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BY: *LM*
VOM Clerk-Treasurer's
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AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, HELD ON JULY 6, 2017 THE FOLLOWING RESOLUTION WAS ADOPTED

Application No. 5SP-2016

Applicant: Mamaroneck Ices, Inc., Scott Rosenberg
Premises: 946 East Boston Post Road (Ralph's Italian Ices)
Zoning District: C1
Section 4, Block 63, Lot 1

WHEREAS, Mamaroneck Ices Inc. d/b/a Ralph's Italian Ices ("Applicant" or "Mamaroneck Ices") operates an ice cream store providing solely outdoor counter service to customers at 946 East Boston Post Road, which is a lot comprised of 11,499 square feet containing a single story building with a gross floor area of approximately 1500 square feet (with Mamaroneck Ices occupying 722 square feet of the building) ("Premises"); and

WHEREAS, the Premises is located at the intersection of two primary well-traveled highways, U.S. Route 1 (Boston Post Road) and NYS Route 127 (Keeler Avenue), with the Frank Avenue extension linking Route 1 with Route 127 and with those roadways providing the only access to the Premises; and

WHEREAS, the Premises is situated directly adjacent to and is largely surrounded by densely populated residential neighborhoods, typified by single and two-family homes, which extend several blocks to the north along Route 127, to the west along Frank Avenue, and to the north and east along Jensen Avenue; and

WHEREAS, on February 29, 2016 the Building Department received a Building Permit Application submitted by Mamaroneck Ices (#16-0128) for certain exterior and interior building alterations to a portion of the Premises with "retail" as the intended use, and with Ralph's Ices as tenant and Dorac Petroleum Corp as the owner of the leased Premises, with the Premises previously used as a gasoline service station; and

WHEREAS, on March 28, 2016, a Commercial-Alterations/Renovations Permit (#16-0295) was issued to "Dorac Petroleum Corp. (Ralph's Italian Ices)" by the Building Inspector for "Commercial-Alterations/Renovations-Façade Renovation Including Replacement of 2 Overhead Garage Doors, Interior Work Includes Partitions, Ceilings and Finishes for Ralph's Italian Ices", which permit also indicated Board of Architectural Review approval for the application on March 17, 2016; and

WHEREAS, on May 10, 2016, the Westchester County Department of Health issued a permit to operate a "Food Service Establishment" to "Mamaroneck Ices Inc., the operator of "Ralph's Italian Ices" at 946 East Boston Post Road, Mamaroneck, NY 10543"; and

WHEREAS, on May 11, 2016, a Certificate of Occupancy was issued by the Building Inspector to “Dorac Petroleum Corp. (Ralph’s Italian Ices)” for “Façade Renovation including Replacement of 2 Overhead Garage Doors, Interior Work Includes Partitions, Ceilings and Finishes for Ralph’s Italian Ices” (“Certificate of Occupancy”); and

I. Appeal by Stephanie Figliomeni and Others (21-2016)

WHEREAS, on June 24, 2016, Stephanie Figliomeni and others commenced an appeal to this Board (“ZBA” or “Board”) challenging the issuance of the Certificate of Occupancy and the Notice of Appeal set forth the following bases for the appeal:

1. The use of the property was improperly determined to be “retail” when Ralph’s Italian Ice is a food service establishment, subject to NYS Department of Health Provisions, that under Village of Mamaroneck Code Section 342-3 is a “fast food restaurant.” See Village of Mamaroneck Code Section 342-30A(1)(b) and (c) where “retail stores and personal service stores” exclude uses such as “restaurants” that are subject to §342-45 and special permits.
2. Ralph’s Italian Ice is an establishment that increases and changes the use of the site from a vacant, abandoned gas/service station and under §342-75 of the Code requires a site development plan that was never obtained.
3. As a fast food restaurant use, Ralph’s requires a special permit pursuant to §342-30A(1)(e) that was never obtained.
4. To the extent that more than 1,000 square feet of lot area at the southeastern portion of the lot was disturbed and a portion of this was paved, a stormwater pollution prevention plan was required by Chapter 294 but was neither prepared nor submitted.
5. No environmental review, not even typing the action, was done as required by the New York State Environmental Quality Review Act.

