MINUTES
BOARD OF APPEALS
VILLAGE OF SEA CLIFF
VILLAGE HALL
300 SEA CLIFF AVENUE
SEA CLIFF, NEW YORK 11579

November 15, 2011

Present:	Chair	Kevin McGilloway
	Members	Dina Epstein
		Noel Griffin
		Ted Kopczynski
	Alternate Member	Matthew Doherty
	Superintendent of Buildings	Andrew Lawrence
	Village Attorney	Brian Stolar

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The meeting was called to order at 8:05 pm.

The Board opened the continued public hearing on the application of Michael Napoli, as tenant, and Samiano Realty Corp., as owner, 243 Glen Cove Avenue, Sea Cliff to operate a restaurant at the premises, which use requires (a) a special permit pursuant to Village Code §§138-902 and 903 to permit a restaurant use and (b) a variance of Village Code §§138-1001 and 1002 to not provide the required number of off-street parking spaces (30 required). Premises are designated as Section 21, Block 192, Lot 180 on the Nassau County Land and Tax Map. The applicants indicated that the interior cooking facilities, with the exception of a new brick oven, would remain as it currently exists. The Board noted that the application is an Unlisted Action under SEQRA, and that it must be referred to the Nassau County Planning Commission. The Board closed the hearing, and reserved decision.

The Board opened the continued public hearing on the application of Steven Grapstein, 290 8th Avenue, Sea Cliff to remove an existing rear yard pool and install a new pool, deck and terrace, which requires variances of the following Village Code provisions: (a) 138-404 to maintain a lot size of 7,100 square feet where the minimum lot size required is 7,500 square feet; (b) 138-405 to increase lot coverage from 3,262.67 square feet to 3,990.97 square feet, where the maximum is 2,130 square feet; (c) 138-408 to maintain a setback of 8.5 feet, where the minimum required setback is 20 feet; and (d) 138-416(D) to install a pool deck and terrace which is 833 square feet, where the maximum permitted floor area for the pool deck and terrace is 500 square feet. Premises are designated as Section 21, Block 123, Lot 1557 on the Nassau County Land and Tax Map. The Board closed the hearing, and requested that the applicant submit the revised plans referred to during the hearing no later than 10 days prior to the next Board meeting date.

The Board opened the continued public hearing on the application of 76 Summit Avenue Corporation appealing a Notice of Disapproval issued by the Superintendent of Buildings dated August 8, 2011 in connection with premises located at 304-310 Sea Cliff Avenue (Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map) and requesting a revised Notice of Disapproval to reflect additional Village Code sections as identified in the appeal. Appellant is the owner of property adjoining the premises that are the subject of the Notice of Disapproval.

The Board opened the continued public hearing on the application of Paradise X Corp. and Jerry Caldari, 304-310 Sea Cliff Avenue, Sea Cliff to use the first floor of the premises for a restaurant. Applicant appeals the determination of the Superintendent of Buildings dated October 5, 2011, and, in the alternative seeks (i) a special use permit pursuant to Village Code §§138-801 and 802, and (ii) variances of the following Village Code provisions: (a)138-808 to maintain structures (building and fence) with less than the required setback of 3 feet; (b) 138-813 to maintain a structure with a height greater than permitted; (c) 138-815 to permit an accessory structure in a front yard; (d) 138-1001 and 138-1002 to not provide the required off street parking of 15 stalls, where no off-street parking is available and a variance was obtained previously for 9 stalls; (e) 138-1004 to not provide an off-street loading space; and (f) 138-1102 to increase a non-conformity on an already non-conforming parcel by intensifying parking requirements. Premises are designated as Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map.

The Board closed the public hearings on the applications of 76 Summit Avenue Corporation and Paradise X, and reserved decision on each matter.

The Board opened the public hearing on the application of Rollin C. and Nina Becker, 172 Maple Avenue, Sea Cliff, New York to construct an exterior basement stairway in a side yard, which construction requires variances of the following Village Code sections: (a) 138-404 to maintain a lot size of 4,800 square feet, where a minimum lot size of 7, 500 feet is required; (b) 138-406 to maintain a front property line of 40 feet, where a minimum of 75 feet is required;

(c) 138-407 to maintain a lot width of 40 feet, where a minimum of 67.5 feet is required; (d) 138-409 to maintain a lot width of 40 feet at the minimum setback, where a minimum of 75 feet is required; (e) 138-411 to permit a 4 foot side yard setback, where a minimum of 10 feet is required; and (f) 138-416 to maintain a garage in a front yard and construct an exterior staircase to a basement 4 feet from the side property line, where a minimum of 10 feet is required. Premises are designated as Section 21, Block 138, Lot 1156 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board opened the public hearing on the application of George Schidlovsky, 242 Sea Cliff Avenue, Sea Cliff to open a restaurant which requires (a) a special permit pursuant to Village Code §§138-802 and 803, and (b) variances of the following sections of the Village Code (i) 138-805 to maintain a lot area of 2,920 square feet, where a minimum of 4,000 square feet is required; (ii) 138-808 to maintain no front yard setback, where a minimum of 3 feet is required; (iii) 138-811 to maintain an existing side yard setback of 2.85 feet, where the minimum required setback is 10 feet; (iv) 138-1002 to permit maintenance of no off-street parking spaces, where 18 are required; (v) 138-1004 to permit maintenance of no loading spaces. Premises are designated as Section 21, Block 131, Lot 6 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board discussed the Napoli/Samiano Realty Corp. application. After such discussion, on motion duly made by Ms. Epstein, seconded by Mr.

Kopczynski, and adopted unanimously, the Board granted the application in accordance with the decision annexed hereto.

The Board discussed the Paradise X application. After such discussion, on motion duly made by Ms. Epstein, seconded by the Chair, and adopted unanimously, the Board granted the application in part and denied the application in part, in accordance with the decision annexed hereto and the decision in the 76 Summit Avenue Corporation decision.

