

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING
WEDNESDAY, MARCH 27, 2019**

PRESENT: Michael Wiskind, Chair
Jacob Amir
Craig Weitz

1) **Call to Order**

The Chair called the regular meeting to order at 7:59 pm.

2) **Announcements and Approval of Minutes**

Announcements

The Chair announced that the next meeting of the Zoning Board of Appeals is scheduled for Wednesday, April 24, 2018 at 8:00 pm.

Approval of Minutes

Mr. Weitz moved, and Mr. Amir seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of November 28, 2018.

Vote: 3 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair -	Aye
Jacob Amir –	Aye
Craig Weitz -	Aye

3) **Public Hearing**

Application for Variances

555 Saw Mill River Road Assoc

(d/b/a Amoco “to go” & Ardsley Motors) (by Bernard Milano)

555 Saw Mill River Road, Ardsley, New York

Section 6.70, Block 50, Lots 1, 2 & 3 in a B-2 Special Business District

For Proposed Replacement of “Sunoco” and “Food Mart” Freestanding and Canopy Signs with New “Amoco” and “to go” Freestanding and Canopy Signs

Application for Variances from Village Code Requirements (Village Code § 200-82C and § 200-82C(5))

Present: Michael Wiskind, Chair
Jacob Amir
Craig Weitz

Also Present: Bernard Milano

The Chair read the Legal Notice.

Open Public Hearing

Mr. Milano produced the five green cards that had been received in response to six notices that had been mailed.

The Chair requested a summary of the variance request. Mr. Milano stated that Sunoco signage would be going down and the Amoco signage going up, and that there was no change in size of sign nor was there additional square footage. The Chair asked if the height of the freestanding sign was changing, and Mr. Milano replied that the height of the sign out on the road is not changing at all. The Chair asked if there would be a change in the illumination on the sides of the signposts, and Mr. Milano stated that they would be illuminated the same as they are now. Mr. Milano continued that [the sign] Sunoco comes down, [the sign] Amoco goes up, the price signs remain the same, where it now says “Food Mart” it will say “to go,” and there is no additional illumination.

The Chair asked if there will be light bars on the sides [of the signpost], and Mr. Milano stated that it is not lit, that it will be exactly the same, that the name changes but that the physical structure will not change at all, and specified that the difference is that “to go” has a white trim instead of the Sunoco color. Mr. Weitz asked if [the sign] Food Mart is not now illuminated, but that “to go” will be, and Mr. Milano replied that that was correct. Mr. Milano interjected that Amoco had notified him that this is one of the oldest Amoco stations in the country, that he has had the station for 54 years and that the prior owner had had it since 1928. The Chair noted that the drawing clearly shows red lit bars on the sides of the sign. Mr. Milano stated that there is no additional illumination and that perhaps the drawing showed

reflectors. The Chair stated that the drawing shows a protruding element. The Chair pointed out that even though the Board of Architectural Review had noted that it is at outskirts of Village, [protruding lights] would constitute a change.

The Chair stated that, as to the canopy sign, the existing signage is within the structure of the canopy while that proposed extends above it by a couple of feet. Mr. Milano replied that it is not by a couple of feet, that the torch of the [Amoco] logo sticks up whereas Sunoco's is all level blocked across, and that is where it exceeds the height limitation, just due to the logo imagery, and just in that one spot. The Chair pointed out that it is literally a difference of two feet, as the present fascia is 36" and the new one is 60". Mr. Milano replied "in that one spot." Mr. Amir asked if this something that Amoco is mandating, and Mr. Milano replied "absolutely." Mr. Amir asked if this is standard for Amoco stations, and Mr. Milano replied that it is for all of them and added that they just did one in the Village of Pelham that shows the same imagery. Mr. Amir asked if the mandate was not just on the coloring and logo, but if Amoco imposes a height specification. Mr. Milano stated that the canopy sign is a specific requirement, that it is like a facility guideline. The Chair stated that the Building Inspector had opined that merchants are accustomed to making changes to accommodate village requirements, not to change the shape of a sign, but to put it lower or make it smaller.

Mr. Weitz asked if the canopy would change, and the Chair asked if Mr. Milano had a picture of the awning. Mr. Milano stated that the awning is coming down and that [the sign] "to go" is going right on the façade so that it will be much less imposing. Mr. Weitz asked if the sign for "Motors" stays the same. Mr. Milano replied that nothing else is touched, strictly the imagery from one company to another. Mr. Amir asked if [the sign] "to go" is a package deal, and Mr. Milano replied that it is their branding. Mr. Amir asked if there were an option to mix and match. Mr. Weitz asked if they will be painting and upgrading the storefront as well, and Mr. Milano replied yes. Mr. Weitz asked if it would remain the same color, and Mr. Milano replied yes. Mr. Weitz asked if it would be painted all the way across the three bays. Mr. Milano replied that the improvement would be to the part where they are taking the awning down, that going all the way across is not part of anything with the signs, that any other painting is up to him and that he wants to do something.

