



Village of Mamaroneck

123 Mamaroneck Avenue
Mamaroneck NY 10543

Zoning Board of Appeals Minutes

VILLAGE OF MAMARONECK ZONING BOARD OF APPEALS MEETING

January 9, 2020 AT 7:30 PM - Court Room @ 169 Mt. Pleasant Avenue

NOTICE OF FIRE EXITS AND REQUEST TO TURN OFF ELECTRONIC DEVICES

These are intended to be Action Minutes which primarily record the actions voted on by the Zoning Board at the meeting held January 9, 2020. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board's records.

PRESENT: Robin Kramer, Chair
Meg Yergin, Board Member
Gretta Heaney, Board Member
Doug Dunaway, Board Member
Abby Roberts, Board Member

Edward Smith, Counsel to Board
Frank Tavalacci, Assistant Building Inspector
Greg Cutler, Village Planner
Matt Carmody, Village Traffic Consultant

EXCUSED: None

Meeting called to order at 7:32 pm

A. PUBLIC HEARINGS

- 1. Application #22SP-2019, Dan Radman for Chipotle Mexican Grill, 805, 817-819 Mamaroneck Avenue, (Section 8, Block 72, Lot 1)** Application to operate a restaurant. The Applicant is required to obtain a Special Permit to operate a restaurant pursuant to Village Code 342-30, Chapter 342 Articles VII and X. (C-1 District)

Andrew Spatz, Esq. addressed the Board

- The AKRF study confirmed the previous calculations of the overall findings with a slight variance on the weekday peak hour of 2 additional spots
- Village Code assigns parking to the mezzanine area, the mezzanine is not occupied by individuals
- Chapter 342-56 B - the Board may approve the joint use of parking spaces by 2 or more establishments in the same lot
- Duck Donuts' peak use will be in the morning, Chipotle's peak use will be in the afternoon and evening
- This is TOD district, anticipates large number of pedestrians and fewer cars

Philip Greeley from Mazur Consulting addressed the Board

- Improvements have been made such as traffic signal and crosswalk improvements, pedestrian improvements, ADA ramps, and the connection to Lester Ave.
- We have responded to your consultant's comments
- The updated information are the demand factors and the time of day variations based on the most recent ITE data, 5th edition, Jan. 2019
- On street parking is available in the area
- The loading areas on the site plan and the use for loading are temporary conditions
- The demand for loading is off hours

Member Yergin

- I have seen a Coca Cola truck parked across 7 spaces for 10 minutes while making a delivery
- I live near the other CVS, they get deliveries during the day, not off hours

Member Dunaway

- At 8 am Sun. morning there were 47 cars in front of Orange Theory and 18 in front of CVS
- You need 11 loading spaces per Code
- I was there on a Fri. and counted 68 cars
- The dry cleaner will have vehicles coming back and forth during the day as he is a drop store
- Deliveries will take 6 or 7 parking spaces

Ryan Guheen of Brixmor Properties addressed the Board

- There are 2 full depth tractor trailer bays as part of the old A&P, currently there are construction related dumpsters there
- Brixmor operates close to 500 shopping centers, 11 loading bays for a center this size is out of the norm
- There will be a full-size compactor connected to CVS and the grocery store
- There will be additional dumpsters for the smaller stores next to the loading bays

Member Yergin

- I don't agree with the 15% parking reduction
- At 3:00 – 155 spaces, at 4:00 – 139 spaces, at 5:00 – 141 spaces, at 6:00 – 148 spaces
- From 3:00 – 7:00 is school pickup and is getting into the commuter time, any congestion and problems on Mamaroneck Avenue is going to be terrible
- I feel we approved Orange Theory and Duck Donuts with an analysis that wasn't comparable to the way it was formulated for the one in 2016

Mr. Greeley

- The original traffic study, which identified the improvements that were done, that were approved by the Village were approved by the County DPW
- The 15% reduction for walking and transit was part of the original application, it was approved and adopted, you can't just say get rid of the 15% now

- The submissions through Sept. had the 85th percentile with the 15% adjustment
- We did an interim where we didn't take any credit because all the uses were being identified, we used the Average Parking Demand Rate from ITE

