

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, OCTOBER 2, 2014 AT 7:30 P.M. IN THE COURTROOM AT 169 MT. PLEASANT AVENUE, MAMARONECK, NEW YORK.

These are intended to be Action Minutes which primarily record the actions voted on by the Zoning Board at the meeting held October 2, 2014. 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:** Barry Weprin, Chairman  
Robin Kramer, Secretary  
Greg Sullivan, Board Member  
Dave Neufeld, Board Member  
Len Violi, Board Member  
Anna Georgiou, Counsel to Board  
Les Steinman, Counsel to Board  
Rex Gedney, Agent for Building Inspector  
Dan Gray, Building Inspector

**ABSENT:** None

RECEIVED  
CLERK OFFICE  
2014 DEC -8 PM 3:18  
VILLAGE OF MAMARONECK  
NEW YORK

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

Mr. Weprin was late so Mr. Neufeld was Acting Chairman. Mr. Neufeld asked if there was a motion to go into Executive Session. Ms. Kramer made the motion to go into Executive Session to discuss a litigation matter related to the Hampshire Club.

Ayes: Sullivan, Kramer, Violi, Neufeld

Nays: None

Absent: Weprin

The Board returned from Executive Session after approximately 15 minutes.

## PUBLIC HEARINGS

1. Application #11SP-2008, DCH MAMARONECK, LLC D/B/A DCH TOYOTA CITY, 700 Waverly Avenue, (Section 8, Block 111, Lot 1A), to renew a special permit to operate an automotive service center. (M-1 District)

Paul Noto, Esq. represented the applicant. Mr. Neufeld noted the complaints that were issued in May 2014 for overgrown grass, garbage and debris on the property and a fence in disrepair. Mr. Noto stated that he was not aware of the complaints but that they will be addressed immediately. Ms. Kramer noted the comment on the Planning Board Transmittal regarding the parking spaces in the nearby lot. Mr. Noto stated a variance was granted for the spaces, which are available.

Mr. Neufeld asked if anyone wanted to address the Board. None did.

Mr. Violi motioned to close the public hearing, seconded by Mr. Sullivan.

Ayes: Kramer, Violi, Sullivan, Neufeld

Nays: None

Absent: Weprin

2. Application #9A-2014, STEFANO AND MARIA DIFIORE, 1105 Jensen Avenue, (Section 4, Block 63, Lot 2B), for a variance to construct a second floor addition and roof alteration, new outdoor stairs, front dormer and roof alteration. The proposed addition to a two family home in an R-5 district violates Article IX, Section 342-64A whereas a building or structure the use of which does not conform to the use regulations for the district in which it is situated shall not be altered, enlarged or extended. (R-5 District)

Martha McCarty, Esq. represented the applicants. Mr. Neufeld noted that the survey in the application was from 1984. Ms. McCarty submitted a current survey as well as letters from neighbors in favor of the project. Mr. Weprin arrived. Mr. Neufeld asked if the application should be for a use variance as it is a 2 family dwelling. Ms. McCarty stated it is a non-conforming, pre-existing grandfathered 2 family dwelling which she believes was built as a 2 family.

Mr. Rino Orsino, R.A. stated it was a 2 family dwelling before the 1968 Village Zoning Code was adopted.

Ms. McCarty stated there will only be 268 square feet of additional space, a lot of which will be used by a staircase. The lot is 10,000 square feet and could have 2 one family dwellings constructed. She also stated it won't adversely impact the neighborhood.

Chairman Weprin asked if anyone wanted to address the Board. None did.

Mr. Sullivan motioned to close the public hearing, seconded by Mr. Weprin.

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

3. Application #2S-2014, MEN AT WORK 427 BOSTON POST RD, LLC, D/B/A DUNKIN DONUTS, 427 East Boston Post Road, (Section 4, Block 60, Lot 7B1), for variances to permit a freestanding sign. The proposed sign violates Chapter 286-11 B (1) a freestanding sign is only allowed when the front of a building is set back 50 feet or more from the property line, the building is set back 39.1 feet. The proposed sign also violates Chapter 286-11 B (2) no freestanding sign shall be located less than 15 feet from a side property line, the proposed sign is 2 feet from the side property line. (MC-2 District)

Paul Noto, Esq. represented the applicant. Chairman Weprin noted the application seems to be identical as the prior application and wondered if the Board should hear this application. Ms. Kramer asked if there were any differences between the applications. Mr. Noto stated the sign is smaller so 1 variance has been eliminated and the trees have grown in the 3 years since the last application. Ms. Georgiou stated that the previous application in 2011 was not for a sign size variance and that the variances applied for now are the same variances as were denied by the Board in 2011. A similar application by the applicant to install a freestanding sign at the premises was also denied in 2010. Ms. Georgiou asked Chairman Weprin if the Board would like Advice of Counsel. Chairman Weprin said yes and the Board agreed. Mr. Georgiou recommended a closed session for Advice of Counsel. The Board and Counsel left the room and returned approximately 15 minutes later. Chairman Weprin stated the Board believes this application is seeking identical variances to the prior application that was denied. It is not appropriate to hear it as a new application. The Board directed Counsel to draft a resolution which will be considered by the Board at its next meeting. Public hearing not opened.