; and

WHEREAS, on July 18, 2016, the ZBA heard the appeal by resident Stephanie Figliomeni and others, seeking revocation of the Certificate of Occupancy issued on May 11, 2016 pertaining to 946 East Boston Post Road, contending that Mamaroneck Ices Inc. was required to obtain site plan approval from the Planning Board and a special permit from the ZBA prior to issuance of the Certificate of Occupancy (“Figliomeni Appeal”); and

WHEREAS, on July 18, 2016 the ZBA granted the Figliomeni Appeal due to Mamaroneck Ices’ failure to obtain the required special permit and site plan approval and revoked the May 11, 2016 Certificate of Occupancy (“CO”) and determined “Ralph’s Ices is a “fast food restaurant” and/or a “food service establishment” as defined in the Zoning Code subject to special permit requirements and special permit approval by this Board as set forth in Article X of the Zoning Code and Zoning Code §342-45. The required special permit was neither applied for nor obtained”; and

WHEREAS, on July 18, 2016 the ZBA also stayed the CO revocation for the purpose of allowing Mamaroneck Ices’ operations to continue while they applied for required site plan and

special permit approvals, with compliance with the following conditions required for the stay to remain in effect:

1. Hours of operation shall be limited to no later than 10pm Sunday through Thursday and 11:30pm Friday and Saturday, to be effective seven (7) days after the filing of this resolution with the Village Clerk.
2. Ralph's Ices must promptly file a site plan application with the Planning Board so that the application can be placed on the September 14, 2016 Planning Board meeting agenda and must meet applicable deadlines for application submission.
3. Ralph's Ices must promptly file a special permit application with this Board so that the application can be heard and properly noticed for the September 8, 2016 Zoning Board meeting and must meet applicable deadlines for application submission.
4. Ralph's Ices must diligently proceed with its applications before the Planning Board and Zoning Board of Appeals and promptly provide all necessary information to facilitate review of the site plan and special permit applications until final determinations are made on both applications.
5. Ralph's Ices shall provide an update on compliance with these conditions at the next regularly scheduled meeting of this Board

("July 18, 2016 Resolution"); and

WHEREAS, subsequently, by Order to Show Cause, Mamaroneck Ices commenced an Article 78 proceeding and sought interim injunctive relief staying the July 18, 2016 Resolution and enjoining Village officials from requiring Mamaroneck Ices to comply with conditions of the July 18, 2016 Resolution pending determination of the underlying proceeding, with such interim relief having been denied on August 9, 2016 and such proceeding having been discontinued on April 25, 2017; and

II. Application 5SP-2016

WHEREAS, on August 17, 2016, within the timeframe for application submissions, Mamaroneck Ices applied to the ZBA for a special permit to operate a food service establishment and for a variance related to the provision of outdoor counter service, with a request that the ZBA provide interim relief by modifying Mamaroneck Ices' hours of operation to no later than 11:00 p.m. Sunday through Thursday and midnight on Friday and Saturday ("Application No. 5SP-2016"); and

WHEREAS, on August 18, 2016, the Building Inspector submitted a signed Special Permit notification and Variance Notification as follows:

Obtain a Special Permit to operate a food service establishment /fast food restaurant.
And to obtain a variance – The proposed application also violates Chapter 342-45 where "No food service establishment or tavern shall provide outdoor counter, drive-

in or curb service, but it may provide service at tables on a porch or terrace where this is incident and clearly subordinate to the operation conducted within the main building” and the Applicant proposes outdoor counter service.

; and

WHEREAS, thereafter Application No. 5SP-2016 was duly noticed for a public hearing to be held at the September 8, 2016 meeting of the ZBA; and

WHEREAS, the gross floor area of Mamaroneck Ices (Ralph’s Ices) store is 722 square feet, with an adjacent 829 square feet portion of the Premises currently unoccupied; and

WHEREAS, on September 2, 2016, the Applicant submitted an application for site plan approval with the Planning Board and supplemented its ZBA submission; and

WHEREAS, at the September 8, 2016 ZBA meeting, as required by the July 18, 2016 Resolution, the Applicant provided an update on Mamaroneck Ices’ compliance with conditions of the July 18, 2016 Resolution (“Compliance Update”) also noting that certain application materials were pending and not yet submitted to the ZBA; and