The Board discussed the 76 Summit Avenue Corporation. After such discussion, on motion duly made by the Chair, seconded by Ms. Epstein, and adopted unanimously, the Board rendered the decision annexed hereto.

The Board discussed the environmental impacts of the Becker application. After such discussion, on motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted unanimously, the Board determined that the action was a Type II matter under SEQRA, and required no further environmental review. After further discussion of the Becker application, on motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted unanimously, the Board granted the application in accordance with the decision annexed hereto.

The Board discussed the environmental significance of the Schidlovsky application. After such discussion, on motion duly made by Ms. Epstein, seconded by Mr. Griffin, and adopted unanimously, the Board adopted the following resolution:

RESOLVED, that the Board hereby finds and concludes:

a. the proposed action is an Unlisted action under the State Environmental Quality Review Act and its regulations;

b. the Board is the lead agency with respect to environmental review of this proposed action;

c. the Board has considered the following factors in respect to its review of the environmental impacts of the proposed action:

   i. whether the proposed action would result in any substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels, or any substantial increase in solid waste production, or create a substantial increase in the potential for erosion, flooding, leaching or drainage problems;

   ii. whether the proposed action would result in the removal or destruction of large quantities of vegetation or fauna, substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on a significant habitat area, substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species, or other significant adverse impacts to natural resources;

   iii. whether the proposed action would impair the environmental characteristics of any Critical Environmental Area;

   iv. whether the proposed action would conflict with the community's current plans or goals as officially approved or adopted;

   v. whether the proposed action would impair the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character;

   vi. whether the proposed action would resulting in a major change in the use of either the quantity or type of energy;

   vii. whether the proposed action would create a hazard to human health;

   viii. whether the proposed action would create a substantial change in the use, or intensity of use, of land, including agricultural, open space or recreational resources, or its capacity to support existing uses;

   ix. whether the proposed action would encourage or attract large numbers of persons to any place for more than a few days, compared to the number who would come to such place without such action;

   x. whether the proposed action would create changes in two or more elements of the environment, no one of which would have a significant impact on the environment, but

when considered together would result in a substantial adverse impact on the environment;

xi. whether the proposed action would create substantial adverse impacts when considered cumulatively with any other actions, proposed or in process;

xii. whether the proposed action would result in substantial adverse impact with respect to any relevant environmental consideration, including noise, aesthetics, traffic, air quality, water quality or adequacy of water supply, drainage, soil conditions, or quality of life in the community in general and the immediate neighborhood in particular;

d. the proposed action would not have a significant adverse environmental impact; and

e. no further environmental review is required with respect to the proposed action.

There being no further business, the meeting was adjourned at 10:10 pm.

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NAPOLI/SAMIANO REALTY DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 15, 2011, on motion of Ms. Epstein, seconded by Mr. Kopczynski, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing, and other matters properly within the consideration of this Board and having discussed the subject application, rendered the following determination:

1. The applicant Michael Napoli, as tenant, and Samiano Realty Corp., as owner, 243 Glen Cove Avenue, Sea Cliff, New York, applied to operate a restaurant at the premises, which use requires (a) a special permit pursuant to Village Code §§138-902 and 903 to permit a restaurant and (b) a variance of Village Code §138-1002 to not provide the required number of off-street parking spaces (30 required). Premises are designated as Section 21, Block 192, Lot 180 on the Nassau County Land and Tax Map (the "Subject Premises". The Subject Premises are located in the Village's Business B Zoning District. The Subject Premises is owned by Samiano Realty Corp.

2. The Subject Premises is located on the northwest corner of Glen Cove Avenue and is surrounded by commercial uses along Glen Cove Avenue to the south, north and east. There are residential properties to the west of the Subject Premises. The building has been used for commercial purposes, including most recently for a sit down food establishment.

3. The applicant has applied to the Board to permit alterations to the premises and operate the premises as a restaurant. Such proposed use requires a special use permit pursuant to Village Code §§138-902 and 903.

4. The applicant proposes to use the first floor of the Subject Premises for a restaurant with seating for 43 patrons. The second floor is proposed to be used only for storage and food preparation.

5. The applicant proposes to have valet parking at the site after 5pm. The proposed restaurant hours are 11:30am-11:00pm Wednesday through Sunday. The restaurant will be closed on Mondays. There is no proposed outdoor seating.

6. The Village building department indicated that the number of on-site parking stalls required would be 30 spaces. However, in reviewing that determination and in considering the parking requirements in relation to the square footage and use of the

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building, it became apparent to the Board that the applicant requires only 21 on-site parking stalls. This determination is based both on the square footage of the building as well as the number of patrons, employees and residential units on site. Accordingly, based pm the 9 on-site spaces (as discussed below) applicant requires a variance for 12 additional spaces.

7. The site plan submitted by the applicant depicted 9 on-site parking stalls and 3 on-street parking spaces immediately in front of the Subject Premises. The applicant confirmed that the three (3) on-street parking spaces were available to the public and not dedicated to the Subject Premises. Accordingly, the Board deems there to be nine (9) spaces available on site. Thus, the Board finds that the three (3) on-street parking spaces, while most likely to be available for the intended use of the Subject Premises, are not eligible under the provisions of Village Code §138-1008.

8. The applicant provided a copy of a license to utilize parking stalls at 259 Glen Cove Avenue after 5pm and all day on weekends and holidays. Thus, the parking available during those times will be an additional 12 stalls. As the applicant proposes to open the restaurant beginning at 11:30am, there will be parts of the day where the parking available for the site, without using off-site parking, will be for 9 cars.

9. The applicant represents that the customer activity of the Subject Premises in the afternoon will be minimal in comparison to the activity in the evening. Based on the location of the Subject Premises, applicant submits that the afternoon use will primarily involve pedestrian traffic and there will be minimal use of the parking area.

