

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, MARCH 6, 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 April 3, 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:** 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  
Robert Hughes, Assistant 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 7:38 p.m.

Chairman Gutterman stated that there is not a full Board, and any applicant who wishes to be heard before the full Board can reschedule.

**PUBLIC HEARINGS**

- 1. Application #6SP-2011, VITHAYA NAUMSUNAM, D/B/A SPICY SHALLOT 2, 1208 West Boston Post Road, (Section 9, Block 21, Lot 2B) to renew a special permit to operate a restaurant (C-1 District)**

Mr. Naumsunam appeared for a Special Permit renewal. He stated there were no changes.

Mr. Gutterman asked if the public had any comments. There were no comments.

### **Close Public Hearing**

On motion of Ms. Kramer, seconded by Mr. Sullivan, the Public Hearing was closed.

Vote: 4-0

### **2. Application #4SP-2014, RAYMOND SCHRAMM, D/B/A NORTHEAST OYSTER BAR, 152 Mamaroneck Avenue (Section 9, Block 50, Lot 19A) for a special permit to operate an oyster bar/restaurant (C-2 District)**

Mr. Raymond Schramm appeared for a Special Permit to operate an oyster bar/restaurant. He stated that there will be no cooking done on the premises. Foods such as oysters, salads, cheeses, etc., will be available for purchase.

Mr. Gutterman asked about the hours of operation. The applicant stated Wednesday through Saturday - 2 p.m. to 10 p.m.; Sunday and Monday - 2 p.m. to 9 p.m.; and closed on Tuesday.

Mr. Gutterman asked if there were any questions from the public. There were no questions.

### **Close Public Hearing**

On motion of Mr. Sullivan, seconded by Mr. Weprin, the Public Hearing was closed.

Vote: 4-0

### **3. Application #5SP-2014, ELIZABETH BRANDT, 1024 Keeler Avenue, (Section 4, Block 31, Lot 70A) for a special permit to operate a deli (R-5 District)**

Mr. Steve Miceli, Miceli's Deli, appeared for a Special Permit and stated the business will remain the same, but is under new ownership. The hours of operation are from 5:30 a.m. to 5:30 p.m. seven days a week.

Mr. Gutterman asked if the public had any questions. There were no questions.

### **Close Public Hearing**

On motion of Mr. Sullivan, seconded by Mr. Weprin, the Public Hearing was closed.

Vote: 4-0

### **4. Application #1A-2014, ANTHONY PASSAFARO, 216 Florence Street, (Section 4, Block 31, Lot 25B) to construct an addition to a single family dwelling on a lot containing two single family homes with the proposed addition violating Article IX, Section 342-64(A) non-conforming use of buildings, where a building or structure the use of which does**

**not conform to the use regulation for the district in which it is situated shall not be altered, enlarged or extended. (R-5 District)**

Mr. Steve Marchesani, architect, appeared for the applicant and stated that this is non-conforming because two single family homes are on one lot in a one-family district. A two-story addition is being constructed onto the rear of the front house. The house is approximately 600 square feet and approximately the same square footage is being added.

Mr. Gutterman inquired if the building height will remain the same. The architect responded yes. Ms. Kramer asked about the rear yard measurements. The architect said the measurements begin from behind the rear of the house starting from the addition. Ms. Kramer asked if there is a rear yard behind the rear house and if so, if it meets Code. The architect responded it does not but this is an existing non-conformity.

Mr. Gutterman asked if there were any questions from the public. Ms. Helen Raush, 220 Florence Street, a neighbor, stated she saw the plans this evening and was satisfied.

### **Close Public Hearing**

On motion of Mr. Weprin, seconded by Mr. Sullivan, the Public Hearing was closed.