The Chair stated that even though the station is on the outskirts of Village, it should be examined like everything else. The Chair noted that the service station already has freestanding signs on two sides and canopy signs on three sides. Mr. Weitz asked if there is currently bright white LED lighting under the canopy, and Mr. Milano stated that that is not changing. The Chair noted that the new signage has a simpler color scheme with fewer colors than the existing signage. The Chair stated that the height of the graphic element that is above the top of the canopy concerns him the most, and that he would like to see what Amoco could propose as an alternative, to make that element smaller or to put it down lower so that it does not exceed the Code's height limitations. Mr. Milano replied that [the torch] would protrude in one spot on the front sign facing North and in one spot on the back facing South, that one little torch would stick out in the middle of the canopy, and that in the 35 years he has been

there, no one has ever objected to anything he has done aesthetically and that everyone always thought it was one of the nicest looking places there. Mr. Milano continued that he does not think that the torch sticking out above in those two spots will cause any significant detriment to the Village appearance-wise. The Chair asked if the sign begins sixteen feet off the ground. Mr. Milano stated his opinion that he is not asking for any additional signage or square footage and even that he is taking some away by taking the awning down, and added that he would not want anything imposing. Mr. Amir stated that he does not have an issue [with the height of the sign due to the torch]. The Chair asked Mr. Amir his thoughts about the lighting on the sides of the free-standing sign. Mr. Amir asked if there is lighting there now, and Mr. Milano replied no. Mr. Amir asked if lighting was being added. Mr. Milano replied that it is evident that they are adding lighting, that he had been told that it was a reflector, but if it is strip lighting on the side of a two-and-a-half inch pole that has been there for thirty years, that if they add the strip on that four by four or whatever that post is, that if that is what the drawing shows then that is what it is, that he had thought it was a reflector but that obviously this is not correct. Mr. Amir asked if it is a reflector or lighting. Mr. Milano replied that according to the Chair, it might be a trim light. Mr. Amir asked if there would there be any benefit to that. Mr. Milano replied that it probably is part of their goal-post facility guideline. Mr. Amir asked if it will it be distracting to drivers on 9A. Mr. Milano stated that if he has seen any, and if it is what he is thinking of about what the Chair showed, of the ones he has seen, it is not really a light and that is why he thought it was a reflector. Mr. Amir asked if it is more decorative, and Mr. Milano replied yes.

Mr. Weitz asked what hours the station is open, and Mr. Milano replied that the station is open Monday through Friday from 6am to 10pm, on Saturday from 7am to 10pm, and on Sunday from 7am to 9pm. Mr. Weitz asked if the lights stay illuminated . Mr. Milano stated that all lights get shut off when the station closes. Mr. Weitz asked if this included the price signs. Mr. Milano stated that the price signs get shut off too, that the only lights that remain on are the downspots on the building and the pole lights on the outside perimeter for security, that the canopy and goal post lights all get shut off. Mr. Amir asked if Amoco requires sign lights to be kept on past closing hours, and Mr. Milano replied no, that they leave the perimeter lights on at the suggestion of the police. The Chair pointed out that there are no residences there.

The Chair asked if any member of the public wished to speak in support of or in opposition to the application, and no one so wished.

The Chair moved, and Mr. Amir seconded, to close the Public Hearing.

Vote: 3 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair -	Aye
Jacob Amir –	Aye
Craig Weitz -	Aye

Close Public Hearing

Mr. Weitz proposed, and Mr. Amir seconded, the following Resolution.

WHEREAS, 555 Saw Mill River Road Associates, of 555 Saw Mill River Road, Ardsley, New York, 10502, has applied to this Board for a variance from strict application of the requirements of Section 200-82(C) of the Zoning Ordinance of the Village of Ardsley, which prohibits the installation or displaying of freestanding or canopy signs, and Section 200-82(C)5 of the Zoning Ordinance of the Village of Ardsley, which prohibits non-conforming signs replacing existing legal non-conforming signs to the extent of the lesser of fifty percent or more of the area of the sign or fifty percent or more of the replacement value of the sign; and

WHEREAS, this application is made under the authority of Section 200-97 Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting premises known as 555 Saw Mill River Road, Ardsley, New York, and designated on local tax maps as Section 6.70, Block 50, Lots 1, 2 and 3, within the B-2 Special Business District; and

WHEREAS, a Public Hearing on this application was held by the Zoning Board of Appeals at the Municipal Building, 507 Ashford Avenue, Ardsley, New York, on March 27, 2019, after due notice by publication; and **WHEREAS**, at the Hearing, applicant Bernard Milano appeared on behalf of 555 Saw Mill River Road Associates in support of this application, and no one appeared in opposition to this application, and all those desiring to be heard were heard and their testimony recorded; and

WHEREAS, this Board, after carefully considering all testimony and the application finds the following:

WHEREAS, this Board, in weighing both the potential benefit to the applicant and the potential detriment to the health, safety and welfare of the neighborhood if the variance is granted, has determined that:

- (1) neither an undesirable change in the character of the neighborhood nor a detriment to nearby properties will be created by the granting of the variance, as the property and its signs continue to be used for the same type of business for decades with changes in signage due to changes in fuel providers, and as the proposed freestanding sign “Amoco” will replace the “Sunoco” sign in the same location and at the same height on posts, and as the existing awning sign “Food Mart” will be replaced with a smaller wall sign “To Go”; and as the Zoning Board of Appeals has been informed that the Board of Architectural Review approved the proposed new signs at its meeting of March 6, 2019;

- (2) the benefits sought by the applicant cannot be feasibly achieved other than by variances, as the sign logo is part of the branding dictated by the applicant's supplier;
- (3) the requested variances are not substantial as the proposed freestanding sign will be in the same location at the same height and of the same height and width as the existing sign apart from the torch protruding two feet higher than the rest of the sign and with the addition of lighting on the sides of the poles, and as the proposed wall sign is smaller than the existing awning sign it will replace;
- (4) the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district in that there are no residences near the subject location, and in that the hours of illumination of the signs will remain limited to the hours of the operation of the business, which currently are until 10:00 PM Mondays through Saturdays and until 9:00 PM Sundays; and
- (5) the circumstance requiring the variances was not self-created in that the change is signs is required by the signage requirements of the applicant's new fuel supplier.