Member Heaney

- I'm concerned with the traffic on Mamaroneck Avenue backing up while people are waiting to make the left into the shopping center, it's an issue that affects the quality of life of Mamaroneck residents
- She asked about customer turn over, someone told me the goal was 90 per hour

Dan Radman of Chipotle addressed the Board

- I ran the numbers for comparable stores/communities, the peak numbers are 45-50 maybe 60 per hour, that goes down to 20-30 an hour off peak

Matt Carmody of AKRF Consulting addressed the Board

- We looked at the applicant's parking projections for Chipotle and the shopping center's general parking use as it relates to shared parking
- The consultant satisfied all our comments, we agree with their results
- Based on the census data for the local area the 15% credit is conservative
- The census says 2 out of 3 of the Washingtonville residents walk, bike or take transit to work, they will be the majority of the patrons to this facility
- We tend to find the ITE projections conservative to very conservative, they look at the worst-case scenario for traffic and parking
- There isn't anything in the manual that deals with school related traffic
- We didn't consider the cars that drive by on Mamaroneck Avenue

Public Comment

Glenn Tippet of Hill Street addressed the Board

- Do we have any evidence that anyone from the school is using the parking lot?
- You have no business asking how much business they do, you don't ask other applicants
- Being a chain/franchise doesn't put them in another category
- There are 40 spaces along Mamaroneck Avenue plus spaces on Nostrand and Lester Avenues
- Most deliveries are done early in the morning
- If you turn down this application, no restaurant can go there
- There's no quantitative way that you can measure a busy parking lot
- As a Village resident I don't want to see a lawsuit brought by a Board going awry of what the law says

Sue McCrory of Orienta addressed the Board

- Thank you for being so conscientious and hardworking
- You can put up a camera and start watching the parking experience

- You need to give yourself a condition that would allow an intervention if there is insufficient parking

Karen Marino of the Town of Mamaroneck addressed the Board

- Orange Theory has classes at 10:30 and 4:00, there aren't any classes at lunchtime
- There's a Chipotle in Pelham and Rye Neck, this one will draw local people

Dave Fonsello, the owner of Duck Donuts addressed the Board

- Chipotle fits in with the synergy of the shopping center
- The businesses' peak times are at different times
- I don't think the parking will be as much as an issue as you think it will be
- The current traffic problems shouldn't hinder the revitalization of the area

End of Public Comment

Mr. Spatz addressed the Board

- The experts spoke with precision reflecting the conservative figures that would support the pending application
- This process has been vetted
- We have to distinguish the facts that we have pending before this Board
- The permit gives you the luxury if this doesn't work out, we have to come back to renew
- We put a pathway in to Lester Avenue to encourage the pedestrian friendly component
- Look at the facts before you, you will arrive at the right decision of granting the Special Permit no different than the other ones that have come before you

On motion of Chair Kramer and seconded by Member Dunaway, Application #22SP-2019, Chipotle Mexican Grill was closed.

Ayes: Ms. Yergin, Chair Kramer, Ms. Roberts, Mr. Dunaway

Nays: Ms. Heaney

Excused: None

- 2. Application #27SP-2019, John Lovelett for Bar'Lees, 155 (157) Mamaroneck Avenue,** (Section 9, Block 51, Lot 9A) Application for a Special Permit to operate an existing wine bar under new management pursuant to Village Code Chapter 342 Article X. (C-2 District)

John Lovelett addressed the Board

- Previous owner ran at this location for 7 years
- It's an upscale wine lounge with small plates and pizza
- Live music Thurs. – Sat., 8 p.m. – 11 p.m.
- Tarot card reader on Tues.
- 9 employees – 1 full time chef, 3 part time kitchen help, 5 bar and service
- Currently closed on Mon.
- Current hours Sun., Tues. – Thurs. 4 p.m. – 11 p.m. Fri. and Sat. 4 p.m. – 1 a.m.

- Would like to open on Mon., no music
- The name will stay the same

Chair Kramer

- The previous Special Permit said no cooking on premises
- Application is for a wine lounge with cooking, the application will be amended
- The operator is Lovelett Properties, Inc.

There was no public comment.