10. The Board hereby grants the parking variance as the Board notes that the premises have been used as a sit down food establishment previously, it is located in an area of the Village that is entirely appropriate for this type of use as it is surrounded primarily by commercial facilities and is located along a primary road, Glen Cove Avenue. The Board further finds that the anticipated reduced vehicular use at the Subject Premises during the afternoon hours is reasonable and likely in view of the location of the Subject Premises.

11. The authority of this Board to grant the variance for parking is limited by law and the provisions of the Zoning Code. The applicant is unable to satisfy the provisions of section 138-1008(A)(1) or (2) prior to 5pm Tuesday through Friday. However,

as the applicant's primary vehicular use occurs after 5pm, and the applicant was able to demonstrate that he can use a premises within 500 feet of the Subject Premises for the parking of 12 vehicles beginning at 5pm, the Board finds that the applicant has satisfied the provisions of Village Code §138-1008(A)(2). Accordingly, the applicant is not required to pay the fee otherwise imposed under section 138-1008(A)(3).

12. In reviewing the parking variance in relation to the Village Law §7-712-b, the Board finds that the benefit to the applicant clearly outweighs any detriment to the neighborhood. In this regard, it is important to note that the neighborhood considered by the Board is the neighborhood within 200 feet of the Subject Premises, which includes a number of commercial establishments. There will be no undesirable change in the neighborhood as the use and the provision of parking on-site and off-site on Glen Cove Avenue, both during the pre-5pm use of the premises and post-5pm and weekend use is consistent with the neighborhood. As the actual anticipated parking prior to 5pm is expected to be minimal and the post-5pm vehicular use is accounted for by use of a nearby property and valet services, the variance is neither substantial nor will it have an adverse impact on the neighborhood. The only other feasible alternative would be to provide for a use that has a lower parking demand. However, in light of the fact that some of the spaces are accommodated as tandem parking and there are only 9 spaces on-site utilizing such configuration, the Board does not definitively determine whether another use would result in a compliant on-site parking arrangement. The Board finds that the difficulty is self-created, but that determination alone is insufficient to warrant a denial of the parking variance.

13. To balance the potential impact the proposed use may have on nearby properties in the area with the obligation of this Board to issue a special permit where adequate, reasonable, and appropriate safeguards and restrictions can be imposed to minimize the adverse effects, this Board will grant the special permit requested subject to the following conditions:

    a. The business shall be conducted as a restaurant with customer seating only on the first floor;
    b. The second floor shall be used only for food preparation and storage, and in no event for customer seating;
    c. There shall be no outdoor customer seating;
    d. No music or amplified sound shall be audible outside the building and the applicant shall be required to apply to this Board for any type of intensification of the proposed use,

including the proposed use of live entertainment, dancing or similar forms of occupancy, including any occupancy involving amplified music;

e. The maximum number of seats permitted in the Subject Premises, whether by seats, stools or in any other manner, shall be 43;
f. The hours of operation shall be from 11:30am to 11pm, Tuesday through Sunday;
g. The premises shall not be used for any use which will intensify or increase the usage or the parking requirements without further application to this Board;
h. The proposed use shall be conducted in such a manner as to minimize, as much as possible, any adverse effect on the nearby residential properties resulting from excessive noise or any other type of nuisance;
i. The parking of vehicles by patrons of the premises, employees, or suppliers, and the loading or unloading of equipment and supplies, shall not interfere with the normal flow of traffic on Lafayette Avenue or Glen Cove Avenue;
j. When making deliveries, the suppliers shall not block any portion of the Lafayette Avenue or Glen Cove Avenue;
k. All exhaust fans shall be located as provided in the plans submitted with the application and shall be directed away from any residential properties and shall be installed with any barriers which are necessary to minimize, to the extent possible, any adverse impacts resulting from noise or fumes;
l. The garbage disposal receptacle shall be fully enclosed at all times (excluding when trash is actually being placed in or removed from the receptacle) in a manner that prevents rodents or other animals from accessing the receptacle and prevents odors from traveling to neighboring properties. The precise location shall be subject to the approval of the Building Department and shall be screened from adjoining properties. In the event that the receptacle is determined by the building department to create a nuisance or potential nuisance, the dumpster shall be moved to a location determined by the Building Department. The dumpster shall be removed or emptied only during the hours permitted under the Village Code.
m. The receptacle shall be cleaned and sanitized at least once per month and shall be emptied at least 2 times per week. No trash or debris shall be permitted to accumulate on site outside of these containers.
n. No deliveries shall be made by tractor trailer sized vehicles. No trucks in excess of 24 feet in length shall make any deliveries to or pick-ups from, the property. No deliveries or

shipments shall be made to or from the property before 7:00 am or after 6:00 pm on any day;

o. Prior to issuance of a certificate of occupancy, the applicant shall obtain full approval, if necessary, from the Nassau County Department of Health and all other agencies for the cooking of food, the use of the cooking and cleaning equipment proposed to be used on-site (including the pizza oven) and any required modifications to the septic or water systems;

p. Any fire sprinkler system and use of the premises for cooking purposes shall conform to applicable NFPA requirements, as determined by the Building Superintendent or any municipal agency with jurisdiction;

q. Cooking equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, parking area, alleys, sidewalks, neighboring properties or storm sewers;

r. Because of the proximity of residential properties on Lafayette Avenue to the restaurant use, and the potential for nuisance resulting from permitting dining late at night, the following conditions shall apply:

    i. No food service or use shall occur outside;
    ii. Any outside lighting shall be designed and installed so as to minimize the impact on adjoining properties by appropriate shielding, direction and reduction of glare and reflection. Final approval of any lighting shall be determined by the Building Department. Any new exterior lighting or building lighting shall be mounted at a height and in a location such that no light spillage of 0.1 foot-candle or higher shall extend beyond the property lines;
    iii. No background or ambient (or other type of) music shall be permitted outside, and the doors and/or windows shall not be left open in a manner which would circumvent this restriction;
    iv. Loitering outside of the restaurant is prohibited; and
    v. The special permit is contingent upon the authorization to use the nearby premises for parking purposes on weekends and after 5pm on weekdays. If the license to so use that parking area is in any way no longer in effect, applicant shall make immediate arrangements for the same number of parking stalls no longer exclusive to the restaurant use.

