

**VILLAGE OF LOCH ARBOUR  
PLANNING BOARD  
MINUTES –REGULAR MEETING  
December 13, 2023**

**THE REGULAR MEETING OF THE VILLAGE OF LOCH ARBOUR PLANNING BOARD WAS HELD IN THE VILLAGE OF LOCH ARBOUR MUNICIPAL BUILDING, 550 MAIN STREET, LOCH ARBOUR, NEW JERSEY ON WEDNESDAY, DECEMBER 13, 2023 AND WAS CALLED TO ORDER BY MAYOR FERNICOLA AT 7:30 PM.**

Salute to the Flag. THE SECRETARY CALLED THE ROLL. PRESENT WERE: Commissioner D' Angelo, Mayor Fernicola, Ms. Appello, Mr. Wiener, Mr. Santos, Mr. Maisto. Absent were Mr. Cumiskey, Mr. Fernicola, Ms. Wilusz.

The Board Secretary announced that the notice requirements of C. 231, P.L. 1975, have been met by transmitting the notice of this Regular Meeting to the Planning Board's two designated newspapers on January 17, 2023 posting a copy of the notice on the Municipal Building bulletin board, and filing a copy of the notice with the Municipal Clerk on the same date.

**CORRESPONDENCE** – None

**MINUTES**

UPON MOTION of Commissioner D' Angelo, seconded by Mayor Fernicola, carried, the following minutes are hereby approved as submitted.

- Regular Meeting of the Planning Board held on July 11, 2023

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola, Mr. Santos, Mr. Maisto

Nays: None Abstain: Ms. Appello, Mr. Wiener

Absent: Mr. Cumiskey, Mr. Fernicola, Ms. Wilusz

UPON MOTION of Ms. Appello, seconded by Mayor Fernicola, carried, the following minutes are hereby approved as submitted.

- Regular Meeting of the Planning Board held on September 13, 2023

Recorded Vote:

Ayes: Mayor Fernicola, Ms. Appello, Mr. Wiener, Mr. Maisto

Nays: None Abstain: Commissioner D' Angelo, Mr. Santos

Absent: Mr. Cumiskey, Mr. Fernicola, Ms. Wilusz

**OLD BUSINESS** –

**A. Memorialize Resolution – 337 Euclid Avenue, Block 3, Lot 16**

**RESOLUTION OF THE PLANNING BOARD OF THE VILLAGE OF LOCH ARBOUR  
REGARDING APPLICATION FOR CERTIFICATE OF APPROPRIATENESS (DEMOLITION)  
BY MYLO DWECK FOR PROPERTY LOCATED AT  
337 EUCLID AVENUE, BLOCK 3, LOT 16**

WHEREAS, MYLO DWECK (hereinafter "Applicant") has applied to the Planning Board of the Village of Loch Arbour for approval of a Certificate of Appropriateness (Demolition) for premises located at 337 Euclid Avenue, Village of Loch Arbour and known as Block 3, Lot 16 on the tax map of the Village of Loch Arbour, which premises are in the Residential Zone; and

WHEREAS, a review of the notices and publications indicate that the Board has jurisdiction to hear this application; and

WHEREAS, public hearings were held on June 14, 2023 and July 11, 2023 and all interested parties were given an opportunity to be heard and express their opinions; and

WHEREAS, the Board reviewed the materials submitted; and

WHEREAS, the Board, after carefully considering the testimony and evidence presented by the Applicant, has made the following factual findings:

The Applicant filed an Application for Certificate of Appropriateness to request permission from the Planning Board to demolish an existing residence. Factually, this is after a Resolution for Certificate of Appropriateness was issued

by the Planning Board to permit a renovation of the residence, where after the renovation, it became known that the scope of the demolition indicated on the Applicant's plans was grossly exceeded. The Planning Board thus looks at the matter as though it is a prospective application for demolition and not a retroactive one. An appeal by the Applicant of a previously issued Stop Work Order was withdrawn by the Applicant during the course of the public hearings, as the Applicant conceded that the Stop Work Order was properly issued.

The Applicant is the owner of the property located at 337 Euclid Avenue known as Block 3, Lot 16, on the municipal tax map of the Village of Loch Arbour, County of Monmouth, and State of New Jersey, which property is located in the Residential Zone.