NOW THEREFORE, be it resolved that the application of 555 Saw Mill River Road Associates is granted.

PROPOSED BY: Mr. Craig Weitz

SECONDED BY: Mr. Jacob Amir

VOTE: 3 in favor, 0 opposed, 0 abstentions, as follows:

Michael Wiskind, Chair –	AYE
Jacob Amir –	AYE
Craig Weitz –	AYE

4) **Public Hearing**

Application for Variance

XXII Five, LLC (by Altin Batska)

12 Center Street, Ardsley, New York

Section 6.50, Block 34, Lot 6, in the B-1 General Business District

Application for Variances for Proposed 3rd-Story East Side and 3rd-Story West Side Additions, with: (1) Three-Story Building Height where Two Stories is the Maximum Permitted (Village Code § 200-670); (2) Half a Foot East Side Yard Width where Zero or Six Feet Minimum is Required (Village Code § 200-70B and § 200-100B); (3) 7.4 Foot Front Yard Depth where Ten Feet Minimum is Required (Village Code § 200-70A); and (4) Three Off-Street Parking Spaces where Eighteen is Minimum Required (Village Code § 200-71)

Present: Michael Wiskind, Chair
Jacob Amir
Craig Weitz

Also Present: Altin Batska
Mostafa Osman, architect
Marianne Stecich, Esq., Stecich Murphy & Lammers, LLP, 505
White Plains Road, Suite 206, Tarrytown, NY, 10591
Daniel M. Richmond, Esq., Zarin & Steinmetz
Maurice Hyacinth, Vice President of HMM Management and Vice
President of 1535 LLC, owner of property

The Chair read the Legal Notice.

Open Public Hearing

Mr. Batska produced the eleven green cards that had been received in response to thirteen notices that had been mailed.

Mr. Osman pointed out the discrepancy on the side yard depth and stated that they were willing to correct it to zero inches or if the Board prefers to keep it at half a foot from the property line, applicant will be happy to adhere to either approach. The Chair asked if the space between the subject building and the Community Center is more than half a foot, and Mr. Osman said that it is. The Chair asked if that meant that the Community Center is not built all the way to the line, and Mr. Osman responded that that was correct.

Mr. Osman summarized the proposal by stating that the two axes of enlargement are to the East toward the parking lot easement and to the front toward Center Street, which is an increase of about three feet. Mr. Amir asked the purpose of the addition. Mr. Osman stated that the purpose is increasing dwelling units and increasing retail space on the ground floor.

The Chair asked when the stair tower was added, and Mr. Batska stated that it was four years ago. The Chair asked if the addition was not contemplated at the time the stair tower was added. Mr. Batska stated that the addition was contemplated at that point, and that he had purchased the building because of the potential of extending the building to the right, and that at the time of the stair tower addition, he did not have funds to extend the building so he added the stair tower in the back in contemplation of this expansion.

Mr. Amir stated that he was trying to visualize the before and after of the addition. Mr. Osman pointed out that the fifth sheet on the plan shows existing and proposed site plans.

The Chair asked why applicant is not proposing making more use of the space in the rear. Mr. Batska stated that if you extend to the rear, you can only fit one unit. Mr. Batska explained that the existing layout now is that there is a barber shop on the first floor, a professional office behind the barber shop, and the second floor has a two-bedroom apartment, which needs windows back and forth to function as a Two-Bedroom apartment, so if you extend back, you do not gain anything, you only make the apartment larger. The Chair pointed out, in terms of the street front reduction, that there is twenty-plus feet in the back, although there is a hill. Mr. Batska stated that the front reduction is only architectural feature that can be scaled back to four inches to make it comply. The Chair asked if it was just aesthetic, and Mr. Batska replied that it was. Mr. Osman asked to bring the Board's attention to the lot and explained that the Community Center building is on the property line and that they were trying to respect that dimension, but that they are happy to bring it back. The Chair remarked that that was not the biggest issue, but that that issue seems to be addressable that way.

The Chair stated that he saw the parking as the biggest issue. The Chair noted that in Ardsley, we often deal with parking that is not available at the levels that the Code has dictated, and that one of the ways we work around that is by thinking that some uses are day uses and others are night uses, but here you have residential usage and people's cars sit at their houses a large chunk of a 24 hour period. In light of that, the Chair asked applicant how he anticipates dealing with this issue if this project were to proceed, as eight apartments is a minimum of eight cars. Mr. Batska acknowledged that it is a challenge that they have to deal with. Mr. Batska stated that he completely sympathized because he lives in town as well and has had many discussions about how to improve parking in the town, and added that it is an ongoing problem. Mr. Batska stated that in approaching this project, he saw two possible scenarios: one was to, instead of three studios, do a three-bedroom unit on both floors, but noted that this scenario would increase the school population, and being sensitive to that criteria, opted for the studios instead, as they will not have any impact on the schools, but unfortunately three studios require more parking spaces than would a three-bedroom apartment. The Chair asked where the building residents would park. Mr. Batska stated that perhaps they could apply for street parking and hopefully get it. Mr. Batska also stated that he knows that there is a Code provision about compensating for the lack of parking spaces, and stated that he is willing to work with all the Boards to come up with a solution to make it better, and for lack of parking spaces to give something to community as compensation for lack of parking.

Mr. Amir asked how many apartments are presently on the second floor, and Mr. Batska replied, “just one apartment.” Mr. Amir asked if there is a designated parking space now for that one residential unit, and Mr. Batska replied that there is. Mr. Amir asked about the parking for the commercial tenants, and Mr. Batska replied “yes.” Mr. Amir asked if those spots are the ones in the back. Mr. Batska stated that there are four parking spots in the back and two where the ramp used to be. Mr. Weitz asked that, if the six are reduced to three, who would get those remaining three. Mr. Batska replied that he had not thought about it, but that he would guess that one would remain with the barber shop since he is my existing tenant, and the he is not sure yet about the other two.

