

AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, HELD ON MAY 4, 2023 THE FOLLOWING RESOLUTION WAS ADOPTED:

**APPLICATION NO. 04-SP-23**

Name: Penny Lick Ice Cream Co., by Ellen Sledge, Owner  
Premises: 1202 West Boston Post Road  
District: C-1  
Tax I.D.: Section 9, Block 21, Lot 2B

**WHEREAS**, Penny Lick Ice Cream Co., by Ellen Sledge, its Owner (the "Applicant"), has applied to the Zoning Board of Appeals ("Board") for a Special Permit to operate a new retail ice cream shop (the "Application") in an existing space in the "Seaport Plaza" shopping center at 1202 West Boston Post Road (the "Premises") which was formerly occupied by a Subway sandwich shop; and

**WHEREAS**, as set forth in the Building Determination letter dated March 13, 2023, a special permit is required to operate this food establishment ("Food Establishment") in the C-1 District subject to the approval procedure set forth in Article X of the Village of Mamaroneck Zoning Code ("Zoning Code"); and

**WHEREAS**, Section 342-3(B) of the Zoning Code defines "Food Service Establishment":

*Any use which includes the serving of food and/or beverages that requires an eating place permit, or is otherwise required by either county or state law to be licensed, including, but not limited to, restaurants, carry-out restaurants, delicatessens and fast-food restaurants. No drive-up or car service shall be permitted; and*

**WHEREAS**, the Applicant proposes no exterior construction, except for a new sign, approval for which is sought under separate application, but includes an expansion of the existing kitchen space with offsetting reduction of the customer area, and completion of interior finishes to match the existing finishes; and

**WHEREAS**, the Applicant represents that existing parking in the shopping center is available for shared use by the various tenants for patrons and employees; and

**WHEREAS**, the Applicant has submitted an interior renovation and occupancy plan, prepared by Bradley Olsen Project Design, dated March 19, 2023, providing details of the proposed interior layout of the restaurant; and

**WHEREAS**, after due notice, the Board conducted a Public Hearing on the Application on May 4, 2023, at which the Board heard all parties, reviewed and considered the materials related to the Application and received no comments from the public; and

**WHEREAS**, the proposed action is classified as Type II pursuant to the New York State Environmental Quality Review Act (SEQRA) regulations, 6 NYCRR §617.5(c)(18).

**WHEREAS**, the Board deliberated on the application at its May 4, 2023 public meeting and determined it was prepared to vote on the Application.

**NOW, THEREFORE BE IT RESOLVED**, that, after duly reviewing the Application and related materials and information provided during the public hearing process, the Board hereby grants a Special Permit to operate a Food Service Establishment on the Premises. In making this determination, the Board makes the following findings:

- 1) The Premises is currently improved with an existing shopping plaza that includes various uses, including other Food Service Establishments, and is located in a commercially zoned area of the Village. The Applicant's proposed retail ice cream shop will occupy space formerly occupied by a Subway Sandwich Shop business. As such, the proposed use is consistent with the neighborhood.
- 2) The Premises is located on Boston Post Road within an existing plaza occupied by tenants offering a variety of goods and services with parking space available for shared use by the tenants. The Board discussed the potential impact on available parking by adding a Food Service Establishment to the shopping center. The Board determined the Applicant would not significantly impact the availability of parking based on its similarity to the former use at the Premises for carry-out service and the Applicant's proposed hours of operation which will attract patrons walking from the nearby school. The Application materials support the conclusion that the proposed use will not adversely affect the public health, safety and welfare, and the comfort and convenience of the public in general, and any residents of the neighborhood.
- 3) The Application is in compliance with the Special Permit standards and requirements as set forth in Zoning Code Sections 342-45 and 342-71 subject to the conditions set forth herein.

**AND BE IT FURTHER RESOLVED**, that, the Special Permit granted herein is subject to the following conditions:

- A. That the Special Permit granted herein is conclusively limited to the specific use as proposed in the Application and shall be valid for an initial period of one (1) year during which the Applicant must apply for and obtain a building permit (Zoning Code Section 342-73). If the Applicant acquires the building permit as required by the Zoning Code, then the Special Permit shall be deemed valid for a period of three (3) years, commencing on the date of this Resolution, with the Applicant obligated to submit a renewal application no less than four (4) months prior to the expiration date; and, upon the Applicant's failure to make said renewal application, the Special Permit granted herein shall expire without further notice to the Applicant.

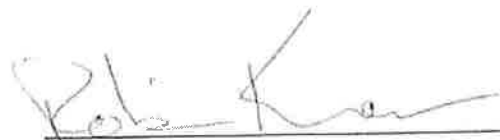
- B. That the Special Permit granted herein shall terminate upon any change in the use, a cessation of use for more than twelve (12) months, a change in the intensity of the use, a change in services provided, a change in operations, and/or a change in the configuration of the Premises.
- C. That the granting of this Special Permit in connection with this Application shall not be deemed to relieve the Applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the plans or construction or any other phase of the proposed project.
- D. The permitted hours of operation shall be as follows:
  - i. **Sunday-Thursday:** 12:00 p.m. -7:00 p.m.
  - ii. **Friday-Saturday:** 12:00 p.m. – 9:00 p.m.
- E. That any work done hereunder shall be in strict compliance with the plans as filed with this Application, except as expressly modified by the conditions herein or such non-material changes to such plans as may be approved by the Building Inspector.
- F. A copy of this Special Permit shall be onsite at all times, and available upon request.
- G. Any exterior lighting must be downward illuminating.
- H. All sound levels must comply with the requirements of the Village Code. No live band, live instrumentalist, or live singing will be permitted.
- I. The Applicant must comply with all applicable local, state, and federal laws and regulations.
- J. That the failure to observe and perform any of these conditions shall render this Special Permit invalid.

**BE IT FURTHER RESOLVED**, that, the Board directs that a complete copy of this resolution be filed with the Village Clerk in compliance with New York State Village Law.

On the motion of Board member Shingler, seconded by Board member Glattstein, the foregoing Resolution was adopted with Board members voting as follows:

<b>Robin Kramer, Chair</b>	<b>YES</b>
<b>Gretta Heaney</b>	<b>YES</b>
<b>Brian Glattstein</b>	<b>YES</b>
<b>David Neufeld</b>	<b>YES</b>
<b>Angelique Shingler</b>	<b>YES</b>

The motion was carried on a vote of 5-0



Robin Kramer, Chair, Zoning Board of Appeals

Dated: 05-31, 2023  
Mamaroneck, New York