The Board considered all relevant criteria under the Municipal Historic Preservation Ordinance #2017-424 (the "Ordinance"), based on the testimony at the hearing of the Project Architect and the Project Contractor and more particularly in Section 7.2 thereof.

At the hearings, the Applicant entered into evidence Exhibits which were relied upon by the Board in making its findings including but not limited to:

**Exhibit A-1:** Architectural Plans prepared by Michael Savarese dated July 13, 2022 and revised to March 10, 2023.

**Exhibit A-2:** Photographs (totaling 6) taken by J. Krimko, Esq. at 2:36 p.m. on March 6, 2023.

**Exhibit A-3:** Exhibit of existing walls as prepared by Michael Savarese dated March 23, 2023.

**Exhibit A-4:** Hardboard showing four (4) color photographs of the construction progress and proposed rendering by Michael Savarese, undated.

**Exhibit A-5:** Photographs (totaling 35) taken by M. Kakiashvilli, undated.

**Exhibit B-1:** Stop Work Order dated March 9, 2023 and issued by Joseph McGrath, Zoning and Code Enforcement Official, Village of Loch Arbour.

**Exhibit B-2:** Photographs (totaling 3) taken by R. Fernicola and R. Wiener, undated

The Board considered all relevant criteria under the Municipal Historic Preservation Ordinance #2017-424, based on the testimony at the hearing from the Applicant and more particularly under Section 7.2 thereof, the Board makes the following findings:

The Applicant's plans previously approved by the Board per Resolution adopted on January 11, 2023 were inconsistent with the Architect's testimony at the 2022 public hearings. The Architect testified at the July 11, 2023 hearing that his plans could not have resulted in the project goal of raising the first floor without demolition of the entire first floor. The Applicant's contractor, Mikhail Kakiashvilli testified at the July 11, 2023 hearing that there was no construction technique which would have allowed the first floor ceiling to be raised without demolishing the first floor as well. The Board notes that had this information been disclosed at the 2022 hearings, it might have considered a denial of the Certificate of Appropriateness as to any demolition component, given the extensive demolition that would have been required and which did in fact occur. The Board notes that the inconsistency between the Architect's plans (drawn incorrectly per the Architect's sworn testimony) and the Architect's testimony could be deemed intentionally misleading and further notes that the Board cannot (and should never be placed in the position to) accept professional and expert testimony in the context of the Board having to determine "omissions by silence", and/or to decipher and resolve inconsistencies in sealed plans and sworn testimony which go to the heart of a licensed professional's credibility and transparency in making presentations before this (and any other) Board. The Board further notes that the Applicant's Architect provided the absolute minimally necessary testimony to justify the standards of the Historic Preservation Ordinance as to the requested Certificate of Appropriateness (Demolition). Subsection C of that Ordinance requires a conclusion that there is no significant architectural or historic value of the structure proposed to be demolished, based upon a detailed analysis and the Board notes that minimal testimony was given to meet this standard. Also, Subsection B of the Ordinance requires a showing as to reconciling the stated goal of maintaining and preserving the historic character of the Village in relation to the proposed demolition and the Board echoes this conclusion that minimal testimony was given to meet this standard.

The Board confirms under these circumstances and given the overall facts as revealed by the testimony, it seeks not to be punitive but rather to confirm the importance of addressing the criteria in the Historic Preservation Ordinance (and land use regulations) by truthful, transparent and comprehensive testimony by any professional qualified in the future to testify on behalf of an applicant.

Based on all the findings and testimony at the hearing by the Applicant, the Board finds the Applicant should be granted the approval of the Application for Certificate of Appropriateness (Demolition) for the prior demolition as occurred prior to the construction as permitted in the January 11, 2023 Certificate of Appropriateness, as per the drawings and plans filed at the hearings and as testified to, subject to the conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Village of Loch Arbour on the 13th day of December 2023, that the approval of the Application for Certificate of Appropriateness (Demolition) be granted for purposes of the demolition of the existing residence (but not including the existing foundation)

because the Applicant has satisfied the relevant criteria of the Loch Arbour Historic Preservation Ordinance based on the findings of fact set forth above.