Vote: 4-0

### **5. Application #1I-2014, JOHN MAWE, regarding 841 Taylor's Lane, (Section 4, Block 79, Lot 8B4) for an appeal of Building Permit #14-0012 (R-15 District)**

Mr. Harold McGuire, applicant's attorney, presented to the Board an aerial map of the property located at 841 Taylors Lane, owned by the Hackenburgs. Mr. McGuire's client, Mr. Mawe, who resides at an adjacent home at 843 Taylors Lane, is appealing the issuance of the building permit given to the owners of 841 Taylors Lane, who are raising their flood damaged house up nine feet in order to make themselves eligible for flood insurance in accordance with FEMA regulations. Mr. McGuire indicated a major part of this appeal concerns the failure of the owners to obtain a floodplain development permit and to comply with the necessary requirements for the issuance of the permit. Mr. McGuire said the Building Department failed to demand that they do so. Mr. McGuire said the owners and Building Department also failed to consult the County Health Department over the sewer issues and further described the appeal. He indicated there were also zoning non-conformities. According to Mr. McGuire, the building permit was issued on January 7, 2014. It allowed for reconnection of the existing septic system under Chapter 186 on the property which dates back to the 1930's. He indicated there could have been a separate permit required by the Village that would require a connection to the Village sewer system in order to comply with the existing Health Department laws. Mr. McGuire stated there was no application for a floodplain development permit, and as a result these issues that are implicated in the floodplain permit were never reviewed. The approved construction plan says nothing about the septic system, construction, age, capacity or design. He said the approved plan shows only the location of the septic tank to be provided and this appears to violate State, County, and Village

health regulations and environmental requirements.

Mr. McGuire then discussed the Planning Board's approval of a Wetlands Permit (Chapter 192) to elevate the Hackenburg home. Mr. McGuire stated he believed sewerage issues were never raised during that proceeding. According to Mr. McGuire, the house is being raised nine feet above flood elevation. The on-site septic system is not acceptable on land below the 100-year flood level. The grade level is four feet above sea level only. He stated the entire property is within the 100-foot buffer zone. He concluded that raising the Hackenburg home will increase hydrostatic pressure on the existing septic system because of gravity problems with the absorption field. Sewage could possibly seep into Mr. Mawe's house into the crawl space. Mr. McGuire stated that before the building permit was issued, the building inspector should have referred this matter to the Public Health Department.

Mr. McGuire said in regard to flood damage prevention, the home is in a "V" zone. According to Chapter 186, any house should be in full compliance with the terms of Village Code Chapters 186 and 342.

Mr. McGuire indicated the building inspector is the gatekeeper for the Village and an application for a floodplain development permit was necessary. As required by Chapter 186, it should have been determined that necessary permits were to have been received from Federal and State authorities. He then stated the building inspector did not require an adequate application to the Planning Board for a Wetlands Permit that should have included an engineering report to deal with the sewage matters and he did not refer this to the Harbor and Coastal Zone Management Commission (HCZMC). He indicated there should have been special attention to protecting wildlife, higher standards should have governed. The building inspector is required to see that all standards comply to the fullest with Chapter 186.

Mr. McGuire then acknowledged the building department considered the application for a building permit to be equivalent to an application for a floodplain development permit. He then stated there was nothing in it about the sewer system. He indicated this application was for a substantially improved structure. This house was severely damaged during Superstorm Sandy, the building inspector was required to ensure that the sewer, gas, electrical and power system be located and constructed to minimize flood damage in the future. Mr. McGuire said no permit for potential sewage pollution was ever sought or issued.

Mr. McGuire said the owners should have disclosed that there was a water property development issue and on the Coastal Assessment Form (CAF), none of the critical components were addressed as the boxes on the Form were checked 'No'. He stated the Planning Board did not deal with sewerage or septic issues.

Mr. McGuire asked the ZBA to order the Building Permit withdrawn.

Mr. McGuire said Chapter 342 permits certain existing non-conforming uses to continue even though they otherwise may violate zoning restrictions, but that section does not grant any exception to State law. He stated the use of the septic system on this property was disconnected for 1 ½ years and is still not being used. Mr. McGuire stated grandfathering no longer applies,

and the repair goes beyond the restoration as to what was there before. The proper procedures were not followed. He acknowledged that the ZBA is not principally responsible for interpreting health regulations. Mr. Gutterman asked Mr. McGuire whether his rationale applied to natural disasters and noted that the property owners did not choose for this to happen.