The Chair asked if applicant had had any conversations with the shopping center that has the rights to that parking lot. Mr. Batska replied that he had not, as they were just starting this process. Mr. Osman stated that this was an interesting approach and that he would be happy to take it. Mr. Amir stated that he shares the concern that parking is always an issue in the downtown area, and suggested that applicant would not want a conflict between his residential and commercial tenants. Mr. Amir pointed out that applicant’s tenants will not get overnight street parking. Mr. Batska suggested that there are options, and also pointed out that there is a shortage of studios in town and stated that we have to compensate that. Mr. Batska also stated that he is trying to build something nice, that he is not a developer by trade but an engineer, so he is not doing this as part of his income or business, that he is doing this because he is passionate about building something nice.

Mr. Weitz asked, of the proposed new 880 square feet, if there a possibility of where the rendering showed two people standing, of putting in one or two spaces there, where it does not take up all of the 880 square feet, but it may provide room, although I don’t know the size of a parking space, to add one or more parking spaces. Mr. Batska stated that parking should be about nine feet, which would require recessing the building nine feet. Mr. Weitz suggested that even if the architectural design of the overhang is retained, there might be a possibility of a covered or even maybe a tandem parking spot, where one of the two-bedroom units might be able to use a tandem spot where they park their own cars back to back. Mr. Weitz pointed out that that would provide five spaces, which would be you closer to what exists. Mr. Batska stated that it is not a bad idea and is worth considering, but that he is concerned that the driveway is quite active with people getting to the parking lot and that parking spots there might impede traffic flow. Mr. Weitz suggested that perhaps they could talk to the Planning Board or the Board of Trustees about removing the basically dead tree in the bottom right hand corner, which would allow that area to become a parking space, an Mr. Weitz added that that area has no parking meter and really has no use other than for snow piling, so there might be a way to take some of that and create a curb cut there. Mr. Amir sought to clarify if the suggestion was to remove the dead tree and to add two other parking spaces adjacent to the building, or if the latter is it not feasible because of the ingress and egress. Mr. Batska opined that the latter would impede ingress and egress but that Mr. Weitz’s other suggestion is more doable. Mr. Batska added that another possibility might be to take away from the sidewalk, as there is plenty of space for a sidewalk and that they can curve the sidewalk next to the

building, which would get more space in the street and then park perpendicular instead of in four vertical or horizontal spaces that are not handy. Mr. Weitz asked if, in the backyard behind the building where applicant does not want to push back, if some kind of grading and a retaining wall could be squeezed in so that parking spaces could be added there, as the Community Center building goes farther back. Mr. Weitz noted that this could lead to some stacking and suggested that this could be used by retail tenants that do not frequently take their cars in and out. Mr. Batska asked if Mr. Weitz was suggesting taking the three spaces and making them into double spaces, and Mr. Weitz replied “something like that.” Mr. Weitz also pointed out that the little alleyway between the Community Center and the building extends back even further, and that there is a planting bed where the three cars that are currently parked could be pulled forward to create even more depth such that it might be possible to stack two or three cars or have some kind of shared system. Mr. Amir asked if that space was now being used for something. Mr. Batska replied that it is recreational space for the building but that everybody would be happy to get more parking space rather than recreational space. Mr. Batska stated that this is a great idea as it would add three parking spaces, which would double the number of spaces proposed.

The Chair acknowledged that this idea is better, but pointed out that multi-bedroom units would have people that could coordinate their activities whereas the proposal is for eight independent residences needing eight spaces. Mr. Batska stated that he thinks that idea applies more to the retail space and the professional offices. Mr. Chair stated that this was so in the sense that the employee in the morning parks all the way in because they’re not going to have to leave. The Chair asked what was the number of parking spaces that theoretically should have been provided when the stair tower was added. Mr. Batska stated that he did not remember whether it was four or five. The Chair asked if the current six is more than is currently needed, and Mr. Batska replied that it is more than is needed. Mr. Batska added that they had spent money to pave it and gave parking back because they know that there is a shortage of parking, so they did the right thing. The Chair expressed his concern that even if applicant could provide six, seven or eight spaces, it would still be a lot fewer than the eighteen spaces required by the Code. Mr. Batska stated that he was not proposing that the Board approve a proposal with fewer than ten spaces, that he knows that they have to come up with a solution. Mr. Batska stated that he is proposing this project with a lot of pros and cons, that one big con obviously is the parking spaces, but that he thinks that the pros outweigh the cons.

Mr. Amir reminded Mr. Batska that in the hours of usage have been examined and suggested that if there is something that might provide a better option than the current proposal, it would be worth considering and exploring. The Chair reiterated that the difficulty is greater with residences where people stay longer.

The Chair asked if anyone present wished to speak in support of or in opposition to the application.

Attorney Marianne Stecich introduced herself and stated that she has represented HMH Management since DeCicco's opened in 2005. Ms. Stecich urged denying the application because there is no parking available to accommodate the very substantial expansion. Ms. Stecich stated that at present, applicant's property has six available parking spaces, and that with the proposed expansion, three would be eliminated, leaving three spaces to serve eight apartments, two of which are two-bedrooms; an 880 square foot retail space, which generates a parking need of six spaces; a 385 square foot studio which generates a parking need of two or three spaces; in addition to the existing use of a barber shop and an office, bringing Ms. Stecich's count to twenty spaces, whereas under the proposal there would be three parking spaces, which are three fewer than are now available. Ms. Stecich asked where the residents and clients of the businesses would park. Ms. Stecich stated that there are only a few parking spaces on Center Street, and no other public parking nearby, so that in fact the only available place to park is the DeCicco's lot, which serves DeCicco's, the pizza parlor, Trustco Bank, the nail salon, the karate school, the physical therapist downstairs and HMH's office.