**NOW, THEREFORE** be it resolved by the Board that the approval of the application is subject to the following conditions and/or the Applicant complying with the following:  
Applicant is bound to all representations at the hearing made by the Applicant, Applicant's expert and Applicant's contractor.

The demolition shall be conducted strictly as set forth in the revised plans prepared by the Applicant's Architect and filed with the application.

Any and all requirements of this Municipality and any other governmental subdivisions as set forth in any laws, ordinances or regulations, and obtainment of any permits or approvals required thereunder, including NJDEP. Publication of a notice of this decision in the official newspaper serving the Village of Loch Arbour and return of proof of publication to the Planning Administrator.

Payment of all taxes, escrows and assessments to date. No building permit or certificate of occupancy is to be issued and no map is to be signed or filed, if applicable, until proof is furnished to the Planning Administrator of the Planning Board that there are no taxes, escrows or assessments due or delinquent on the Property.

Obtaining all proper building permits for demolition, to the extent applicable, in accordance with the documents marked at the hearing and in compliance with the testimony of the Applicant and the Applicant's expert at the hearing.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Village Clerk, the Village Construction Official, the Board Engineer/Planner, the Village Tax Collector, the Village Tax Assessor, the Village Tax Collector, the Village Attorney, the Board Attorney, and the Applicant herein.

**BE IT FURTHER RESOLVED** that this Resolution shall serve as one of memorialization of the action taken by this Board at its meeting of December 13, 2023.

Moved by: Mayor Fernicola

Seconded by: Commissioner D' Angelo

**ROLL CALL VOTE**

Those in favor: Commissioner D' Angelo, Mayor Fernicola, Mr. Santos, Mr. Maisto

Those Opposed: None

Those absent: Mr. Cumiskey, Mr. R. Fernicola, Ms. Wilusz

Those recused: Ms. Appello, Mr. Wiener

**B. Memorialize Resolution – 5 Buena Vista Court, Block 2, Lot 9**

**RESOLUTION OF THE PLANNING BOARD OF THE VILLAGE OF LOCH ARBOUR  
REGARDING APPLICATION FOR CERTIFICATE OF APPROPRIATENESS  
BY LAUREN MCBAIN FOR PROPERTY LOCATED AT  
5 BUENA VISTA COURT, BLOCK 2, LOT 9**

WHEREAS, LAUREN MCBAIN (hereinafter "Applicant") has applied to the Planning Board of the Village of Loch Arbour for approval of a Certificate of Appropriateness for premises located at 5 Buena Vista Court, Village of Loch Arbour and known as Block 2, Lot 9 on the tax map of the Village of Loch Arbour, which premises are in the Residential Zone; and

WHEREAS, a review of the notices and publications indicate that the Board has jurisdiction to hear this application; and

WHEREAS, a hearing was held on September 13, 2023 and all interested parties were given an opportunity to be heard and express their opinions; and

WHEREAS, the Board reviewed the materials submitted; and

WHEREAS, the Board, after carefully considering the testimony and evidence presented by the Applicant pro se, has made the following factual findings:

The Applicant filed an Application for Certificate of Appropriateness to request approval from the Planning Board to rebuild an existing closed-in rear porch.

The Applicant is the owner of the property located at 5 Buena Vista Court, known as Block 2, Lot 9, on the municipal tax map of the Village of Loch Arbour, County of Monmouth, and State of New Jersey, which property is located in the Residential Zone.

The Board considered all relevant criteria under the Municipal Historic Preservation Ordinance #2017-424 (the "Ordinance"), based on the testimony at the hearing of the Project Architect and more particularly in Section 7.2 hereinafter.

At the hearings, the Applicant entered into evidence Exhibits which were relied upon by the Board in making its findings, including but not limited to:

**Exhibit A-1:** Sample of Cedar Impressions siding

**Exhibit A-2:** Manufacturer's information sheet of proposed Therma-Tru Benchmark Door

**Exhibit A-3:** Manufacturer's information sheet of proposed Anderson Series 400 tilt-wash double hung windows

**Exhibit A-4:** Pictures taken by Applicant of existing front porch and existing rear porch

The proposed Renovation (the "Renovation"), is consistent with the style of the original existing Dwelling (the "Dwelling" or "Structure"). The Renovation meets the requirements of the Ordinance and more particularly in Section 7.2 hereinafter.

