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**VILLAGE OF MAMARONECK
ZONING BOARD OF APPEALS MINUTES
THURSDAY APRIL 2, 2020 7:00 PM
ONLINE VIA ZOOM**

NOTICE OF FIRE EXITS AND REQUEST TO TURN OFF ELECTRONIC DEVICES

The full public record of this meeting is the audio/video recording made of this meeting and can be found at: https://lmctv.org/videos_list/village-of-mamaroneck-zoning-board-meeting-4-2-20/

PRESENT:

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

**Christy Mason, Counsel to the Board
Lori Lee Dickson, Counsel to the Board for the Tiekert Appeal
Frank Tivolacci, Assistant Building Inspector
Greg Cutler, Village Planner
Charlotte Mountain, Village Code Enforcement Office**

EXCUSED:

None

Meeting called to order at 7:00pm

Greg Cutler, the Village Planner, explained how the public can ask questions and make comments during the virtual Zoom meeting.

A. APPROVAL OF MINUTES

1. Approval of Minutes – 1/9/20, 1/21/20 and 2/6/20 meetings

The minutes were not voted on.

B PUBLIC HEARINGS

1. **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(B) (6) of the Village Code where the approved 18-unit development requires Fair and Affordable Housing Units and the Applicant proposes O. (C-2 District)

Christie Addona of Silverberg Zalantis:

We're back before you tonight because at the March meeting the Board suggested that in lieu of treating our application as a variance that we make a submission to the Board that based upon the circumstances of this project Cappetta is vested in the prior zoning and the new zoning text amendments adopted by the Village Board in August 2019 and specifically, with respect to the Fair and Affordable

Housing Units do not apply to this project. We made that submission on March 16, 2020 outlining in detail why we believe it is appropriate for the board to make such a finding which it is authorized to do under the Zoning Code and New York Village law.

Just to reiterate, at the outset, nothing about this project is changing from what was originally approved. All we are requesting is the ability to go forward with the construction that has already commenced on this project.

Ms. Addona summarized the history of the project.

- Applied to Planning Board in early 2018 with 2 proposals
- The approved design was for 18 loft units
- The other was for 21 units
- July 2018 ZBA granted variances for the 18 units proposal
- Sept. 2018 HCZMC Consistency Determination granted with conditions
- The applicant will fund replacement of Village infrastructure, a new streetlight and parking signage on the building
- November 2018 Planning Board approval granted with conditions

After getting the approvals, the applicant began making plans for construction, including securing construction funding cutting off utilities and hiring construction personnel. There were also several requirements Cappetta had to complete before a demolition permit could be issued, including having the structure inspected for asbestos, and by an exterminator. The water had to be reconnected to be used during demolition and hiring an SOE engineer, so that immediately after demolition they could do the necessary inspections and testing to ensure the integrity of the remaining building wall and footings and prepare expedited engineering plans for the new footings and retaining wall to stabilize the site, which was a very costly endeavor.

In July 2019 Cappetta attended a meeting with various village officials to discuss the construction parameters, including sequencing of construction vehicles, placement of construction fencing, temporary pedestrian crosswalk, etc.

On July 10 a demolition permit was issued. In reliance upon the demolition permit, which also contemplated removal of the underground storage tanks, Cappetta did go forward with demolishing the existing structure and also performed additional site work, which you can see in the photographs that were included in your submission.

Ms. Addona presented the photos on screen.

Previous structure

required reconnecting of the water prior to demo



After the structure was demolished, the applicant had to make repairs to the adjacent garage on the neighboring property because of the proximity, which they did to the neighbor's satisfaction. They did soil boring tests to ensure the soil could support the foundation to be constructed. They removed the underground storage tanks as was required by the HCZMC approval and the Planning Board approval.



On August 22nd Cappetta received another permit to pour concrete to construct the reinforced retaining wall which was needed to stabilize the site after construction. Work began upon this immediately as it was necessary for the safety and the integrity of the site and the public. This was also a very complex and costly procedure which had to be done after the building was demolished.





