

Telephone
(914) 277-5582

FAX
(914) 277-3790

ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.

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



AGENDA

September 15, 2015
7:30 PM
SOMERS TOWN HOUSE

**1. JOHN AND MARY
DILLON**

BZ14/15

A renewal application for a Special Exception Use Permit for an accessory apartment, located in an R-80 Residential Zoning District at **31 Valley Pond Road, Katonah**. The property is shown on the Town Tax Map as **Section: 27.11, Block: 2, Lot: 7**. RE: Section Schedule 170-70.

**2. JOHN AND ELIZABETH
LEARY**

BZ15/15

A renewal application for a Special Exception Use Permit for an accessory apartment, located in an R-80 Residential Zoning District at **108 Pines Bridge Road, Katonah**. The property is shown on the Town Tax Map as **Section: 47.16, Block: 1, Lot: 11**. RE: Section Schedule 170-70.

3. ROSALIE MIGNANO

BZ16/15

A renewal application for a Special Exception Use Permit for an accessory apartment, located in an R-40 Residential Zoning District at **8 Hilldale Avenue, Somers**. The property is shown on the Town Tax Map as **Section: 6.16, Block: 2, Lot: 32**. RE: Section Schedule 170-70.

4. **JOHN AND DOREEN
VERMEERSCH**

BZ17/15
A renewal application for a Special Exception Use Permit for an accessory apartment, located in an R-80 Residential Zoning District at **20 South Lane, Katonah**. The property is shown on the Town Tax Map as **Section: 48.17, Block: 1, Lot: 16**. RE: Section Schedule 170-70.
5. **JEFFREY AND ANDREA
WEISBROT**

BZ18/15
A renewal application for a Special Exception Use Permit for an accessory apartment, located in an R-80 Residential Zoning District at **28 Young Road, Katonah**. The property is shown on the Town Tax Map as **Section: 38.06, Block: 1, Lot: 6**. RE: Section Schedule 170-70.
6. **InSite Towers
Development, LLC**

BZ19/15
An application for a Special Exception Use Permit renewal of a cell tower, located in an R-80 Residential Zoning District at **121 Route 100, Katonah**. The property is shown on the Town Tax Map as **Section: 38.17, Block: 1, Lot: 5**. RE: Section Schedule 170-129.6 (G).
7. **ROBERT AND SALLY
KRAUSS**

BZ20/15
An application for an Area Variance for lot coverage, located in an R-40 Residential Zoning District at **233 Route 202, Somers**. The property is shown on the Town Tax Map as **Section: 17.10, Block: 1, Lot: 14**. RE: Section Schedule 170-40A.
8. **KENNETH AND DEBORAH
WILLIAMS**

BZ21/15
An application for an Area Variance for an existing above ground pool for less than the required side yard set back in a single family dwelling, located in an R-10 Residential Zoning District at **54 Old Mill Road, Yorktown Heights**. The property is shown on the Town Tax Map as **Section: 16.06, Block: 3, Lot: 67**. RE: Section Schedule 170-A.1.
9. **UC OF SOMERS, LLC**

BZ22/15
An application to appeal the Building Inspector's interpretation of personal services, located in a Community Shopping District at **80 Route 6, Baldwin Place**. The property is shown on the Town Tax Map as **Section: 4.20, Block: 1, Lot: 11**. RE: Section Schedule 170-21.2.

10. OTHER BUSINESS

Approval of July 21, 2015 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

John + Mary Dillon

B Z NUMBER B214/15

DATE: 8/27/15

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

1. John + Mary Dillon
(Name of appellant)

whose post office address is 31 Valley Pond Road, Katonah
(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
(Name of officer)

made on
(Office held)

which ruling was filed on and notice of such ruling was
first received by appellant on; such ruling

applicant is seeking renewal of a
(Give summary of ruling)
Special Exception Use Permit for
an existing accessory apartment
within a single family dwelling
located in an R-80 Residential
Zone

Re: Section Schedule 170-70

3. The property which is the subject of the appeal is located at or known as
31 Valley Pond Road, Katonah
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 27.11 Block: 2 Lot: 7

The interest of the appellant is that of the 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

