

November 16, 2021
VIA HAND

Zoning Board of Appeals
Village of Mamaroneck
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Re: ***1258 E. Boston Post Road – Special Permit
Section 4, Block 65D , Lot 306B***

Dear Chair Kramer and Members of the Board:

As you know, we represent Integrity Automotive Group, LLC D/B/A Toyota City (the “Applicant”) in connection with the property located at 1258 E. Boston Post Road (the “Subject Property”). The Applicant appeared before your board at your most recent meeting on November 14, 2021 with a Special Permit Application and currently has a Site Plan Application pending before the Planning Board with regard to the Subject Property.

As requested at the last meeting, submitted herewith is supplemental information for the Board’s consideration. Specifically, submitted herewith are the following:

- Exhibit A: Disclosure Certification by Jeffrey Weiner, Member
- Exhibit B: Village of Mamaroneck Zoning Board of Appeals Minutes for Prior Use Variance Application
 - September 08, 2016
 - October 06, 2016
- Updated Architectural Plans: Project Drawings prepared by Crozier, Gedney Architects, P.C., last revised 11/16/21:
 - T-100: Proposed Site Plan
 - A-101: Plan & Elevation

Supplemental Summary

Per your Board's request, the Applicant has provided updated architectural plans showing the conceptual floor plan and front elevation of the show room proposed on the Subject Property. The final design and layout will be subject to Planning Board and Board of Architectural Review approval; however, the plans provided are the conceptual overview to add context for the Zoning Boards consideration of this Special Permit Application. As can be seen, the building will accommodate both showroom and office space. In addition, the site plan has been updated to show approximate locations of new utility connections and to label the three (3) parking spots closest to the building as customer parking. The Applicant intends to use the Subject Property for the sale of both new and used vehicles in accordance §342-30.A(1)(h) of the Village Code.

The proposed site lighting will be similar to the fixtures across the street at the existing Toyota City facility at 1305 E. Boston Post Rd. The lighting fixtures have photo-cell activators and are on from dusk until dawn. The general hours of operation for the Subject Property are anticipated to be 9AM – 6PM from Monday to Saturday and reduced hours of 11AM – 5PM on Sundays.

As also requested by the Board, we have provided the minutes from the prior use variance application concerning, in part, the Subject Property. In 2016, the prior owner/operator of Toyota City made an application for a use variance (#2UV-2016) to utilize the residentially zoned lot adjacent to the Subject Property for parking in connection with Toyota City and a proposed office use on another adjacent parcel (with the proposed office being located on the other side of Beaver Swamp Brook). Ultimately, the Zoning Board of Appeals denied the use variance.

This Application drastically differs from the prior use variance application. Most importantly, the proposed Application is limited to just the commercially zoned lot and no use or area variances are required. Secondly, the Applicant is proposing to construct a new structure on the Subject Property for a showroom and office space and is proposing significant screening around the perimeter of the site from all adjacent lots.

We look forward to presenting this information to the Board at your upcoming meeting. Thank you for your attention to this matter.

Very Truly Yours,

HARFENIST KRAUT & PERLSTEIN LLP

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CERTIFICATION

Integrity Automotive LLC

(Required by New York State General Municipal Law)

states as follows:

(Applicant's name)

1. I am interested in this application for a variance or special use permit now pending before the Village of Mamaroneck Board of Appeals,
2. I reside at 1258 E. Boston Post Road, Mamaroneck, New York
3. The nature of my interest in the aforesaid application is as follows:
Lessee

4. If the Applicant or owner is a corporation, list the corporation's officers:

President: _____ Vice President: _____

Integrity Automotive LLC

Secretary: _____ Treasurer: _____

Members: Jeffrey Weiner and Michael Ianelli

5. Do any of the following individuals have an interest, as defined below, in the owner or Applicant:

- a. Any New York State officers, or
- b. Any officer or employee of the Village of Mamaroneck, Town of Rye, Town of Mamaroneck, or Westchester County.

☐ Yes☒ No

For the purpose of this disclosure, an officer or employee shall be deemed to have an interest in the owner or Applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:

- a. is the Applicant or owner, or
- b. is an officer, director, partner or employee of the Applicant or owner, or
- c. legally or beneficially owns or controls stock of corporate Applicant or owner; or
- d. Is a party to an agreement with such an Applicant or owner, express or implied, whereby he may receive any payment or other benefit, whether or not for service rendered dependent or contingent upon the favorable approval of such application.