On August 28th the Village Board's zoning text amendments went into effect, that among other things required the Fair and Affordable Housing Units for the proposed 18 units. This was 20 months after Cappetta began the application process, 9 months after it received its' last approval and nearly 2 months after it demolished the existing structure and performed the additional site work that I discussed.

Cappetta engaged in all the activities, at considerable expense and went forward with the more expensive, less dense design based upon the understanding of having market rate units. Significantly, as you were advised by Mr. Cutler in December, when the Village Board was contemplating the affordable units that would be generated by the new zoning regulations, it did not include this property in the calculations.

We originally applied to this Board seeking a variance, and at the March meeting the Board was divided as to how to handle the issue of whether it was a variance as an area variance or use variance, and as an alternate mechanism to afford Cappetta relief, given the unique circumstances of this application, the Chair asked if it would be possible for the Board to find that Cappetta was vested in the prior zoning.

Under the Code and State law, the Board is authorized to make the determination that ought to have been made by the individual charged with interpreting the Zoning Code, here the Building Inspector. The Inspector has found that Cappetta is not in compliance with the new zoning requirements because it is not providing the Fair and Affordable Housing Units. It's within this Board's jurisdiction to determine that the Code requirements do not apply because Cappetta is vested in the prior zoning.

Just to be clear, Cappetta is not opposed to affordable housing and has another project that is before the Planning Board right now that will provide the required affordable housing. However, the difference in the 2 projects cannot be understated, with the new project Cappetta knew what the requirements were at the outset and can plan accordingly. That was not the case for 172 East Prospect because the requirements did not exist.

Cappetta is requesting relief from this Board under the very unique circumstances of this application in that it pursued a more expensive design with fewer units, agreed to several conditions that require making repairs and improvements to Village property at Cappetta's expense and incurred substantial costs in site work all based upon the project budget that it came up with years ago and before the Fair and Affordable Housing Unit requirement existed.

Our letter provided case law of support that Cappetta has completed substantial construction and incurred substantial expense on this project such that it should be vested in the prior zoning. We also provided language from the Appellate Division, Second Department, the controlling intermediate Appellate Court in the State, which we believe is very instructive in this situation and I'm going to briefly quote for you.

“While the general standard in discerning vested rights in substantial construction and substantial expenditure made prior to the effective date of the zoning amendment, there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right. Rather it is a term which sums up a determination that the facts of the case render it inequitable that the State or the Municipality impede the individual from taking certain action, each case must be determined according to its’ own circumstances.”

In this case, and based upon the facts and circumstances I’ve described, we respectfully submit that it would be inequitable to require Cappetta to comply with this new zoning requirement. Therefore, in light of this very unique situation, we respectfully request that the Board grant the requested relief as originally suggested by the Board at the meeting last month and find that Cappetta vested in the prior zoning.

Chair Kramer:

You had a demo permit. You were required by the variance to get a building permit within a year, did you get a building permit within a year?

Ms. Addona:

We had a demolition permit, which also provided for the removal of the underground storage tanks.

Chair Kramer:

In terms of expenditures did you do any, you made promises to the Village, did you do any of that work or just the work related to the site specifically?

Ms. Addona:

We did make a binding, irrevocable offer to the Village to fund the streetlight and parking signage. Even though the actual money hasn’t been spent, the applicant is bound by that offer that it made, and the Village Board has the right to accept it.

Chair Kramer:

That was imposed by the Planning Board? That may or may not have been imposed regardless of whether you are building this project, streetlights are needed whether you’re building this project or the as of right project, correct?

Ms. Addona:

Yes, there’s no way to know for certain.

