 District)

Patricia Savone, the landlord, addressed the Board. She stated that her tenants are requesting a special permit to operate a business that has been in existence for ten years. She asked the Board what questions they had.

Mr. Neufeld asked what the hours of operation will be. Ms. Savone stated that they would be the same as the establishment before (8:00 a.m. to 10:00 p.m. Monday through Friday and 12:00 p.m. to 11:00 p.m. Saturday and Sunday). Discussion arose as to what the hours of operation would be because the application set forth a particular set of hours and Ms. Savone had stated different hours. Chairman Gutterman suggested that the applicants stay with the hours of operation that they indicated on their application (7:00 a.m. and 12:00 a.m. Monday through Sunday).

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

Mr. Sullivan moved to close the public hearing on Application #4SP-2013, seconded by Ms. Kramer.

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

3. Application #12A-2013, LAURA RAINALDI, 643 Lorraine Street (Section 4, Block 17, Lot 1), for three variances to erect an above ground pool 15 feet in diameter and four feet deep for the summer where the proposed pool violates Section 300-3(A) (Prohibitions and Standards), where no pool shall be erected or constructed in the front yard of any premises and Section 300-3(B) (Prohibitions and Standards), where the proposed pool is setback four feet from the secondary front yard on Grove Street and ten feet is required. The proposed pool also violates Article V, Section 342-27 of the Schedule of Minimum Requirements for Residential Districts, where the pool is setback 15 feet from the primary front yard on Lorraine Street and 20 feet is required. (R-5 District)

Laura Rainaldi, the applicant, addressed the Board. She stated that she is requesting to erect a 15' by 48" seasonal Intex above ground pool. Ms. Kramer asked what an Intex pool is. Doug Dunaway addressed the Board. He stated that it is a temporary, above ground pool to be put up at the beginning of summer and taken down at the end of the summer.

Ms. Kramer asked if this is a pool that is inflated. Ms. Rainaldi submitted photos of the pool to the Board. Mr. Dunaway said the pool has a frame and walls. Mr. Sullivan asked if the pool will be on the triangular side of the property by Grove Street and Ms. Rainaldi indicated it would. Mr. Dunaway reviewed the photos with the Board. The Board discussed the fact that the house fronts Lorraine Street and the sideyard faces Grove Street, and that the property is on a corner lot.

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

Mr. Sullivan moved to close the public hearing on Application #12A-2013, seconded by Ms. Kramer.

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

Mr. Dunaway asked if the Board could make a decision tonight as the applicant would like to use the pool for the last month of the season. Chairman Gutterman stated that the request was noted.

4. Application #13A-2013, ROBERT RIPLEY, 520 Brook Street (Section 4, Block 26, Lot 31), for a variance to legalize an enclosure of an existing unheated open porch where the porch violates Article V, Section 342-27 of the Schedule of Minimum Requirements for Residential Districts where the structure has a 23.6 foot setback from the rear property line and 25 feet is required. (R-5 District)

Robert Ripley, the applicant, addressed the Board. He stated that he has had a porch at the rear of his house since 1952. The porch is compliant and has all the necessary permits, he noted. Mr. Ripley said that 17 years ago he enclosed the porch using the same foundation, support posts and roof. He indicated that the size of the porch was never altered or increased. Mr. Ripley said that he requires an 18 inch variance for the rear property line. He noted that his rear neighbor has an 8 foot high fence, so he won't be impacted by the encroachment on the setback.

Mr. Sullivan asked how large Mr. Ripley's lot was. Mr. Ripley stated that it is a slightly undersized lot. Mr. Weprin asked what prompted Mr. Ripley to come forward now and he said he was selling his house and needed a Certificate of Occupancy. Mr. Ripley noted that nothing was changed structurally, but the porch does look different now. He reminded the Board he is asking for only 18 inches.

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

Mr. Sullivan moved to close the public hearing on Application #13A-2013, seconded by Ms. Kramer.

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

5. 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)

Michael Mastrogiacomo, the applicant's engineer, addressed the Board. He stated that the applicant requires five variances to sub-divide the lot into two. Mr. Mastrogiacomo noted that the variances requested are in line with other lots in the area with respect to lot width, depth and size. Chairman Gutterman asked if it is the applicant's intent to create two lots out of the one lot and Mr. Mastrogiacomo said that was correct.

Chairman Gutterman stated that the biggest insufficiency is variance #5 of the application which states that Lot A depth is insufficient by 5.39 feet. Ms. Kramer noted that there is an error in the Notice of Disapproval in that it should have referenced the word foot, not square foot. Mr. Mastrogiacomo stated that the notice should read lineal feet.

Mr. Mastrogiacomo went on to say that he has gone up and down Grand Street and there isn't one lot that is 100 feet deep because of how the lots are laid out. He said that the sidelines are not 90 degrees to the street line. He also stated that he has petitioned the State to obtain a portion of the property by the New England Thruway. As for the insufficiencies, Mr. Mastrogiacomo stated that they have been distributed to both parcels to keep the impact minimal.

Ms. Kramer asked if the home that the applicant is proposing to build is zoning compliant or does it need additional variances. Mr. Mastrogiacomo stated that no additional variances are needed; the building will be built to conform to all the setback and coverage requirements should the applicant obtain the variances requested. Since the lot is smaller, the house will be smaller, he noted.

Chairman Gutterman asked if anyone wished to address the Board.

Patree Limardi addressed the Board. She stated that she reside at 259 Grand Street. Ms. Limardi said that she doesn't understand the variances requested, but has lived on Grand Street for 50 years. She said that all the neighbors take pride in their property and that the property in question is an eye sore and that the landlord doesn't live there. She went on to say that the property is currently not maintained and she can't imagine how everything is going to look with another home squeezed in. Ms. Limardi said that all the houses on the street have been grandfathered in with respect to the setback requirements.

With respect to parking, Ms. Limardi stated that it is going to be a major issue on Grand Street. She submitted pictures of what the property looks like. She said that three cars park in the driveway currently and those parking spaces will be lost once the new house is built. Ms. Limardi noted that there is no available parking on Grand Street at night and this will add to the parking issues.

Ms. Limardi also questioned how a large rock situated in the front of the house will be removed. She detailed an experience in the past when blasting occurred in the neighborhood and that her home sustained damage from the blasting.

Ms. Kramer asked where Ms. Limardi lives in relation to 209 Grand Street. Ms. Limardi said that she lives across the street from the current house.

