

Telephone
(914) 277-5582

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(914) 277-3790

ZONING BOARD OF APPEALS

Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Victor Cannistra,
Chairman
Ronald Carpaneto
Bill Harden
Arnold Guyot
Dennis McNamara
Bruce Prince
Umberto Santaroni



AGENDA

October 21, 2014

7:30 PM

SOMERS TOWN HOUSE

1. PAUL R. IACUONE LLC

BZ11/14 (CARRY OVER)

An application for a Use Variance to permit a drive-thru restaurant, located in a Neighborhood Shopping District at **63 Route 6, Baldwin Place**. The property is shown on the Town Tax Map as **Section: 4.20, Block: 1, Lot: 5**. RE: Section Schedule 170-21.2.

2. JONATHAN GIBSON

BZ12/14

An application for a Special Exception Use Permit to harbor 6 chickens, located in an R-10 Residential Zoning District at **19 Acacia Drive, Mahopac**. The property is shown on the Town Tax Map as **Section: 5.14, Block: 1, Lot: 22**. RE: Section Schedule 170-69.

3. OTHER BUSINESS

Approval of September 16, 2014 Meeting Minutes.



ZONING BOARD OF APPEALS

Town of Somers

WESTCHESTER COUNTY, N. Y.

TOWN HOUSE
SOMERS, NEW YORK 10589

(914) 277-5582

IN THE MATTER OF THE APPEAL
OF

B Z NUMBER BZ11/14
DATE: 8/13/14

TO THE ZONING BOARD OF APPEALS
OF THE TOWN OF SOMERS, N. Y.:

1. Paul Iaccone, President of Paul R Iaccone LLC
(Name of appellant)
whose post office address is PO Box 56 Baldwin Place NY 10508
(Post office address)
through Robert D. Gaudioso, Esq.
(Name of attorney or representative if any)
whose post office address is 94 White Plains Rd. Tarrytown NY 10791
(Post office address)
does hereby appeal to the Zoning Board of Appeals at the Town of Somers.

2. Such appeal is taken from a ruling of Stren Citarella
(Name of officer)
Building Inspector, made on Aug 5, 2014
(Office held)
which ruling was filed on Aug 5, 2014, and notice of such ruling was
first received by appellant on Aug 5, 2014; such ruling
Denying BP restaurant with drive-through window
(Give summary of ruling)

3. The property which is the subject of the appeal is located at or known as 63 Route 6, Somers NY
(Street and number or distance from and names of nearest intersecting streets)
Town Tax Map as Section: 4.20, Block: 1 Lot: 5
The interest of the appellant is that of owner
(Owner, tenant, etc.)

4. The appeal is taken (on the ground that the ruling or decision was erroneous) to obtain
variance, ~~permit or special permit~~. (Strike out wording not applicable.)

(OVER)

5.

(Fill out (a) or (b) or both if applicable)

(a) The property which is the subject of the appeal is located at or known as.....

63 Route 6 Somers NY
Parcel ID 4-20-1-5

(b) A variance, permit or special permit is sought because of practical difficulties or unnecessary hardship to the property as indicated below:

Inability to rent privately or retain private tenants

and such may be granted pursuant to Community Shopping Zone

with temp use variance for drive-thru

(Refer to applicable Provisions of the Zoning Ordinance of the Town of Somers)

DENISE SCHIRMER
Notary Public State of New York
No. 01SC6298242
Qualified in Dutchess County
Commission Expires March 10, 2018

Both applicant and owner must sign if they are different persons.

I Hereby Dispose And Say That All The Above Statements And The Statements Contained In The Papers Submitted Herewith Are True.