Chair Kramer:

The principal of vesting in New York State requires, it says it would be inequitable because of the amount of loss that you would suffer if you were required to comply with the Code. You can look at Putnam Armonk v Southeast, is maintained only where the property interest is too substantial to justify its’ deprivation in light of the objectives to be achieved. In such cases the right to a non-conforming use is termed vested and will not be disturbed where enforcement caused serious loss to the owner. If you were forced to, if the Board did not find that you were vested, and the Board did not agree to grant you a variance, and you had to build as an of right project, what serious loss would you suffer from that result?

Ms. Addona:

All the costs that have already been incurred in furtherance of this project and having to go back and redesign everything, possibly have to go back for alternate approvals if that was required by the Village and have to basically start from scratch and go back to the drawing board.

Chair Kramer:

So, it's your soft costs that would be affected. You would've had to demolish anyway, presumably you would've had to build a retaining wall anyway and to remove the storage tanks. All of that would've had to been done whatever work you're doing on this project. Correct?

Ms. Addona replied yes.

Chair Kramer:

Soft costs get considered in connection with a common law vesting, I just want to understand. Your lost costs would be your soft costs incurred in doing this project and then you'd have to incur new soft costs. You'd still have the same hard costs, correct?

Ms. Addona:

I can't necessarily speak for how the construction would have proceeded under either design.

Chair Kramer:

You did demo, which you would've had to do anyway, you removed storage tanks that you would've had to remove anyway, and you put up a retaining wall which related to the property not the building. You would've had to do that anyway. Am I missing something in terms of what you did, in terms of hard costs?

Ms. Addona replied not that I'm aware of.

Chair Kramer:

That's what I have for now. Let's go with the rest of the Board, starting with the end assuming we were sitting.

Member Heaney:

I have a question directed to the Village Attorney. As I recall, the applicant originally tried to get the project to go forward based on this vesting concept. A memo was presented to the Village Attorney and the Village Attorney rejected the vesting issue. I'd like to understand why, from the Village's perspective, the vesting issue was rejected.

Ms. Mason:

That was drafted by Bob Spolzino; I can take a look at it quickly and let you know. If you give me a couple of minutes, if I can locate it.

Ms. Addona:

If I could just speak to that briefly, because I did have the communication with Mr. Spolzino. We were forthright with the Board at the outset of this process that we had had those communications. We did present these circumstances to the Village Attorney and the response was that he did not believe we had vested. That is why we preceded with the variance application. However, I don't believe, at least I never saw, a written memorandum from Mr. Spolzino to that effect. It was me submitting to him and then a phone call after the fact.

Member Heaney:

I just want to have an understanding what legal principle the Village Attorney used to reject the vesting concept.

Ms. Mason:

I'll try and locate it quickly, perhaps if this continues, I can address it at the next meeting. Bob mentioned that he might have written something on it. I didn't find it earlier; I can look in other places now.

Mr. Brescia stated it doesn't exist.

Chair Kramer:

I don't remember seeing a memo.

Member Yergin:

You didn't get a building permit within a year so you would have to apply for those 2 variances again. Christie, you kept referring to substantial construction costs, I would like to reiterate I think where Robin was going, that you incurred costs to prepare the property, but I see more substantial construction costs. Most of what I'm reading about vesting rights, it's about how much of the project you actually built or constructed, what percentage of the foundation and that cost. It seems everything was to prepare the property to go many different ways, could have many different kinds of projects.

I'm also interested (inaudible for several words) and were not successful, as least Mr. Spolzino did not see it that way. You then applied for the 2 variances for the height and the affordable housing units, but you had the choice at the time to ask for an interpretation or to come to us for vested rights then as to why the Village wasn't granting you vested rights, instead you applied for variances. In my mind that's agreeing that you didn't have vested rights and you needed the variances. It does seem that it's more than 60 days past the date of the notice that you got from the Building Department, so you timed out on being able to use this argument of vested rights. I would like the Board to consider that.

Most of what I've been reading about vested rights it does have to do with the amount of money spent in terms of the percentage of the entire project, how much of the building has been constructed. I understand that there's no exact equation, but that's generally the measure used by board to understand (inaudible).