On motion of Member Dunaway and seconded by Member Roberts, Application #27SP-2019, Lovelett Properties, Inc. was closed.

Ayes: Mr. Dunaway, Ms. Roberts, Ms. Heaney, Ms. Yergin, Chair Kramer

Nays: None

Excused: None

On motion of Member Heaney and seconded by Member Roberts the Special Permit was granted for Application 27SP-2019, Lovelett Properties, Inc. for Bar'Lees as a wine lounge with food with the following conditions:

- the standards from the prior Special Permit are same except;
- they can open on Mon. from 4 p.m. – 10 p.m.
- they can have cooking on the premises
- no amplified music
- if there is music or amplified sound all the windows and doors must be closed at 10 p.m.
- hours of operation are 4 p.m. – 10 p.m. Sun. and Mon., 4 p.m. – 11 p.m. Tues. – Thurs. and 4 p.m. – 1 a.m. Fri. and Sat.

Application #28A-2019, Marc Castaldi for AVC Properties, Appeal regarding 1017 Grove Street, (Section 4, Block 15, Lot 32) Appeal of Code Enforcement Appearance Ticket dated July 24, 2019 (Docket #19-4346) issued for violation of Village Code Sections 126-7 and 342-87 and Village Manager/Trustee determination under Village Law Section 4-400(1)(d) and Village Code Section 126-15(d). (R-5 District)

Mark Castaldi, the property owner addressed the Board

- Mr. Farrell, formerly of the Bldg. Dept., issued an Order to Remedy dated May 5, 2019
- I contacted Mr. Farrell several times with no response
- Court summons was issued
- I am requesting this Board to reverse the Building Inspector's decision to take the issue to court and to remand it back to the Bldg. Dept. and provide me direction on how to remedy the violation

Counsel advised the Board that they have jurisdiction regarding the Building Department/ Building Inspector's issuance of the Code Enforcement Appearance Ticket.

The Board would like to see

- Mr. Castaldi's and the Building Inspector's e-mails

- Complete packages for all Board members

The application was adjourned until the February meeting.

- 3. Application #29A-2019, Marc Castaldi for AVC Properties, Appeal regarding 1019 Grove Street,** (Section 4, Block 15, Lot 32.1) Appeal of Code Enforcement Appearance Ticket dated July 24, 2019 (Docket #19-4346) issued for violations of Village Code Section 126-7 and 342-87 and Village Manager/Trustee determination under Village Law Section 4-400(1)(d) and Village Code Section 126-15(d). (R-5 District)

The Board wants the same information as Application 28A-2019. This application is also adjourned until the February meeting.

- 4. 1i-2020, Tiekert Appeal regarding 130 Beach Avenue,** (Section 4, Block 54, Lot 27B) Application for an Interpretation of Article IX Section 64 Subsection C, Article IV Subsection A, Chapter 126, Section 7, Subsection A, Chapter 126 Section 4, Subsection A, 19 NYCRR Section 1226.1 regarding complaints 19-4657 (9/10/19), 19-4658 (9/11/19), 19-4656 (9/12/19), 19-4667 (9/12/19) and 19-4655 (9/10/19).

Counsel is recused from this application as he is involved in litigation in connection with the enforcement actions in connections with this application.

Chair Kramer stated the application will not be closed tonight; the Village will provide Counsel at a future meeting.

Member Dunaway, Member Yergin, Member Heaney and Member Roberts stated they know Mr. Tiekert professionally and/or personally. They did not feel there is a conflict of interest. Chair Kramer doesn't see an issue but will check with Counsel.

Stuart Tiekert, the homeowner addressed the Board

- I own and reside in Condo Unit B at 130 Beach Avenue
- There is a long-term boarder on the 3rd floor
- On Sept. 9th Village staff and Police came to my house with a warrant to inspect my unit
- The Village claims the 3rd floor is an illegal dwelling unit
- There isn't a stove or range in the 3rd floor unit and hasn't been since 1995
- The main house was built as a single family in 1918, it was converted to a 2 family in 1948, the owner moved to the 2nd and 3rd floors
- The 1st floor and new 3 car garage with an apartment over it became rental units
- In 1985 I was part of a 4-member partnership which purchased the house with the intent of creating a dwelling unit for each partner under condominium ownership
- 1985-86 the 3-car garage was converted to a 3-bedroom duplex living unit
- The electric was upgraded to 4 separate- 125-amp panels, a new kitchen was installed in the 1st floor of the main house and a parking area was created
- In June 1986 a variance to convert to a 4 family was denied
- In 1991 the partnership was dissolved, title of the 3 condo units was transferred to the unit owners
- The walls and doors that separate the 2nd and 3rd floors had been added

