

*Chairman John Brewer called the Planning & Zoning Commission meeting to order at 7:00 pm.  
Roll: 8 Present (Brewer, Scarpelli, Meyer, Holliman, Bernstein, Apke, Muscat and Schock). 1 Absent  
(and Steneck). Also present were Deputy Village Administrator/Village Clerk Heather Maieritsch,  
Deputy Village Clerk Katherine Holt and Associate Village Attorney Jim Binninger.*

*Motion to allow Scarpelli to participate via telephone conference by Berstein/Schock.  
7 Ayes (Brewer, Meyer, Holliman, Bernstein, Apke, Muscat and Schock). 1 Absent (Steneck). Motion  
carries.*

**APPROVAL OF MINUTES:**

**1. Planning and Zoning/Historic Commission Meeting Minutes dated October 15, 2015**

*Motion to approve the October 15, 2015 meeting minutes by Holliman/Scarpelli.  
7 Ayes (Brewer, Scarpelli, Holliman, Meyer, Apke, Muscat and Schock). 1 Absent (Steneck). 1 Abstain  
(Bernstein). Motion carries.*

**PUBLIC COMMENT: None**

**NEW BUSINESS:**

**1. PUBLIC HEARING:** 442 Lakeshore Drive, East Dundee Illinois. Requesting variances from sections 157.003, 157.085(B) and 157.085(D) at 442 Lakeshore Drive, East Dundee, Illinois.

*Motion to open the public hearing for 442 Lakeshore Drive by Scarpelli/Apke.  
8 Ayes (Brewer, Scarpelli, Holliman, Meyer, Apke, Muscat, Bernstein and Schock). 1 Absent (Steneck).  
Motion carries.*

Attorney Binninger introduced the Zoning Board of Appeals Rules of Procedure and reviewed them with the Commission, petitioner, objector and their counsel.

*Motion to approve the Zoning Board of Appeals Rules of Procedure by Schock/Meyer.  
8 Ayes (Brewer, Scarpelli, Holliman, Meyer, Apke, Muscat, Bernstein and Schock). 1 Absent (Steneck).  
Motion carries.*

Attorney Binninger stated that the Zoning Board of Appeals Rules of Procedures will be entered as Exhibit 1 for this hearing.

Attorney Ronald Roeser and petitioner Daniel O'Leary were sworn in by the Village-hired court reporter. Attorney Roeser gave his opening statement explaining that there has been ongoing litigation that has brought the Village into the case twice. He said the Village Board passed a resolution in May 2015 approving all of the material described in the petition for the property built in 2009. He said that the resolution was rejected by the court stating that it did not rise to the level of importance; therefore, a petition has been submitted to the Commission requesting a formal variance. He explained that the garage was built according to the plans and inspected and approved by the Village Building Inspector as well as an outside inspection company. He said since it is built into a hill, it is difficult to determine the proper way to measure it. Now it is 6 years later being objected to. He said tonight, he and his client are asking for variances for the height, distance, what is considered a story and how many stalls a garage is allowed.

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Attorney Roeser then questioned his witness, Mr. O'Leary, about the construction and inspection of the garage. He requested that Mr. O'Leary's variance application be entered into evidence as Exhibit 2.

Attorney William Maloney, counsel for the objector, cross examined Mr. O'Leary about the height and construction of the upper story of the accessory garage as well as the distance it was built from the principle building. Mr. Maloney introduced a plat of survey done in 2014 by Alan J. Coulson, P.C.

Attorney Binninger said that the two principle variances are the height of the structure and the distance of an accessory structure from the principle building. Attorney Roeser requested that the attic being considered a story be added as a variance as well as the two stall vs. four stall garage issue. Binninger said his direction to the Commission will be of the two variances regarding height and distance. He said the requirement regarding the story height will be considered as part of the height variation request.