14. Because of the potential of abuse which the proposed special permit use presents if not supervised correctly and the resultant adverse impacts on the surrounding property owners and the Village and its residents that could result, this Board, mindful of its responsibilities to protect nearby residents from over commercialization of the area and other potential adverse impacts and the limited ability of the applicant and/or operator to completely control the adverse impact which the business may generate, will grant the special permit to operate as proposed for a period of two (2) years commencing on the date that this decision is filed with the Village Clerk. The special permit shall be limited to the operation of a restaurant by the applicant, and any change in ownership shall require a new application to this Board for a special permit. To extend the special permit, prior to the expiration of the two (2) year period, but in no event sooner than four months prior to said date, the applicant, if it desires to continue the use of the premises in the manner proposed by the application, shall reapply to the Board having jurisdiction for a renewal of the special permit. The application shall be made in a timely manner so as to permit this Board to render its decision prior to the expiration of the aforesaid two (2) year time period. The provisions of this paragraph shall constitute a condition of this decision.

15. Except as otherwise provided herein, the provisions of Village Code §§138-1304 and 1403 apply.

If one or more of the aforesaid conditions of this decision are violated, the Village or the Board shall have the right to suspend or revoke the special permit in accordance with the procedures set forth in the Village Code.

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BUILDING DEPARTMENT

PARADISE X DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 15, 2011, on motion of Ms. Epstein, seconded by the Chair, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing, and other matters properly within the consideration of this Board and having discussed the subject application, rendered the following determination:

1. The applicants Paradise X Corp. and Jerry Caldari, 304-310 Sea Cliff Avenue, Sea Cliff appeals the determination of the Superintendent of Buildings dated October 5, 2011, and, in the alternative seek (i) a special use permit pursuant to Village Code §§138-801 and 802, and (ii) variances of the following Village Code provisions: (a)138-808 to maintain structures (building and fence) with less than the required setback of 3 feet; (b) 138-813 to maintain a structure with a height greater than permitted; (c) 138-815 to permit an accessory structure in a front yard; (d) 138-1001 and 138-1002 to not provide the required off street parking of 15 stalls, where no off-street parking is available and a variance was obtained previously for 9 stalls; (e) 138-1004 to not provide an off-street loading space; and (f) 138-1102 to increase a non-conformity on an already non-conforming parcel by intensifying parking requirements. Premises are designated as Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map. (the "Subject Premises").

2. The Subject Premises are located in a Business A Zoning District, and are improved presently with various uses, including retail stores, apartment units and a vacant unit previously used for restaurant purposes, most recently as Olives By The Sea and before that as Once Upon a Moose. The restaurant portion of the Subject Premises had been used as a restaurant for many years. Olives By The Sea occupied the Subject Premises pursuant to an approval granted by this Board in July 2010. That approval included a special permit grant and a parking variance for 9 parking spaces.

3. The Board held public hearings on this application, made a determination of no environmental significance, and timely referred the application to the Nassau County Planning Commission as required by law.

4. Originally, the notice of disapproval identified the need for a special permit for the restaurant and a variance to permit a walk-in refrigerator in a front yard. Thereafter, upon an appeal of that

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determination being filed by a neighboring property owner, the Building Superintendent issued a new notice of disapproval dated October 5, 2011. It is that new notice of disapproval that is the subject of this application (as well as the subject of the appeal of the adjoining property owner).

5. At the hearings, the applicant testified to the following:

    a. The proposed restaurant is intended to be used as a sit down restaurant. There will be 20 seats at tables and 7 seats at the sushi bar. An additional 10 seats will be available seasonally utilizing outdoor space wholly on the Subject Premises.
    b. The proposed restaurant will be open from 11:30am to 12am weekdays, and 8am to 12 pm on Saturdays and Sundays. The seasonal outdoor seating will be used only until 10pm.
    c. There will be no mechanical ventilation in the outdoor seating area.
    d. There will be no live music on site, only prerecorded background type music.
    e. The applicant will be applying for only a beer and wine license, and represented that it had no intent to seek a license to operate a full bar.
    f. Access to the restaurant is by way of two openings, each on Central Avenue. Thus, while the property address is Sea Cliff Avenue, the front of the restaurant, for access purposes, is Central Avenue. Across from the restaurant entrance is the Village Green. The property is located in the midst of the business/retail area of the Village. There are residences on Summit Avenue, north of the Subject Premises, which are partially buffered from the Subject Premises as they are effectively behind the proposed use. There also are apartments above the restaurant. The outdoor seating will be located in areas that are under an awning and are to be located in a manner to avoid interference with access to the Subject Premises.
    g. The outdoor seating is proposed to be utilized seasonally, and is located wholly within the property boundaries and not extending into the right-of-way of Central Avenue or Sea Cliff Avenue.
    h. The food proposed for the restaurant is food typical of a sushi restaurant.
    i. The proposed cooking equipment will be utilized in such a manner that it will not impact either the residents in the apartments above the restaurant or the nearby residents.

j. The cooking exhaust system and all cooking and fire sprinkler systems shall fully comply with applicable laws and municipal agency and department regulations.
k. No food or drink service area will be provided outdoors.

6. The plans submitted by the applicant depict seating for 20 at tables, 7 at the sushi bar and 10 outdoor seasonal seats. Based on this proposed seating, it was determined by the Superintendent of Buildings that 15 on-site parking spaces are required. The applicant has no space on the Subject Premises to provide any parking. A prior application granted in July 2010 for the previous restaurant use obtained a variance for 9 stalls. Thus, the increase, and the amounts that would be due under the parking relief provisions of the Village Code, would be for an additional 6 spaces.