Mr. McGuire then addressed the rear yard setback that he described was being reduced from 30 feet to 27 feet, and that 30 feet is required by Chapter 342. He indicated that there is no documentation as to why this was acceptable and no variance was applied for. The rear yard setback is only 19 feet from the corner of the deck. He stated that these are serious setback violations which may have FEMA implications. Section 342.65 that addressed grandfathering states that 'no permit shall be issued which results in the increase of any such non-conformity'. He concluded that raising the deck 10 feet up in the air is an increase and that this house, as proposed, will exceed the 2 ½ story Zoning Code requirement.

Leo Napier, attorney representing 841 Taylors Lane owners (Hackenburg), stated the septic system was put in around 1983. Rex Gedney, architect, also appeared on behalf of the 841 Taylors Lane owners. Mr. Napier indicated a valid permit was issued and the septic system is periodically inspected by the County Health Department. There was no formal complaint lodged by Mr. Mawe. The house, as designed, is compliant with floodplain development requirements. He stated that there is no issue on grandfathering in the septic system that it is not illegal, and has been in place since 1983. The applicant is just lifting the original structure. Mr. Napier confirmed there is no change to the interior of the home or to the footprint; there are no additional bedrooms. He also confirmed that the floor plan will remain as is. Mr. Napier concluded that there is nothing that would trigger the County Health Department to review this. He stated that the County Health Department issued a memorandum in 2000 referencing complete teardowns and this property is not a teardown; this is simply raising the existing structure.

Ms. Kramer asked if anything less than a full teardown was addressed in that memorandum. Mr. Napier responded that he only focused on a complete teardown, which this is not. He confirmed that the house is only being lifted, it is not being expanded and everything is staying the same. The exterior walls are in good condition. Also he stated that 841 Taylors Lane is not within 100 feet of a public main so the owner cannot be forced to connect and the closest town sewer main is at the intersection of Barrymore Lane and Taylors Lane. Mr. Weprin asked about the effect of raising the home on the septic system; does it render it inadequate. Mr. Napier responded that septic systems and their adequacy are subject to review by the County Health Department not a zoning board of appeals.

Ms. Kramer asked if someone told the County Health Department that the house is being raised.

Mr. Rex Gedney, project architect, responded that he has been in contact with the County Health Department. He stated the structure is being lifted, and only additional steps will be added in front and back to exit the house; reference also was made to the deck that was being elevated. He stated there are no other planned alterations to the home. The County Health Department said they had no jurisdiction and that the septic system was there and they could continue to use it.

Mr. Gutterman inquired about setbacks and whether in this application is the house being moved horizontally. Mr. Gedney responded no and stated the house is being elevated only.

Mr. Gutterman addressed the rear yard set back to the edge of the water which is less than the 30 foot requirement, and asked if it is existing. Mr. Gedney said yes.

Ms. Kramer added that they had 30 feet and it will now be 27 feet. Mr. Gedney said it is only because of the stairs.

Ms. Kramer asked whether adding stairs requires a variance and will it affect the rear yard requirements. Mr. Gedney said they were not requested to get a variance as the stairs are a required means of egress. Mr. Gedney stated open wooden steps will be put on.

Mr. Gerety said the stairs can intrude three feet and that the Zoning Code (Chapter 342) allows for the stairs proposed as a building projection without a variance. Mr. Weprin then asked for an opinion on whether by raising the house it becomes 3 ½ stories under the Zoning Code.

Mr. Gedney stated the house will be elevated on piers. He stated there will be a breakaway wall system. The on-grade lower level will not be occupied and is considered a story under the NYS Building Code. However, Mr. Gedney stated that under the Village Zoning Code, it is not a story.

Mr. Gedney said this is a single family residence in a single family zone. It is a conforming use. He stated the septic system is compliant. No septic system is allowed below the floodplain level in new construction. It was a functioning permitted septic system.

Ms. Kramer inquired what if a new house is built on the property today. Mr. Gedney said a septic system probably not would be permitted and would have to be tested. It would be below floodplain level. Ms. Kramer then asked whether you would be allowed to continue to use a septic system in this situation, not a new house. Mr. Gedney responded that the law allowed use of the septic system to continue under these circumstances.