Attorney Binninger asked the petitioner to present testimony as to the uniqueness of the property. Attorney Roeser posed questions to Mr. O'Leary about his property having two adjacent lots and how Lakeshore Drive dead ends in front of his home. Mr. O'Leary testified that his property is on a 20 foot hill with the garage situated in the middle of the hill. He also explained that he and his neighbor to the East share an easement to access their properties.

Attorney Maloney questioned Mr. O'Leary about stormwater drainage in relation to the construction of the garage.

Patrick Clarke, the objector, was sworn in by the Village-hired court reporter. Through Attorney Maloney, Mr. Clarke testified that the accessory garage's upper story has been used to store ATVs, lawn tractors and leaf machines. He also testified that he commissioned a survey of the garage dimensions by Alan J. Coulson, P.C. in May 2014. Mr. Maloney moved to admit the survey into evidence. Mr. Roeser objected on the grounds of hearsay. Mr. Maloney replied that under the evidence act, a sealed survey is an exception to the hearsay rule. Attorney Binninger allows the survey to be admitted. The survey was passed around to the Commission for review.

Attorney Roeser crossed examined Mr. Clarke about his testimony on the size of the upper level of the garage. He also questioned Mr. Clarke about the timing of when he filed his objection and brought action against the O'Learys. He asked Mr. Clarke if he had seen a letter from the Village Inspector addressed to his wife, Alison Clarke, dated July 31, 2008 stating that the structure was in compliance with the code. Mr. Clarke answered that he did. Mr. Roeser asked Mr. Clarke if he saw an inspection report letter dated October 3, 2008 from the Village Inspector to the Village Administrator indicating that the structure was determined to be in compliance. Mr. Clarke replied that he did not recall seeing that letter.

Mr. Clarke requested that the Coulson survey be admitted as Exhibit 3. He also submitted two photos of the accessory garage, one taken of the construction state and one taken of the finished state. He requested that these photos be admitted as Exhibit 4.

Commissioner Meyer asked Mr. O'Leary if he currently uses the accessory garage attic for storage and how is it accessed. Mr. O'Leary replied that he currently stores camping equipment and lawn furniture. He said because it is built into a hill, the attic is entered from the rear by a ramp. Commissioner Apke asked if the ramp and rear door were part of the original drawings. Mr. O'Leary replied that they were not. Apke then questioned the installation of 3 LVL beams as noted on the inspection report rather than

installing 2 as listed on the original drawings. O'Leary replied that the change was decided by the Village Building Inspector because there was a considerable amount of sway to the floor.

Attorney Roeser gave his final summary stating that they have not received any other objections to this structure in regard to this petition but for this one. He said they would just like to resolve this. He said he and Mr. O'Leary are here on terms of a hardship. He said the garage was built according to plans, inspected and issued a final occupancy permit. He said he doesn't blame the Village, but if there is any error, the Village did not catch it or advise of it.

Attorney Maloney gave his final summary stating that there are deviations between the plans submitted and the actual construction. He said the reason the Clarke's are objecting is because there has been an expropriation of their easement transformed into the grand entryway for this garage. He said one of the core issues of the litigation is whether or not this easement may be transformed, reconfigured and have its use re-characterized by one party.

Attorney Binninger provided a summary and variance recommendations to the commission. He then discussed the findings of fact questions in detail with the commission.

Debbie Tyrrell provided a public comment in support of the O'Leary's objection.

Allison Clarke was sworn in by the Village-hired court reporter. She testified that she used to receive light from the west on her driveway that would melt the snow but it has been blocked since the construction of the garage, causing her to fall several times.

Deborah Basso was sworn in by the Village-hired court reporter. Ms. Basso provided comments on how to take height measurements.