31 Valley Pond Road, Katonah

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

Renewal of Special Exception Use Permit

and such may be granted pursuant to Section 170-70

(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 23rd DAY July 20 15

Denise E. Schirmer
NOTARY SIGNATURE

John H. Dillon
OWNER SIGNATURE

NOTARY SIGNATURE

APPLICANT SIGNATURE



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

John + Elizabeth Leany

B Z NUMBER BZ 15/15
DATE: 8/27/15

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

1. John Leany (Name of appellant)

whose post office address is 108 Pines Bridge Road, Katonah (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 (Name of officer)

made on (Office held)

which ruling was filed on and notice of such ruling was first received by appellant on; such ruling

(Give summary of ruling)
applicant is seeking renewal of a Special Exception Use Permit for an existing accessory apartment within a single family dwelling dwelling located in an R-80 Residential Zone

3. The property which is the subject of the appeal is located at or known as 108 Pines Bridge Road, Katonah and is shown on the (Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 47.16, Block: 1, Lot: 11

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

108 Pines Bridge Road, Katonah

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

Renewal of Special Exception Use Permit

and such may be granted pursuant to Section 170 - 70

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

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 17th DAY August 20 15
Denise E. Schirmer NOTARY SIGNATURE
[Signature] OWNER SIGNATURE

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

APPLICANT SIGNATURE



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
Rosalie Mignano

B Z NUMBER *BZ16/15*
DATE: *8/27/15*

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

1. *Rosalie Mignano*
(Name of appellant)

whose post office address is *8 Hilldale Avenue, Somers*
(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
(Name of officer)

....., made on
(Office held)

which ruling was filed on, and notice of such ruling was
first received by appellant on

(Give summary of ruling)
*applicant is seeking renewal
of a Special Exception Use Permit
for an existing accessory apartment
within a single family dwelling
located in an R-40 Residential
Zone*

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

Town Tax Map as Section: *6.16* Block: *2* Lot: *32*

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.)

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

8 Hilldale Avenue, Somers

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

Renewal of Special Exception Use Permit

and such may be granted pursuant to.....

Section 170-70

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

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 11 DAY AUGUST 20 15

Signature of Notary Public



NOTARY SIGNATURE

Signature of Owner

OWNER SIGNATURE

APPLICANT SIGNATURE



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
John + Doreen Vermeersch

B Z NUMBER *BZ 17/15*
DATE: *8/27/15*

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

1. *John + Doreen Vermeersch*
(Name of appellant)

whose post office address is *20 South Lane, Katonah*
(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
(Name of officer)

....., made on
(Office held)

which ruling was filed on and notice of such ruling was
first received by appellant on; such ruling

.....
(Give summary of ruling)
*applicant is seeking a Special
Exception Use Permit for an existing
accessory apartment within a single
family dwelling located in a R-80
Residential Zone*

3. The property which is the subject of the appeal is located at or known as
20 South Lane, Katonah and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: *48.17* Block: *1* Lot: *16*

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

20 South Lane, Katonah, NY 10536

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

Renewal of Special Exception Use Permit under new ownership

and such may be granted pursuant to Section 170-70

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

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 25th DAY August 20 15

Denise E. Schirmer
NOTARY SIGNATURE

[Signature]
OWNER SIGNATURE

DENISE SCHIRMER
Notary Public State of New York
No. 01SC6298242
Qualified in Dutchess County
Commission Expires March 10, 20 18
NOTARY SIGNATURE

APPLICANT SIGNATURE



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
Jeffrey + Andrea Weisbrot

B Z NUMBER BZ 18/15
DATE: 8/27/15

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

1. Jeffrey + Andrea Weisbrot
(Name of appellant)
whose post office address is 28 Young Road, Katonah, NY 10536
(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
(Name of officer)
made on
(Office held)

which ruling was filed on and notice of such ruling was
first received by appellant on

such ruling
applicant is seeking renewal of a
(Give summary of filing)
Special Exception Use Permit for
an existing accessory apartment
within a single family dwelling
located in an R-80 Residential
Zone
Re: Section Schedule 170-70

3. The property which is the subject of the appeal is located at or known as 28
Young Road, Katonah, NY 10536 and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 38.06 Block: 1 Lot: 6

The interest of the appellant is that of the 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.)

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 28 Young Road, Katonah, NY 10536

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

Renewal of Special Exception Use Permit

and such may be granted pursuant to Section 17c-7c

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

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 _____ DAY August 20 15

NOTARY SIGNATURE

OWNER SIGNATURE

NOTARY SIGNATURE

APPLICANT SIGNATURE

Christina M. Squillante (Cedrone)
Notary Public
State of New York
No. 01506258575
Commission Expires 03/26/2016

Christina M. Squillante (Cedrone)
Notary Public
State of New York
No. 01506258575
Commission Expires 03/26/2016



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
InSite Towers Development, LLC

B Z NUMBER BZ19/15
DATE: 8/27/15

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

1. **InSite Towers Development, LLC**

(Name of appellant)

whose post office address is **c/o Snyder & Snyder, LLP**

(Post office address)

through **Robert D. Gaudio, Esq.**

(Name of attorney or representative if any)

whose post office address is **94 White Plains Road, Tarrytown, NY 10591**

(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.....