Mr. Gedney remarked that Mr. Mawe's system also failed. In order for him to do particular work on his house he had to hook up to the forced main system. The house to the left of Mr. Mawe's also is on a septic system. The next house is on a forced main system.

Mr. Gutterman asked if the public wished to speak or comment on this application. No one did.

Mr. McGuire then asked to address the Board.

Mr. McGuire said Mr. Gedney did not address the more substantial non-conforming issue that is the setback requirement which is the elevated porch. He said the Board should focus on this.

Mr. McGuire said the sewage issue impacts the hydrostatic pressure and that Chapter 186 addresses this and certain characteristics are required. He stated that it is not accurate to say you

can use the existing system and that it is fine. There should have been an investigation as it is a procedural issue.

Mr. Napier stated the septic system is existing; no new house is being proposed. He then deferred to the building inspector.

Ms. Kramer confirmed with Mr. Napier that there is no change to the location of the deck and that the deck was not getting bigger or moved in any direction. She commented that the house is going straight up. Mr. Napier stated the house is just going straight up, only the stairs are being added.

### **Close Public Hearing**

On motion of Mr. Sullivan, seconded by Mr. Weprin, the public hearing was closed.

Vote: 4-0

### **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 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 that the amended site plan application of Mamaroneck Beach and Yacht Club is zoning compliant (MR District)**

Mr. Gutterman asked for a brief recess at 8:35 p.m. to seek advice of counsel.

The meeting reconvened at 8:45 p.m.

Mr. Gutterman stated 'use' will be discussed this evening. At the next zoning board meeting there will be a session on clarifying rules on the submittal of materials.

Mr. Gutterman stated that the following correspondence has been received since the last meeting and made part of the record - two emails from Sue McCrory both dated February 20, 2014, responding to a question raised by Ms. Kramer and attaching records to correct facts misreported at prior meetings; a five-page letter from Mr. Daniel Natchez dated February 20, 2014; correspondence from Keane & Beane, dated March 3, 2014; and e-mails from Gabriel Cohen, Rhett Thurman and Katherine Dufresne dated March 5, 2014. Mr. Steinman said a letter also was received from the law firm of Newman Ferrara dated March 6, 2014, and a March 6, 2014 e-mail from Eric Gordon responding to the Newman Ferrara letter.

Mr. Gutterman said they will now discuss the question of 'use' and asked for comments from the Board members.

Mr. Weprin stated the controversy over MBYC's use of the property has existed since 1979.

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Based upon the record before the Board, the appellants have not demonstrated that the use is not a permitted use. The activities conducted on the property are related to the functions of a club. He noted that no violations have been issued to the club for those activities.

Ms. Kramer said they have been charged with looking at the pre-2006 Code and whether the Club's operations meet the requirements of that Code. The Pre-2006 Code states that a club cannot be used for an activity commonly conducted as a business and a club must cater exclusively to its members and guests except that twenty (20) percent of events held may be non-member events. Ms. Kramer referred to a New York case interpreting the term "commonly conducted as a business" as one that is open to the public. Here, tennis lessons are open to the public along with the summer camps. This does not conform to the language. Mr. Weprin stated that there are memberships for the summer camp.

Ms. Kramer also questioned whether MBYC is an "annual membership organization" as required by the Pre-2006 Zoning Code. She remarked that one can pay the membership fee and one can then book a wedding. In other words, anyone can become a member. Ms. Kramer, referring to a case outside New York, suggested that the ability to walk up, pay a membership fee and hold an event was a way around the language of the Pre 2006 Zoning Code. If anything, the MBYC is a nonconforming use. Ms. Kramer stated that she is not suggesting that the Club be shut down.

In regard to the 990 question, Ms. Kramer, stated, there is nothing in the definition of Club that says they have to be a Not-for-Profit in the pre-2006 Code. A club has to file Form 990 to conduct non-member events. The ZBA has already granted a special permit to MBYC to hold non-member events. Accordingly, the 990 issue may not even be relevant.