7. In addition to the variance for parking spaces, the proposed use requires a special permit. As a matter of law, special permits allow specific uses in a given district, provided that the applicant can demonstrate that it meets or complies with certain standards set forth in the zoning regulations related to such use and that the proposed use will not be a detriment to the neighborhood. As set forth below, the Board grants the parking variance and the special permit subject to certain conditions.

8. In connection with the granting of a special permit, the Board has the power to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and which are not inconsistent with the provisions of the zoning regulations.

9. Also, the applicant requests a variance to permit a walk-in refrigerator in a front yard. As set forth below, the Board grants this variance subject to conditions. The applicant appeals the items that were added to the October 5, 2011 notice of disapproval and in the alternate requests variances of those additional items. The Board concurs with the Superintendent's determination in the October 5, 2011 notice of disapproval and denies applicant's appeal.

10. With regard to the parking variance, Village Code §138-1008 provides that where the required off-street parking spaces cannot be located on the same lot with the use served, a variance may be granted by the Board to the extent that the applicant can provide the required number of spaces within 500 feet of the premises or the applicant can lease the required number of spaces from other

property owners within 500 feet of the lot (as long as those spaces are available to the applicant during the times of operation of the use). A variance still may be granted even if the applicant is unable to demonstrate either of the above so long as the applicant agrees to pay to the Village an amount of money equal to the cost of construction of the number of spaces the applicant is required to provide. This cost is to be computed in accordance with the amounts most recently set by resolution of the Board of Trustees.

11. As there are no spaces available on-site and the applicant has not been able to demonstrate that other spaces may be available on other sites within 500 feet, to obtain a parking variance for 15 spaces the applicant would be required to pay to the Village the required parking fee (for the 6 additional spaces beyond the 9 spaces permitted in the aforesaid July 2010 determination).

12. The Board hereby grants the parking variance as the Board notes that the premises have been used as a restaurant for 30 or so years without any known complaints or incidents related to parking, the premises are located in the main downtown area of the Village's Business A zoning district, the premises would not be usable for any purpose without substantial renovations, many people will not travel to the establishment by automobile, and there are parking spaces otherwise available in the immediate vicinity of the premises. The Board utilized these factors and considerations in determining that the benefit to the applicant if the parking variances are granted outweighed any perceived detriment to the neighborhood. As the premises are located in the center of the downtown business district along Sea Cliff Avenue and there are a number of available parking spaces in the immediate vicinity, there will not be an undesirable change in the neighborhood. Although a neighbor expressed a concern that the proposed use would create a parking problem, especially for overnight parking in the immediate vicinity, that speculative concern was not further pursued by the neighbor with any supporting evidence. The Board is familiar with the immediate neighborhood and recognizes that parking is available, especially in the evenings. The Board also recognizes that Sea Cliff Avenue is readily accessible for patrons walking to the premises, and as with the prior use as a restaurant, the Board finds that many patrons will walk to the premises. As there is expected to be sufficient parking to accommodate the 6 potential extra vehicles (and the prior use required the same number of vehicles, if the revised notice of disapproval was considered in the prior approval), the proposed parking variance is neither substantial nor will it have an adverse impact on the physical or environmental conditions in the neighborhood. While the Board does find that the

difficulty is self-created, this factor alone is insufficient to reach a different result when comparing the benefit sought against the detriment to the neighborhood.

13. The authority of this Board to grant the variance for parking is limited by law and the provisions of the Zoning Code. Since the applicant is unable to satisfy the provisions of section 138-1008(A)(1) or (2), the authority of this Board to grant a variance is conditioned upon the applicant complying with the provisions of section 138-1008(A)(3). Accordingly, subject to compliance with section 138-1008(A)(3), including payment of the required fee for 6 additional spaces, and the conditions set forth below, the Board grants a variance of Village Code §§138-1001 and 1002. The sums due are to be paid no later than 30 days after this decision is filed with the Village Clerk and no later than issuance of a certificate of occupancy by the building department. To fully satisfy this requirement, the applicant must file a letter with the Village Clerk acknowledging its consent to this condition and agreeing to pay the required sum for 6 parking spaces.

14. The Board also grants the variance to permit the restaurant to operate without a loading space (section 138-1004). No loading space is available on the site, and subject to the conditions below, the Board finds that the benefit to the applicant to use the premises for restaurant purposes outweighs any detriment to the neighborhood. The Board has considered the five underlying factors, including substantiality, feasibility and overall impact of this variance on the neighborhood, and finds that as long as deliveries are accomplished during the timeframes imposed and in a manner that does not interfere with traffic on the adjoining roadways, the lack of an on-site loading space has no detriment on the neighborhood.

15. As to height of the building (138-813), no change is being proposed. As the use proposed is in the first story and in no way relates to the height of the building, the Board grants the variance from the height provisions in the Village Code. Likewise, the location of the building and the fence within 3 feet of the property line are existing conditions and the restaurant use, with an entrance on Central Avenue, has no impact on those existing conditions. In fact, the building has been located at the site for over 100 years. The Board finds that requiring the applicant to remove these encroachments which have existed for over 100 years (building) and have no impact on the neighborhood (fence and building) would result in a substantial detriment to the neighborhood. Thus, retaining the fence and the building in their present locations would

be a benefit to the community and would outweigh any detriment to the immediate neighborhood. Accordingly, the Board grants the variance of Village Code §138-808.