(Name of officer)

....., made on

(Office held)

which ruling was filed on, and notice of such ruling was
first received by appellant on

(Give summary of ruling)

Renewal of Special Use Permit issued by Zoning Board of Appeals

3. The property which is the subject of the appeal is located at or known as **Amato Property**

121 Route 100, Somers, New York

....., and is shown on the

(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 38.17....., Block: 1..... Lot: 5.....

The interest of the appellant is that of **tenant**

(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
121 Route 100, Somers, New York

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

.....Renewal of Special Use Permit.....
.....
.....
.....

and such may be granted pursuant to Section 170-129.6(G)

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

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 20th DAY August 2015

NOTARY SIGNATURE

OWNER SIGNATURE

Douglas W. Warden

NOTARY SIGNATURE

InSite Towers Development, LLC
By: [Signature]

APPLICANT SIGNATURE

DOUGLAS W. WARDEN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02WAB145289
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES 05/01/2018
2018



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
Robert + Sally Krauss

B Z NUMBER: B220/15
DATE: 8/27/15

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

1. Robert Krauss

(Name of appellant)

whose post office address is 233 Route 202, Somers
(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 Efreem Citarella

(Name of officer)

Building Inspector made on July 7, 2015
(Office held)

which ruling was filed on and notice of such ruling was
first received by appellant on such ruling

(Give summary of ruling)

Area Variance for Lot Coverage

3. The property which is the subject of the appeal is located at or known as 233
Route 202, Somers

(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 17-10 Block: 1 Lot: 14

The interest of the appellant is that of Robert Krauss
(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 233

Route 702, Somers

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

Area Variance for lot Coverage

and such may be granted pursuant to Zoning Schedule
Part 1 - Sections 170-40A

(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, 2015

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 7th DAY July 20 15

Denise E. Schirmer
NOTARY SIGNATURE

[Signature]
OWNER SIGNATURE

NOTARY SIGNATURE

APPLICANT SIGNATURE



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
Kenneth + Deborah Williams

B Z NUMBER *BZ 21/15*
DATE: *8/27/15*

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

1. *Kenneth + Deborah Williams*
(Name of appellant)

whose post office address is *54 Old Mill Road, Yorktown Heights*
(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
(Office held)

which ruling was filed on *July 16, 2015* and notice of such ruling was

first received by appellant on

4'6" ~~side~~ side yard variance for
(Give summary of ruling)
an above ground pool (existing)

3. The property which is the subject of the appeal is located at or known as

54 Old Mill Road and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: *16.06* Block: *3* Lot: *67*

The interest of the appellant is that of *Kenneth + Deborah Williams*
(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

54 Old Mill Road, Yorktown Heights

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

4' 6" side yard variance for an existing above ground pool

and such may be granted pursuant to

170-A.1 of the zoning Schedule

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

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 7th DAY August 20 15
Denise E. Schirmer NOTARY SIGNATURE
Ken William OWNER SIGNATURE

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

APPLICANT SIGNATURE



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

UC of Somers, LLC

B Z NUMBER: BZ 22/15
DATE: 8/27/15

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

1. Leo Napior, as attorney for UC of Somers, LLC
(Name of appellant)

whose post office address is 2975 Westchester Ave - Suite 415, Purchase NY 10577
(Post office address)

through Harfenist Kraut & Perlstein LLP
(Name of attorney or representative if any)

whose post office address is 2975 Westchester Ave - Suite 415, Purchase, NY 10577
(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 Efreem Citarella
(Name of officer)

Building Inspector made on July 27, 2015
(Office held)

which ruling was filed on N/A and notice of such ruling was
first received by appellant on N/A such ruling

(Give summary of ruling)

See attached cover letter

3. The property which is the subject of the appeal is located at or known as

80 Route 6, Baldwin Place and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 4.20 Block: 1 Lot: 11

The interest of the appellant is that of Tenant
(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