Mr. Sullivan agreed with Ms. Kramer that the Form 990 issues were not relevant. He also agreed with Ms. Kramer that the Pre-2006 Zoning Code does not mention the term "not-for-profit". He stated that a special permit for non-member events was granted to MBYC in 2009 and 2013. He noted that the LWRP Update which he is working on emphasizes providing public access to the waterfront, yet appellants appear to want to close down Mamaroneck beach clubs. He finds the distinction between member and non-member events to be ambiguous. The Board of Trustees should rewrite the law. Mr. Sullivan finds MBYC's use to be in compliance with the Pre-2006 Zoning Code. He said 990 is not the issue. Mr. Sullivan said we cannot go back on the special permits that were issued to MBYC.

Mr. Gutterman said use, and the welfare of the community is what is at issue here and should be determined by what is going on at the site. Typical club activities, similar to those conducted by the other clubs, are being conducted on the property. While there are some questions on legal status or the relationship of the various entities that constitute the MBYC, this has all existed for a long time and other clubs have similar complex structures. Regarding the 990 issue, the Club may be using the tax law to their maximum advantage. The activities being conducted, including non-member events, are essential for their survival, fall within the purview of a club, and are being conducted by other clubs in the Village. Aspects of the Code should be re-written and that is not for this Board, but for the Board of Trustees. It has not been proven that we have a violation of use under the pre-2006 Code.

Ms. Kramer reiterated that the 990 issue, who owns the Club and noise issues on the property

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are irrelevant to the matter before the ZBA. It is the language of the Pre-2006 Zoning Code that matters. She said MBYC is not catering exclusively to members and their guests, even if you take into consideration the 20% non-member events permitted. It is open to the public as a business. This does not meet the Pre-2006 Zoning Code's definition of the permitted use.

Mr. Weprin disagreed that the Club was operating as a business or was open to the general public. You can't come in pay for the use of the pool or other facilities on a daily basis. "What is a member" is not defined in the Pre-2006 Zoning Code. Clubs can have several different classes of members to allow special events to be held. There is nothing wrong with someone showing up and saying they want to become a member in order to have their wedding there. They may go over the line, however, on tennis, but tennis is being conducted by the tennis professional and is not a business of the Club. This is not a sufficient basis for shutting down the Club. The definition of Club in the Pre-2006 Zoning Code is vague but he finds that MBYC meets that definition.

Mr. Gutterman said we cannot dictate standards of membership. Many clubs have multiple categories of members. The Club has an annual membership and is an organization with standards. With all the ambiguity, we have to favor the owner. For him, the recreational and social activities being conducted on the site are determinative.

Ms. Gutterman suggested that the Board take a vote on the use aspect of the appeal.

### **Motion on Zoning Compliance in 2013**

On motion by Mr. Sullivan, seconded by Mr. Weprin, the Zoning Board of Appeals determined that the use of the Mamaroneck Beach and Yacht Club property as set forth in the 2013 Amended Site Plan Application before the Planning Board is, as determined by the Building Inspector, zoning compliant with the Village's Pre-2006 Zoning Code.

Ayes: Weprin, Sullivan, Gutterman  
Nays: Kramer

Debra Cohen, Esq., Attorney for SAPOA, asked if this is an advisory vote. She also asked if it was a final decision.

Mr. Steinman said this is not an advisory vote, but a vote on one issue of the appeal.

The Board proceeded with remaining issues.

Mr. Gutterman stated the hearing will remain open on this application to discuss the remaining open items. Written materials should be submitted not less than two weeks prior to the meeting. No last minutes submissions will be considered. Appellants were encouraged to present a summary of their remaining claims at the next meeting but not to repeat prior submissions or presentations that are already part of the record. MBYC will then be expected to respond to those

claims.

Ms. Jennifer Gray, Keane and Beane, stated they have 25-26 additional claims to respond to by the next meeting, and additional time may be needed to respond to any new claims.

Mr. Daniel Natchez, President of SAPOA, stated that MBYC should respond to what has already been submitted.

Mr. Steinman said if MBYC does not have sufficient time to prepare, then the Board should consider this and put it over until May. As to any new matters, Mr. Steinman stated that the ZBA has always been careful to allow all parties adequate opportunities to respond to the others claims. The ZBA will determine the course of future proceedings at the April meeting.

The hearing was adjourned to April 3, 2014.