### **CLOSED APPLICATIONS**

1. Application #11SP-2008, DCH MAMARONECK, LLC D/B/A DCH TOYOTA CITY, 700 Waverly Avenue, (Section 8, Block 111, Lot 1A), to renew a special permit to operate an automotive service center. (M-1 District)

The Board discussed the merits of the application.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application to renew a special permit to operate an automotive service center was approved with no term limit subject to the complaints being closed.

Ayes: Violi, Neufeld, Sullivan, Kramer  
Nays: None  
Abstain: Weprin

2. Application #9A-2014, STEFANO AND MARIA DIFIORE, 1105 Jensen Avenue, (Section 4, Block 63, Lot 2B), for a variance to construct a second floor addition and roof alteration, new outdoor stairs, front dormer and roof alteration. The proposed addition to a two family home in an R-5 district violates Article IX, Section 342-64A whereas a building or structure the use of which does not conform to the use regulations for the district in which it is situated shall not be altered, enlarged or extended. (R-5 District)

The Board discussed the merits of the application. Mr. Sullivan stated similar variances have been granted in the past, the variance is minimal and won't adversely affect the neighborhood.

On motion of Mr. Violi, seconded by Mr. Neufeld, the application to construct an addition to a 2 family dwelling in a single family zone was approved.

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

3. 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 and Yacht Club, (Section 4, Block 37, Lot 1) for an appeal of the determination of the Building Inspector, made on April 5, 2013 finding the amended site plan application of Mamaroneck Beach and Yacht Club is zoning compliant. (MR District)

Chairman Weprin stated that there are 3 issues left to be decided that weren't raised in the previous appeal, #s 9, 10 and 15 from the previously submitted chart.

As part of a discussion of res judicata, Chairman Weprin stated that the issues could have been raised in the appeal of the 2010 site plan zoning compliance but were not. Ms. Kramer noted that the res judicata argument does not apply to Ms. McCrory since she was not a party to the 2010 zoning compliance appeal. Mr. Violi stated that res judicata may apply to Ms. McCrory. Chairman Weprin was troubled by the claim that Ms. McCrory is not subject to res judicata. Although she was not a party, she had the same interest as SAPOA in that prior proceeding and she was aware of the prior proceeding. Counsel Steinman discussed issues of timeliness and res judicata and the distinctions between the two.

Regarding #9, FAR (attics) Chairman Weprin thinks that attic space is what is meant by "roof areas" under the pre-2006 Zoning Ordinance.. He is persuaded by the subsequent change in the definition of floor area, gross, to exclude "roof area" and substitute a reference to attic space as not being counted as floor area. Ms. Kramer stated attic wasn't used in the original code, the term was added to clarify or exclude where it's not clear.

Regarding #10, (story and half story) Chairman Weprin stated that there is nothing in the record to indicate any of the buildings exceed the 3 story limit in the pre 2006 Zoning Code. Ms. Kramer acknowledged that if none of the buildings are more than 3 stories, the issue regarding attics as half stories really does not matter.

Regarding #15, (5,000 s.f. per dwelling rule) Chairman Weprin stated that he is uncomfortable with an interpretation that would make regulations on construction in the MR Zone more onerous than in a residential zone. Ms. Kramer stated that the Note at issue in #15 is not a density or lot coverage requirement. She doesn't think the Building Inspector could have made a determination as he was only on the job for 2 days, the plans are multi pages and the lot coverage calculation isn't shown on the plans.

Counsel Steinman discussed the interpretation of the Note in Issue # 15. He suggested that the note contemplates that there be an existing residential use and that the impact of new construction and the 5000 square foot requirement are to be calculated with regard to that existing residential use. He also pointed out that the 5000 square foot requirement is an area and not a distance requirement. Further, that aggregation of the square footage- buffer- would be much greater than comparable requirements for multifamily zones. Mr. Violi would interpret the Note as applying to the entire lot area. Ms. Kramer responded that to do so would ignore the "immediately surrounding" language. Mr. Weprin stated that the Note contemplates an existing structure. If you are building a new building, any existing residential structure must have at least 5,000 square feet immediately surrounding it. Mr. Neufeld emphasized that the word "reduced" contemplates, as Chairman Weprin stated, an existing structure. Mr. Neufeld stated that the intent was not to hurt what you have – you cannot put something new that would reduce the area around an existing residential structure. Chairman Weprin concurred and, if there was no pre-existing residential structure, the building inspector would not have had to apply this Note.

Ms. Kramer raised the issue of whether the Building inspector could look at the plans submitted to him and make a determination of Issue # 15.

Chairman Weprin summed up the evening's discussion and stated that it appears that 4 members of the ZBA would agree to deny the story appeal (Issue # 10), with Ms. Kramer undecided as yet on that issue. As to Issue # 9, the Chairman, Mr. Violi and Mr. Sullivan agree that the attic space is a roof area that would not count as floor area. Ms Kramer disagrees.

Chairman Weprin asked Counsel about the 62 day requirement to make a decision. Mr. Steinman stated that an extension would be requested of the applicants. .

Mr. Sullivan noted that the attachment that has footnote #4 (Issue # 15) has been amended 12 times. He asked Counsel if it was possible to find out if any of the amendments spoke to #4. Ms. Kramer felt that was a good idea and may provide the answer the Board is looking for. Mr. Steinman stated he will try to do the research. Chairman Weprin also requested that a full size set of the plans that are the subject of this appeal be provided to Board members.

**MINUTES**

The minutes of the September 4, 2014 meeting were not completed and therefore could not be approved.

Prepared by:  
Barbara Ritter