WHEREAS, at the September 8, 2016 meeting, the public hearing on Application 5SP-2016 was opened and the Board discussed the requested modification of the hours of operation, which was requested as part of Application No. 5SP-2016; and

WHEREAS, at the hearing, neighboring property owners, some of whom who were named respondents in the Article 78 proceeding, were heard and were generally opposed to any increase in the Applicant’s hours of operations; and

WHEREAS, at the September 8, 2016 hearing, the principal and president of Mamaroneck Ices, Scott Rosenberg, who was also represented by counsel, contended that the hours imposed by the ZBA at the July 18, 2016 meeting were adversely impacting the Applicant’s ability to operate a viable business and were unfair; and

WHEREAS, at the September 8, 2016 ZBA meeting, the Board considered the Applicant’s request to modify hours of operation, before adjourning the public hearing for Application No. 5SP-2016 to the October 6, 2016 meeting; and

WHEREAS, at the September 8, 2016 ZBA meeting, pending further determination by the ZBA in connection with the special permit application, the hours of operation for Mamaroneck Ices (Ralph’s Italian Ices) set forth in the ZBA’s July 18, 2016 Resolution Interim Order/Conditions of Stay of Revocation of Certificate of Occupancy were modified as follows: to close no later than 10:30 Sundays through Thursdays and no later than 12:00 midnight Friday and Saturday, with only customers on line at closing time to be served, and that within ten minutes of closing time, all safety lights must be turned off and that except as expressly modified herein the provisions of the ZBA’s July 18, 2016 Resolution shall remain in full force and effect; and

WHEREAS, at the October 6, 2016 meeting, the public hearing was continued with a request from the Applicant that the matter be adjourned to allow time for further review of the site plan by the Planning Board and clarification from the Building Inspector as to whether additional variances were required, until the December 1, 2016 meeting; and

WHEREAS, on November 9, 2016, the Applicant submitted correspondence and supplemental materials in further support of its August 17, 2016 application, contending that special permit requirements have been satisfied and seeking a variance of the outdoor counter service prohibition for food service establishments, and further, indicating that it was seeking a license from the New York State Department of Transportation to allow use of its property for parking; and

WHEREAS, on December 1, 2016 Village resident Nora Lucas submitted email correspondence to the ZBA discussing her analysis of zoning compliance issues with regard to the application; and

WHEREAS, in a memorandum dated December 1, 2016, the Planning Board provided an update on the Planning Board's review of the Applicant's site plan application to date, including recommendations on lighting and landscaping, and other elements of the site plan; and

WHEREAS, at the December 1, 2016 ZBA meeting residents in opposition to the application addressed the Board and continued to express concerns (i) that off-street parking was inadequate for the use and that if a second tenant occupied the existing vacant space it will exacerbate parking issues, (ii) about traffic generated by the use and safety on and off-site due to the outdoor counter service and number of customers during peak summer periods; (iii) about noise and loitering by customers, and (iv) as to the hours of operation, among other issues of concern; and

WHEREAS, at the December 1, 2016 ZBA meeting, the ZBA requested that the Building Inspector address zoning compliance issues raised by Ms. Lucas, as neither the Building Inspector nor his representative were in attendance at that meeting; and

WHEREAS, in correspondence dated December 6, 2016, the Applicant's attorney responded to zoning compliance issues set forth in Ms. Lucas' December 1, 2016 email correspondence, contending that other than the variance for outdoor counter service none of the other variances identified by Ms. Lucas were required; and

WHEREAS, in email correspondence dated December 14, 2016 and January 4, 2017 the Building Inspector responded to inquiries regarding zoning compliance and whether additional variances were necessary for this application.¹ stating as follows:

After reviewing the Nora Lucas letter, I have determined that no new variances are required for the above mentioned application. A bulleted letter will follow. [December 14]

To answer the board members' question, I would offer that the tables and chairs do not

¹ Thereafter on January 17, 2017 those statements were challenged in an appeal to this Board filed by Stephanie Figliomeni and others (Application # 11-2017).