**7. Adjourned Application #1SP-2014, HAMPSHIRE CLUB, INC., 1025 Cove Road (Section 9, Block 89B, Lots 15 & 16, Section 9, Block 89C, Lots 22A & 23, Section 9, Block 89D, Lots 24, 25, 26, 27 & 28, Section 9, Block 72, Lots 1, 2, 3, 11, 17B, 17C, 18D, 24, 25, 28 & 29 ) for a special permit to host non-member events (MR/R-20 Districts)**

Michael Zarin, Esq., applicant's attorney, stated that he trusts the Board has all the materials before it to render a determination on the request for the special use permit for non-member events.

The issue before the Board is to review and make a determination to approve the special permit to host non-member events with respect to the Stipulation of the Supreme Court brought by the Village of Mamaroneck. It is the applicant's and the Village's intent for the Club to obtain the special permit as soon as possible. Much discussion already has taken place. He stated the Club is seeking the exact same Permit and Resolution like all the other membership clubs that operate in the Village. Mr. Zarin stated this is a 1920's Golf Club.

Last month, the Board chose not to hear the application because notice infirmities were raised on the night of the meeting. The addresses on the Notices were the same addresses as on the Certificates of Occupancy, and on Notices of Violation. The application has been renoticed. Two hundred property owners were notified. He said the Club would like to operate under the same standards that all the other Clubs operate under with the exact same permit and language. Any delay in making a determination will be harmful as events need to be scheduled for the upcoming season.

A golf club has operated on the site since the 1920's, before any zoning was in place. Hampshire operates as an annual membership club. Operational issues are enforcement matters. The issue before the ZBA is a special permit for non-member events.

Ms. Kramer said one can get a special permit for non-member events in an MR district. She questioned if one can get a special permit for non-member events for the portion that is in a residential district, since the club is in both districts.

Mr. Zarin said when the MR Zone was created in 1985, this was the only club left with a “split zone”, which may have been inadvertent. Mr. Zarin said this club has been treated as a single golf club throughout its span. And the Code provides that the special permit shall be issued in accordance with Article 10 of the Code which permits the inclusion of reasonable conditions. Those reasonable conditions can reflect that it is one property and those activities can be conducted in the R-20. To find, after 80 years, that non-member events can occur in the clubhouse but not on the golf course would be inequitable and an unjust result. In light of the circumstances in this unique case, the ZBA has, in the past regarding non-member event special permits, and in this case, should apply a reasonable and practical construction of the Code language. Such a construction, the applicable principles under Article X of the Zoning Code and general nonconforming use principles support the issuance of the special permit with reasonable conditions.

Ms. Kramer said that the Zoning Board only has jurisdiction to make the decision to issue a special permit where it is expressly provided for in the Code.

Ms. Kramer said there is nothing in the Code allowing the zoning board to issue a special permit for non-member events in the R district. The power to impose conditions does not confer such power.

Ms. Kramer asked if non-members events were held over the past 80 years. Mr. Zarin said yes. There have been charitable events, weddings, charitable golf events etc. Mr. Zarin stated that such events would definitely fall within the guise of the nonconforming use.

Mr. Gutterman asked if there were any members of the public who wished to speak to the application.

Steven Kass, Esq. stated he is counsel for the Mamaroneck Coastal Environment Coalition. He said several members of the Coalition will speak. He remarked that in the stipulation the Village did not promise to issue a special permit. Rather the applicant promised to submit an application for such special permit.

Ms. Celia Felsher, President of the Coalition, stated current laws applies, and not pre-2006 law. Notwithstanding the recent corporate reorganization, the Hampshire Club operates in violation of the zoning laws. The Club is not entitled to receive a special permit. Hampshire is located in a marine recreation district. The Club has to therefore be used for recreation facilities of an annual membership club. A membership club is a not-for-profit organization with its facilities catering exclusively to its members and their guests, where commercial or business activities are not conducted except as required for the general purposes and the membership of the club. Hampshire Club is not being used as a membership only club and is not truly a not-for-profit entity. It also is engaged in commercial activity. Control is in the hands of the property owners, not the membership. Ms. Felsher said New World Realty acquired the Club a few years ago. The directors of the new entity are all associated with the property developers including Westport Capital. She stated the Charter was filed with the application, but the By-Laws were not.