SWORN TO ME BEFORE THIS 5th DAY August 20 14

Denise E. Schirmer
NOTARY SIGNATURE

[Signature]
OWNER SIGNATURE

Denise E. Schirmer
NOTARY SIGNATURE

[Signature]
APPLICANT SIGNATURE

Short Environmental Assessment Form

Part 1 - Project Information

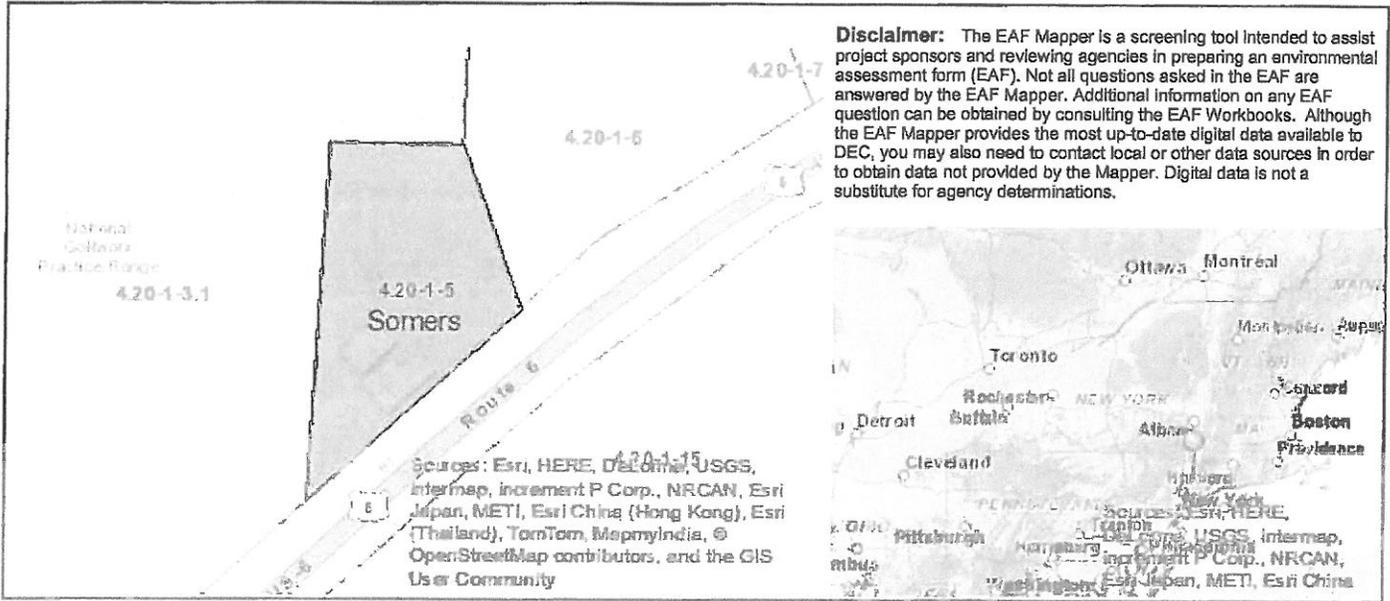
Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project: 63 Route 6			
Project Location (describe, and attach a location map): 63 Route 6, Somers, NY			
Brief Description of Proposed Action: Use Variance to permit drive-through restaurant			
Name of Applicant or Sponsor: Paul R. Iacune, LLC		Telephone: 914-333-0700	
Address: P.O. Box 56		E-Mail: RGaudioso@snyderlaw.net	
City/PO: Baldwin		State: NY	Zip Code: 10505
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action? _____			1.0 acres
b. Total acreage to be physically disturbed? _____			1.0 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____			1.0 acres
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>Paul R. Iaccone, LLC</u> Date: <u>8/12/14</u>		
Signature: <u></u>		



- Part 1 / Question 7 [Critical Environmental Area] Yes
- Part 1 / Question 7 [Critical Environmental Area - Identify] Name:Baldwin Place Area, Reason:Difficulties w/ portable water source, Agency:Somers, Town of, Date:9-26-90
- Part 1 / Question 12a [National Register of Historic Places] No
- Part 1 / Question 12b [Archeological Sites] Yes
- Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies] Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
- Part 1 / Question 15 [Threatened or Endangered Animal] No
- Part 1 / Question 16 [100 Year Flood Plain] No
- Part 1 / Question 20 [Remediation Site] Yes



ZONING BOARD OF APPEALS

Town of Somers

WESTCHESTER COUNTY, N. Y.

TOWN HOUSE
SOMERS, NEW YORK 10589

(914) 277-5582

IN THE MATTER OF THE APPEAL
OF

B Z NUMBER BZ10/14
DATE: 9/16/14

TO THE ZONING BOARD OF APPEALS
OF THE TOWN OF SOMERS, N. Y.:

1. [Signature] Jonathan T. Gibson
(Name of appellant)

whose post office address is 19 ACACIA DR. MAHOPAC NY 10541
(Post office address)

through
(Name of attorney or representative if any)

whose post office address is
(Post office address)

does hereby appeal to the Zoning Board of Appeals at the Town of Somers.

2. Such appeal is taken from a ruling of EFREM CITARELLA
(Name of officer)

BUILDING INSPECTOR made on 9-16-14
(Office held)

which ruling was filed on 9-16-14, and notice of such ruling was
first received by appellant on 9-16-14; such ruling

SPECIAL EXCEPTION USE PERMIT 170-69
(Give summary of ruling)

3. The property which is the subject of the appeal is located at or known as 19
ACACIA DR. and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 5.14 Block: 1 Lot: 22

The interest of the appellant is that of [Signature]
(Owner, tenant, etc.)

4. The appeal is taken (on the ground that the ruling or decision was erroneous) to obtain
variance, permit or special permit. (Strike out wording not applicable.)

(OVER)

5.

(Fill out (a) or (b) or both if applicable)

(a) The property which is the subject of the appeal is located at or known as

19 ACACIA DR

(b) A variance, permit or special permit is sought because of practical difficulties or unnecessary hardship to the property as indicated below:

NEED 40,000 SQUARE FOOT LOT

OWNS 3 LOTS ONLY EQUAL 30,000 SQUARE FT.

and such may be granted pursuant to... 170-69

(Refer to applicable Provisions of the Zoning Ordinance of the Town of Somers)

DENISE SCHIRMER
Notary Public State of New York
No. 01SC6298242
Qualified in Dutchess County
Commission Expires March 10, 2018

Both applicant and owner must sign if they are different persons.

I Hereby Dispose And Say That All The Above Statements And The Statements Contained In The Papers Submitted Herewith Are True.