A PERSON WHO KNOWINGLY AND INTENTIONALLY FAILS TO MAKE SUCH DISCLOSURE SHALL BE GUILTY OF A MISDEMEANOR AS PROVIDED IN GENERAL MUNICIPAL LAW, SECTION 809

If "Yes," state the name and nature and extent of the interest of such individual:

(Name & Residence)_____
(Extent of interest)Sworn to before me this 17th day of November, 2021

Applicant's Signature

Kelly A. Wilks

NOTARY PUBLIC

KELLY A. WILKS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01WI6400009
Qualified in New York County
My Commission Expires 11-04-2023

Board could conduct an uncoordinated review, as discussed previously. Mr. Noto felt an uncoordinated review could be acceptable since the Planning Board would still go through its own SEQRA review.

Mr. Violi stated he felt the Board should move forward with an uncoordinated review, close the hearing then deliberate. The Planning Board will do their own review anyway.

Chair Weprin agreed and it was the consensus of the Board to move forward with an uncoordinated SEQRA review. The EAF will be reviewed.

The Board then discussed the application as presented, discussed the parameters of the variances requested and heard from all interested members of the public.

Ms. Bienstock-Cohen motioned to close the public hearing, seconded by Mr. Violi

Ayes:	Weprin, Bienstock-Cohen, Violi, Neufeld
Recused:	None
Nays:	None
Absent:	Ianniello

- 6. Application #2UV-2016, Joseph & John DeCrescenzo & Rosalind Lifrieri**, for DCH Toyota 1258 East Boston Post Road (Section 4, Block 65D, Lot 304-305 & 306) for a use variance. This application violates Chapter 342-21 of the Zoning Code in which the existing and proposed commercial use (parking lot) is not a permitted use in the residential zone. (R-5 District)

Paul Noto, attorney for the Applicants, stated the address is 1202 Sunnyside Avenue, he noted the application was incorrect showing 1258 East Post Road which is the front lot. He gave a brief history of the application. Toyota City has been at this location since the 1970's; this lot is in the R-5 zone and has been used for parking since the 1920's. He referenced the minutes submitted with the application reflect the 1952 use variance requested for parking for the restaurant. There was a lengthy hearing on this matter, the C-1 portion of this site had a restaurant, a use variance was granted for parking. It was a time limited, 10 year variance with 18 conditions. The former restaurant had burned down and the structure had to be removed, a building no longer exists on the C-1 portion. DCH has used this lot for many years, the showroom is across the street; there was an application for renovations to the showroom, during that process it was noted permits for this site would be required as well. If the use

variance is granted they would then go to the Planning Board for site plan review; if not this would still go to the Planning Board for the C-1 lot.

He then discussed the four statutory criteria applied to use variance applications—Currently the property as a rental turns a fair profit, the realtor can state the value of the lot is approximately \$150,000, it has never been used for residential or mixed use and the hardship has not been self-imposed.

Rona Calogero, resident and residential real estate broker, stated her opinion that the property drops in grade, it would be undesirable for residential use and there are no utilities on the lot. Currently the lot is graveled, there is a buffer of trees and the last house on the road is protected (lot 22). It was noted there are currently no cars on this lot; the application would be for 37 cars. The lease of the property was then discussed..

Mr. Neufeld questioned how there could be a lack of reasonable return and discussed the lease terms with Mr. Noto. It was clarified that the Applicants lease the subject parcel with the adjacent 1258 East Boston Post Road parcel to DCH Toyota for over \$200,000 annually (annual net rental income estimated as \$176,799) with a remaining lease term of approximately more 10 years (until 2026). The lease is not contingent upon the Applicants obtaining this use variance.

Mr. Noto then discussed that the primary use had existed on the C-1 portion of the site and the parking on that lot had been accessory to the principal use, which no longer exists. The need for use variance is since the original variance granted in 1952, predated the code, this was always R-5 but used for parking in connection with the restaurant's C-1 use. It is for this Board to determine if a use variance can remain. It was noted the granting of the variance should not change community character since this has been used for parking whether it was for the restaurant or a car dealership. It was then noted there is a petition from the neighbors who have concerns about the site; Mr. Noto stated if the applicant goes to the Planning Board, these issues would have to be addressed or this Board could impose conditions as was done in 1952. Without the use variance the R-5 portion can only be used for R-5 uses.