Ms. Felsher stated that New World created the lease. As drafted, the owners can terminate the lease at any time with sixty-days notice. A real membership Club would never have agreed to

hose terms. She said this is a for-profit entity. As a for profit entity, there will continue to be a great deal of pressure for non-member income. New World and Westport Capital receive compensation. Hampshire Club has not filed a 990 to enable the ZBA to understand the Club's operations. The owners want revenue.

Ms. Kelly Wenstrup, resident, stated that Hampshire was operating a catering hall business, maximizing its for profit operations. Special events held at the Club create significant traffic impacts.

Ms. Jane Herzog, resident, stated there is a large amount of traffic on Cove Road including buses, trucks and cars that adversely impacts the neighborhood. The roadway is heavily used. It is a nuisance and inconvenience to the local residents.

Ms. Kim Larsen, speaking on behalf of the Orienta Point Association, stated the Board should not approve this permit. Hampshire is a commercial operation. The Club, as previously stated, is not a true membership Club. She said if it is a legitimate not-for-profit, then a 990 should be filed. Parking is an issue as there is a shortage of available on-site parking spaces. The cars spill out into the roadway and in front of the nearby homes.

Several speakers stated that the Club routinely closes to its members at 2:30 p.m. on Saturday afternoons to enable the facilities to be used for special events on Saturday evenings.

Mr. Kass stated that the threshold issue is that Hampshire is not a membership club. It is operated for the benefit of an investment group. Until it changes its structure and operation, the Club is not entitled to the special permit. Mr. Kass also disputed Mr. Zarin's claim that, until recently, the Club was not aware that it needed a non-member event special permit, referring to several letters his office sent to the Village in 2013 regarding this issue.

In the event the Club makes changes so that it operates in accordance with Village law, any non-member event special permit issued should contain conditions pertaining to limitations on parking, amplified noise, the definition of, annual number and semi-annual reporting of non-member events held on the property, the term of the permit and the posting of an enforcement bond.

Mr. Kass further stated that there is a real question as to whether the ZBA has the power to grant a special permit covering non-member events in the R-20 zone.

Mr. Zarin responded to the public comment. He mentioned a lease from 1944 permitting non-member events on the property. Such events date back to the 1940's, if not the 1920's. He said the Club is a legally established not-for-profit corporation. The ZBA is not the forum for determining the propriety of such non-profit organization. The Zoning Code provides for the lease or ownership of the property. The rental charged is based upon an appraisal and is not unreasonable for a 116 acre property in Mamaroneck. Mr Zarin agreed that all parking would be on their property, including the privately owned portion of Cove Road. The trucks complained of have nothing to do with the Club's operations. Most special events held at the Club are charitable events. No grounds or legitimate concerns have been stated that would prevent the Club from receiving the same special permit with the same conditions as granted to other clubs. Speculation

about potential future violations should not be considered. If violations occur they can be addressed as enforcement matters. Mr. Zarin also denied Mr. Kass' claim of prior knowledge of the need for the special permit.

Mr. Zarin denied that the Club routinely closes to members at 2:30 p.m. on Saturdays. Mr. Dan Pfeiffer, owner, and Mr. David Smith, recently hired General Manager, confirmed Mr. Zarin's statement.

Ms. Jennifer Kronick, resident, stated she is unhappy with the large attendance at events. The parking has gotten worse and is disruptive to the residents. The organizational issue should be considered because no permit has yet been issued.

Ms. Sue McCrory, resident, stated that grandfathering should not be honored because the nonconforming use ceased when the non-profit entity was replaced by a for profit entity. Mr. Kass also stated that there should be no grandfathering.

Mr. John Hofstetter, former Board of Trustees member, stated the Board of Trustees had received complaints about Hampshire Club while he was on the Board. He stated 990 should be filed before the special permit is issued.

Mr. Zarin stated that the zoning use was not affected by the change in ownership. The uses on the property continued. It is the use of the property, not the user of the property that controls.

Ms. Kramer stated that the transfer of ownership from a not-for-profit to a for-profit corporation presents an issue regarding the continuation of nonconforming status.