The Board considered all relevant criteria under the Municipal Historic Preservation Ordinance #2017-424, based on the testimony at the hearing from the Applicant and more particularly under Section 7.2, the Board makes the following findings:

The work will expand upon the existing architectural features and replace much of the detail with new, more historically referenced materials. The scale of the proposed Renovation is consistent with its style, and an improvement on the existing scale of the home. The Renovation will not adversely affect the ambiance, character, and appearance of the District and the relationships among structures and between structures and public ways in the District.

The width and height relationship is being preserved by maintaining the existing rear dimensions as presently established, and the Renovation does not change the overall width of the footprint of the home. Additionally, the Applicant will remove the east and west side windows of the rear porch and not replace them, but rather frame in, insulate and utilize the noted Cedar Impressions siding to cover the area of the east and west rear porch windows. In light of the location of the adjoining structures to the east and west of the Applicant's resident, this does not have a negative impact on the existing rear porch of the Dwelling.

The relationship of the proposed Renovation to the neighboring structures with regard to the open space between, will not be changed by the Renovation. No portion of the Renovation will be closer to any lot line than the existing structure. The roof pitch on the Addition will match the existing roof pitch in both the design character and the slope of the roof. Details such as the eaves, soffits and trim will be maintained and enhanced.

The relationship of the width of windows to the height of windows of the Renovation will be visually compatible with those in the existing remainder of the Dwelling.

Since the Renovation will have new material which is more historically referenced, it will be visually compatible with the remainder of the Dwelling.

The relationship of materials and texture of the rear façade and roof of the Renovation will be visually compatible with the predominant materials of the remainder of the Dwelling, existing and as proposed.

The roof shape of the Renovation, as unchanged, will be visually compatible with the existing roof of the Dwelling.

The size of the Renovation, the mass of the Renovation in relation to the open spaces, and the windows, door openings, etc. will be visually compatible with the existing Dwelling.

Based on all the findings and testimony at the hearing by the Applicant, the Board finds the Applicant should be granted the approval of the Application for Certificate of Appropriateness for the rebuilding and renovation of the existing rear porch of the current Dwelling with the representation that the rear porch east and west windows are to be removed and not replaced (with their former openings to be framed, insulated and covered by Cedar Impressions siding as set forth in Exhibit A-1 as per the drawings and plans filed at the hearing and as testified about, subject to the conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Village of Loch Arbour on the 13th day of December, 2023, that the approval of the Application for Certificate of Appropriateness be granted for purposes of the rebuilding and renovation of the existing rear porch of the Dwelling, because the Applicant has satisfied the relevant criteria of the Loch Arbour Historic Preservation Ordinance based on the findings of fact set forth above.

**NOW, THEREFORE** be it resolved by the Board that the approval of the application is subject to the following conditions and/or the Applicant complying with the following:  
Applicant is bound to all representations at the hearing made by the Applicant and Applicant's expert.  
The improvements shall be constructed strictly as set forth in the plans prepared by the Applicant and filed with the application. The improvements shall also be constructed strictly in place of the existing rear porch, with no expansion of the existing footprint, provided, however, that the rear stairs are to be replaced with pressure treated wood framing and manufactured wood surfaces at the location and as depicted in the Applicant's plans.

Any and all requirements of this Municipality and any other governmental subdivisions as set forth in any laws, ordinances or regulations, and obtainment of any permits or approvals required thereunder, including NJDEP.

Publication of a notice of this decision in the official newspaper serving the Village of Loch Arbour and return of proof of publication to the Planning Administrator.

Payment of all taxes, escrows and assessments to date. No building permit or certificate of occupancy is to be issued and no map is to be signed or filed, if applicable, until proof is furnished to the Planning Administrator of the Planning Board that there are no taxes, escrows or assessments due or delinquent on the Property.

Obtaining all proper building permits for construction and constructing same in accordance with the documents marked at the hearing and in compliance with the testimony of the Applicant and the Applicant's expert at the hearing.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Village Clerk, the Village Construction Official, the Board Engineer/Planner, the Village Tax Collector, the Village Tax Assessor, the Village Tax Collector, the Village Attorney, the Board Attorney, and the Applicant herein.

