

MINUTES

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

January 11, 2017

Present:	Chair	Bruce Treiber
	Members	Laurie Martone
		Timothy Driscoll
		Dr. Nicholas Virgilio
		Ed Camiolo
	Building Department	Shane Dommin
	Village Attorney	Brian S. Stolar, Esq.

The meeting was called to order at 7:30 pm.

The Board opened the public hearing on the application of William and Doreen Crawford, 125 Dayton Street, Sea Cliff, New York for site plan approval to construct a new residence with associated site improvements. Premises are designated as Section 21, Block K, Lot 757 on the Nassau County Land and Tax Map. Peter Albinski, architect, represented the applicants. Mr. Albinski advised the Board that the applicant obtained approvals from the Zoning Board of Appeals, and that the comments and approval conditions imposed by the Zoning Board were incorporated into the revised plans dated October 4, 2016. A neighbor testified regarding the impact of the proposed development. The Board also noted that the Village Department of Public Works expressed a concern about the widening of the curb cut in an area of the Dayton Street right-of-way

that the Department uses currently for snow plowing operations. The Board closed the public hearing and reserved decision.

The Board opened the public hearing on the application of Marianna Kreatsoulas, 35 Hawthorne Road, Sea Cliff, New York for an amendment of a previous approval, to permit fencing and netting at a height of 21 feet for a linear distance of 67 feet along the westerly property line and six foot high fencing along a portion of the southerly property line. Premises are designated as Section 21, Block 31, Lot 28 on the Nassau County Land and Tax Map. The applicant expressed that the notice created confusion in that it created the impression is that the proposal is to construct a fence (not netting). The Board confirmed its understanding that the applicant seeks approval for proposed netting and posts, where the posts extend to 21 feet in height and the netting and posts are to be 67 linear feet in length, along the westerly property line, and that a six foot fence is proposed for a portion of the southerly property line. The applicant represented that she has a certificate of completion to permit the current netting and posts (40 feet in length) in accordance with the Board's March 2014 approval. The applicant represented that the netting, in its proposed location, will prevent balls from passing into the neighboring yard and will ameliorate the current impacts from the existing netting. Neighbors testified about the impact of the height of the netting, the excessive noise from the posts and netting at the existing height, the aesthetic impact, and the availability of alternatives. The Board closed the hearing, and reserved decision.

The Board advised that the continued public hearings on the applications of (a) Digiovanni and Associates Architects, 26 Preston Avenue, as agent for Sloop Redhead Inc. for site plan approval to construct a new residence, (b) Sloop Redhead, Inc., 299 Prospect Avenue for site plan approval to construct a new curb cut and driveway, (c) Richard LaSalle, 168 Prospect Avenue, for site plan approval to construct a new front yard driveway and curb cuts, and (d) 14 Bay Avenue Commons, LLC, for site plan and wall permit, are continued to February 7, 2017 at 7:30pm.

The Board discussed the Kreatsoulas application. On motion duly made by the Chair, seconded by Ms. Martone, and adopted unanimously, the Board determined that the application is a Type II matter under SEQRA and granted a portion of the application and denied a portion of the application, as set forth in the attached decision.

The Board discussed the Crawford application. On motion duly made by the Chair, seconded by Dr. Virgilio, and adopted unanimously, the Board determined that the application is a Type II matter under SEQRA and granted site plan approval, subject to the following conditions: (a) the construction of the all improvements shall conform to the plans dated October 4, 2016; (b) the site preparation and staging shall comply with all applicable laws and regulations and shall be performed in accordance with plans approved by the Building Department; (c) drainage facilities to accommodate stormwater runoff resulting from the proposed improvements, including the rear stairwell, shall be provided as required by the Building Department; (d) applicants shall file a survey

depicting the driveway addition authorized herein, (e) applicants shall install a brick wall, not higher than forty-two (42) inches in the location provided in the plans, and shall supplement the wall with landscaping outside the wall to provide additional sound and visual protection of the air conditioning units, in a location authorized by the Building Department, (f) septic facilities shall be provided in locations that accommodate all septic waste and do not impact the existing trees located on the premises or the retaining wall along the southerly property line; (g) any changes to the site, including changes that require the removal of trees, resulting from the installation of any site improvement and facilities shall require approval of this Board, unless determined by the Building Department to be a minor modification, and (h) applicant shall obtain a building permit for the work within 6 months and a certificate of completion within 12 months, of the filing of this decision with the Village Clerk.