Ms. Kramer requested an opinion from counsel regarding the authority of the ZBA to grant a non-member event special permit for the portion of the property that is in the R-20 zone.

### **Close Public Hearing**

On motion of Ms. Kramer, seconded by Mr. Sullivan, the public hearing was closed.

Vote: 4-0.

### **CLOSED APPLICATIONS**

- 1. Application #6SP-2011, VITHAYA NAUMSUNAM, D/B/A SPICY SHALLOT 2, 1208 West Boston Post Road, (Section 9, Block 21, Lot 2B) to renew a special permit to operate a restaurant (C-1 District)**

The Board discussed the merits of the application.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application to renew a special permit to operate a restaurant was approved.

Ayes: Gutterman, Kramer, Sullivan, Weprin

Nays: None

**2. Application #4SP-2014, RAYMOND SCHRAMM, D/B/A NORTHEAST OYSTER BAR, 152 Mamaroneck Avenue (Section 9, Block 50, Lot 19A) for a special permit to operate an oyster bar/restaurant (C-2 District)**

The Board discussed the merits of the application.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application for a special permit to operate an oyster bar/restaurant was approved with standard conditions.

Ayes: Gutterman, Kramer, Sullivan, Weprin

Nays: None

**3. Application #5SP-2014, ELIZABETH BRANDT, 1024 Keeler Avenue, (Section 4, Block 31, Lot 70A) for a special permit to operate a deli (R-5 District)**

The Board discussed the merits of the application.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application for a special permit to operate a deli was approved for a period of 3 years with the same conditions as on the existing deli.

Ayes: Gutterman, Kramer, Sullivan, Weprin

Nays: None

**4. Application #1A-2014, ANTHONY PASSAFARO, 216 Florence Street, (Section 4, Block 31, Lot 25B) to construct an addition to a single family dwelling on a lot containing two single family homes with the proposed addition violating Article IX, Section 342-64(A) non-conforming use of buildings, where a building or structure the use of which does not conform to the use regulation for the district in which it is situated shall not be altered, enlarged or extended. (R-5 District)**

Mr. Weprin indicated the addition is set back from the street and that this is a unique application, these are two single family homes on a single lot. Mr. Gutterman indicated this is consistent with the area and there should be no change to the neighborhood character and only minimal visual impacts. Ms. Kramer discussed the fundamental basis of zoning to eliminate nonconforming uses and its relevance to this application.

The Board discussed the merits of the application.

On motion of Mr. Weprin, seconded by Mr. Sullivan, the application for a variance to construct an addition to a single family dwelling on a lot containing two single family homes was approved.

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

**5. Application #11-2014, JOHN MAWE, regarding 841 Taylors Lane, (Section 4, Block 79, Lot 8B4) for an appeal of Building Permit #14-0012 (R-15 District)**

Ms. Kramer discussed the Building Inspector's authority to determine compliance with laws and regulations other than zoning. Mr. Gutterman stated Chapter 126 speaks to what the Building Inspector does, he does not believe it is appropriate to second guess what the Building Inspector does with regard to such laws and regulations and that this is a jurisdiction issue. Ms. Kramer stated she does not necessarily view this as a jurisdiction issue; the Building Inspector has the responsibility to ensure compliance with certain laws. The Board discussed Zoning Code §342-84 and the reference to Chapter 126. Mr. Weprin stated he did not feel the Building Inspector could do any more in this instance. Compliance with the Zoning Code and lack of Board jurisdiction for other issues raised in the appeal will be addressed in a draft resolution to be prepared for the Board's consideration at the April 3, 2014 meeting. The Planning Board's issuance of a wetland permit for elevation of the home will also be referenced in the draft resolution.

Ms. Georgiou stated she will draft the resolution.

**MINUTES**

On motion of Mr. Sullivan, seconded by Mr. Weprin, the minutes of the December 5, 2013 meeting were approved.

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

On motion of Mr. Sullivan, seconded by Mr. Weprin, the minutes of the February 6, 2014 meeting were approved as amended.

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

**ADJOURNMENT**

The meeting was adjourned at 11:25 p.m.

Prepared by:  
Anne Hohlweck