16. As to the variance to permit an accessory structure in the front yard (138-815(A)), the Board grants the variance requested. This structure will be fully enclosed and is proposed to be located in the only available location on the premises. There is no evidence presented in the record that would demonstrate that the proposed structure will create a detriment to nearby properties or will otherwise result in an undesirable change in the neighborhood. Absent such demonstration, and based on the Board's own review of the neighborhood, the Board finds that there will be no detriment to the neighborhood and that it does not create an undesirable change in the neighborhood. Due to the configuration of the property and the existing building which is over 100 years old, it would not be feasible to locate the structure in any other location on the property. The request is not substantial, and involves only a refrigeration unit in an area that does not impact the neighborhood. For the same reasons, no adverse impact on the environmental or physical conditions exists, and there was no testimony that would contradict such finding. While the Board finds that the difficulty is self-created, the Board does not find that such determination would be sufficient to override the benefit to the applicant where the remaining statutory factors all support a finding that the benefit outweighs any detriment. Likewise, for the same reasons, (while not requiring variances) the Board would have found that the existing shed and air conditioning unit would have warranted the granting of variances had variances been necessary for such features.

17. As to the alteration of a non-conforming building, the Board grants the variance. Technically, the only alteration that would apply is the provision of a certain number of seats that exceeds the prior approval and use, and thus requires a variance related to parking. There are no proposed building modifications that would be deemed an alteration requiring a variance under section 138-1102. Thus, for the reasons identified in the parking analysis above, the Board grants the variance of section 138-1102.

18. The applicant's request for a special permit to operate a restaurant at premises where a restaurant has been in operation for many years is also granted on the conditions set forth below. To balance the potential adverse impacts the proposed use may have on nearby properties and traffic in the area with the obligation of this Board to issue a special permit where adequate, reasonable, and

appropriate conditions and restrictions can be imposed to minimize the adverse effects, the special permit is granted to operate the portion of the Subject Premises depicted in the plans submitted with the application as a restaurant subject to the following conditions:

a. The special permit is granted to the applicant only or to any business or entity in which the applicant has a controlling interest;
b. The parking of vehicles by patrons of the premises, employees, or suppliers, and the loading or unloading of equipment and supplies, shall not interfere with the normal flow of traffic on the adjoining streets;
c. There shall be no outside storage of supplies, equipment, materials or any other items used in connection with the restaurant, except in the walk-in refrigerator;
d. Exterior lighting of the premises shall be designed so as to minimize any impact on the adjoining properties through shielding, directional lighting and reduction of glare and reflection. Any new exterior lighting or building lighting shall be mounted at a height and in a location such that no light spillage of 0.1 foot-candle or higher shall extend beyond the property lines. There shall be no additional lighting for outdoor usage, except for table candlelight;
e. The applicant shall comply with the conditions imposed in connection with the granting of the parking variance application, including submitting the required letter and paying the fee required for the additional 6 parking spaces;
f. Seating shall be limited to the proposed seating, including 20 seats at inside tables, 7 seats at the sushi bar, and no more than 10 outdoor seats to be used for seasonal dining. If additional seating is necessary, applicant must reapply to the Board for appropriate relief as then identified by the Superintendent of Buildings;
g. The cooking equipment shall be limited to the equipment proposed by the applicant;
h. No deliveries shall be made by tractor trailer sized vehicles. No trucks in excess of 24 feet in length shall make any deliveries to or pick-ups from, the property. No deliveries or shipments shall be made to or from the property before 7:00 am or after 6:00 pm on any day;
i. Prior to issuance of a certificate of occupancy, the applicant shall obtain full approval, if necessary, from the Nassau County Department of Health and all other agencies for the cooking of food, the use of the cooking and cleaning

equipment proposed to be used on-site and any required modifications to the septic or water systems;

j. Any fire sprinkler system and use of the premises for cooking purposes shall conform to applicable NFPA requirements, as determined by the Building Superintendent or any municipal agency with jurisdiction;

k. Cooking equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, parking area, alleys, sidewalks, neighboring properties or storm sewers;

l. No noise, fumes, or similar sources of nuisance are to emanate in a manner as to be unreasonably annoying to surrounding property owners;

m. Except as provided elsewhere in this decision, there shall not be any outside seating on the Subject Premises without additional application to this Board;

n. The hours of operation for the interior of the restaurant shall be weekdays from 11:30am to 12am and Saturdays and Sundays from 8am to 12am. Any extension of hours beyond the hours proposed by the applicants, and conditioned herein, requires a reapplication to this Board;

o. Interior music shall be limited to prerecorded background type music and shall not include any live music. No music shall be permitted outside, and the doors and/or windows shall not be left open in a manner that would circumvent this restriction;

p. Outdoor seating and use of the outside area shall be limited to no later than 10:00 pm. All tables and chairs shall be removed from the outside area by 10:15pm and shall not be placed outside prior to opening of the restaurant on the next business day;

q. Applicants may seek a beer and wine license, but shall not seek any type of alcohol license that is deemed to permit additional drinks at the site (ie., a full bar license) without making an application to the Board for a modification and/or intensification of the restaurant use proposed at the Subject Premises.

r. No heating or cooking apparatus related to food preparation and no bar shall be located outside, including any bar for the service or storage of alcoholic or non-alcoholic beverages.