There being no further business, the Chair closed the meeting at 9:25pm.

BRUCE TREIBER, CHAIR

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In the Matter of the Application of

Marianna Kreditsoulas
35 Hawthorne Road
Sea Cliff, New York

for approval pursuant to Chapter 64
to permit fencing and netting at a height of
21 feet for a linear distance of 67 feet
running along a portion of the
westerly property line and
six foot high fencing along a portion
of the southerly property line.

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RESOLVED, upon consideration of the evidence presented at the public hearing held by the Planning Board (the "Board"), all proceedings had herein, all documentation submitted to the Board, following the personal inspection of the subject property by the Board members, and after due deliberation, the Board makes the following findings of fact and decision:

1. This is an application by Marianna Kreditsoulas, owner of property located at 35 Hawthorne Road, Sea Cliff, New York and designated as Section 21, Block 31, Lot 28 (the "Subject Premises"), for approval pursuant to Chapter 64 to permit fencing and netting at a height of 21 feet for a linear distance of 67 feet running along a portion of the westerly property line and six foot high fencing along a portion of the southerly property line. The proposed netting and fencing locations are depicted in a Plot Plan filed with the application.

2. The Subject Premises has frontage on Hawthorne Road (on the north side) and Highland Place (on the east side). The Subject Premises is located in

a residential community, surrounded by residences. The Subject Premises is less than one-third of an acre, with a southerly property line of 100 feet and a westerly property line of 165 feet. The proposed netting and posts will be offset from the westerly property line and will run from the rear corner to a point approximately parallel to the rear line of the residence. It will thus run the entire side portion of the rear of the residence. The proposed netting will be visible from portions of two public roadways (Highland Place and Hawthorne Road) and from adjoining and nearby residences.

3. By decision rendered on March 12, 2014, the Board granted a permit pursuant to Chapter 64 to permit netting along the westerly property line at a height of 20 feet extending from the southwest corner of the property a linear distance of 40 feet in a northerly direction and 6 foot high fencing extending from the northerly terminus of the netting to a point extending to a point corresponding with the northerly edge of a generator and air conditioning units (which fencing was set forth in the plan approved in 2014), subject to the following conditions: (a) the fencing and posts shall be installed in the location, using the same materials and at the height depicted in the plans submitted with the application, (b) a final survey depicting the location of the poles and fencing shall be filed with the Village building department if determined by the building department to be necessary to assure that it is located on the applicants' property, (c) when there is no activity on the premises involving the flight of any objects or playing equipment or playing balls that may be used above the ground, the fencing/netting and posts shall be safely taken down and stored securely and

safely, (d) from sunset to sunrise, the fencing/netting and posts shall be safely and securely stored on the premises, as this approval does not authorize the use of such netting/fencing and posts during the hours from sunset to sunrise, and (e) within the timeframe provided in Village Code §138-1304(A), applicants shall complete the work and obtain all certificates necessary for the work. The conditions reflected the Board's intent to assure that the impact of the use of the netting would be mitigated.

4. Applicant installed the previously approved posts and netting, and at the hearing on January 11, 2017, presented a copy of a Certificate of Completion issued by the Building Department. The posts and netting were installed in or around 2014.