Ms. Stecich contended that this Board was not involved in the extensive analysis of the parking needs of the HMH businesses going back to 2005, because HMH Management made certain that its mix of tenants met within the parking scheme that the Board of Trustees had approved in 2005 when DeCicco's opened. Ms. Stecich stated that in November 2005, the Board of Trustees had determined that 129 parking spaces were needed for HMH's businesses at 2135 Center Street and the health club and the warehouse that were then downstairs. Ms. Stecich noted that that number had included a reduction for peak traffic at different times. Ms. Stecich also stated that in November 2005, both the Board of Trustees and HMH Management had recognized that the adequacy of the number of parking spaces would have to be reviewed whenever there was a change of use or occupancy, and that over the next ten years, HMH would review with the Village and the Board of Trustees the number of parking spaces each time there was a change of use.

Ms. Stecich continued that in January 2007, when Trustco sought to open a branch there, it went before the Board. Ms. Stecich stated that Trustco employed four tellers, which required twenty spaces while three tellers required fifteen, and as fifteen fit within the 129, they said it had to be fifteen. Ms. Stecich added that when the Building Inspector went in and found that they wanted space for a fourth, an opportunity arose to maybe get rid of it, that demonstrates how shopping centers are regulated. Ms. Stecich continued that in 2010, they had to go back to the Board of Trustees again for the musical instrument store, and again in March 2013 in connection with the martial arts studio, in May 2013 when the pizzeria moved in, in March 2014 when DeCicco's expanded, and then in September 2015 when the physical therapy opened on Center Street. Ms. Stecich stated that all of this goes to show what a delicate balance the parking situation is for HMH properties, and emphasized that Trustco only has three tellers because there was not enough parking space. Ms. Stecich informed the Board that over the years, HMH has had to reject tenants because their tenancy would exceed the number of parking spaces according to the count that the Board of Trustees said they have to keep. Ms. Stecich pointed out that this also contributes to successful businesses because there

is enough parking, and that if there were not enough parking or if it were difficult to find parking, people could buy their groceries someplace else or get their nails done someplace else, and that this benefits HMH too because their tenants need parking.

Ms. Stecich contended that permitting the applicant to expand his business so dramatically, without any regard to the absence of parking spaces, and going so far as to eliminate half the parking spaces they currently have, would mean that his tenants and the customers of the various businesses would park in the DeCicco's lot, as it is the most obvious place, which would completely undercut the balance the Village has tried to achieve ever since the shopping center was reactivated thirteen years ago. Ms. Stecich further contended that picking up two or three additional parking spaces is not sufficient, as there is a deficiency of either fourteen or seventeen. Ms. Stecich also contended that the variances that the applicant seeks, especially the parking variance, create a detriment to nearby property, would clearly be a detriment to DeCicco's and other tenants of the shopping center, would have a hugely substantial adverse impact on the neighborhood, and that the difficulty would be self-created. Ms. Stecich added that HMH does not object to the applicant upgrading his business, but believes that it should not be at a scale so significant as to be a detriment to the HMH properties.

Mr. Maurice Hyacinth introduced himself as the Vice President of HMH Management Company, the property managers for the shopping center located at 1535 Center Street, and also as the Vice President of 1535 Center Street LLC, the owner of property. Mr. Hyacinth stated that the copies of the information package provided to the Board supports much of the information Ms. Srecich just shared, and includes a cover letter describing and outlining our opposition to this development. Mr. Hyacinth stated that he also had shared a letter from John DeCicco, Jr., principal at DeCicco's Markets, which states his opposition to the application as well. He then proceeded to say:

“We object to the application. The basis of our objection relates to the applicant's request for relief from parking requirements established by the Village Code. Based upon the size and scope of the proposed project, the applicant would be required to provide eighteen to twenty parking spaces, parking organic to the proposed development site would total three spaces, leaving a deficiency of fifteen to seventeen parking spaces. How is that excess going to be absorbed into a tight and underserved parking area. As you know, parking has been and continues to be an issue in the downtown business district. As the owner of the two large retail properties in the downtown business district (we also own the Ardsley Village Green Center), we are aware of this issue as the properties have been analyzed by the Ardsley Village Board of Trustees on multiple occasions, specifically with respect to our shopping center at 1535 Center Street, also known as the DeCicco's Center, but let's just call it “The Center.” And with each change in use, we are required to clearly establish compliance with the parking plan scheme which had been established by the Village Board. The initial plan, called “The Center Parking Plan,” required 129 spaces after the reduction of 64 spaces by the Village Board of Trustees. At this moment, we have 132 parking

spaces available in The Center, so we have an overage, based on the current requirements, of four spaces.

Since the initial improvement and implementation of our Center parking plan, each change of use application submitted to The Center must demonstrate full compliance with and conformity to The Center Parking Plan. An analysis detailing and reconciling parking impact to The Center are submitted with each change of use application. For example, parking analysis letters submitted in conjunction with change of use applications for such tenants include, but are not limited to, the application for Trustco Bank submitted in January 2007, Music Center of America in June 2010, a proposed hair salon in April 2012, the martial arts at 15 Center Street on March 5, 2013, the relocation of the pizzeria from 25 to 27 Center Street in 2013, the expansion of the DeCicco's market in 2014, and the opening of Fitness Now, which is related to the physical rehab facility, in 2015. Each of these letters is attached so that you understand the scope and the nature of the analysis. As evidenced by each of the attached parking analysis letters, parking requirements for any new uses are closely scrutinized. This property owner is held to a strict standard of compliance to The Center Parking Plan, and we have established to the satisfaction of the Village Board the ability of The Center to adequately and organically support the parking demands generated by our tenancies.