Paul Ricci, planner for the Applicant, had reviewed the Master Plan as well as the Zoning Code. He submitted handouts, Page 1- exhibit 1 – an aerial and zoning map depicting East Boston Post Road- This aerial is dated 2013, and obtained through Westchester County GIS. He superimposed the existing Village zoning, property labels and lot lines. Pages 2 and 3 titled 'planning exhibit for DCH Auto' photos were taken September 2016. He then reviewed his memo submitted titled 'Summary of Planning Testimony' discussing the parcel, zoning, uses, history and potential site improvements if a variance is granted. He felt the storage of cars was a

passive use for the site which would be less of an impact than other uses permitted in this zone. He noted the repaving and striping of the parking lot, addition of landscaping (the plan proposes 29 new trees, 361 shrubs, fescue variety grass and over 5,000 ground cover plantings) and new stormwater management system would create a more desirable visual environment. He felt this was a long standing condition and historically this use had existed.

Greg DeAngelis & Kevin LaFollette, residents, submitted site photos, historic property cards and the petition submitted earlier via email. Mr. DeAngelis noted as a neighbor to this site there has been an incremental increase in parking. He was not sure when the zoning lines had changed. He added in the documents submitted there is a property card showing a single family home as late as 2003. He stated the 'new' site plan shows spaces for 104 spaces where already 165 exist since parked vehicles do not need the same space as a true parking lot, there should be no need to expand in to the R-5 portion of the lot. He felt the variance requested is excessive and the hardship was self-created and there is value in the lot. Mr. LaFollette then noted concerns about Beaver Swamp Brook, and the potential of fluid leakage if older cars are parked there.

Ned Ferrarone, resident and on the Board of Directors of the Kassel Court HOA, noted the subdivision has one of the largest green spaces along the Post Road. He disagreed with the Applicant's planner and did not feel a parking lot was a great buffer between residential and commercial areas. He did agree the proposed landscaping would be beneficial to the site. There are concerns with the changes that have occurred in the neighborhood. Car carriers come at odd hours, are large, noisy and disruptive to the neighborhood. He noted in the past, for other applications, time limits and restrictions were set for loading and unloading – he suggested this should take place on the actual property not on main streets.

Dan Natchez, resident, noted the requirements state an applicant needs to submit their documents in advance, but documents have been submitted at the meeting and the public does not get to review them. He felt the property had significant value merely due to its comparatively large size. He also noted Mr. Noto stated no cars should be parked there, and nearly one month ago cars were on site, per an agreement with the Planning Board. He also felt the loading and unloading along the Post Road obstructs more than one lane of traffic. He had been unaware a house had been there in the past and thought that the foundation remains may be the reason why part of the lot was not being used. He suggested, if the variance is granted it could be limited to the Post Road half of the property to serve as a better buffer and limit the intensity of the site.

John Hofstetter, past member of the Board of Trustees, did not feel this was a passive benign use, the delivery of cars at odd hours happens even when there are site plan restrictions

because they are not enforced in the Village. He felt the restaurant was gone, then so is the primary use the parking lot was accessory to.

Mr. Neufeld asked for clarification of the lease. Mr. DeCrescenzo, property owner, stated the lease covers lots 19, 20 & 21.

Mr. Violi asked about the minutes from 1952, they had referred subdivision of the original lots, when a lot is divided by a zoning district, at that time you could have asked the Zoning Board to continue the use in a non-conforming zoning district- he asked if that provision still exists. Mr. Noto was not sure.

The Applicant requested this application be adjourned to the next meeting to allow more time for additional information to be presented. The Board agreed, this application was adjourned until the October meeting.

7. # 5SP-2016 **Mamaroneck Ices, Inc.**(Ralph's Italian Ices), 946 East Boston Post Road (Section 4, Block 63 Lot 1) for a *special permit* to operate a food service establishment/ fast food restaurant and for variance of Chapter 342-45 where 'No food service establishment or tavern shall provide outdoor counter, drive-in or curb service, but it may provide service at tables on a porch or terrace where this is incident and clearly subordinate to the operation conducted within the main building,' and the applicant proposes outdoor counter service. (C-1 District)

Chair Weprin prefaced the discussion by stating that this public hearing discussion tonight will be limited to the Applicant's request to modify on an interim basis the hours of operation imposed by this Board in granting the Figliomeni Appeal. The Board had read the Applicant's submission, noting the economic impacts and describing their compliance with the imposed conditions.

Eric Gordon, attorney for the Applicant, noted had photos of the site taken in the past few days showing minimal use during the late hours on the site. He felt if the business were open later in the evening it would have minimal impact to the neighborhood. He then distributed photos to the Board members.

He clarified the statements made regarding compliance to the restricted open hours. If people are on line by the time they are to close, no new customer can get on line, but he customers already on line will be served. He added it was hard in the beginning, since people were not used to the early hours.