**BE IT FURTHER RESOLVED** that this Resolution shall serve as one of memorialization of the action taken by this Board at its meeting of December 13, 2023.

Moved by: Mayor Fernicola

Seconded by: Ms. Appello

**ROLL CALL VOTE**

Those in favor: Mayor Fernicola, Ms. Appello, Mr. Wiener, Mr. Maisto

Those Opposed: None

Those absent: Mr. Cumiskey, Mr. R. Fernicola, Ms. Wilusz

Those recused: Commissioner D' Angelo, Mr. Santos

**NEW BUSINESS –**

**A/B. 112 Euclid Avenue, Block 9, Lot 2 VARIANCE/MAJOR ALTERATION**

THIS MATTER WAS NOT NOTICED PROPERLY. THIS MATTER IS SCHEDULED FOR THE NEXT PLANNING BOARD MEETING WHICH WAS RESCHEDULED FOR JANUARY 8, 2024 AT 6:30 PM.

**C. 101 Edgemont Drive, Block 9, Lot 13.01 (Notice of Appeal)**

Zoning Official, Joseph McGrath issued a Stop Work Order in violation of Village Development Ordinance No. 156-417(e), as the true intended use of the addition to the structure was not disclosed, as well as Ordinance No. 352 in that no Flood Plain Elevation Certificate has been provided and that a cabana does not promote the intent of Ordinance No. 2018-450. (Historic Preservation)

The following Exhibits have been marked into evidence:

Exhibit A-1: Jurisdictional Package (Application and Notice) – with attachments. Dated August 1, 2023.

Exhibit A-2: Architectural Plans prepared by Robert A. Hazelrigg and Associates dated April 12, 2022, consisting of 14 pages.

Exhibit A-3: 2 - Screen Shots of Village of Loch Arbour Website.

Exhibit A-4: Printout of PDF file of Historic Preservation Application, Request of Local Zoning Determination, Planning Board Application.

Exhibit A-5: Copy of part of Approved Plans, T1.1, consisting of 1 page.

Exhibit A-6: Screen shot of permit issued by the Borough of Deal.

Exhibit A-7: Email (OPRA Request) from Jennifer Krimko, Esq., to Village Clerk

Exhibit A-8: Email (OPRA Request) to Jennifer Krimko, Esq., from Village Clerk

Exhibit A-9: Copy of Village of Loch Arbour Ordinance 2022-475. Pages: 1,4,6,7,8,10,11,36.

Jennifer Krimko, Esq., from the law firm Ansell, Grimm and Aaron, PC., Attorney for the owners at 101 Edgemont Drive, Loch Arbour, filed an Application of Appeal. Ms. Krimko stated in the alternative an Application for Variance was submitted, as necessary, as well as an Amended Certificate of Appropriateness is being sought.

Ms. Krimko stated she is intending to call as witness' the following persons: Architect, Thomas Lavin, Planner, Andrew Janiw and the Contractor, John Scarpino, if needed.

Joseph McGrath, Loch Arbour Zoning Officer, was sworn in. Mr. McGrath testified he was made aware of this situation, based on a complaint from a resident, stating the construction was not being done in accordance with the Plans. Mr. McGrath reviewed plans that were submitted and determined the builder deviated from the plans. The Construction Official also reviewed the plans, and they both determined this is more a Cabana than a Sunroom. The Building Department issued a Stop Work Order. Mr. McGrath issued a Stop Work Order for Zoning. Mr. McGrath testified the structure was not at the right elevation, the floor appeared to be lower than what was required in this particular Flood Zone. Mr. McGrath also stated a new Elevation Certificate was not submitted. The floor of the addition appeared to be lower than the main structure. Mr. McGrath testified a sewer, water and gas line were installed in this addition. These utilities were not depicted on the original plans submitted. Mr. McGrath testified with the added utilities, it is now classified as a cabana and a cabana is not a permitted use in the Village.

The Board discussed with Mr. McGrath the difference between a Sunroom and a Cabana. Mr. McGrath testified the structure cannot be accessed from the primary structure. Referenced was Exhibit A-2. Mr. McGrath testified this structure is an accessory structure. Mr. McGrath confirmed it is a second primary structure and could be used as living space. Mr. McGrath confirmed if the use is not specifically identified as a permitted use, it is prohibited as per Loch Arbour Ordinances.