The Village Board and the Village Planning Board have rationally adopted this disciplined and well-reasoned approach for The Center in order to reasonably and balance the demand for parking for The Center and the downtown business district in general. The granting of the applicant's request for a variance will: (1) disrupt this delicate balance that the Village Board and the Village Planning Board have shown to maintain; (2) lead to parking chaos in the downtown business district; (3) place undue physical burdens on the parking facilities of our Center and place unfair economic burdens and liability issues on us as the owners of The Center and the tenants in The Center. Some of those liability issues are: if somebody comes on the property and uses the parking lot, trips and falls, we're on the hook, and they are not even supporting our businesses. That results in us essentially subsidizing the applicant, which is not necessarily fair. If the subject application is granted, the parking then generated by the proposed development will result in a significant parking crunch in the Center Street corridor of the downtown business district. Projections indicate that the proposed development will suffer a deficiency of fifteen to seventeen spaces.

Street parking on Center Street is very limited, as there are a total of nine spaces on the entire length of Center Street (Exhibit 8 shows pictures of Center Street which exhibits the number of spaces). Two of these spaces are generally occupied each business day by Village personnel who run the Village [Community] Center. Additionally, Dr. Strick's office is on Center Street, together with the barber shop, so they generally generate demand for parking spaces on Center Street. As a further

aside, Dr. Strick was also granted a variance, so that he could open his office on Center Street, so he has a parking shortfall for his operation as well, so this only further exacerbates the situation.

Parking can no longer be treated as a fungible commodity. For the most part, we have been treating it as a fungible commodity. We are getting to the point where it can no longer be that.

While we appreciate that the applicant is aware of the type of parking constraints and issues, and has come before the Board tonight and has indicated a willingness to pitch in and help, it unfortunately does not really address the practical aspect of what would happen if the variance were granted, that being that people are just going to park wherever they can park, but that means that you are going to end up in our lot or in the lot for the CVS Center, and that again results in those two property owners bearing an undue impact on the development.

By the way, as I mentioned before, I delivered a letter of objection to the application from John DeCicco, Jr., as principal of the DeCicco store. They too feel very uncomfortable with bringing additional parking into the environment and continuing to, looks like, result in an overburdening of our parking facility as well.

I thank the Board for giving me the opportunity to speak. If you have any questions about the information delivered to you, please feel free to contact me.”

Daniel Richmond introduced himself as a partner with the law firm Zarin & Steinmetz. Mr. Richmond stated that his firm had recently been retained to represent Ardsley Associates, which owns the shopping center located at 7-9 - 7-25 Saw Mill River Road. Mr. Richmond stated that by his letter and presentation, he would set forth their preliminary concerns, and that at a minimum, they would respectfully ask that the Board keep the hearing open, because they would like to present more definite evidence about the parking situation, which they think the Board is well aware of. Mr. Richmond informed the Board that his client, Ardsley Associates, owns the shopping center that contains the CVS, Wallauer’s, Sunshine Bagels, Planet Wings and Ardsley Cleaners, and stated that they are already impacted by the parking condition, including, similar to HMM Management, where people are using the parking spaces to the detriment of existing tenants without patronizing the stores there. Mr. Richmond suggested that the Board could see that this application, which requests an 84% variance of the parking, would only exacerbate that, including by providing only three spaces where eighteen are required. Mr. Richmond stated that from their perspective, it is difficult to see how the Board could rationally approve this application as it now stands. Mr. Richmond then continued:

“As your Board is aware, as it has stated, the analysis your Board is required to engage in is a balancing of a benefit to the applicant and the detriment to the health, safety and

welfare of neighbors, including by the balancing test of the five factors you have discussed, including undesirable change to the neighborhood, impact to the neighboring properties, uses and whether the variance is substantial. I would also like to point out that the Ardsley Village Code specifically requires your Board to further consider ‘protection of the character of the Village, protection of property value of the individuals and the residents, and the protection of the residents of the Village from nuisances of any and every kind and against unreasonable and undue interference with their peaceful and quiet enjoyment, safety or general welfare.’

Walking through the factors again, and as set forth, and as I think HMH Management has said as well, this project would exacerbate an existing problem. With respect to the applicant, I think the architecture is well-done, but it seems that they haven’t really thought through the parking impact yet. Certainly your Board is entitled to rely on your own observations, your own personal knowledge of the area, as well as that put forth by community residents, including HMH Management. And again, we would ask for the opportunity to present further evidence to concretize this for your Board.

By compounding this, there would be additional non-customers to use the parking lot of Ardsley Associates, and the Courts have not hesitated to uphold determinations of Zoning Boards to reject applications that similarly would exacerbate parking circumstances. We have cited some cases, for example, *Monte Carlo v. Weiss*, which was a 2016 Second Department case, where the Second Department upheld the ZBA denial for renewal for area variances, including because they found that the parking variance would cause disruptive additional demand for street parking. Similarly, in the matter of *El Classico Restaurant*, which we cite in our letter, the Court held that the Board properly recognized that granting a variance would benefit the applicant and that benefit may not be able to be achieved by any other means, but this needs to be weighed against ‘the need to alleviate traffic congestion by requiring adequate parking facilities.’