Mr. Rosenberg owner of Ralph's Italian Ices, stated at 10pm during the week and 11:30pm on the weekend, his cousin stands outside at the end of the line and turns people away. He stated this is no issue, he has photos. He asked if he is told to close at

3. Application # 7SP-2016, **Hailu Asian Bistro, Inc.** (Moe Laoung Yong), 265 Mamaroneck Avenue (Section 9, Block 19, Lot 8A3) for a special permit to operate an existing restaurant under new ownership and management. (C-2 District).

(Formerly known as Haiku)

Mr. Yong once worked for Haiku, he has taken over the business, is changing the name. The food, layout, and hours of operation 11-9:30pm weekdays, weekends until 10:30pm will all remain the same. There is no bar.

There were no public comments.

Ms. Bienstock-Cohen motioned to close the public hearing, seconded by Mr. Neufeld

Ayes:	Weprin, Bienstock-Cohen, Violi, Neufeld
Recused:	None
Nays:	None
Absent:	Ianniello

4. Application #2UV-2016, **Joseph & John DeCrescenzo & Rosalind Lifrieri, for DCH Toyota**, 1202 Sunnyside Avenue (Section 4, Block 65D, Lot 304-305 & 306) for a use variance. This application violates Chapter 342-21 of the Zoning Code in which the existing and proposed commercial use (parking lot) is not a permitted use in the residential zone. (R-5 District)

Mr. Noto addressed the Board; there is no new information to present. He addressed some of the concerns presented in letters received today. This business has been there for years, there have been no complaints about sidewalks and no violations have been issued. If they were to obtain this use variance they would then still have to go through the Planning Board review process. As the plans show there is extensive landscaping proposed to buffer the neighbors, but this can only be achieved through site plan and the neighbors want these improvements. If the tenant cannot use it, it will remain an empty lot. They have received no violations. The neighbors say they have complained, DCH is not aware of this. They feel they have been responsive to the neighbors and the only way to make this better is by granting the use variance. They felt other issues have been addressed.

Ms. Georgiou clarified the lease presented is for two properties situated in the C-1 & R-5 zoning districts. Mr. Noto was unsure what would happen with the lease if the use variance was not granted. This lease has been in place since the 1970's and is in effect until 2026. By its terms

Mr. Violi noted that this has been going on for many years. If this property were limited to the R-5 uses, the neighbors will have the same concerns. If a residence was built there, it still does not resolve the problem. Although the Planning Board will review the site, the previous variance had 18 conditions and the ZBA could again institute conditions such as

number of cars permitted.

Mr. Natchez, resident, noted originally the site was to hold only the number of cars permitted without the use of part of the lot. In his view they are not complying with the approval. He also noted the entire lot was never completely used for parked cars, remnants of a structure remain. If a variance were granted, conditions would be appropriate, and if not granted, there may still be a problem.

Mr. LaFollette, resident, discussed the letter submitted by Mr. DeAngelis. He noted the 1952 original variance granted to allow 10-12 cars to be parked occasionally on the R-5 portion. Regarding complaints, he stated, he as well as other neighbors have complained, he was unsure how those complaints were processed through Toyota City, he has not called the police. He would like DCH to include the neighbors in their conversations about the site.

Mr. Noto stated the Applicant would agree to include the neighbors in the site plan conversations.

The Board briefly discussed continuing this application until December or after the Planning Board has worked through this site plan. It was agreed this would need the variance first and if granted move through the planning process. If this use is not granted, there is no reason for Planning Board review.

Ms. Bienstock-Cohen motioned to close the public hearing, seconded by Mr. Neufeld

Ayes:	Weprin, Bienstock-Cohen, Violi, Neufeld
Recused:	None
Nays:	None
Absent:	Ianniello

5. Application #12A-2016, **Danny Singh**, 636 Hillside Avenue (Section 4, Block 2, Lot 1B) for an area variance. The 3rd story addition is in violation of Chapter 342-27 Attachment 2 of the Schedule of Minimum Requirements where the maximum number of stories permitted is 2 1/2 and the Applicant has already constructed 3rd story without a building permit. (R-2F District)

Chair Weprin began with concerns that the 'Gardener's Cottage "is rented therefore making this property 3 families which would not be allowed in a 2 family zone.

Mr. Singh felt the tenant in the "Gardener's Quarters" has been there since 2001. This is how it was when he bought the property, the house had 2 units and the garage, 1 unit.