Lori Nimphius addressed the Board. She indicated that she lives at 240 Grand Street. She noted that the property is a complete eye sore and that the owner does not live there. The shrubbery is overgrown and that the current tenants park on the street and also block driveways, she stated.

Ms. Nimphius also stated that she can't see how another structure will fit on such a small piece of property. She said that she and her neighbors care about their properties and neighborhood. She concluded by stating that she is not in favor of this project.

David Casterella addressed the Board. He stated that he lives at 253 Washington Street. He said that in addition to the issues already raised, there is also a problem with flooding. Mr. Casterella stated that Washington Street will be impacted by flooding if the applicant is allowed to sub-divide and build a second house on the lot.

Rich Becker, the owner of the property, addressed the Board. He stated that he is surprised at what is going on tonight. He stated that this project has been going on since the former Building Inspector Rob Melillo. Mr. Becker stated that plans were submitted to the Building Department and in turn he went before the Planning Board. Somehow, Mr. Becker stated, he went before the Planning Board first instead of going to the ZBA. He noted that some of the individuals here tonight were also at the Planning Board meeting. He spoke with them and his attorney, Nick Barone, provided his card and asked that the neighbors call if there are any issues.

Mr. Becker stated that he also personally went to the property and mowed/raked the lawn, as well as renting a truck and cleaning the property. He said that he has since hired a gardener for the lawn upkeep. He said the property is now clean and the pictures submitted tonight don't represent what the current conditions of the property are. He also noted that there is an abandoned and condemned house on Grand Street which the neighbors don't seem to be complaining about.

Mr. Becker stated that he wishes to leave the existing house and build a second house with a driveway and a garage, which won't impact the parking issues. He also noted that it is his intention to sell the property to people who will be good neighbors to the other neighbors.

Ms. Limardi addressed the Board again. She stated that the house Mr. Becker is referencing has been sold and will probably be torn down and another house built. Mr. Weprin asked if the conditions depicted in Ms. Limardi's photos are still occurring. She stated that there are still issues with the upkeep and the parking. She went on to say that she has never had a neighborhood like it is now. She also stated that the lot doesn't look big enough to build another house.

Mike Mastrogiacomo addressed the Board again. He stated that the lot conforms to every other lot. He said that there isn't one lot that is 5,000 sq. ft. or has a 100 ft. depth. He said that the applicant is following the zoning code and is working within it to keep the character of the neighborhood.

Rose Cipriano addressed the Board. She stated that there is not enough property for this project. She stated that she tried to build a two-family house and was denied. She stated that she didn't receive a permit for what she wanted to do and she had the property for it.

Mr. Mastrogiacomo stated that the length of the property is 100 feet deep, but the code requires you to measure it perpendicularly. Properties across the street are the same in size. The lots are true 100 by 100.

Ms. Kramer inquired about the survey. Mr. Mastrogiacomo stated that he provided a copy much early when John Winter was the Building Inspector. Ms. Kramer stated that the Board needs an actual survey for this application. Chairman Gutterman asked Mr. Gerety if he has a survey in the Building Department records. Mr. Gerety stated that he would need to check the files upstairs. He noted that the project started with the Planning Board for site plan and then was forwarded to the ZBA. Mr. Steinman stated that the project started as a site plan. Mr. Mastrogiacomo stated that he couldn't have come up with these numbers without a survey.

The Board discussed if they should close the hearing and ask for the survey. Ms. Kramer asked if the intent was to tear down the existing house and build a new house. Mr. Becker stated that the current house will remain except for a small mudroom which will be removed and a second house will be built with parking underneath it. Ms. Kramer asked if the parking for the new house meets the code requirements and Mr. Becker said it does. Mr. Weprin asked what the parking requirements. Ms. Georgiou stated that four parking spaces are required for each two family home. She asked if the Board wished to refer the applicant to the Planning Board for comment on the subdivision. The Board declined to do that.

Discussion arose as to how the Building Inspector came up with the numbers and Mr. Gerety stated that he did not recall whether he had the survey. He also stated that he doesn't have any reason to doubt the numbers and that the applicant is also a surveyor. Chairman Gutterman stated that the document the Board has was stamped with the engineer's stamp, not a surveyor's stamp.

Mr. Mastrogiacomo stated that he would pull up the survey on his iPhone. Chairman Gutterman stated that he would accept the survey through the applicant's phone if the date is also on it. Mr. Mastrogiacomo was unable to pull up the survey as his server locked out. Mr. Mastrogiacomo reiterated that he could not have come up with the calculations had he not been using a survey. Chairman Gutterman stated that there may be a survey, but it's not in the Board's packet. He voiced his concern about not having the survey and didn't want to close the hearing until a survey was received.

The application was adjourned to the September 12, 2013 meeting.

6. 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)

Chairman Gutterman stated that he now has a copy of the Grand Central Restaurant resolution and noted the requirements on the January 2012 resolution. He read the requirements relative to the parking that were listed with respect to 1) Aldian Rental All allowing the applicant to use their adjacent lot at 964 E. Boston Post Road for fifteen cars after 5:00 p.m., 2) In approximately



18 months, the applicant shall appear before the ZBA and report on the adequacy of off-street parking for restaurant operations.

Mr. Weprin asked if the applicant would need to modify the special permit for outdoor dining. Ms. Georgiou stated that the applicant would need to go through site plan approval for that. Mr. Weprin stated that he feels bound by precedent assuming the Board can deal with the terrace.

Ms. Kramer stated that the biggest issue regards the survey and that the Board doesn't know what the current conditions are. It was noted that the special permit should be contingent on obtaining a current survey. Chairman Gutterman stated that the restaurant has not grown and the motel has been diminished.

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

Mr. Sullivan moved to close the public hearing on Application #3SP-2013, seconded by Mr. Weprin.

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

7. 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)

Paul Noto, attorney for the applicant, addressed the Board. He stated that this is a continuation of a public hearing to build a self-storage facility. He noted that at the conclusion of the May meeting, the applicant was asked to recalculate the parking and the financials for the FAR. Mr. Noto stated that the applicant needs five loading spaces and 89 parking spaces, of which the applicant has 52 parking spaces.

Mr. Noto indicated that he submitted the FAR and traffic study. Ms. Kramer asked why the calculations have changed. Kimberly Martelli, the applicant's architect, addressed the Board. She stated that there were two elements she looked at with respect to the calculations. One was for individual tenants on site and the fact that the numbers are rounded up, she said. The reason the loading number has decreased is that the applicant is applying a portion of the zoning code that doesn't require adhering to the loading spaces. Ms. Martelli noted that the applicant does meet zoning requirements for off-street parking.