*constitute structure, and can be moved at any time.
Mamaroneck Ices Inc. is required to obtain an Area Variance for the Outdoor Counter Service. After careful review of the additional submittals from the concerned residents, as well as the applicant, I have determined that no additional variances are required.
[January 4]*

; and

WHEREAS, the public hearing was continued at the January 5, 2017 meeting, with further testimony having been provided by the Applicant and also by residents in opposition to the application, and with the public hearing closed on that date; and

WHEREAS, during the public hearing, the Applicant and residents in opposition to the application were given the opportunity to be heard and were heard and such persons submitted documents and other correspondence for consideration by the Board and all those materials were considered by the Board as part of the record on this application; and

WHEREAS, as a special permit use, this application is subject to the requirements of Article X of the Zoning Code, wherein the Board shall “ascertain that the proposed use will not adversely affect the public health, safety and welfare and the comfort and convenience of the public in general and of the residents of the neighborhood in particular” and subject to requirements of Village Code Section 342-71; and

WHEREAS, the following are specific special permit requirements for food service establishments:

“No food service establishment or tavern shall provide outdoor counter, drive-in or curb service, but it may provide service at tables on a porch or terrace where this is incident and clearly subordinate to the operation conducted within the main building. In a C-1 District, no more than 20% of all indoor seats in a food service establishment or tavern shall be counter seats. In a C-2 District, no fast-food restaurant, carry-out restaurant or delicatessen shall be permitted on Mamaroneck Avenue closer than 200 linear feet to another existing fast-food restaurant, carry-out restaurant or delicatessen on the same side of the avenue. Such distance shall be measured from the closest lot line of the respective food service establishments.”

See Village Code §342-45; and

WHEREAS, the Applicant applied for a variance from Village Code Section 342-45 as the special permit use application provided solely outdoor counter service with no indoor service component, which variance was denied by this Board in a resolution dated February 2, 2017 with this Board further determining in that resolution as follows: (1) the hearing for such special permit application shall be reopened to facilitate submission of an amended site plan to reflect no outdoor service with required hearing notice to be provided for either the March 2, 2017 or April 6, 2017 meeting of the ZBA and compliance with applicable deadlines for application submission required, unless otherwise modified by further determination of this Board. If the Applicant fails to return to the Board with an amended site plan by its April 6, 2017 meeting, the stay of the revocation of the May 11, 2016 Certificate of Occupancy will be lifted and such revocation will remain in full force and effect; and (2) the Applicant must promptly file an amended site plan application with the

Planning Board so that the application can be placed on the Planning Board meeting agenda during March, 2017 and (3) the July 18, 2016 stay of the revocation of the May 11, 2016 Certificate of Occupancy by this Board remains in full force and effect with conditions as modified by the September 8, 2016 resolution of this Board; and

WHEREAS, thereafter the Applicant submitted an amended special permit application and site plan with a “bump-out” to enclose the counter service area with no outdoor counter service within the timeframe for submissions for the April 6, 2017 Board meeting and the public hearing was reopened on that date, with further submissions by Applicant’s consultants and by members of the public in opposition to the application and with the public hearing having been continued to the May 4, 2017 meeting; and

WHEREAS, at the May 4, 2017 meeting, the Applicant announced that because of the Planning Board’s proceedings on the site plan submitted it was apparent that certain Planning Board members were not in favor of the proposed “bump out” enclosure for counter service, and as a result the Applicant would seek to again revise its application to facilitate leasing of the entire space of approximately 1500 square feet with an additional use on-site, a coffee/ pastry shop, and with no “bump out” for counter service and requested that the Applicant be permitted to submit the revised site plan for consideration at the next ZBA meeting to be held on June 1, 2017; and

WHEREAS, at the May 4, 2017 meeting, pending further determination by the ZBA in connection with the special permit application, the hours of operation for Mamaroneck Ices (Ralph’s Italian Ices) set forth in the ZBA’s July 18, 2016 Resolution Interim Order/Conditions of Stay of Revocation of Certificate of Occupancy as modified on September 8, 2016 were further modified as follows: to close no later than 10:00pm Sundays through Thursdays and no later than 11:30pm Friday and Saturday, with no customers to be served after these closing times and with all outdoor lighting to be turned off, and with a parking lot attendant to be present on-site every day from 6:00pm to 10:00pm and that except as expressly modified the provisions of the ZBA’s July 18, 2016 Resolution shall remain in full force and effect; and