Mayor Fernicola stated this matter came before the Loch Arbour Board of Commissioners Meeting in July, 2023, asking for relief from the Summer Moratorium and the Contractor referred to the structure as a "Cabana" several times. Mr. McGrath testified that the Contractor told him he deviated from the plans.

Ms. Krimko cross examined Mr. McGrath. Ms. Krimko spoke to Mr. McGrath regarding the structure being a sunroom and plumbing being installed for a wet bar. Mr. McGrath testified the wet bar was not in the original plans. Mr. McGrath testified a sunroom can have a wet bar. Ms. Krimko referenced was Exhibit A-2 (A-1.8) and Mr. McGrath testified there is no interior access (ie. Door) from the house to the sunroom.

Mayor Fernicola asked Ms. Krimko when the Certificate of Appropriateness was approved, did the applicant present testimony, there was no access from this proposed room to the house. Ms. Krimko stated she does not recall.

Ms. Krimko referenced Exhibit A-2 (A-1.8) and spoke to Mr. McGrath about the elevation of the sunroom. Ms. Krimko stated the new pool patio has no stairs to the sunroom, and there are 7 stairs up to an existing raised porch. Ms. Krimko stated Mr. McGrath testified there were sewer, water and gas running to the sunroom. Mr. McGrath testified the construction department also found they were not permitted. Ms. Krimko stated building permits were issued for the plumbing.

Ms. Krimko stated, even though she is not conceding that a sunroom cannot have plumbing, the plans being submitted to the proposed Sunroom, do not include the sink. Ms. Krimko stated any plumbing that has been installed in the Sunroom will be removed. Ms. Krimko and Mr. McGrath spoke about what constitutes a second dwelling.

Mayor Fernicola confirmed with Mr. McGrath he relied on the Construction Official there was water, sewer and gas line installed in the sunroom.

Ms. Krimko stipulated to the Board, there is water, sewer and gas to the home, the only utility that was run to the sunroom by building department permit, was plumbing.

Ms. Krimko read a statement and summarized the timeline and approval by the Planning Board on October 20, 2021. She stated a Flood Plain Certificate compliance was not discussed at the hearing nor a condition of approval in the Resolution.

Ms. Krimko referenced Exhibit A-9 and stated Ordinance 352 was repealed and replaced with Ordinance 2022-475. She stated Mr. McGrath referenced in his Stop Work Order Ordinance 352, which was repealed and replaced. She stated when the Stop Work Order was issued on July 17, 2023, Ordinance 352 was not in effect. She also stated the Stop Work Order should be overturned as it relates to compliance with Ordinance 352, which was not in effect at the time the Stop Work Order was issued. In accordance with Ordinance 2022-475, the Construction Official only, has the authority to enforce. The Zoning Officer has no authority to issue a Stop Work Order regarding an alleged violation of this Ordinance. She referenced Exhibit A-5 where both Zoning and Construction signed off on these plans. She stated there is no allegation of violation in the Stop Work Order received for Ordinance 2022-475.

Ms. Krimko stated the Village maintains the Development Ordinances on the Village Website. Ms. Krimko stated Ordinance 2022-475 is not on the Village Website. Ms. Krimko referenced Exhibit A-9. Ms. Krimko stated the Flood Plain Administrator is Village Engineer, Peter Avakian. Ms. Krimko read from the Ordinance the procedure on determining if a Flood Plain Certificate should be obtained. The Flood Plain Administrator has jurisdiction over this determination. She stated the Village has no process requiring the Flood Plain Administrator to review all plans to make this determination before the Zoning or Construction Permits are issued. She referenced Exhibit A-7 and Exhibit A-8 stating no records found of applications, permits or denials for a Flood Plain Certificate. Ms. Krimko stated the Flood Plain Administrator does not have a written application, as stated in the Ordinance. She stated it is unreasonable to expect a homeowner to locate and comply with an Ordinance that was not published on the Village's website, to which, the Zoning Officer failed to know existed. Especially after the homeowner spent a significant amount of money to construct a permitted sunroom, before Loch Harbour reversed its position. She stated the homeowner followed the Village's protocol. She stated if the Flood Plain Administrator determined it was in a Flood Zone, the plans should have never been released by the Zoning Office. The application was made in good faith. She referenced a Superior Court Case in New Jersey, regarding this issue. She stated the Zoning Officer has no jurisdiction regarding this Stop Work Order, so same should be overturned.