5. The applicant seeks now to obtain approval to modify and extend the netting and supporting posts, at a height of 21 feet, from the southwest corner to a point 67 feet north. In connection with this proposal, the applicant proposes to move the netting and posts a couple of feet east of the existing location and to install Leyland Cypress trees between the netting and posts and the property line. Leyland Cypress trees are common in the Village and are a fast growing tree species with widths up to eight (8) feet. The applicant's proposal to install these trees 1 foot from the property line, and the netting 1 foot from the tree center is unrealistic. If properly accounted for, the proposal placement of the trees would require the netting to be approximately ten (10) feet from the property line. Considering the proximity of the homes in the neighborhood, a separation of 3 or 10 feet from the property line will not result in any lesser

impact. In fact, if placed at the 10 foot distance, the netting would have an even greater impact on the residence immediately to the south. The applicant also proposes a 30 foot long section of 6 foot high fencing along a portion of the southerly property line as shown on the plans submitted with the application.

6. The applicant testified that her son's passion is soccer, and he plays soccer as an outlet for a form of Tourette's. The applicant did not explain the necessity of 67 feet of netting at a height of 20 feet in view of her son's passion or outlet. The applicant stated that the netting and posts would be part of a new pulley system, and that the applicant would be able to retract the netting and posts on a daily basis. The applicant explained that the netting provided a protection against soccer balls passing into the neighbor's yard, and that some of the sounds emanating from the usage of the net were no different than noise coming from a residential yard. The applicant also inexplicably stated that the height of the netting and posts is just as high as a single basketball hoop and trampoline.

7. The Board noted that the proposed equipment is advertised as, and is in fact, a commercial piece of equipment that is sold primarily to schools. The Board also acknowledged that the mitigation measures imposed in 2014 were ineffective to minimize the visual and noise impact. As discussed herein, the Board finds that the modified netting proposal also would be ineffective in minimizing the impact and the factors to be considered mandate a denial.

8. Residents testified that the netting and posts, as proposed, create a visual eyesore visible from neighboring properties and the street, that the posts and

netting makes significant noise, that the height of the netting affords an opportunity for a person to kick a ball harder (thus, allowing for greater noises than would result from typical residential ball playing), and that the yard now is used not just as an accessory to a residential home, typical of the Village, but has become a training facility.

9. The applicant's request for a permit is governed by Chapter 64. As provided in Chapter 64, fences and walls proposed at heights in excess of four (4) feet may be permitted as an exception by the Planning Board if a situation warrants such an exception. As provided in Village Code §64-3.1, the Board is to give reasonable consideration to the needs, objectives and purposes of the applicant as balanced against the physical and visual environment of the Village and the safety, health and welfare of the adjoining property owners and the Village and its residents. In making the determination, the Planning Board shall consider, along with all other factors which the Board deems relevant, the type of fence to be used, including the design and component materials; location; setback from property lines, streets, and corners; height, purpose, including necessity for privacy, safety or shielding from noise, traffic or other potentially annoying factors; whether the fence is new or the replacement of an existing fence; the consent or objection of adjacent property owners' whether the fence will accomplish the proposed purpose; practicality of alternatives to accomplish the same purpose with less adverse effect; effects on the adjacent properties; obstructions to light, air and visibility of adjacent properties which will result; appropriateness of design to the character of the neighborhood; effect on clear

and safe passage of pedestrians and vehicles; whether an obstruction to view will be created which creates a danger to pedestrians or traffic disproportionate to the benefit to be derived; means of fastening and support; likelihood of accident or danger due to location; whether the structure will be permanent or temporary.

10. Upon considering the aforesaid criteria, the Board finds that the proposed 6 foot high fencing is appropriate and warrants an exception, but that the proposed netting and posts is offensive and entirely inappropriate and does not warrant an exception. In fact, the Board acknowledged that it would not have granted the 2014 application had it fully grasped the impact on the health, safety and welfare caused by the potential use of the netting and posts.

11. The design, including 21 foot high supporting posts, with netting 20 feet in height, for a linear distance of 67 feet is entirely inconsistent with a single family residential dwelling and not appropriate in a residential yard.