80 Route 6, Baldwin Place

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

The Applicant seeks an interpretation of § 170-21.2 as further set forth in the attached cover letter

and such may be granted pursuant to § 170-108 of the Zoning Ordinance and § 267-6(1) of Town Law

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

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 12th DAY August 20 15

ellen p. Yamahar NOTARY SIGNATURE

My Commission Expires 5/31/18 ALC # 10437

VA SOMERS, INC. by: Thomas J. Myers, EVP OWNER SIGNATURE Thomas J. Myers

Laurie C. Pelliccio NOTARY SIGNATURE LAURIE C. PELLICCIO

Notary Public, State of New York No. 01PE6144745 Qualified in Westchester County Commission Expires May 1, 2018

[Signature] as attorney APPLICANT SIGNATURE

JONATHAN D. KRAUT

DIRECT TEL.: 914-701-0800
MAIN FAX: 914-701-0808
JKRAUT@HKPLAW.COM

August 10, 2015
VIA HAND

Zoning Board of Appeals
Town of Somers
335 Route 202
Somers, New York 10589

Re: ***80 Route 6, Baldwin Place***
Tax Map Identifier: 1.140-89-6

Dear Chairman Cannistra and Members of the Zoning Board of Appeals:

We respectfully submit to you herewith a request for an interpretation of § 170-21.2 of the Town of Somers Zoning Ordinance (the “Town Code”) on behalf of UC of Somers, LLC, (the “Applicant”) and ask that this matter be placed on your agenda for the next available meeting. For your convenience an Executive Summary is provided below.

Submitted herewith are:

- Exhibit 1: Zoning Board of Appeals Application¹
- Exhibit 2: Copy of Site Plan for the Shopping Center
- Exhibit 3: Photographs of other PhysiciansOne Urgent Care locations
- Exhibit 4: Letter to Village of Mamaroneck Building Inspector concerning MDXpress
- Exhibit 5: Certificate of Occupancy for MDXpress in the Village of Mamaroneck
- Exhibit 6: Site photographs of MDXpress and PM Pediatrics

¹ We have not included a Short Environmental Assessment Form as the instant application is a Type II action exempt from SEQR review pursuant to 6 NYCRR.5(c)(31).

Executive Summary

The Applicant is a prospective tenant in the Somers Commons shopping center (the "Subject Property") and is seeking to open an urgent care facility at the shopping center. The Subject Property is located in the CS: Community Shopping District wherein, pursuant to § 170-21.1 of the Town Code, the permitted principal uses are as follows:

- A. Retail stores.
- B. Personal service establishments.
- C. Restaurants and fast-food establishments, excluding drive-in or curbside service.
- D. Banks.
- E. Residential apartments over stores.
- F. Any other nonresidential use as permitted and regulated in a Residence R40 District.

The Applicant is requesting an interpretation of this section of the Town Code pursuant to §170-108 of the Town Code and § 267-b(1) of the New York State Town Law. Specifically, we ask for an interpretation on whether the Applicant's intended use at the Subject Property is within the meaning of a "Personal Service Establishment." The Building Inspector has opined the intended use is a "Medical, Dental, Veterinary, Professional and Business office" which is a permitted use under the NS: Neighborhood Shopping District, but is not a permitted use within the CS District.

The urgent care business is a growing business throughout the country and provides a convenient alternative to primary care physicians and hospital emergency rooms by offering full-service walk-in treatment for non-life-threatening medical conditions. The convenience of not having to wait to schedule a visit with your primary care physician or burdening an emergency room with a non-life threatening condition is to the benefit of the entire medical community. An urgent care facility differs from a traditional medical office in that it is a walk-in facility without scheduled appointments during the course of the day.

Many of the modern zoning controls distinguish medical office use from retail / personal service uses due to the parking requirements needed for a traditional medical office use where you will find that any given day has a heavy schedule of appointments and patients often spend significant time in the waiting area. In fact, the Town Code requires 1 space per 150 square feet of gross floor area for medical office use compared to 1 space per 200 square feet of gross floor area for retail / personal service uses. An urgent care facility is more akin to personal service establishment in that you have visitors throughout the day with no set schedule or appointments who are typically promptly attended to by the physicians. In addition, while typical medical offices are usually found within professional office buildings, the urgent care business has sprung up in visible and frequented retail locations throughout the New York and Connecticut areas in order to generate awareness of the services and for the convenience of the patrons. For



example, the parent entity of the Applicant, PhysiciansOne Urgent Care, has locations within retail shopping centers in Derby, CT, Newtown, CT, Norwalk, CT, and Groton, CT. Photographs of each of those locations are attached hereto as Exhibit 3 for your reference.