Mr. Aikins asked Ms. Krimko if the Applicant has Flood Insurance on this property. Ms. Krimko stated she did not know. Ms. Krimko and Mr. Wiener discussed the website. The Board and the Professionals spoke about the Ordinances on the Website and the Flood Zone. Mr. Aikins and Mr. Sam Avakian discussed the Flood Zone. Mr. Avakian advised and explained the Elevation Certificate and confirmed there was one issued for the original structure built in 2015. Ms. Krimko stated the applicant is not stating if they did or did not know the structure was in a flood zone, she stated there was no evidence of Ordinance 2022-475 or the requirements. Mr. Avakian discussed with the Board the Flood Plain Elevation Certificate issued in 2015. Mr. Aikins referenced Exhibit A-2 and read from the requirements.

Planning Board Secretary, Marilyn Simons, RMC, was sworn in. Ms. Krimko asked Mrs. Simons if Village Ordinance 2022-475 is on the Village Website. Ms. Simons stated she is unaware if Ordinance 2022-475 is on the website. Ms. Simons stated she posts information or the Website provider posts information on the Website. She stated it would be an oversight if any development Ordinance is not posted on the website.

Mr. McGrath stated the Ordinance that was in place at the time of the approval is the guiding Ordinance for that project through out. Ordinance 352 was replaced after this project was approved.

Ms. Krimko stated the Construction Official withdrew his Stop Work Order issued. She stated the Board has no jurisdiction for the appeal as the original Ordinance was repealed before the applicant applied for building permits. She stated the applicable Ordinance in effect at the time of applying for building permits was Ordinance 2022-475. She stated again the only persons that has the right to enforce this is the Construction Official and the Flood Plain Manager.

The Board and Ms. Krimko discussed the website and the Flood Certification. The Board and Professionals discussed the case. The Board discussed the timeline with the repeal of Ordinance 352 and the adoption of Ordinance 2022-475.

Ms. Krimko stated the following will be testified to:

1. It was alleged that the true intended use of Structure was not disclosed .
2. Ordinance 352 was violated.
3. Cabana does not promote the intent Ordinance 2018-450. (HPO)
4. Addition is not a permitted use, because it is alleged to be a cabana and violation of Ordinance 156 and it was not disclosed in the building plans, that it is a cabana.
5. Construction Plans deviated from Plans approved from the Planning Board. The Applicant concedes that there was a change as it relates to the sink. Ms. Krimko stated the sink will be removed.
6. The Applicant is seeking 2 minor changes to the plans, that have not yet been constructed.

Architect, Thomas Lavin, was sworn in. The Board accepted Mr. Lavin as an expert witness in Architecture. Mr. Lavin referenced Exhibit A-2. Mr. Lavin confirmed there was nothing changed to the exterior of the structure as approved by the Certificate of Appropriateness. Mr. Lavin testified to the specifications of the structure. Mr. Lavin testified the structure is the same level as the pool patio. He testified there is no access connection between the sunroom and the house. Mr. Lavin testified it is part of the principal structure. He confirmed there were no variances required with this Application. Mr. Lavin confirmed the sink was not on the drawings submitted.

Mayor Fernicola spoke about the definition of a sunroom. Mr. Lavin testified the definition can be found in the New Jersey Building Code book. Mr. Lavin's understanding of the definition is a room enclosure, made mostly of glass. The Board and Professionals spoke about the difference between a sunroom and a cabana. Mr. Lavin testified that typically a cabana consists of a bathroom, kitchenette for use for a pool. He has never designed a cabana with nothing in it. Cabinetry was not shown on the plans. Mr. Lavin testified this sunroom was constructed for a place to sit, without having to go into the main house. Mr. Lavin testified he is not aware of any Village Ordinance prohibiting cabinetry in a sunroom.

UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the meeting be opened to public for questions of the Architect, Thomas Lavin. There being no questions, UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the meeting be closed to the public.