Ms. Kramer asked that with respect to the new storage use, how many parking and loading spaces are needed and Ms. Martelli stated that 55 spaces for parking and 5 spaces for loading. Ms. Martelli stated that the other minor modification that she made is increasing the setback on Waverly Avenue.

Discussion arose regarding the fact that the current plan has come a long way since the original application back in 2010; however the Board questioned whether the setback was still an issue. Mr. Neufeld stated that the applicant can still build what they want further back on the property. The Board reviewed the plans.

Ms. Martelli noted that the area around the self-storage building is not paved, but will have planters. Mr. Neufeld asked if parking is being proposed in the front on Waverly Avenue and Ms. Martelli indicated that it was not. Mr. Neufeld asked how far from Waverly Avenue does the proposed building sit and Ms. Martelli stated that it was 2 feet and now it is 4 feet.

Brian Dempsey, the applicant's engineer, addressed the Board. He stated that he performed a traffic study for the site. He said that for this type of business, it does not generate a lot of traffic. He noted that some of the improvements on site will help move the traffic along and make for a better flow of traffic. From a traffic standpoint, Mr. Dempsey said, the facility will generate a lot less traffic than it does now.

In terms of parking, Mr. Dempsey stated that there are 44 parking spaces, plus an additional 18 spaces. Those spaces will be eliminated and cleaned up. He indicated that there will be 52 spaces on the site. Mr. Dempsey stated that he looked at parking spaces required for self-storage buildings and he also looked at different self-storage facilities in Westchester County. He noted that many of the facilities had more spaces, but parking similar to what the applicant is proposing.

Ms. Kramer asked if Mr. Dempsey had asked other villages and towns he contacted if there were any issues or if the parking was practicable. Mr. Dempsey answered that he had not. Ms. Martelli stated that in her study of self-storage facilities, she visited many of them and at no point in her visits did she observe more than three or four parked cars. She stated that there were very limited numbers of occupants at one time, based on her observations.

Chairman Gutterman asked if anyone wished to address the Board.

Alan Stern addressed the Board. He stated that he owns a business next door to Murphy Brothers. He stated that it was his understanding that the Village Planner was going to address the setback issue and asked if he came up with a setback requirement. He stated that the building will cut off the street. Also, he said that at the rear, this building will be 45 feet high. Mr. Stern stated that if the building is placed at the front of the property, it closes the street off. He stated that he questions the location of the building.

Mr. Stern noted that originally, the plan was to construct the building further back by Railroad Avenue. He said he believes that is the proper location for the building. Mr. Stern also suggested that one story could be removed and the building stretched out.

With respect to the winter months, Mr. Stern stated that there will be icing in the cold weather. He stated that he has not seen a flood plan and he hopes the Village Planner looks at all of this.

Mr. Stern stated that there continues to be a severe parking issue on Waverly Avenue. He said that based on his own study there are approximately 16 to 18 cars parked vertically on Waverly Avenue. Based on the plans, parking spaces will be lost. He also stated that the Village should put parking meters at those spaces. He noted that the parking issue extends all the way to Ogden Avenue and that the same issue exists on Mamaroneck Avenue.

Mr. Stern said that he is concerned by the fact that the applicant had a plan and then appears to have thrown it out and replaced it with this larger plan. He said that he believes that the barn should be torn down.

Discussion arose as to Mr. Stern's setback and how close he is located to the applicant's property. Ms. Martelli had Mr. Stern review the plans to indicate where his property and the applicant's property were located.

Mr. Noto indicated that the building was moved because the Planning Board insisted the applicant move it. As for the parking spaces that are lost, they are not legal spaces, he said. Mr. Noto said that the applicant is trying to improve the area. He also noted that the applicant is entitled to have a building 45 feet in height. Mr. Noto stated that the Village Planner has reviewed the project.

Ms. Kramer stated that the applicant did not provide a survey. Ms. Martelli indicated that they had provided one. Mr. Neufeld asked Ms. Martelli if she had it with her. Ms. Martelli provided a copy of the survey.

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

John Hofstetter addressed the Board. He suggested that the Board be clear as to what 45 feet in height is. The fact that there is a flooding issue makes it necessary to raise the building and this could make it a 50 foot building and not a 45 foot building. Mr. Hofstetter stated that he knows the area gets flooded and people will be storing valuables in the building. What measures are being taken into consideration for that issue, he asked.

Ms. Martelli stated that the building is 2 feet above the grade. She said the building will be above the flood plain, but won't be higher than 45 feet. Ms. Kramer asked if the height was measured from grade and Ms. Martelli stated that is correct.

Mr. Sullivan moved to close the public hearing on Application #9A-2013, seconded by Mr. Weprin.

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

*At 9:33 p.m. the Board took a break.*

*At 9:40 p.m. the Board reconvened.*

8. Adjourned 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)

Chairman Gutterman noted that public hearings for this application have been going on for many months and that the Board has accepted a lot of documents.

Ms. McCrory, the applicant, addressed the Board. She stated that the house in question is almost twice the size in FAR than what is allowed. She stated that she submitted for the record Building Department documents. She also referenced that approved plans are attached to the Building Permit submission.

Ms. McCrory stated that the foundation plan indicates that there are no deviations from the approved plans. She also noted that she submitted memos from the former Village Engineer Keith Furey stating that the foundation was not built to plan. Ms. McCrory read from the March 2008 memo from the Village Engineer where he indicates that the foundation was not built to the foundation plan.

Ms. McCrory noted that, essentially, there were three options for the property owners: 1) Fix the foundation, 2) Seek a variance, 3) Apply for a map revision. She indicated that the first time the Ottingers applied for a map revision, they were denied. She noted that in 2012, a map revision was approved. When that map revision was approved, the Ottingers needed to match the foundation to what was built, Ms. McCrory said. The Ottingers, Ms. McCrory stated, never revised their permit and what was built is twice the allowable FAR. There are still requirements that need to be met now that the property is in the A-Zone, she said. She noted that the revised plans process was skipped in this matter.

Ms. Kramer noted that when the house was built, the code was different and that based on the Building Department and the ZBA determinations, the FAR was approved. Ms. McCrory reiterated that what was built was not on the plans. She said that the Ottingers built something that did not have an open foundation.