Mr. Farrell added, just because a CO was given, doesn't mean there was permission for 3 families. There is no definition of a gardener's quarters in the code. He noted if there

5. #2UV-2016, Joseph & John DeCrescenzo & Rosalind Lifrieri, for DCH Toyota, 1202 Sunnyside Avenue

The Board discussed the use variance requested and did not feel the Applicants had met the criteria for the use variance. The property can function as residential, making this commercial and paving it can affect the value of the surrounding residential properties. There were specific requirements when they were before the ZBA in the past, which they did not comply with.

Mr. Violi's view was that making this property stay residential would not benefit the situation. He added this property has been used for parking for decades, and he would support this variance with restrictions on number of cars, landscaping etc. He added he did not feel the applicant could get a reasonable return.

The use variance standards were reviewed and it was noted all standards are required to be met, this is not a balancing test.

(1) That the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted); *Mr. Violi felt the applicant would not get a reasonable return, the other Board members disagreed and thought there would be reasonable return.* The other members felt that the DCH Lease provides Applicants with an estimated \$176,799 in net income annually and that continuation of the DCH Lease for the remainder of its term (approximately ten years) is not contingent upon the Applicants' obtaining a use variance

(2) that the property is being affected by unique, or at least highly uncommon circumstances;

Mr. Violi noted this history of parking of vehicles and could continue with a limited number of cars permitted, Chair Weprin agreed

(3) that the variance, if granted, will not alter the essential character of the neighborhood;

Chair Weprin agreed but there was concern with neighborhood impacts associated with continued use as a parking lot.

(4) That the hardship is not self-created.

Mr. Violi felt this was not self-created, Chair Weprin disagreed

The Board discussed the use variance standards in greater detail and the majority supported findings that: (a) the Applicants have failed to demonstrate by competent financial evidence, for any of permitted uses under the R-5 zoning regulations, that they cannot realize a reasonable return and that the lack of return is substantial. This absence of proof alone defeats any claim of unnecessary hardship. Instead, the record reflects that the DCH Lease provides Applicants with an estimated \$176,799 in net income annually and that continuation of the DCH Lease for the remainder of its term (approximately ten years) is not contingent upon the Applicants' obtaining a use variance. Moreover, there was no showing of an unreasonable return to the Applicants if the DCH Lease excluded the Premises and/or the Premises was sold as a residential lot (value estimated by Applicants' realtor as \$150,000). That the Premises may potentially be worth less as a residential lot than it would be as a commercial lot is irrelevant to this determination. (b) Although the Applicants' alleged hardship relating to the property in question is unique and does not appear to apply to a substantial portion of the district or neighborhood, this factor alone is not determinative. (c) The Applicants have demonstrated that the requested use variance, if granted, will not necessarily alter the essential character of the neighborhood. However,

testimony by neighbors, who are most directly affected, included concerns that impacts associated with the continued use of the Premises as a car inventory parking lot are altering the nature and character of the residential neighborhood. (d) The alleged hardship has been self-created. The Applicants have not demonstrated unnecessary hardship as mandated by Village Law 7-712-b (2) and are not entitled to the use variance.

Mr. Neufeld motioned to deny the use variance requested, based on the above findings; seconded by Ms. Bienstock-Cohen

Ayes:	Weprin, Bienstock-Cohen, Neufeld
Recused:	None
Nays:	Violi
Absent:	Ianniello

6. #15A-2016, BB & G Corporation, 209 Grand Street

As there were no changes to the plans presented, the Board agreed to grant the same variance with the same conditions.

Ms. Bienstock-Cohen motioned to approve the variances requested, seconded by Mr. Neufeld

Ayes:	Weprin, Bienstock-Cohen, Violi, Neufeld
Recused:	None
Nays:	None
Absent:	Ianniello

7. #12A-2016, Danny Singh, 636 Hillside Avenue

The Board wanted to also have Member Ianniello present for deliberations. There was also concern with how the 'gardener's quarters' functions. It is an income rental, and does not have a family member living in it.

Member Bienstock-Cohen had great concerns in granting this variance, it will set a dangerous precedent that rewards people for construction without a permit. Mr. Violi too had concerns with the creation of a 3rd story with no permits. He also felt the Applicant did not make a compelling argument to support his request. The Board discussed the possibility of denial which would require the 3rd story to be removed.

It was noted the variance requested was not for a 3 families, but for a 3rd story addition, which was built without a permit.

The Board reviewed the photos and the application submitted as they reviewed the statutory criteria for area variances.

- (1) Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance;

Some Board members did not feel this addition made a substantial change in the neighborhood; more information is needed to evaluate this.