- Cabinets, a stove and a sink were added in 1992
- The 3rd floor has a hard-wired smoke alarm and a fire escape
- My unit has been inspected by Building Inspectors, Fire Inspectors and Electrical Inspectors over the years – no issues were ever raised about an illegal dwelling unit
- Until the violations were issued, it was my understanding that as long as the 3rd floor didn't have cooking facilities it is legally habitable
- I ask the ZBA to confirm that to be a dwelling unit a space needs complete housekeeping facilities, my 3rd floor doesn't have cooking facilities
- I ask for an interpretation that under the Zoning Code of the Village my 3rd floor is not a dwelling unit because it lacks cooking facilities
- I ask that you reverse or annul the violations
- If spaces don't need cooking facilities to be considered a dwelling unit, many spaces in homes in the Village such as 3rd floors and basements must be considered dwelling units
- Village Code allows me to have 2 boarders
- The existing use is 3 family
- I believe a Certificate of Compliance was issued for the 1948 work
- The 3rd floor is a rooming unit, there is a refrigerator and sink
- There is a separate door and staircase to the 3rd floor

The Board wants to see

- The Certificate of Compliance from 1948 and all other CCs
- A copy of the Zoning Code from the 1940s
- The Building Department file

Charlotte Mountain, Code Enforcement Officer addressed the Board

- There isn't a stove but there is kitchen cabinetry, a microwave, a refrigerator, a kitchen sink, a coffee maker and pots and pans
- We have issued violations in similar circumstances
- There are separate lockable doors to each apartment

Public Comment

Sue McCrory of Orienta addressed the Board

- I have a guest house on my property, it has a kitchen without a range
- The implications of this are far broader than this application

John Hofstetter, a real estate agent addressed the Board

- A lot of houses have 3rd floors that are occupied with locks on the doors going from the 2nd to 3rd floor
- Several people in the community have college students as boarders
- I've been in houses where the den/library has a sink
- There are a number of occurrences throughout the Village that will be affected by this

End of Public Comment

The application was adjourned to March at the applicant's request.

B. CLOSED APPLICATIONS

1. **Application #23SP-2019, Igor Madrit for Go Green Dry Cleaners, 805 Mamaroneck Avenue,** (Section 8, Block 72, Lot 1) Special Permit to operate a Dry Cleaner “Drop Store” location pursuant to Chapter 342 Article VII of the Village Code. (C-1 District)

This was not discussed/decided.

2. **Application #31A-2019, Dominic Brescia for Cappetta Inc., 172 East Prospect Avenue,** (Section 9, Block 19, Lot 21A) Application to construct a new building with 18 one-bedroom units with parking on site. The proposed development is in violation of Chapter 342-50(F)(4) of the Village Code where the maximum permitted height is 40’ and the approved structure proposes 44’.10” and Chapter 342-50(B)(6) of the Village Code where the approved 18-unit development requires 2 Fair and Affordable Housing Units and the Applicant proposes 0. (C-2 District)

Deliberations regarding the affordable units

Chair Kramer

- The use is a permitted use
- It is a proper subject for an area variance
- NYC Planning considers it an area variance because it’s in the bulk (area) requirements section
- They were concerned with people getting the variance they created a provision, a Special Permit

Member Heaney

- Area variances deal with physical and dimensional requirements of the Code
- There is no Case Law that we found on point on this issue
- To give an area variance to relief for affordable housing has ramifications for policy, I don’t think this Board has jurisdiction to do
- We should request to see if the State Attorney General would give an opinion

Member Yergin

- It speaks to how you’re using the space, it’s not about the dimensions of the space, I think it’s about a use

On motion of Member Yergin, seconded by Member Heaney the Board voted to deny the area variance for Application 31A-2019, Dominic Brescia for Cappetta, Inc.