12. The location of the netting and posts in the applicant's yard, setback only feet from the westerly property line, separated only by proposed plantings, and extending 67 feet from the southerly property line, creates an unavoidable offensive viewpoint. The placement of trees to attempt to offset the visual impact would not completely screen the netting and posts.

13. The netting height of 20 feet and post height of 21 feet is incongruent with any fencing in the Village. Particularly significant is that the property is less than one-third of an acre, nestled in a residential neighborhood with similar sized properties and homes closely spaced. The height and location of 21 foot high

posts and netting at a height of 20 feet, for a linear distance of 67 feet, is significant given the setting and character of the neighborhood.

14. The Board granted approval in 2014 for netting that extended only 40 feet, and was proposed to be used in a manner that would be seen and used only sparingly. The reality is that the condition that was applied to attempt to mitigate the impact does not effectively mitigate the impact, as the posts would always remain in place and the netting is retained in place a significant amount of time. Even with the netting pulled back, it still would remain at a height of 20 feet in its retracted position. The new netting system would not serve to ameliorate the impacts described in this decision.

15. The adjacent owners and many residents in the neighborhood expressed their objection to the proposed netting and posts. The Board is cognizant that general objections, without factual support, may be insufficient alone to deny the request. However, the netting currently in place has created a hostility amongst the neighbors. Those neighbors testified about the visual and noise impact of the existing netting and its disturbance to the neighborhood. The Board finds that such a disturbance exists, and would be exacerbated by the enlargement of the netting, as proposed.

16. The applicant expressed that the purpose of the netting is to provide an outlet for her son to play soccer in the yard. The Board finds that soccer can be played without the need for 20 foot high netting. Netting, at a height of 20 feet for a linear distance of 67 feet, is excessive for the expressed purpose. In fact, playing soccer in a yard does not require the placement of the proposed netting,

and the applicant's son will be able to enjoy and use the yard for soccer without 20 foot high netting. The proposed accommodation is not reasonable.

17. The proposed netting has a deleterious visual impact on neighboring properties and also creates additional noise not typically associated with residential properties in close proximity as exist in the neighborhood.

18. The netting and posts are not appropriate to the character of the neighborhood. The proposal is likely to cause further annoyance in its use with the neighboring properties. While playing in a yard is part of the allure of residing in the Village, the proposed netting creates an environment not consistent with such allure and instead involves a use of the premises in a manner that is inappropriate with the residential character of the lots in this area of the Village. The applicant's property is less than one-third of an acre, the netting will take up approximately forty percent (40%) of the property line length and nearly the full length of the yard from the corner of the property to the rear of the house. In effect, the proposal creates a wall of netting along the entirety of this yard. This is contrary to the neighborhood character in the vicinity.

19. The applicant's contention that the netting is similar to a basketball hoop or a trampoline is without basis in fact. Each represents a small area of land, and neither creates a 67 foot wide and 20 foot high wall of netting.

20. The facts and circumstances of the proposal do not warrant an exception to permit posts at a height of 21 feet and netting 20 feet in height, for a linear distance of 67 feet. The proposed retraction of the netting will not minimize the impacts identified herein.

21. As to the 6 foot fencing on a portion of the southerly property line, the proposal is more consistent with the ability of a resident to use a yard for playing of sports, including soccer, in a manner that does not have the same impacts as the netting. As such, the Board approves that portion of the application relating to the 6 foot high fencing on the following conditions: (a) the fencing be installed in the locations and materials shown in the plans; (b) no portion of the 6 foot fencing shall extend beyond the line of the garage; (c) a final survey depicting the location of the fencing shall be filed with the Village building department for review in accordance with this approval, unless such survey is determined by the building department to be unnecessary; (d) applicant shall comply with all requirements of the Superintendent of Buildings and the Village Code, except as modified by this approval; (e) the fencing, including any other structures, shall not exceed a total of six (6) feet in height; and (f) applicant shall obtain a building permit for the work within 6 months.