The second factor is whether the applicant can achieve some benefit from the property through less intense development or by selling it. We would just note as to the success of the applicant to achieve those benefits, the Board should bear in mind that the Court has been clear, that applicant does not have a reasonable expectation that it can develop a large project like this on the site. The Courts have repeatedly affirmed that the owner of a property constrained by zoning regulations can not reasonably expect to have the same developability as the applicant on an undeveloped site, as the applicant’s baseline benefit is not that it can build his proposed project, but rather that only have expected to develop the site limited by the zoning constraints. As the Court of Appeals noted in the case called *Gaza* that we cite in our Complaint, the purchase of a bundle of rights necessarily include the acquisition of a bundle of limitations. As such, respectfully, your Board should not consider the requested variances unless and until the applicant shows that it has made diligent efforts to obtain a commensurate benefit from the

property through either a far less aggressive development proposal or through the sale to private parties.

The third factor is that the variances are clearly extremely substantial, again there is an 84% variance [requested]. The law is clear that the Zoning Board can reject variance requests that are far less substantial. In *JSB Enterprises*, again cited in our papers, the Court upheld the rejection by the Zoning Board of a parking variance that would have resulted in a 41% deficiency. In *Caspian Realty v. The Zoning Board of Greenburgh*, it upheld [the denial of] a variance that would have resulted in a 50% decrease. Again, this is an 84% decrease. So it is not only achieved numerically but in real-world impacts. For several reasons this would adversely impact the human environment.

We also note that your Board can and should consider that granting the requested extreme variance could open the floodgates to similar variance requests in development of this nature in this area. As your Board knows, once you set a precedent, it can be difficult to distinguish upon further applications. Again, if there is an existing parking situation, which your Board is certainly aware of downtown, I think that you should tread cautiously, I would submit.

Finally, although self-created hardship may not be determinative, we think it is certainly critically important here. We look forward to working with your Board and any applicant going forward on this application, but the parking situation obviously needs to be addressed. Thank you very much.”

The Chair asked the other two members of the public present if they wished to speak, and they indicated that they did not so wish.

The Chair invited the applicant to respond. Mr. Batska stated that he had heard the argument that they would be reducing the parking spaces by half and acknowledged that although it was not very material to the discussion, he wanted it on the record that they presently do not need six parking spaces. The Chair asked if in the current configuration there are more spaces than required, and Mr. Batska replied that that was correct. Mr. Batska stated that he sympathizes with the need for parking spaces downtown but that he does not agree with many of the assumptions that were just made, specifically that all the tenants will automatically go park in their properties, and that those assumptions are just assumptions and are not based in fact. Mr. Batska stated that he is sure that something could be worked out with the Village where the tenants could park in public parking behind the gas station at night only. Mr. Batska stated that he agrees that the parking needs to be addressed and is not suggesting that this project is great without the parking spaces. Mr. Batska also strongly emphasized that something has to give if we want to beautify downtown and that there is a reason why the downtown looks the way it does, and that is because we have all of these constraints. Mr. Batska added that he is in the town for ten years and that all he hears is how ugly our town is because it does not have

a downtown, and it is pitiful that an attempt to beautify the downtown a little bit gets shut down because we do not have parking spaces. Mr. Batska contended that the lack of parking spaces is not going to kill the whole town, and that the excess from this project is not going to make the difference in all the parking deficiencies of downtown, that this is not a huge development of fifty units that will tip the scale, it is just a small building, and this makes the problem a lot bigger than it is. Mr. Batska concluded that he is very committed to working it out with neighbors and Boards to find a perfect solution, but that he thinks that to shut it down and automatically assume that all the tenants will have an affect on their properties is ridiculous.

Mr. Amir asked if applicant recognized that DeCicco's parking lot requires 128 spaces and that there are 132 available. Mr. Amir asked if, presuming applicant could not get street parking, he recognized that there is an issue to be discussed. Mr. Batska replied that he did, that there is potential of people using the building to go to DeCicco's, but that they had presented it as a certainty, which is ridiculous. Mr. Amir asked Mr. Richmond if he knew the number of required or current spaces in the CVS shopping center, and Mr. Richmond stated that he did not know. Mr. Weitz asked Mr. Richmond if he knew how many spaces there were in that site, including the overflow, and Mr. Richmond stated that he did not know but that he thought it was about 60, but not to quote him, The Chair pointed out that there had been a reduction because of the widening of Route 9A.

Ms. Stecich made the point that right now there is of overage of parking in the DeCicco's lot, but that is based on the mix of tenants and that the number required goes up and down, that sometimes it has gone all the way to 132, so that would deprive them of having the opportunity of a different tenant coming in.

The Chair asked the applicant if he had had any discussions with other people who have parking lots in the area. The Chair noted that the Building Inspector had mentioned that the Village has a Code provision for a property owner to pay a fee to the Village for dedicated parking spaces, and that this is something that could theoretically be done with either of the shopping center properties or other sites within the Village that had spaces, if it was of mutual interest, so there could be an arrangement to rent or buy those spaces for tenants if it was of interest to the landlord.

Mr. Amir stated that he understood Ms. Stecich's point that the number of spaces required fluctuates depending on tenancies. Mr. Hyancinth referred to the added liability to the current property owners. Mr: Amir suggested that if a landlord did a rental, they would work out the additional insurance costs. Mr. Richmond stated that his client would not be interested.

Mr. Richmond requested the opportunity to bring to the Board's attention a reminder that a master development plan in the works, and that he assumes that the Board can take that into account in making its decision, because the Village is looking to address a lot of these issues on a community-wide basis. The Chair stated that he had discussed this concept with the

Building Inspector, and that while this is not a firm conclusion, the plan is far away from being enacted, and that the Board might be more inclined to rely on that if there were something in place.