SWORN TO ME BEFORE THIS 16th DAY September 20 14

Denise E. Schirmer
NOTARY SIGNATURE

X [Signature]
OWNER SIGNATURE

Denise E. Schirmer
NOTARY SIGNATURE

X [Signature]
APPLICANT SIGNATURE

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Facsimile

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WESTCHESTER COUNTY, N.Y.

Victor Cannistra,
Chairman
Ronald Carpaneto
Arnold Guyot
Bill Harden
Dennis McNamara
Bruce Prince
Umberto Santaroni



Meeting Minutes
September 16, 2014

The members present were: Chairman Cannistra, Mr. Carpaneto, Mr. Guyot, Mr. Harden, Mr. McNamara, and Mr. Santaroni.

Building Inspector Efrem Citarella was also present, as well as the applicants and interested residents.

Chairman Cannistra opened the meeting at 7:30 p.m. with the Pledge of Allegiance.

New member Bill Harden was welcomed.

APPLICANTS:

T-MOBILE NORTHEAST LLC – BZ06/14 – 16.15-1-1.1

A 90 day extension of time to submit the engineering site inspection report for a Special Exception Use Permit renewal of a cell tower that was granted on May 20, 2014, located in an R-120 Residential Zoning District at **87 Route 202, Somers**. The property is shown on the Town Tax Map as **Section: 16.15, Block: 1, Lot: 1.1**. RE: Section Schedule 170-129.6 (G).

Robert Gaudio of Snyder & Snyder, LLP indicated that although the engineering site inspection report has been received, he would still like to request a 90 day extension to complete the paperwork. All members were given a copy of the report. There have been no safety issues, and each carrier is required to have an inspection every three years.

Mr. Carpaneto made a motion for a Type II Action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Carpaneto	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. McNamara	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

All were in favor.

Mr. McNamara made a motion to grant the 90 day extension to complete the paperwork as related to the engineering inspection report. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Carpaneto	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. McNamara	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

All were in favor.

PAUL R. IACUONE, LLC – BZ11/14 – 4.20-1-5

An application for a Use Variance to permit a drive-through restaurant, located in a Neighborhood Shopping District at **63 Route 6, Baldwin Place**. The property is shown on the Town Tax Map as **Section: 4.20, Block: 1, Lot: 5**. RE: Section Schedule 170-21.2.

Robert Gaudio of Snyder & Snyder, LLP addressed the Board and gave a history of the property, as well as the criteria for the Use Variance. The property is about an acre, and is in the Neighborhood Shopping District, which is a very small zoning district. The building is approximately 3,000 square feet and has a state of the art industrial kitchen.

The timeline is as follows:

In 1998, Mr. Iacuone bought 50% of the business for \$120,000.

In 1993, the area was rezoned from General Business, which allowed for a fast food restaurant.

In 1996, Mr. Iacuone purchased the remaining 50% of the business for \$335,000. Less than a month later, the area was rezoned again to Community Shopping (the shopping center) and Neighborhood Shopping.

In 2001, Mr. Iacuone became ill and leased the restaurant. The first two businesses failed and that trend unfortunately continued until present day. The most recent restaurant that occupied the space was the Greek American Grill. An article from the August 2012 on-line Somers Daily Voice entitled "Greek Grill Hopes to Break Route 6 Jinx in Somers" was shared.

Since 2001, \$180,000 was spent renovating the building. The current yearly expenses are \$11,700 and the building has been vacant for two years.

Fast food, as well as drive through restaurants has expressed an interest in renting the building, but the zoning doesn't allow it.

In Mr. Gaudio's opinion, Mr. Iacuone does meet the criteria for a Use Variance since:

The owner cannot obtain a reasonable return on his investment.

The hardship is not unique to the property.

The character of the neighborhood will not change.

The alleged hardship has not been self-created.

If this Use Variance is approved, the applicant will have to go through the Planning Board and Architectural Review Board process. It was confirmed that fast foods with a drive through have been interested.

Mr. Iacuone approached the podium and indicated that he has been in ongoing discussions with Chesire Coffee Co. in Connecticut regarding renting this property, but they must be able to have a drive through.

The Chairman asked why consideration wasn't given to going directly to the Town Board to request a Use Variance. Mr. Gaudio responded that there are three reasons why it was not done: a Use Variance legally required by the Town is a fundamental right of the property owner; spot zoning could be assigned; and that exact process took place for a proposed project on the golf range property, which resulted in a negative decision, and was also quite costly.

Mr. Iacuone is marketing to all types of business, with almost no interest. It would also be costly to remove the existing kitchen.

Selling the property is not an option as it would be done so at a loss since the property is undervalued.

The Chairman would like to do a site visit, as well as consult with the Town Attorney. Therefore the item is carried over until the October 21, 2014 meeting.

OTHER BUSINESS:

A motion was made by the Chairman to approve the minutes of the July 15, 2014 monthly meeting. All were in favor, but Mr. Harden as he was not present.

The next monthly meeting of the Zoning Board of Appeals is scheduled to be held on October 21, 2014. There being no further business, the meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board