WHEREAS, after further submissions and presentations by Applicant’s consultants and by members of the public in opposition to the application the application was continued to the June 1, 2017 meeting; and

WHEREAS, thereafter the Applicant submitted a revised site plan with counter service located entirely within the existing building and with an additional food service establishment-a café- to also be operated out of the same building, among other interior and exterior changes to the site plan which were presented and discussed at the June 1, 2017 ZBA meeting; and

WHEREAS, at the June 1, 2017 meeting, pending further determination by the ZBA in connection with the special permit application, the ZBA decided that the hours of operation for Mamaroneck Ices (Ralph’s Italian Ices) set forth in the ZBA’s July 18, 2016 Resolution Interim Order/Conditions of Stay of Revocation of Certificate of Occupancy shall be further modified as follows: All outdoor lighting (not including flood lights) shall be turned off no later than 30 minutes after closing. Exterior flood lights shall be turned off at closing time and that except as expressly modified the provisions of the ZBA’s July 18, 2016 Resolution and the Interim Order/Conditions of Stay of Revocation dated May 4, 2017 shall remain in full force and effect; and

WHEREAS, with after further submissions by Applicant's consultants and by members of the public in opposition to the application the public hearing was closed on June 1, 2017; and members of this Board having made personal inspection of the Premises and being familiar therewith; and with due notice having been given and with the Board hearing all parties and receiving their evidence and proofs; and

WHEREAS, after duly considering all the proofs and evidence before it, this Board finds as follows:

1. Due to the Building Inspector's erroneous issuance of a building permit and certificate of occupancy, Mamaroneck Ices was allowed to open for business in May, 2016, without first obtaining a special permit from this Board and site plan approval from the Planning Board.

2. As a result of the Board's July, 2016 stay of the revocation of the certificate of occupancy pending applications by Mamaroneck Ices for special permit and site plan approvals, Mamaroneck Ices continues to operate its business to date.

3. Testimony before this Board, corroborated by photographs and video recordings, establishes that during the year Mamaroneck Ices has been in operation, the volume and intensity of the business, together with its extended and late night hours of operation seven days a week, have overwhelmed the capacity of the site and surrounding roads and infrastructure, creating dangerous conflicts and unsafe conditions for drivers, pedestrians, and customers, endangering children in an active parking lot at night purchasing ice cream, and producing negative spillover effects that adversely affect the quality of life and peace and tranquility of the residents of the adjoining residential neighborhood. For example, the multiple points of ingress and egress to the site, insufficient parking facilities to accommodate the volume of customer traffic entering and exiting the property during peak business hours and the absence of physical barriers separating customers from vehicles (a) encourage illegal turns and other unsafe vehicular movements; (b) generate dangerous conflicts between vehicles entering and exiting the parking lot and patrons waiting on line at the counter; and (c) result in erratic on-site parking and patron cars backing up and overflowing on to adjoining residential streets taking up all the legal spaces in the neighborhood and blocking residents' driveways. Additionally, long outdoor customer lines with attendant noise from patrons, slamming car doors and beeping car locks, leaving the overflow customers to consume their ice cream while standing in the parking lot dodging traffic or loitering off-site in front of neighboring residences, and the glare of the bright lights illuminating the parking lot extending beyond the property's boundaries, all have significant adverse impacts on neighboring residents.²

² The nature of Mamaroneck Ices' business necessarily invites and encourages customers to linger on the premises while consuming their food. The ices/ice creams melt and require consumption within a limited time. They are not easily susceptible to removal from the site. As a result, customers stay on the property, typically near their cars or in the outdoor seating area, which directly abuts homes. The presence of customers and social nature of their time at Mamaroneck Ices causes noise and disruption to the neighborhood, with neighbors unable to enjoy their yards or leave windows open. Mamaroneck Ices' proposed seating indoors for six customers would not materially change or improve the outdoor noise, crowding or traffic and safety concerns.