Mr. Hyacinth stated that he wanted to add another point about the uses of the Community Center. Mr. Hyacinth pointed out that they have no organic parking there, that every Wednesday is Senior Day, that it gets packed on Center Street and they do in fact end up on our lot because he sees them and, as a matter of fact, that he has helped some of them down the steps so that they can get to the Senior Center, so this impacts the shopping center. Mr. Hyacinth continued that when there are events at the Community Center, particularly on the weekends when the Village rents out the Community Center to third party users and there are parties, showers, etc., the parking situation again becomes extremely encumbering in that Center Street corridor when there is something going on. Mr. Hyacinth concluded that there is factual evidence that there is reliance on their shopping center to help subsidize or support the shortfalls of parking that occur in the downtown area.

Mr. Amir asked if the application for a variance for the parking is concurrent with the third floor addition, if it goes hand in hand, and Mr. Batska replied "yes." Mr. Amir asked applicant if he had you looked at not having a third floor and reconfiguring the second floor. Mr. Batska responded by saying that his drive is not financial benefit, and that, as any developer will tell you, this project is not the most beneficial, especially with adding extra fee arrangements that would be made to make up for the lack of parking, and that his drive is just to build something nice in the downtown. Mr. Amir asked if he thought he could accomplish that and if it would be feasible to do it without a third floor. Mr. Osman stated that without the third floor it would be a totally different building and it would not look the way it looks in the current proposal. Mr. Osman added that the more folks that live there are more that would go to CVS and DeCicco's. Mr. Amir acknowledge that more foot traffic may be beneficial to the neighbors and that that is something for them to think about. Mr. Batska stated that he shares their concerns and has had the same predicament when there is an event at the Community Center and they park on his and DeCicco's property in disregard of the parking signs. Mr. Batska reiterated that he is not just increasing, that he just wants to beautify the center of town.

Mr. Weitz returned to the subject of the reduction of 880 square feet of retail space and said that he did not know if the Village can absorb that or if there is a tenant for that retail space it with the parking limitation, but suggested that reducing that would reduce the required amount of spaces along with a possibility of that rear piece coming in as a factor which then may add to that parking where applicant is not losing income but still getting the traction that he would like for the development in the downtown. Mr. Weitz stated that he thinks it would benefit the applicant to come up with solution as opposed to a cost in lieu of parking that does not benefit the Village and which would stop this development anyway because it might then not make economic sense for applicant to continue with this project. Mr. Weitz concluded that he would like to see a balance of this happen because if people like the applicant do not take the opportunity to develop our downtown, which committee Mr. Weitz is also part of, then it

will not be even a possibility, so he strongly recommended that applicant try to come up with a reduced plan in the retail while maintaining that studio, which while on paper might require two cars, will more likely have one space in my opinion, just because a 330 square foot apartment will be hard for two cars to use.

The Chair summed up that he did not think that the Board would be ready to vote on this proposal as it stands tonight because only three of the Board members are present, so it would have to be unanimous for approval. The Chair pointed out that of the four variances listed here, he thinks that applicant has already agreed that he can revise a proposal where a side yard variance will not be necessary, which also provides applicant a few more square feet. Mr. Batska stated that that variance is almost immaterial because the building is built six inches from the property line, which means that the distance between the building and the Village [Community] Center is about four-and-a-half feet, and that in order to remedy that discrepancy, you would have to build six more inches (Chair: on the side of the building where you're not doing very much), yes, which will have a detrimental effect on the passageway, which does not help anybody. The Chair explained that what he meant was that it is not a concern. The Chair continued that applicant did, regarding the front yard setback issues, indicate that he could maintain a shadow line or whatever, so as not to have that come into play. The Chair continued that no one mentioned height, so he gathers that no one is very concerned about that. The Chair concluded that the parking really is the key thing, and therefore suggested that applicant rework the proposal and see what he can do to come up with a more reasonable amount of parking by any of the various things discussed including using the yard, possibly reconfiguring the area near the entrance to the lot, seeing what can be worked out with either the Village or neighboring properties to provide either ideally the required amount of parking or at least as close as you can reasonably come, and that after does those things, comes back with a revised proposal.

Mr. Amir asked applicant that if he comes back to please add photos of the back. Mr. Weitz asked applicant to also bring an outline of the survey. Mr. Weitz asked how much of the rear sloping area belongs to 12 Center Street, and Mr. Batska replied "about six feet."

Mr. Osman noted that he got here from Metro North to Dobbs Ferry and then took the bus, suggesting that there are infrastructures in place to alleviate some of the demand for parking, that it is set up pretty nicely as he was able to go to Planet Wings before he came here to visit the shops.

The Chair added that he appreciates the effort to bring an aesthetic design and to bring something nice and classier than what we have now, to provide studios that there is not much of in Ardsley so that is a good thing too, but that, as noted by several of the people who spoke, the Board needs to balance the benefits to the applicant with the detriment to the neighbors, as well as a greater community benefit.

Mr. Richmond stated that the CVS shopping center has 65 parking spaces, but that he does not know how this number was affected by the reduction. The Chair stated that the Board can ask the Building Inspector for this information too.

Mr. Batska asked what the Board would like to see, and the Chair stated that the Board would like to see the front and side setback variances out of the picture, a better use of the backyard either for the building or for parking, and most important, a plan for achieving parking without encroaching on anybody.

The Chair stated that this matter would be continued.

5) **Adjournment**

As there was no other business before the Zoning Board of Appeals, the meeting was adjourned at 9:40.

Respectfully submitted,
Judith Calder,
Recording Secretary