Joseph Messina, the attorney for the Ottingers, addressed the Board. He noted that the real issues before the Board all relate to Chapter 186 and the Board has already determined that they do not deal with Chapter 186 matters.

Mr. Messina went on to say that throughout this issue, Ms. McCrory has been denied. FEMA informed Ms. McCrory that she doesn't have standing, Mr. Messina said. He said that Ms.

McCrorry's issue should be brought before the Planning Board. Mr. Messina also stated that the house is currently in compliance and that Ms. McCrorry is not an aggrieved party.

June Ottinger, the property owner, addressed the Board. She stated that Ms. McCrorry's comments are not factual. Ms. Ottinger stated that she submitted plans, they were approved by then Building Inspector Richard Carroll, and that what was drawn and built did have a monolithic wall. Ms. Ottinger noted that as the house was being built, it passed every inspection and that what was submitted was exactly what was built.

With respect to FEMA, a new Building Inspector found that FEMA should come to the site to make a determination as to whether the house complied with the A-Zone, she said. Ms. Ottinger noted that FEMA had no problem with the crawl space. She went on to say that the foundation is identical to what was planned.

Ms. Kramer asked if at the time FEMA found the house compliant for the A-Zone, were they in the V-Zone and Ms. Ottinger answered yes.

Mr. Messina addressed the Board again and stated that he did not believe this Board has jurisdiction and would like the hearing closed.

Mr. Weprin moved to close the public hearing on Application #2I-2013, seconded by Ms. Kramer.

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

9. 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)

Dan Natchez, the applicant, addressed the Board. Chairman Gutterman noted that a lot of time had already been spent on this application. Mr. Natchez handed out a supplementary slide presentation. He stated that there are three major issues: 1) The application is an expansion of an existing non-conforming condition, 2) Current zoning should be used, and 3) The Building Inspector's determination is incorrect and if done correctly, will show that the project is not zoning compliant.

Mr. Natchez then went through his slide presentation. He discussed the various companies that operate out of the Club. With respect to the Building Department referral to the Planning Board, Mr. Natchez believes there are many things wrong with it. Although, he said, he does not fault Mr. Gerety. He believes Mr. Gerety was trying to move the process along in a four day period when he first started working for the Village.

Mr. Natchez stated that with respect to the use determination, the ZBA can either find that the operations are grandfathered as pre-existing or not grandfathered. If it is determined to be non-conforming, then the Club must apply for a variance, Mr. Natchez said.

Mr. Natchez stated that in 1928, clubs were allowed, but not businesses. During the period of 1953 to 1957, Mr. Natchez noted that clubs were not allowed in the area. In 1968, clubs were again allowed through re-zoning, he indicated. Throughout the changes, it was consistent that there could be no commercial use, Mr. Natchez said. He noted that throughout the years, the Club has changed its name. Mr. Natchez said that it is clear that starting from 1928 to today, the code has been consistent regarding commercial activity. The only difference is that from 1968 on, clubs had to be not-for-profit. Mr. Natchez stated that based on his research, somewhere in the 1970's commercial activity with catering began.

Mr. Natchez stated that there was a Court decision in 1984 (Marbach decision) regarding the Club's corporate status. He said that letters from attorney Joel Sachs to the Department of State and a letter to the HCZMC made it clear that the use for the Club was for commercial purposes. Mr. Natchez went on to say that in 1985, the ZBA reviewed the matter and the Board felt the Club was a business entity. Ms. Kramer asked what the special permit was for back then and Mr. Natchez said it was for a breakwater application.

Mr. Natchez showed income statements from Taylor Point and noted that MB&YC is not registered with the State of New York or Westchester County as a d/b/a. He said he believes there is only one bank account and believes that it is for Taylor Point.

Mr. Natchez compared the IRS 990 forms for the various clubs. He said that there is very little information shown in the MB&YC's 990 forms and what is reported by other clubs is different from what the Club reports. Mr. Natchez stated that the Club only reports membership dues. He believes there is a tremendous amount of marketing to the non-member public to use the Club. Mr. Natchez stated that one does not need to be a member of the Club to take tennis lessons and that the tennis courts are rented out. Mr. Natchez illustrated the fees for the Club's rentals, dining fees, etc. He stated that facilities are being used by nonmembers. Mr. Natchez also reviewed the Club's contract for events.

Chairman Gutterman noted that at the bottom of the contract slide, it references the word "Inc." Mr. Natchez said that if events are done through the "Inc." it should be listed on the 990 forms. Mr. Natchez stated that there are two tax forms that can be completed. One is a short form and the other is a longer form, he noted. He said the Club uses the short form version which is usually reserved for less complicated businesses.

With respect to Lisa Rosenshein's transcripts, Mr. Natchez said that comments she made during the depositions regard business entities. Mr. Natchez also noted that there have been several complaints made against the Club, but the Village has chosen not to address the issues. He said that, at best, MB&YC is a non-conforming use. He said that it is clear decisions are not made for the members' benefit. Mr. Natchez also stated that the evidence is overwhelming and no expansion is permitted. He reminded the Board that this decision will have severe impacts on the Village, not just the marine zone.

Mr. Natchez stated that the stipulation agreement references an amended site plan. He believes when everything is finished, it then becomes a final site plan. Mr. Natchez noted that the Club was paid \$825,000 and the assessment was reduced. He said he believes final is final.

Mr. Natchez stated that in addition to the two issues he has discussed, there are 26 other issues to address. With respect to authority, Mr. Natchez said that the Board has authority regarding the Building Inspector's determination. He said the Board has the right and duty if a matter has been determined by the Building Inspector.

Mr. Natchez stated the following: 1) The facility is used by non-members, 2) The average grades have not been calculated correctly, 3) The clubhouse height has not been calculated correctly, 4) Underwater land is being used for FAR calculations, 5) Outfalls through the seawall and repairs buried, 6) The swimming pool area has changed substantially, 7) The existing survey is no longer accurate.

Mr. Natchez went on to say that this is a complicated application; it is not a simple amendment. He said that parking is a major issue. He also discussed the various dining facilities and believes the number of facilities make parking inadequate.

Mr. Natchez said that the main issue is how the site is being utilized. He stated that all other clubs have a main building that is functional. Mr. Natchez noted that both stipulations (2010 and 2013) state that the ZBA can make their own decision; they aren't bound by anything in the stipulation. He stated that when the ZBA had their special meeting regarding signing the 2013 stipulation, the Board made it clear that it did not want to be bound by the stipulation. Chairman Gutterman stated for the record that not all Board members attended the special meeting regarding the stipulation.