s. All plantings and planted areas shall be maintained in good and neat condition to accomplish the purposes intended, and shall be replaced as necessary to maintain the screening and planted areas in a manner that serves as a buffer area for the residential properties on Summit Avenue;

t. The Subject Premises shall not be used for any use that intensifies or increases the usage or the parking requirements or the potential impacts of the premises without further application to the Board;
u. Loitering outside of the restaurant is prohibited;
v. No mechanical means of ventilation, heating or cooling shall be utilized for the outdoor seating area;
w. No trash or debris from the restaurant shall be stored outside unless placed in fully enclosed and sealed garbage disposal receptacles. Such receptacles shall be sanitized in a manner so as not to permit odors to emanate outside such receptacles. No such receptacles shall be visible from Summit, Central or Sea Cliff Avenues;
x. No employees or customers shall be permitted to smoke in the outside seating area of the premises, and as otherwise permitted under any applicable law related to smoking;
y. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all special use permit conditions and requirements contained herein; and
z. Because of the potential of abuse which the proposed special permit use presents if not supervised correctly and the resultant adverse impacts on the surrounding property owners and the Village and its residents that could result, this Board, mindful of its responsibilities to protect nearby residents from over commercialization of the area and other potential adverse impacts and the limited ability of the applicant and/or operator to completely control the adverse impact which the business may generate, will grant the special permit to operate as proposed for a period of two (2) years commencing on the date that this decision is filed with the Village Clerk. The special permit shall be limited to the operation of a restaurant by the applicant, and any change in ownership shall require a new application to this Board for a special permit. To extend the special permit, prior to the expiration of the two (2) year period, but in no event sooner than four months prior to said date, the applicant, if it desires to continue the use of the premises in the manner proposed by the application, shall reapply to the Board having jurisdiction for a renewal of the special permit. The application shall be made in a timely manner so as to permit this Board to render its decision prior to the expiration of the aforesaid two (2) year time period. The provisions of this paragraph shall constitute a condition of this decision.

19. If one or more of the aforesaid conditions of this decision are violated, the Village shall have the right to suspend or revoke the special permit in accordance with the procedures set forth in the Village Code.

20. Except as otherwise provided herein, the provisions of Village Code §§138-1304 and 1403 apply.

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76 SUMMIT AVENUE CORPORATION DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 15, 2011, on motion of the Chair, seconded by Ms. Epstein, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing, and other matters properly within the consideration of this Board and having discussed the subject application, rendered the following determination:

1. 76 Summit Avenue Corporation appealed a Notice of Disapproval issued by the Superintendent dated August 8, 2011 in connection with premises located at 304-310 Sea Cliff Avenue (Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map) and requested a revised Notice of Disapproval to reflect additional Village Code sections as identified in the appeal. Appellant is the owner of premises adjoining the premises that are the subject of the August 8, 2011 Notice of Disapproval.

2. The appeal related to an application by Paradise X Corp. and Jerry Caldari, 304-310 Sea Cliff Avenue, Sea Cliff to use a currently vacant commercial space at those premises for restaurant purposes. The Paradise X premises are hereinafter referred to as the "Subject Premises".

3. The August 8, 2011 Notice of Disapproval identified the requirement that Paradise X obtain a special permit approval to use the Subject Premises as a restaurant and a variance of Village Code §138-815 to install an accessory structure (walk-in refrigerator) in a front yard. The Subject Premises is currently vacant but had been used previously for restaurant purposes, most recently as Olives By The Sea (Olives) and before that as Once Upon a Moose. Prior to, and in connection with, the occupancy by Olives the Board, by decision dated July 12, 2010, granted a special permit and a variance to permit no on-site parking, where 9 parking spaces would be required for such use.

4. After the Board commenced a public hearing on the application of Paradise X for a special permit and a variance of section 138-815, the appellant contended that additional variances were necessary. In connection with that contention, appellant filed an appeal requesting that the Board find that the following additional Village Code sections should have been identified as requiring variances in the August 8, 2011 Notice of Disapproval: (a) 138-1102 in that an increase in the number of seating spaces, parking spaces, provision of liquor services, and kitchen equipment together with the new accessory structure results in an alteration to the building,

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that increases the non-conformity; (b) 138-1002 in that the number of parking spaces required should be at least 15 (not 9); (c) 138-1001 in that the building is being used in a way that requires the minimum number of parking and loading spaces be provided; (d) 138-806 in that the proposed lot coverage, including the accessory structure, exceeds the maximum permitted lot coverage; (e) 138-812 in that the existing minimum rear yard does not meet the required minimum required setback; (f) 138-813 in that the existing building height exceeds the permitted height; (g) 138-815(A) in that the existing shed and air conditioner compressor are located in a front yard; (h) 138-816(C) in that there is no required buffer area; and (i) 138-1004 in that there is no loading space. The appellant also submits that Paradise X should be directed by the Village to submit plans, prior to the Board's hearing, that demonstrate compliance with handicapped accessibility, plumbing requirements and the New York State Uniform Fire Prevention and Building Code. Each of these compliance items are for review by the building department only after the Board renders a determination on the variances, as those items relate to building permit issues. Accordingly, the Board finds that these additional requests do not apply to this hearing and are the proper subject of a review by the building department upon the processing of a building permit application if the Board grants the variances of the Village Code provisions as a necessary predicate to the building department's review of any building permit sought by Paradise X.

5. As a result of the appellant's application, by notice of disapproval dated October 5, 2011, the Superintendent issued a new denial letter adding the following items claimed by appellant to be applicable to the Paradise X application (and thus requiring Paradise X to obtain variances of the newly listed provisions): (a) 138-808 to maintain structures (building and fence) with less than the required setback; (b) 138-813 to maintain a building height in excess of the permitted height; (c) 138-1001 and 1002 to increase the number of required parking stalls not otherwise provided on site to 15; (d) 138-1004 to not provide an off-street loading space; and (e) 138-1102 to increase a non-conformity on an already non-conforming parcel by intensifying parking requirements.

6. The appellant did not appeal the new October 5, 2011 notice of disapproval in a timely fashion (or at all), and the appellant's appeal technically is jurisdictionally defective as the appeal relates only to a notice of disapproval that was superseded and the appellant did not appeal the superseding notice of disapproval. Notwithstanding this determination and the jurisdictional impediment to this Board considering the appellant's claims, the Board herein addresses the

merits of the appellant's claim as it would apply to the October 5, 2011 notice of disapproval.

7. Appellant's contentions, if applied to the October 5, 2011 notice of disapproval, would be moot with respect to each of the variances/Code sections included in the amended notice of disapproval dated October 5, 2011. Thus, to the extent the appellant claims that variances are required for Village Code §§138-813, 1001, 1002, 1004, and 1102, the Board deems those appeals moot, as each of those sections have been identified in the October 5, 2011 amended notice of disapproval and addressed by the Board in the Paradise X application.