## **2. Findings of Fact – 442 Lakeshore Drive, East Dundee, Illinois**

*Motion to approve Positive Findings of Fact for a Variance for the Distance of less than 10 feet between the Detached Garage and the Principle Structure Including the Attached Garage by Muscat/Apke. 8 Ayes (Brewer, Muscat, Meyer, Apke, Scarpelli, Holliman, Bernstein and Schock). 1 Absent (Steneck). Motion carries.*

*Motion to approve the Variance Request for the Distance of less than 10 feet between an Accessory Structure and a Principle Structure Including an Attached Garage by Schock/Bernstein. 4 Ayes (Scarpelli, Holliman, Bernstein and Schock). 4 Nays (Apke, Meyer, Brewer and Muscat) 1 Absent (Steneck). Motion fails.*

*Motion to approve Positive Findings of Fact for a Height Variance for an Accessory Structure to exceed 15 feet by Holliman/Muscat. 7 Ayes (Brewer, Muscat, Apke, Scarpelli, Holliman, Bernstein and Schock). 1 Nay (Meyer). 1 Absent (Steneck). Motion carries.*

*Motion to approve the Variance Request to allow an Accessory Structure Higher than 15 feet by Muscat/Holliman. 4 Ayes (Scarpelli, Holliman, Bernstein and Schock). 4 Nays (Apke, Meyer, Brewer and Muscat). 1 Absent (Steneck). Motion fails.*

Attorney Binninger advised that the recommendations will now go to the Village Board and this item will be on the agenda on Monday, December 14.

*Motion to close the public hearing for 442 Lakeshore Drive by Muscat/Holliman was passed by a unanimous vote.*

- 3. PUBLIC HEARING:** 110 N. River Street, East Dundee Illinois. Requesting a variance from - section 157.051 (I) Building Height: which allows for a maximum building height of 40 feet and three stories and grant approval of a variance to allow for the proposed building height of 52 feet with a rear lot elevation of 47 feet and approval of a four story building at 110 N River, East Dundee, Illinois.

*Motion to open the public hearing 110 N. River Street by Holliman/Muscat was passed by a unanimous vote.*

Joseph Billitteri, John Curtis and Larry Farrenkopf were sworn in by the Village-hired court reporter. Mr. Curtis stated that they are requesting a height variance as well as approval for a four story building. He said his plans allow for 30 parking stalls for the 20 apartment units which include garage parking inside of the building. He advised that an experienced breakfast/lunch business is interested in renting the retail space and would close at 2:30 pm, freeing up evening parking space.

Mr. Farrenkopf discussed the architecture of the proposed building.

Mr. Curtis explained that the front elevation of the building will be 51 feet in height. He said due to a grade change, the rear elevation of the building will be 46 feet tall. He compared these heights with other downtown building heights.

Attorney Binninger asked the petitioners to explain what is unique to the property. Mr. Farrenkopf replied that it takes a lot of creativity to design a mixed use building for that location.

East Dundee Resident Paula Lauer asked what the purpose is for the additional height. Mr. Curtis replied that it allows for additional apartments/tenants which will help increase the residential population downtown.

Downtown Business owner Roger Shelton asked if the Bandito Barney height comparison mentioned earlier by Mr. Curtis was based on the proposed building's flat roof measurement versus the top of Bandito's turret. Mr. Curtis replied that the flat roof is 48 feet tall with an additional 3 foot parapet wall. He said Bandito's turret is 44 feet tall.

Commissioner Scarpelli asked how many apartments would be lost without a fourth floor. Mr. Curtis replied that the top floor has four luxury apartments.

Tom Roeser of Otto Engineering asked the Commission to not grant the variance. He referenced various sections of East Dundee's Comprehensive Plan including community form and character, site planning and design. He said he worked hard on the design of his building at 220 River Street to ensure it did not dwarf the surrounding buildings at 28 feet tall. He said there is no compelling need or hardship to this applicant. He said that as a downtown business owner, he and other owners will be financially harmed if

the character of what they have been trying to build in this great town is destroyed. Mr. Roser also voiced his concerns about parking issues.

Attorney Binninger did a head count of 14 downtown business owners present in the audience.