Chairman Gutterman asked if MB&YC would like to address the Board.

Eric Gordon, attorney for MB&YC, addressed the Board. He stated that also in attendance on behalf of the Club were Lisa Rosenshein, owner, Paul Noto, attorney for the Club and Greg DeAngelis, the architect. Mr. Gordon stated that he did not receive a copy of Mr. Natchez's presentation this evening relating to non-commercial uses. He noted for the record that he had sent a letter to the Board regarding the jurisdictional aspects of this application.

Mr. Gordon stated that this application dates back to 2004. The courts in 2006 and 2008 determined that the Village had delayed the project and therefore said that the pre-2006 code should be applied. The decisions resulted in the 2010 stipulation, he said. Mr. Gordon noted that the stipulation did not force the Boards to make any determinations. Mr. Gordon clarified that the settlement was for a litigation matter, not to have the land use Boards approve the plan. He noted that the plan has been amended due to the litigation.

Mr. Gordon said that the stipulation states that the later filed versions of this plan fall under the pre-2006 code. In 2010, MB&YC received approvals, he said. There were two issues at the time: 1) FAR and, 2) Parking spaces graveled instead of paved, he said. Everything else was

considered zoning compliant at that point, he noted. Mr. Gordon stated that there was then litigation and to address the deficiencies, this amended plan was put forward. There are four changes to the plan he said: 1) Reconfiguration of parking to take out the Otter Creek parcel, 2) Reduction in height of the yacht club building, 3) Recreation building lowered and expanded, 4) Yacht club building expanded in order to benefit the members of the club.

There are discussions of what the uses of the yacht club building are supposed to be, Mr. Gordon stated. He said that the matter is before the Planning Board; they are taking that into consideration.

Mr. Gordon stated that the question then arose as to which code should be followed. The Village Attorney provided a letter to the ZBA which states that the pre-2006 code should be followed with respect to this project based on the court cases, Mr. Gordon said.

Mr. Neufeld asked which decision Mr. Gordon is relying on with respect to the pre-2006 code. Mr. Gordon stated that the two decisions were merged when referenced in the stipulation saying that due to those decisions, the pre-2006 code needs to apply to the application. The Club's position is that application was amended in four ways and the rest of the application was approved, Mr. Gordon clarified. Mr. Gordon stated that this is an amended site plan. If there were no stipulations, Mr. Gordon stated that he still believes the Court cases suffice because the Village was accused of improprieties. Mr. Gordon said that either the stipulation or Court decisions can be used to make a determination that the pre-2006 code applies.

Discussion arose as to whether the stipulation can change the Village's code. Are the trustees bound to change the code and the Board then needs to abide by it, Mr. Neufeld asked. Mr. Gordon stated that it is not changing the current code, but saying that the pre-2006 code should be applied. Mr. Neufeld stated that is, in a sense, modifying the current code. Mr. Gordon did not feel that applying a previous code is a modification of the current code. Mr. Gordon stated that this is the threshold issue and that must be decided first. He said he didn't want to waste the Board's time and resources addressing the 26 other aspects of the SAPOA appeal until the Board decides which code should be used. Mr. Gordon stated that there is an issue as to whether the Board has authority or can make a determination on issues that the Building Inspector hasn't decided merely because SAPOA believes the Building Inspector should have considered these things and made a determination.

Ms. Kramer stated that under the stipulation there was something called the amended site plan which went back for approval to the Planning Board. She asked if that amended site plan was ever approved by the Planning Board. Mr. Gordon stated that there was an approval which then led to an appeal in 2011 to this Board. Ms. Kramer asked if the amended site plan as attached to the stipulation was approved more or less by the Planning Board and Mr. Gordon stated that was correct. Mr. Gordon said that there was a site plan resolution issued by the Planning Board. Ms. Kramer then asked if the Club has gone back to the Planning Board asking for modifications for that approved site plan and Mr. Gordon stated that they had. Ms. Kramer stated that if this is a version of the amended approved site plan, then that tells the Board something about which code to apply. If it is a different site plan, it may not be the same answer, she noted. Ms. Kramer asked at what point in the process the amended site plan (referenced in the stipulation) would no longer be an amended site plan. Mr. Gordon stated that this does not continue forever. The



Planning Board receives many applications to amend approved site plans which do not change the use and character of the property, Mr. Gordon said. He said there is no substantial use or change to the Club's property. Ms. Kramer stated that implies that if the Club decided to hold off building for ten years, would the pre-2006 code still apply, if there was no change in use or character to the property. Mr. Gordon said that there was a finding of zoning non-compliance in this instance. Mr. Gordon said that there was a decision of zoning non-compliance that the Club is trying to remedy. If the Club came in with a totally new setup for the property that had nothing to do with this plan, it would be an issue, he said. Mr. Neufeld stated that is what the Board is questioning. Mr. Gordon stated that if the Club were trying to change the uses of the property that would not be an amendment to this plan. He also stated that the Village Attorney has given a determination that this is an amended version of the site plan.

Ms. Kramer said when a Building Inspector issues a permit or approves a plan, he doesn't list every section of the code; the Building Inspector issues an approval that these plans comply. Which is what happened here, she said. Ms. Kramer asked if Mr. Gordon is saying that because the Building Inspector did not go down a list and say this and that is zoning compliant, no one can appeal that. Mr. Gordon stated that if it is under Chapter 342, then one can. He said he is referring to matters outside of Chapter 342. The Club will address any issues within Chapter 342, Mr. Gordon noted.

Mr. Gordon stated that he wished to address Mr. Natchez's comments of major misrepresentations by the Club. He said he will address the issue of use should the Board find that the pre-2006 code applies. If the Board doesn't find that the pre-2006 code applies, the Club will take another path, Mr. Gordon said. Suffice it to say, this Club is run to benefit the Club, Mr. Gordon said. He also said that the FAR may change if the Planning Board says that the buildings are too big. Mr. Gordon also said that the Club is trying to do things to benefit the Club's members. He thanked the Board for their time.