Ayes: Ms. Heaney, Ms. Yergin, Ms. Roberts

Nays: Mr. Dunaway, Chair Kramer

Excused: None

Findings

- There are no physical or dimensional qualities to affordability
- The way it’s written in the Code speaks to how the space is being used

Chair Kramer suggested giving the Applicant the opportunity to present their argument as to why it is an area variance and not a use variance. The Board agreed.

On motion of Member Yergin and seconded by Member Heaney the Board withdrew their determination to deny the area variance

Ayes: Ms. Heaney, Ms. Yergin, Chair Kramer, Ms. Roberts, Mr. Dunaway

Nays: None

Excused: None

On motion of Member Dunaway and seconded by Member Roberts the Board reopened the hearing for the Applicant to present why they think a waiver of the Affordable Housing Requirements are subject to an area variance and to request the Board of Trustees to request an opinion from the State Attorney General.

The Board did not vote and began discussing the Requested Height Variance

Deliberations and Findings on the height variance

- The BOT just adopted the height limit, do we want to grant the variance and set a precedent
- This is a unique situation they got a previous variance and were ready to start construction
- The BOT didn't discuss this site or this application
- They can proceed with the project with a different design
- They have other remedies, can argue vesting

Findings

- The benefit can be achieved in a different way
- There will be an undesirable change to the neighborhood, it's too tall

Deliberations

- Member Dunaway wants to grant or deny both the height variance and the affordable units aspects of the application together
- The application we approved a year ago hasn't changed, the Village Code changed

Motion made by Member Dunaway to deny the Height Variance seconded by Member Yergin

No vote was taken regarding denying the height variance

The Board further discussed findings

Findings to approve the height variance

- The variance isn't substantial, it's not more than 11%
- No adverse physical or environmental effects
- The same plan was approved in July 2018, the only difference is the BOT changed the Code
- The benefit can't be achieved by other means – design of the project
- There will not be an undesirable change to the neighborhood
- It's not self-created

On motion of Chair Kramer and seconded by Member Roberts the Board approved the height Variance based on the findings as noted above for Application 31A-2019, Dominic Brescia for Cappetta, Inc.

Ayes: Ms. Heaney, Ms. Yergin, Chair Kramer, Ms. Roberts

Nays: Member Dunaway

Excused: None

On motion of Chair Kramer and seconded by Member Dunaway the Board reopened the hearing on the variance for the Affordable Housing Requirement for the Applicant to present their argument as to why they believe it's an area variance.

Ayes: Ms. Heaney, Ms. Yergin, Chair Kramer, Ms. Roberts, Mr. Dunaway

Nays: None

Excused: None

On motion of Member Dunaway and seconded by Member Heaney the Board requested the Board of Trustees to request the Village Attorney to ask the State Attorney General for an opinion on the Affordable Housing Requirement.

Ayes: Ms. Heaney, Ms. Yergin, Ms. Roberts, Mr. Dunaway

Nays: Chair Kramer

Excused: None

3. **Application #25A-2019, Agency Construction Corp for Urban Manpower & Supply, 526 and 530 Fayette Avenue**, (Section 8, Block 93, Lot 32B and Section 8, Block 93, Lot 31) Application to construct a 3-story commercial building with associated parking. The proposed application is in violation of Chapter 342-56 of the Village Code where 26 parking spaces are required, and the Applicant proposes 16. (M-1 District)

Adjourned to the February 6th meeting awaiting possible issuance of the Negative Declaration by the Planning Board on January 22nd.

C ADJOURN MEETING

On motion of Chair Kramer and seconded by Member Dunaway the meeting was adjourned at 1:09 a.m.

Ayes: Chair Kramer, Ms. Heaney, Ms. Yergin, Ms. Roberts, Member Dunaway

Nays: None

Excused: None

Respectfully Submitted,

Betty-Ann Sherer

Betty-Ann Sherer

ANY HANDICAPPED PERSON NEEDING SPECIAL ASSISTANCE IN ORDER TO ATTEND THE MEETING SHOULD CALL THE VILLAGE MANAGER'S OFFICE AT 914-777-7703

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