Ms. Addona:

We raised this issue to the Board in response to comments that were made by the Board last month. In our initial submission we did indicate that it was our belief that we were vested however, the Village attorney had disagreed. We did appeal within 60 days and (inaudible) and this Board is always within its' rights to issue an interpretation based upon a determination by the Building Inspector.

Under Village law, it says that a use variance can be granted on appeal from the decision or determination of the administrative officer, it says the same thing with respect to area variances. There's no such requirement that it be on appeal for an interpretation. We're here before you and the interpretation is before you, and therefore, we would submit that even now it is still within the Board's right, especially where the Board, last month, raised this as a possible avenue that you would not be precluded from making this finding under the circumstances.

The law hasn't caught up to the times, that's why the equitable nature of this is so significant. Years have gone into this you don't just pull a building permit anymore. You go through a year long land use review process. You go to multiple boards over multiple months paying consultant's fees on both ends. You try to do the best you can, you try to plan ahead. That's what they tried to do based on what was in front of them at the time, which didn't include the requirement for a fair and affordable housing unit. I understand it's the soft costs, it's also what they've agreed to do as part of the project that should be considered as well.

Member Yergin:

In July, when you were getting the building permit, why did you not apply for a building permit? I know you have another project going on in the Village, I would assume that you understood the new regulations were being considered and were going to be voted on. Why did you not apply for the building permit, because in my mind, that actually (inaudible) the building permit, it actually wasn't approved to be constructed. You received a lot of approvals, site plan approval, variance approval, but it does take the Building Department to sign off on a building permit for you to be considered that you had the right to build the building. If you don't have that in hand, then I don't see how you have vested rights in building the thing because you never actually got the absolute right since you didn't get the building permit.

Ms. Addona:

There was a lot that had to be done prior to that being issued including the demolition of the existing structure. I understand that these are things that would have happened for any project site, but they're not issues that would've been encountered on any site if we were dealing with a vacant lot where there were no underground storage tanks, where you weren't abutting against an adjacent building that needed an immediate retaining wall that had to be constructed on an expedited basis in order to stabilize the site. Those were all things that were unique to this site, and if they hadn't existed, we very well may have been able to get a building permit.

Just to clarify, there's been a foundation permit pending since September that we've been trying to work through with the Village, so it's not for lack of trying.

Chair Kramer:

With respect to needing a building permit, there is case law that says you don't necessarily need a building permit and there's also a lot of case law that says vested rights acquired by clearing and grading the building site, commencing excavation. There's a lot of case law out there and you don't need to have done the construction.

Member Yergin:

There's also a lot of case law where they found exactly what happened, a building coming down, a retaining wall built or tanks being taken out, there was no building permit, no start to construction and the project wasn't considered to have vested rights.

Chair Kramer:

I do think the building permit issue is a much bigger issue because if they didn't have a variance, they couldn't have built. So, what should've happened in July is, they should've applied for an extension of the permit.

Member Yergin:

If we are going to go on and consider the vested rights, I do have case law that I'd like to share with the rest of the Board.

Member Dunaway:

What they've done to the site is actually to prep it, nothing to do with building construction. They could've applied for a building permit application of which they then could've come back and said that we need it extended, but they didn't. I understand Robin, what you indicated. I understand very clearly what Meg indicated, I kind of agree with Meg on this particular issue, but I'm going to take a wait and see.

Chair Kramer:

Is there any member of the public who wishes to speak on this application? When you speak, since we can't see you, please identify yourself.

Mr. Cutler:

If you're a member of the public, please use the raise your hand feature and I'll unmute you.

Public Comment

Penny Chumley of 124 Spruce Street:

This project is quite literally in my backyard. There are other variances that his development has already requested and received and now they're in front of this Board with another variance request, this one being particularly egregious in that they are wanting to build more luxury, high-rise, multi-unit families in our Village. We've already seen what development has done to the Village and continues to do. I think for them to be granted an opportunity to neglect the most critical members of our Village, people who are working people who don't make the kind of money I think they want to rent these units for, now isn't an appropriate time to grant them this variance.