Chairman Gutterman asked the Village Attorney to address the Board. Linda Whitehead, Village Attorney, addressed the Board. Ms. Whitehead stated that she reviewed the consent judgment and history of the matter. She stated that she wished to point out that the plan being referred to as a final plan this evening is not a final plan. The ZBA found that two items of the plan were not zoning compliant and amendments to the plan had to be made. The plan was approved by the Planning Board, but there were subsequent appeals to the ZBA and the Court, Ms. Whitehead noted.

Ms. Whitehead stated that the consent judgment contains a number of criteria for the site plan. The consent judgment clearly envisioned a plan that contains certain uses and certain buildings, and even though it gives the Boards discretion to review and approve or disapprove, it anticipated certain things, she said. The current plan fits with those criteria, she said. Ms. Whitehead said that the Board earlier questioned when the pre-2006 code would not apply and she said that if the Club came in with a plan that did not meet the criteria, we would consider this completely differently. The current plan before the Planning Board is a further revised plan as referenced in the stipulation, she noted.

Ms. Kramer asked if in ten years, the Club wants to move the walls around and build it out, what would happen. Ms. Whitehead said the bigger issue would be why it isn't built yet. Ms. Kramer said to assume it's been built and the Club wants to make changes. Ms. Whitehead said that once it is built, it would be a different situation. Ms. Kramer gave a scenario in which it hadn't yet been built because the membership changed its mind, would the pre-2006 code apply. Ms. Whitehead reminded the Board that they are here today and it hasn't been built today because the plan that was approved in 2010 has been the subject of subsequent appeals and the determination that there were some items that were not zoning compliant. We are still within that same process, Ms. Whitehead said. If the Club has everything up to and including the Building Permit and it hasn't built anything in ten years that is a different situation. This is all the same process that came out of the 2004 plan, through the Court decisions and the stipulation to where we are today, Ms. Whitehead noted.

Discussion arose as to whether the stipulation has an end date. It was noted that there was a six year timeframe to build. Ms. Whitehead said the project hasn't been built and has been delayed because of the appeals and litigation. Mr. Steinman stated that there have been time extensions granted. Ms. Whitehead stated that if at the end of the six years, the project was not built; she believes the Court would have stayed the timeframes. Mr. Steinman stated that the litigation has stayed any building at this point.

Paul Noto, attorney for the applicant, addressed the Board. He said that the Building Inspector was never asked to review use because the use didn't change, so that is not properly before this Board. The Planning Board at their work session last week indicated that if they approved the amended site plan, the yacht master building may be decreased and that would change this appeal, he stated. Mr. Noto also stated that he did not receive copies of Mr. Natchez's presentation this evening and requested a copy of it. Mr. Steinman stated for the record that the Planning Board has not made any determination as to the size of the yacht master's building.

Ms. Kramer said that once the Building Inspector determined the plan was zoning compliant, can't one infer that he was also addressing the use aspect. Mr. Noto answered no because the Building Inspector made a determination on the amended site plan. He was asked to review four changes from the 2010 plan, Mr. Noto said. Mr. Gerety did not make an actual determination on use because he was not asked to, Mr. Noto said. Ms. Kramer said that a Building Permit says that the applicant complies in all manners with the requirements of the building code, zoning code, etc. Mr. Noto did not agree and stated that once the permit is issued and it is determined the use is not proper, the individual will be violated and that is the procedure. In zoning nothing is implicit, Mr. Noto said. Ms. Kramer said she did not agree with that. On issues of use, the enforcement mechanism kicks in and there is a local court for that, Mr. Noto said.

Mr. Sullivan stated that the Club recently received a special permit from this Board to hold non-member events in which they needed to provide tax returns. Ms. Kramer stated that the issue is not that they have non-member events. Ms. Kramer stated that the Board didn't deal with the issue of the Club being a club when the special permit was being renewed. Mr. Sullivan felt the Board shouldn't be dealing with it now either as it is not part of the appeal.

Debra Cohen, attorney for SAPOA, addressed the Board. With regard to Mr. Noto's position that use is not before this Board, Ms. Cohen stated that this appeal is an appeal of the Building Inspector's April 5, 2013 referral to the Planning Board where he went through the items on the checklist and said everything was zoning compliant. Ms. Cohen stated that item number one of the checklist is "use permitted" and that is very straightforward and believes the discussion of use is on the table.

Ms. Cohen stated that the viewpoint that matters occurring at the Club that are not in conformance to the code should be handled through the issuance of violations and not be before the Board is an oversimplification. Ms. Cohen noted that she has seen correspondence dating back to 1984 going back and forth and between various Boards attempting to obtain the proper documentation so that the Boards can do their due diligence as to whether the use at the site exceeds what the code allows in terms of commercial uses. There has been a failure by the Club to produce such records, she said. Ms. Cohen stated that the only reason the Board has information before it is by the public obtaining documents through FOIL and from litigation.

Ms. Cohen stated that contrary to Mr. Gordon's assertion, Sue McCrory has had some victories with the Court in regards to MB&YC. Specifically, she noted that Ms. McCrory won a Court decision relative to documents that were not made available prior to 2010.

Ms. Cohen stated that in terms of the Village Attorney's opinion relied upon by the Building Inspector and reiterated tonight, she is not going to go through her letter of opposition. However, Ms. Cohen stated that based on comments from the Board members tonight regarding the concept of finality with the plan; that is not really the issue. Ms. Cohen stated that the issue is that there was an agreement that was entered into to end litigation and the Village's part of the deal was to expedite an approval of a plan which the Village did and upon the plan being approved, the Club agreed to withdraw pending litigation for what they saw as a bad faith approval process. That is what we in the law call finality, Ms. Cohen stated. The Village paid its dues for its bad acts, she noted. Now we all come to the table as equals and the clock is running, she said. Everything ended in 2010, when an agreement was reached, Ms. Cohen said.

The final point Ms. Cohen wished to make is that it is SAPOA's belief that we agree the threshold determination is which zoning should apply, 2006 or 2013. Ms. Cohen stated that if the Board decides that the 2006 code should apply, this won't be the end of this appeal. It doesn't moot the other issues on the table, she said. The Club has said that if the Board doesn't find that the 2006 code applies, they will take a different path, she said. That does not obviate the need for the other pending issues to be resolved, Ms. Cohen said. Ms. Cohen stated that if the Board doesn't address these other issues, her client may be time-barred at a later date to bring this to the ZBA again.