Tracy Burnidge of Turnkey Brokers Inc. said that he represents the 311 Barrington Avenue development. He stated that he went through great lengths to study the existing buildings as far as height and materials used. He said his original design was of a 3 story building. But after receiving negative feedback, he has decided to create only 2 stories. He also voiced concerns about parking issues.

Terry Donati stated that his comments have already been covered by previous commenters.

Mario Aliano, owner of Aliano's Restaurant, said that he agrees with Tom Roeser that building heights should match. He requested that the building be created with just two levels. He also voiced concerns about parking issues.

East Dundee Resident Paula Lauer said she agrees with many of the previous comments. She said a mixed-use development at that location would be a great addition to the downtown but thinks it needs some tweaks. She also voiced concerns about parking issues.

East Dundee resident DeLoris Doederlein stated that she has lived through three revitalizations of East Dundee and this will be her last one. She said she doesn't want it to be a mistake.

Joe Billiterri stated that he believes in this town and plans to live in it. He said he agrees that more parking is needed and said he was promised there would be additional parking created. He said that he meets the laws for parking at his proposed building.

#### **4. Findings of Fact 110 N. River Street, East Dundee, Illinois**

Attorney Binninger said he has made notes to put together the findings of fact. He asked the Commission to provide any additional comments they may have. He asked the Commission if they wanted him to prepare a negative findings of fact. There was consensus of the Commission to do so.

*Motion to Authorize the Village Attorney to prepare the Findings of Fact based on the hearing's testimony of not meeting the requirements of the variance by Muscat/Apke.*

*8 Ayes (Brewer, Muscat, Apke, Scarpelli, Holliman, Bernstein, Meyer and Schock). 1 Absent (Steneck). Motion carries*

*Motion to deny the variance for height for 110 N. River Street as presented by Schock/Muscat.*

*8 Ayes (Brewer, Muscat, Apke, Scarpelli, Holliman, Bernstein, Meyer and Schock). 1 Absent (Steneck). Motion carries.*

#### **5. PUBLIC HEARING: Village-initiated request for amendments to the text of**

- a. Section 157.003 of the East Dundee Zoning Chapter be and is hereby amended by adding a new definition as follows: "**BREW PUB**. A brewery that brews beer only on the premises for sales to distributors and non-licensees only for consumption, stores beer on the premises, and is allowed sales for on and off premise consumption. The brew pub may have but is not required to have food service. Total sales for off-premises

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consumption shall not exceed 155,000 gallons per calendar year. A brew pub shall include a premise described as a microbrewery or nano-brewery.”

- b. Allowable Use Table in Section 157.050(F)(1)(d)(2) of the East Dundee Zoning Chapter be and is hereby amended by adding as permitted uses in the B-1 Downtown Business District, B-2 Community Business District, and B-3 Service Business District the following use: “Brew Pub”

*Chairman Brewer opened up the Public Hearing for the Village-initiated request for amendments to the text of adding a new definition for a Brew Pub. Attorney Binninger noted that in addition, the Brew Pub will be added as a permitted use in the B-1, B-2 and B-3 zoning districts.*

Clerk Maieritsch advised that an interested party would like to open a brew pub at the proposed 311 Barrington Avenue development. She said this operation would be regulated by the state and would need to obtain several different liquor licenses for producing, serving and bottling alcohol. She said a definition has been created by the Village Attorney based off of the microbrewery/nano-brewery concept from state law.

*Motion to approve the addition of a new definition for a Brew Pub and permit this use in the B-1, B-2 and B-3 zoning districts by Schock/Apke.*

*8 Ayes (Brewer, Muscat, Apke, Scarpelli, Holliman, Bernstein, Meyer and Schock). 1 Absent (Steneck). Motion carries.*

**HISTORIC COMMISSION: None**

*Motion to close the Planning and Zoning Meeting at 9:55 pm by Apke/Muscat.  
Motion carries by unanimous vote.*