4. During the past year, Mamaroneck Ices has presented a series of ever changing site plans attempting, albeit unsuccessfully, to adequately address and mitigate these impacts. Initially, Mamaroneck Ices proposed a site plan with solely outdoor counter service. When, as discussed in more detail below, such outdoor counter service was determined to be prohibited by the Village Zoning Code and a variance was denied, Mamaroneck Ices revised its proposed site plan to enclose the outdoor counter area. Most recently, Mamaroneck Ices further revised its proposed site plan and sought approval to add a second commercial use, a café, on the site. As the review process before this Board has proceeded, the unsuitability of the property for the specific use(s) proposed has become increasingly clear.

A. Outdoor Counter Service is Prohibited by the Zoning Code

First, the Building Inspector determined that the outdoor counter service, which, as noted by Mamaroneck Ices, is the foundation of the franchise's business model,³ is not permitted under Village Zoning Code Section 342-45. Denying Mamaroneck Ices' application for a variance, this Board, in its February 2, 2017 resolution, found that the outdoor counter service produced a significant undesirable change in the character of the neighborhood and a detriment to nearby properties: "Having solely outdoor counter service has caused excessive numbers of customers to congregate in the parking area/lot and off-site, with detrimental impacts to the neighborhood, which consist primarily of single-family homes and is residentially zoned, including noise, loitering and safety issues."

Further, this Board found that continuation of the business with outdoor counter service would have an adverse effect/impact on the physical environmental conditions in the neighborhood or district. Chief among the Board's concerns were "pedestrian safety, both on and off the site, and customer lines extending into parking areas and across the access area to and from the adjoining roadway which will also adversely affect the quality of life of neighbors."

These and other findings embodied in the Board's February 2, 2017 resolution denying the outdoor counter service variance were not challenged by Mamaroneck Ices. Accordingly, they represent the law of the case in this proceeding and are binding upon both Mamaroneck Ices and the Board.

In response to the Board's denial of the outdoor counter service variance, in March 2017, Mamaroneck Ices submitted a further revised site plan enclosing the outdoor counter. Yet, in a prior submission to the Board in support of the outdoor counter service variance, Mamaroneck Ices conceded that enclosing the outdoor counter would not mitigate the adverse impacts of the use documented in the Board's February 2, 2017 resolution. Customers waiting on line outside during peak hours and persons consuming ice cream at the outdoor tables on the property would not be eliminated. "If anything," Mamaroneck Ices advised the Board, "enclosing the counter would create a further undesirable change because it would take away from

³ According to counsel for Mamaroneck Ices, "Had the applicant been advised that outdoor counter service was not permitted, he very well may have determined this was not an appropriate site for a Ralph's...." November 9, 2016 letter to the Board from Keane & Beane PC.

the parking area and limit the area where customers can walk on the Property without being exposed to vehicles.” Letter to the Board from Keane & Beane PC dated November 9, 2016.

B. Adding a Second Commercial Use on the Property Exacerbates Site Conflicts, Unsafe Conditions and Neighborhood Impacts

Throughout the course of the application, the Board has expressed concerns with the likelihood of the landlord’s leasing the remaining portion of the property not utilized for Mamaroneck Ices’ business to another commercial tenant for which there would otherwise be no parking on site. None of the site plans submitted by Mamaroneck Ices allocated parking for a second commercial use or otherwise addressed the potential cumulative impacts of two commercial uses operating simultaneously on the site.

Most recently, in May 2017, Mamaroneck Ices first advised the Board that it planned to lease the entire property and submitted a further revised site plan, this time to include a second food service establishment on the property, a café. As proposed by Mamaroneck Ices, the hours of operation of the café (7 AM to 6 PM) would (a) overlap the hours of operation of the ice cream store, bringing additional cars and customers to the site and increasing the burden on the already overburdened parking lot; and (b) extend the cumulative hours of operation of the two businesses from the early morning to the late evening, seven days a week. Accordingly, the added café use proposed by Mamaroneck Ices would further expand the volume of business conducted and further intensify of the use of the property, exacerbating, not mitigating, the previously identified on-site operational conflicts and safety hazards and the adverse impacts on the adjoining residential neighborhood.⁴

C. The Site Plan Cannot Be Implemented Without Setback Waivers or Variances and a License from the NYSDOT

Due to the configuration of the property, Mamaroneck Ices has been unable to submit a zoning compliant site plan that (a) provides sufficient on-site parking that does not encroach upon the front yard setback and (b) locates a dumpster on-site without infringing upon the front yard setback.