8. In reviewing the remaining claims made by the appellant, the Board has reviewed the determination *ab initio* to reach its own conclusion as to whether the items identified as requiring variances should have been included in the denial letter. Those items include Village Code §§138-806, 812, 815(A) and 816(C).

9. The Board held public hearings on the appellant's application on October 18, 2011 and November 15, 2011. The appellant appeared at the hearing on October 18, 2011 and acknowledged that the modified notice of disapproval and the revised application brought by Paradise X seeking variances of the added Village Code sections addressed many of the issues raised in this appeal. The appellant did not appear at the continued public hearing on November 15, 2011.

10. The Paradise X application seeks approval to erect a walk-in refrigerator in a front yard and to utilize the premises as a restaurant. The walk-in refrigerator requires a variance due to its location in the front yard on the property. The use of the premises creates a need for additional parking and a variance to not require an on-site loading space. Any other variances, as identified in the amended denial letter, relate only to existing conditions. Thus, with the exception of the claims made by appellant that a variance is required for loading purposes and to increase the number of required off-street parking spaces, the remaining points relate to the maintenance of existing conditions on the property. Each of those items (accessory structure in front yard, parking requirements and loading spaces) is identified in the amended notice of disapproval, and therefore has been rendered moot on this appeal.

11. For the reasons set forth below, the Board finds that no variances are required for the sections identified in paragraph 8 above. Accordingly, appellant's remaining contentions are denied.

12. The appellant's claim that Village Code §138-806 applies has no merit. After reviewing the plans in view of the claims made by appellant, the Superintendent of Buildings confirmed that the existing building and the new structure (the walk-in refrigerator) do not result in lot coverage in excess of the permitted lot coverage. No information was provided to the Board that would change that opinion. Accordingly, the Board denies appellant's appeal as it relates to section 138-806.

13. The appellant's claim that Village Code §138-812 applies also has no merit. The property has three front yards. It does not have a rear yard. Accordingly, the minimum rear yard requirements would not apply.

14. The appellant's claim that Village Code §138-815(A) applies to an air conditioning unit is wrong. Air conditioning units are not accessory buildings subject to the requirements of section 815(A). Appellant only states in conclusory fashion that such a unit should qualify under this statutory provision. The Board disagrees with this position, and finds that an air conditioner condenser unit is not an accessory structure as intended by section 138-815. This determination is consistent with the provision in section 138-815(F) that air conditioning units are not deemed accessory buildings.

15. Likewise, section 138-815(A) does not apply to the so-called shed. The Board was unable to locate a shed on the property. Rather, there is a small rubbermaid container on the property that appears to be nothing more than a snap together plastic container. It is not a shed, and certainly not a structure under the Village Code. Under appellant's contention, small plastic playhouses would also be deemed structures. Such a contention makes no rational sense. Moreover, the container is currently on the property (by the residential portion of the building) and there was no provision cited by the appellant that would require the Board to deem the keeping of such a container on private property to require a variance on an unrelated application, even if it was deemed to be a structure.

16. As to section 138-816(C), appellant again has misinterpreted the Village Code. The 5 foot buffer area is provided. It consists of open space, as well as a fence. There is no proposed change to the premises or the building that necessitates site plan review. If site plan review was required, then the Planning Board could require plantings or fencing, if deemed necessary. Without such review authority applicable to the application, no such plantings or additional fencing is required. In fact, section 138-816(a), which

contains the buffer area requirements, states that in the buffer area there shall be trees or fencing "as determined by the Planning Board pursuant to its site plan review powers". As there is no site plan review authority, there is no requirement of plantings in the existing buffer area.

17. The remaining contentions of appellant are deemed moot as the revised notice of disapproval identified each of the remaining Village Code sections identified in the appellant's application. This includes the following sections of the Village Code: (a) 138-1102; (b) 138-1001 and 1002; (c) 138-813; and (d) 138-1004.

18. The Board finds that appellant's application appeals a determination that has been superseded and that appellant failed to appeal the October 5, 2011 notice of disapproval. As there has been no appeal of the new determination, the Board lacks jurisdiction to consider an appeal of that new determination. The Board also finds that the contentions that relate to the Village Code sections not added to the October 5, 2011 notice of disapproval lack merit in any event.

19. For the reasons set forth herein, appellant's appeal of Village Code §§138-806, 812, 815(A) and 816(C) is denied.

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BECKER SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 15, 2011, on motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Rollin C. and Nina Becker, 172 Maple Avenue, Sea Cliff, New York to construct an exterior basement stairway in a side yard, which construction requires variances of the following Village Code sections: (a) 138-404 to maintain a lot size of 4,800 square feet, where a minimum lot size of 7, 500 feet is required; (b) 138-406 to maintain a front property line of 40 feet, where a minimum of 75 feet is required; (c) 138-407 to maintain a lot width of 40 feet, where a minimum of 67.5 feet is required; (d) 138-409 to maintain a lot width of 40 feet at the minimum setback, where a minimum of 75 feet is required; (e) 138-411 to permit a 4 foot side yard setback, where a minimum of 10 feet is required; and (f) 138-416 to maintain a garage in a front yard and construct an exterior staircase to a basement 4 feet from the side property line, where a minimum of 10 feet is required. Premises are designated as Section 21, Block 138, Lot 1156 on the Nassau County Land and Tax Map.

2. The applicants are the record owners of the subject premises.

3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.

4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.

5. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans submitted with the application and all requirements of the building department; and (b) within eighteen months after the filing of this decision with the Village Clerk, the applicant, or his successor in interest, shall obtain at applicant's sole cost and expense all certificates of occupancy, completion or compliance that may be required for such work.

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