Scott Defoe, 847 Soundview Drive, addressed the Board. He provided a scenario of a traveler with a large suitcase, who has the suitcase weighed, pays for it and then adds more to the suitcase and says he already paid for it. Basically, that is what the Club is doing, Mr. Defoe said. There was a lot of evidence that no one knew about at the time, Mr. Defoe stated. As a Board of Appeals, you can exercise your discretion with respect to new evidence coming to light, he said.

This Board is not bound by the stipulation, Mr. Defoe said. He asked the Board to consider everything that has been presented.

Celia Felsher, 521 Eagle Knolls Road, said she wanted to talk about one small issue regarding the existing code violations relating to the use and operation of the Club. The existing operations of the Club do not comply with the zoning code, Ms. Felsher stated. The code requires now and required then that the Club must be a not-for-profit entity and the activities must be primarily for the benefit the members, she stated. Ms. Felsher said that she doesn't believe either of these points is occurring. It has been difficult ferreting out information regarding ownership because it appears that the Club has made it difficult to get the true facts and the public hasn't gotten that information, she said. Ms. Felsher stated that she believes the Club is owned and operated by for-profit entities and the operation is commercial in nature. She said she is concerned about what appears to be a cavalier attitude of enforcing the laws of the Village where some residents are expected to follow the laws and others are given a free pass. Ms. Felsher stated that the use discussion must be had. By expanding the facilities and expanding the use, it should not be permitted, Ms. Felsher stated.

Alan Wood, 727 Soundview Drive, addressed the Board. He said he lives adjacent to Otter Creek and has lived in the Village for 50 years. He stated that when he first moved to the area, he needed to obtain a special permit to install a dock. Mr. Wood went on to say that MB&YC has violated regulations for the last 50 years. No one in the Village has tried to enforce the rules and the public was never able to get the information prior to now, Ms. Wood stated. He appealed to the Board to do the right thing for the Village. There are many overriding issues, Mr. Wood said. He stated that as a for-profit entity, the Club should not be allowed to build anymore.

Sarah Robertson, 732 The Parkway, stated that it's important to determine whether the Club is zoning compliant. She said that she uses the Club, but is not a member. The Board needs to determine if the Club is zoning compliant and if there is proof of that, she said.

Lois Fenton, 721 Shore Acres Drive, addressed the Board. She said that she has lived in the Village for over 50 years. Ms. Fenton said she is surprised that everyone is acting as if this behavior from the Rosensheins is something new. She said that the Village has been put upon in many ways. One time in the middle of the night several years back, Ms. Fenton said, truckloads of soil were added to the property and part of the water became part of their property. No permissions were ever requested, granted and no punishment ever occurred, Ms. Fenton noted. Ms. Fenton stated that if someone else was to extend their property into the waters, it would not be permissible.

Alison Stabile, 572 The Parkway, addressed the Board. She stated she is the Vice President of the SAPOA board. SAPOA is a not-for-profit organization, run for the benefit of its members, she said. Ms. Stabile stated that SAPOA has 200 homes and that SAPOA has regular Board meetings, in which minutes are taken and distributed. She stated that there are annual meetings, where members vote and that the activities are guided by the membership and are acted on their behalf.

Ms. Stabile stated that MB&YC has presented itself as a not-for-profit organization and it is on this basis that they are claiming to be compliant with the zoning code. They are not a not-for-profit according to the requirements and as evidenced in their own tax filings, she said. Ms. Stabile asked where the money is for the private parties, where are the salaries that are paid to the employees, where is the list of Board members and officers.

Gabrielle Cohen addressed the Board. She stated that she has paid for tennis lessons at MB&YC and has also played tennis at the Club. She noted that she is not a member. Ms. Cohen said that her children have gone to the Club and they are not members. Ms. Cohen said a friend of hers had a wedding at the Club and that she is not a member either.

Ms. Cohen noted that when the Club holds functions, there are a large number of coach buses that pass by her house going toward the Club. She said that she has asked other residents who reside near clubs and they have told her they do not have the same problem with the congestion and large buses coming through.

Ms. Cohen stated that just because an entity chooses not to tell the truth or doesn't get caught doing something wrong, doesn't mean it shouldn't be held accountable. This notion of for profit vs. not-for-profit is not an insignificant one, she said. The Club's for profit activities are having an impact on the community right now, she said.

Ms. Cohen stated that with respect to the stipulation, the stipulation doesn't make the situation right and that this Board can make their own determination. She said that the ZBA is the checks and balances needed. She said that the Board, too, will also have to live with this decision. Ms. Cohen stated that she understands that the Board may have pressure placed on it to make a certain decision, but the ZBA should overturn the Building Inspector's determination.

Nora Lucas, Village resident, addressed the Board. She stated that she was involved in a case where this Board overlooked an administrative precedent and was overturned by the Court. The 1985 determination that found MB&YC was not zoning compliant because it was not operated in 1985 and nor is it operated today as a not-for-profit, but a commercial entity, she said. The Club is not a club; one can buy tennis lessons and parties, she said.

Ms. Lucas said she doesn't understand how the Building Inspector could have made this determination if he was provided with the record the Board has in front of it. She also said she doesn't understand why the 1985 ZBA determination just surfaced today; it should have been in the file a long time ago. Ms. Lucas stated that she is asking this Board to revoke the determination made by the Building Inspector saying that the Club is zoning compliant and set the Village and Club on the path to fair and equal zoning. The Club can ask for a use variance, she said.

John Hofstetter, 304 Prospect Avenue, addressed the Board. He stated that one of the issues that concern him is whether the 2006 or current zoning code applies. It seems that the use issue needs to be addressed before anything else should be addressed, Mr. Hofstetter noted. Moving beyond that is addressing the Village Attorney who got up and spoke, he said. Mr. Hofstetter noted that he was on the Board of Trustees when the consent agreement was agreed to and

participated in the discussions; the \$825,000 was a result in reaching an agreement and getting to a final site plan which was approved and then found in error based on an application made by the Club, he said. The Club could have made an application that was zoning compliant, but it didn't, he said. The Club could have eliminated the small parcel in question and provided the appropriate parking, but they chose not to, he stated. Mr. Hofstetter clarified that the issue was not created by the Village, but by the Club.

Even if the 2006 zoning code should apply, the Club's own environmental planner has said that there are substantial changes to the application, he said. If this is the case, Mr. Hofstetter said the current code should apply. If the Village paid \$825,000 and on top of that the depositions were made public, the Courts saw this as final, he said. This is a new application, he said. He stated that he hoped the Board would determine that this is a new application and that the new code should apply. And, even before that, the Board should look at the use issue, Mr. Hofstetter said. He said that the use issue is not relegated to only MB&YC, but will set a precedent for other clubs in the area.