Furthermore, Mamaroneck Ices’ proposed parking configuration extends beyond the property line and nine of the designated parking spaces encroach upon property owned by New York State. As a result, a license to permit Mamaroneck Ices to use that property for parking has not been obtained from the New York State Department of Transportation (“NYSDOT”). As acknowledged by Mamaroneck Ices, NYSDOT approval of the traffic circulation pattern and location of ingress and egress to the parking lot are necessary preconditions to the issuance of that license.

⁴ The cumulative impact of the two uses was not addressed by Mamaroneck Ices’ consultants. An impromptu parking chart, apparently prepared by the business’ principal, Mr. Rosenberg, was submitted to the Board. However, testimony and photographs submitted by neighboring residents contradicted the information provided by Mr. Rosenberg regarding the number of cars parking on the property.

Notwithstanding that this proceeding has been ongoing for nearly a year, Mamaroneck Ices has still not been able to obtain the necessary approvals from NYSDOT that the site plan provides for safe and adequate means of ingress and egress to the site and that State owned property may be utilized for parking. Without such approvals, the proposed site plan cannot be legally implemented.

Finally, although conceding that conditions on the site can be chaotic, Mamaroneck Ices maintains that once the novelty of its business wears off and new franchises are opened in White Plains and New Rochelle, those conditions will be ameliorated. No financial or other probative evidence of similar reductions in business has been submitted by Mamaroneck Ices to document this speculation. To the contrary, the evidence before this Board indicates that in its second full season of operation on the property, Mamaroneck Ices' business continues to flourish. Unfortunately, at the same time, the unsafe conditions on the site and the detrimental spillover effects of the use on the adjoining residents persist unabated without a viable plan to mitigate those dangerous conditions and adverse impacts.

5. Against this background, and based upon a record that includes substantial evidence of the actual operational impacts of the Mamaroneck Ices' use, the Board determines that the proposed operation of Mamaroneck Ices' use individually and together with the addition of a second café use on the property, will substantially and materially have an adverse effect on the public health, safety and welfare and comfort and convenience of the public in general and the residents of the neighborhood in particular and that the pertinent criteria for granting a special permit set forth in Section 342-71 of the Village Zoning Code have not been met as follows:

- A. The location and size of the use, the nature and intensity of the operations and traffic involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to the type, arrangement and capacity of streets giving access to it and the hours of operation are such that the proposed use will not be in harmony with the appropriate and orderly development of the district in which it is located.
- B. The operations in connection with the use will be objectionable by reason of excessive noise.
- C. The parking areas to be provided will not be of adequate capacity for the particular use, or properly located and suitably screened from adjoining residential uses and that, based upon the record, and given Mamaroneck Ices' inability to obtain NYSDOT approval for its traffic circulation plan, the entrance and exit drives cannot be determined to have been laid out so as to achieve maximum safety.
- D. All necessary approvals of any other governmental agency or board have not been obtained by Mamaroneck Ices.
- E. The operations will create unsafe and dangerous conditions to persons using the site and on property in the vicinity thereof.

NOW THEREFORE, on motion of Ms. Wenstrup; seconded by Mr. Neufeld:

BE IT RESOLVED, this Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA), and it is further;

RESOLVED, that based on the foregoing findings, in accordance with the vote of this Board taken on July 6, 2017, the application for such special permit is hereby denied; and

BE IT FURTHER RESOLVED THAT the stay of the revocation of the May 16, 2016 Certificate of Occupancy adopted by this Board on July 18, 2016 is hereby lifted with such revocation effective on the later of July 13, 2017 or the date of filing of this resolution with the Village Clerk.

In favor: Kramer, Wenstrup, Neufeld, Weprin, Neuringer

Opposed: None

Absent: None

07 06 2017 5SP-2016 Mamaroneck Ices

Ralph's 946 East Boston Post Road

Dated: July 6, 2017
Mamaroneck, N.Y.

A handwritten signature in blue ink, appearing to be "Ralph", written above a horizontal line.

Chairman

A handwritten signature in blue ink, appearing to be "Robi Kow", written above a horizontal line.

Secretary