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola, Ms. Appello, Mr. Wiener, Mr. Santos, Mr. Maisto

Nays: None Abstain: None

Absent: Mr. Cumiskey, Mr. Fernicola, Ms. Wilusz

John Scarpino, Scarpino Construction, LLC, was sworn. Mr. Scarpino is the contractor for the subject property. Mr. Scarpino referenced Exhibit A-2. (A1.8) Mr. Scarpino testified that a permit update was done to install a sink in the sunroom. A permit was obtained by the Deal Building Department. Mr. Scarpino confirmed the sink will be taken out of the plan. He stated a traditional sewer line was not put in. But there was a sewer line put in from the sink to the sewer line in the house. He confirmed waste from a sink must go into a sewer line. Mr. Scarpino confirmed the elevation of the home is higher, and a pump would have to be installed. Mr. Scarpino testified that a cabana generally has a washer dryer, a full kitchen and a bathroom. This Sunroom has none of those amenities. He also testified a sunroom traditionally has cabinetry and a sink. Mr. Scarpino was not aware it was not in the original plan. Mr. Scarpino testified the sewer will be cut off. The water supply will be capped off in the existing bathroom on the main level of the home. The gas line is for the pool. Mr. Scarpino testified that when the drywallers were there, they pulled the gas line thru the interior of the structure. It should have been left on the outside.

Mr. Scarpino discussed with the Board what would be installed in the sunroom. He confirmed there will be cabinetry, furniture, chairs, etc.

UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the meeting be opened to public for questions of the Contractor, John Scarpino. There being no questions, UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the meeting be closed to the public.

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola, Ms. Appello, Mr. Wiener, Mr. Santos, Mr. Maisto

Nays: None Abstain: None

Absent: Mr. Cumiskey, Mr. Fernicola, Ms. Wilusz

TEN MINUTE RECESS

Andrew Janiw, AICP, Beacon and Planning and Consulting Services, LLC, was sworn in. The Board accepted him as a qualified Planner. Mr. Janiw referenced Village Ordinance 156 (417E). Mr. Janiw also referenced the HPO Ordinance and stated this Ordinance was not intended to regulate use. The HPO regulates the architectural appearance. Mr. Janiw testified the true intended use of this structure is a sunroom. Mr. Janiw read the definition of a sunroom and referenced the Planning Board Resolution that was adopted by the Planning Board in 2021 to build this sunroom. Mr. Janiw read from the Village Ordinance a definition of a cabana in a beach zone. Mr. Janiw confirmed this home is not in the beach zone. Mr. Janiw discussed with the Board and the Professionals the definition of a sunroom in the International Residential Code – NJ Edition. (N11016(R202) defined terms) Mr. Janiw read the definition from the Code for a sunroom. (Chapter 3 Building/Planning Section R301.2.1.1.1) Mr. Janiw read the five classifications of a sunroom in this section. Mr. Janiw testified this structure meets the definition of a sunroom in the Code. (Classification 4)

This matter was adjourned due to the late hour.

It was confirmed that this application will be carried to the next Loch Arbour Planning Board Meeting scheduled for Monday, January 8, 2024 at 6:30 p.m. This shall also confirm the Applicant and their Attorney extend the time to make a decision regarding this matter.

#### **DISCUSSION -**

##### **A. PENDING APPLICATIONS –**

115 Euclid Avenue, Block 5, Lot 7

Variance – Certificate of Appropriateness. Matter will be scheduled for January 8, 2024 at 6:30 pm

##### **B. Next Planning Board Meeting is scheduled for Monday, January 8, 2024 at 6:30 pm.**

UPON MOTION, of Mr. Wiener seconded by Commissioner D' Angelo, carried that the Planning Board Reorganization and Regular Meeting has been rescheduled for Monday, January 8, 2024 at 6:30 pm.

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola, Ms. Appello, Mr. Wiener, Mr. Santos, Mr. Maisto

Nays: None Abstain: None

Absent: Mr. Cumiskey, Mr. Fernicola, Ms. Wilusz

#### **PUBLIC COMMENTS**

UPON MOTION of Mayor Fernicola, seconded by Commissioner, carried that the meeting be opened to the public. With no public present, the Meeting was closed to the public.

There being no further business, and UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the meeting be adjourned at 9:35 p.m.

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Marilyn Simons, Board Secretary