By way of example, several years ago our firm was retained by MDXpress, another urgent care provider, concerning the opening of a potential new location in the Village of Mamaroneck. In that case, the subject property was within the C-1: General Commercial District which permits retail / personal service stores as well as business and professional offices.

The location MDXpress had selected for their facility was within a retail shopping center. However, the Building Inspector at the time initially determined that the change in use from retail to medical would require site plan review and modification by the Planning Board. Due to the existing configuration of the property, other existing uses within the shopping center and varying minimum parking requirements between retail / personal service establishments and medical office use, the site plan modification would have also required an area variance due to a parking deficiency. However, upon a closer review of the business practice and a prior determination that a different urgent care facility, PM Pediatrics, located within a shopping center in the Village of Mamaroneck had been processed as a personal service store, the Building Inspector rescinded his initial determination and agreed that an urgent care facility is properly classified as a personal service store and did not require any site plan modification for a change in use. A copy of our letter to the Village of Mamaroneck Building Inspector is attached hereto as Exhibit 4 and a copy of the Certificate of Occupancy for MDXpress showing no further approvals were necessary is attached hereto as Exhibit 5. In addition, site photographs of the locations of MDXpress and PM Pediatrics in Mamaroneck are attached as Exhibit 6.

While a cursory review of the Town Code may classify an urgent care facility as a medical office use, a more liberal interpretation, like that utilized in the Village of Mamaroneck, (taking into mind the distinct differences in business operation and parking and traffic demands between an urgent care facility and a traditional medical office use), would lead to the conclusion that such a use is a hybrid between a medical office and a personal service establishment.

A general tenet of the laws of the State of New York is that zoning laws are in derogation of common law rights and must be strictly construed against the municipality. *Allen v. Adami*, 39 N.Y.2d 275, 383 N.Y.S.2d 565 (1976). “Any ambiguity in the language used in such regulations must be resolved in favor of the property owner.” *Id.* at 567.

In the instant matter you are faced with a non-traditional hybrid medical / personal service use, but one that is a burgeoning business in our economy and will provide a welcome service to your community. We have provided you with precedent for this exact interpretation from another municipality within Westchester County and real world examples of urgent care facilities in retail shopping centers exactly like the

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Subject Property. We ask that you take all of the foregoing into consideration in rendering your determination in this matter and grant the Applicant's request for an interpretation.

We look forward to addressing any questions or comments at your upcoming meeting. Thank you for your attention to this matter.

Very Truly Yours,

HARFENIST KRAUT & PERLSTEIN LLP

By:


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Facsimile

ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.

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



Meeting Minutes
July 21, 2015

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

Building Inspector Efrem Citarella, the applicants and interested residents were also present.

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

APPLICANT:

SCOTT AND BAMBINA MEYERS – BZ11/15 – 26.08-2-19 (ADJOURNMENT)

A new ownership application for a Special Exception Use Permit for an existing accessory apartment, located in an R-40 Residential Zoning District at **5 St. Leonard Avenue, Granite Springs**. The property is shown on the Town Tax Map as **Section: 26.08, Block: 2, Lot: 19**. RE. Section Schedule 170-70.

Bambina Meyers addressed the Board. Her mother lives in the accessory apartment. Mr. Citarella confirmed that he has inspected the apartment and there have been no changes. It meets all code requirements, and there have been no complaints or violations.

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

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

Mr. Secon readdressed the Board. The owners are working with a nursery to have the trees planted at the soonest possible date, as well as the contractor to complete the fence project. After the landscaping is done, it will be maintained. If one of the plantings were to die, it would be replaced. A 4' wide fieldstone walkway from the house to the tennis courts is being built.

Mr. Guyot is happy that the neighbors were able to work together to resolve this issue.

Mr. Santaroni made a motion for a Type II Action. Mr. Guyot 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. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Harden made a motion to grant the 4' Variance on the height of a fence for a tennis court, with the understanding that as long as the fence is in place, the accompanying shrubbery will be maintained, including replacement. 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. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Variance was granted.

OTHER BUSINESS:

A motion was made by the Chairman to approve the minutes of the June 16, 2015 monthly meeting. All were in favor.

The next monthly meeting of the Zoning Board of Appeals is scheduled to be held on September 15, 2015. There being no further business, the meeting was adjourned at 7:55 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board

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