Dan Natchez addressed the Board again. He stated that the 2010 plan that was attached to the original stipulation agreement was changed on more than one occasion before it became final. The stipulation agreement says it was drafted in such a way that says there may be some small changes, but when one gets to the final, it is final, he said.

Mr. Natchez went on to say that the code is clear that the Building Inspector makes a determination and it doesn't go to the Board before a determination is made. If something isn't done correctly, it's the Board's job to review the matter, he said. Mr. Natchez said that if an appeal is made, the Board has the duty to consider the appeal.

When the special permit for non-member events for the Club was granted, the Board's decision made a requirement that the Club must comply with the zoning code for its operation; that has not been done, Mr. Natchez said. He also stated that SAPOA is not against the Club or the Rosensheins. He said he is in support of clubs that do club activities. He stated this Club is a business entity. Most of the information that has been presented in this appeal, he said, was not available in 2010. Had it been, Mr. Natchez said he was told by individuals from other Boards that the decision and outcome would have been different. He reminded the Board that this is a large issue.

Eric Gordon addressed the Board again. He stated that he wanted to make the Board aware that the depositions of the Rosensheins were taken prior to 2010 and were in the hands of the Village's attorneys. Mr. Weprin stated that that point had been made several times.

Chairman Gutterman stated that the Board would keep the public hearing open and would accept documentation from MB&YC addressing points that were brought up by SAPOA. Mr. Noto asked if the Board was going to make a determination on which zoning code to apply. Mr. Weprin said not tonight. Mr. Noto asked if the Board wanted him to address the 26 points on September 12<sup>th</sup> or have the Board make their determination first with regard to which zoning code and then have Mr. Noto address the points at the October meeting. Ms. Kramer told Mr. Noto that he should make a determination on whatever he thinks should be addressed. Mr. Noto

said the Building Inspector would address it and then he would provide information as well. Mr. Noto also stated that he didn't know if the Planning Board would meet before the September 12<sup>th</sup> meeting. Mr. Noto said construction is not commencing in September, so his rebuttal could wait until October.

The Board took a few moments to discuss amongst themselves which zoning code (2006 or current) is applicable. Chairman Gutterman said that while the hearing is still open the Board will make a decision in September and MB&YC can make a presentation in October. The application is adjourned to the September 12<sup>th</sup> meeting.

### **CLOSED APPLICATIONS**

1. Application #1S-2013, PROSPECT CIGAR GROUP D/B/A DOC JAMES CIGAR LOUNGE, 133 E. Prospect Avenue (Section 9, Block 51, Lot 9B), to legalize a hanging sign where the sign violates Section 286-12B(1) (business establishments shall be limited to one façade sign) where this is the second facade sign, Section 286-12C(2) (the lower edge of a sign shall not be located above the level of the second story of the building), and Section 286-2 (Projecting Sign: the sign extends 7 feet where 18 inches is allowed from the plane of such wall or structure. (C-2 District)

The Board noted that the application should be approved for this particular location only. The sign was erected by a previous tenant and has been there for many years.

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

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

2. 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)

The Board discussed the hardship to the applicant and property owner. It was noted that the approval should be contingent upon the Board receiving an updated survey. Discussion arose as to whether the survey should be submitted to the Building Inspector or the ZBA for purposes of this application. Mr. Neufeld stated that the special permit should be contingent on the applicant providing the ZBA with the updated survey consistent with what was represented at the hearing. Ms. Kramer said it should be a condition of the resolution. The Board requested that the survey be provided at the September meeting and that they are making this allowance so that the applicant can open the restaurant next week.

Mr. Weprin suggested approving the special permit for three months and asking for the survey. Mr. Steinman said the Board can approve the special permit and ask the applicant to bring the survey to the next meeting. Mr. Sullivan brought up the fact that the applicant would need to re-

notice the application if the Board requests that he come back in three months. The Board decided against the short timeframe and agreed to a regular special permit with conditions.

Discussion also arose as to adding the deck in the “whereas” clause and it was decided that the resolution would reference the deck. The applicant will submit the updated survey to the Board and the survey should be consistent with what was said at the public hearing. It was also noted that the resolution will contain the same conditions as the special permit for Grand Central Restaurant.

On motion of Mr. Weprin, seconded by Mr. Neufeld, the application for a special permit is approved for a three year term conditioned upon the Board receiving an updated survey at its September 12, 2013 meeting that reflects what was said at the public hearing.

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

3. Application #4SP-2013, MARY JIMENEZ D/B/A DOMINICAN KITCHEN, 443 Mamaroneck Avenue (Section 9, Block 11, Lot 5), for a special permit to operate a restaurant. (C-2 District)

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

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

4. Application #12A-2013, LAURA RAINALDI, 643 Lorraine Street (Section 4, Block 17, Lot 1), for three variances to erect an above ground pool 15 feet in diameter and four feet deep for the summer where the proposed pool violates Section 300-3(A) (Prohibitions and Standards), where no pool shall be erected or constructed in the front yard of any premises and Section 300-3(B) (Prohibitions and Standards), where the proposed pool is setback four feet from the secondary front yard on Grove Street and ten feet is required. The proposed pool also violates Article V, Section 342-27 of the Schedule of Minimum Requirements for Residential Districts, where the pool is setback 15 feet from the primary front yard on Lorraine Street and 20 feet is required. (R-5 District)

The Board discussed the merits of the application. It was noted that this is a temporary/seasonal variance that would be in place from May through September. Discussion arose as to the safety issues of the pool. Mr. Gerety stated that the Building Department will be issuing a permit and the pool will be inspected by the Building Department as well.

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

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



5. Application #13A-2013, ROBERT RIPLEY, 520 Brook Street (Section 4, Block 26, Lot 31), for a variance to legalize an enclosure of an existing unheated open porch where the porch violates Article V, Section 342-27 of the Schedule of Minimum Requirements for Residential Districts where the structure has a 23.6 foot setback from the rear property line and 25 feet is required. (R-5 District)

The Board discussed the merits of the application. It was noted that the variance requested is for only 18 inches.

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

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

**ADJOURN**

On motion of Ms. Kramer, seconded by Mr. Sullivan, the meeting was adjourned at 12:16 a.m.

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

ROBIN KRAMER  
Secretary

Prepared by:  
Ann P. Powers