Daniel Newman of Spruce Street:

I agree with Penny's views. I don't understand why they need the variance from those 2 units, particularly at a time like this.

Ms. Addona:

We understand where they're coming from. Like I've said before, it's not about not providing affordable housing, we're doing it for the new project that they're contemplating now and seeking approvals for; it's the timing, that's really the issue here. It's not to say the applicant doesn't want to provide the housing, it's just that they couldn't have planned for that at the time.

Chair Kramer:

The case law all deals with what percentage of loss that you've suffered, you didn't do those calculations, did you?

Ms. Addona:

We just provided hard numbers.

Chair Kramer:

You provided hard numbers of what you've incurred, you didn't provide hard numbers of the total cost of the project. If you incurred \$100,000 on a \$5,000,000 project, that may not be a lot, whereas if you incur \$1,000,000 on a \$5,000,000, that's a lot. The size of the project is relevant.

Ms. Addona:

I can tell you as far as I'm aware, the construction budget was somewhere in the area of, I think around \$6,000,000. They've already expended well in excess of \$1,000,000, probably closer to 2 if you take into account the purchasing of the property, the carrying costs, the soft costs and the hard costs.

Chair Kramer:

Whether we deny this application or the variance, and you have to build something else, they're not lost costs, they're incurred to do this. The lost costs are really your soft costs in applying for this application.

Ms. Addona:

It would be longer than it needed to be if we had to start all over again.

Ms. Mason:

There is not a formal memo, it was a conversation that Bob had with the Building Inspector to let the Building Inspector know that he felt that substantial construction had not yet been completed. He is also in agreement with what the Chair initially said, some of her questions. I think that points more to substantial investment, but overall, he felt that it had not been vested.

Member Yergin:

I would like to be able to enter into the record that I found case law of Exetor Building Corp. v Town of Newburgh. Steven Silverberg, who is the managing partner of the applicant's firm, wrote about this in a blog, didn't seem to argue with the fact that a case where a building had been demolished, water tanks had been removed, the ground had been leveled and yet they didn't get the building permit and hadn't started construction, and Steven Silverberg, agreed that the project did not have vested rights and the fact that you have an approved site plan and some other approvals is not enough to have vested rights.

I'd like to have that as part of our discussion if we're going to be talking about vested rights. Also, if we go into discussion about this and we agree not to see that they have vested rights and we go back to talking about use or area variance, is that where we'd be headed, back to the application?

Chair Kramer replied yes.

Member Yergin:

I'm deviating a little bit because I think it's important as part of the record and the applicant is part of the hearing to discuss topics. I did more research on whether affordable housing is a use variance or area variance. I found a lot of litigation where some towns and municipalities actually seem to be trying to prevent affordable housing. In those instances, they kept talking about whether it was a beneficial use, and in many places they found it was a beneficial use and they talked about a use variance to put it in places where it wasn't zoned. It seems to be going the opposite way, but I have found some case law where they are talking about affordable housing as being a use and a benefit to the community.

Ms. Addona:

With respect to the blog, I can not speak specifically to what was in that blog, however, my experience with it is that it's a reiteration of what the Court found and is generally not an opinion but a way of reiterating, making known to the public the type of case law decisions that are coming out. I don't think there's generally heavy argument in those blogs.

Regarding the cases that you referred to, I think there's a lot of variables that come into play, such as what the original zoning was for, where the affordable housing was being proposed. A use variance is generally something you see when, for instance, something is used for commercial and you want to put something residential there. I don't know if that was the type of situation that was in those cases, but I think that's one instance that may come up.

Chair Kramer:

I would say about beneficial use, I'm not sure that if a case talks about beneficial use means that it is a use variance vs an area variance. A lot of times what they're doing in those cases is applicants asking for multi-family housing in order to provide affordable housing in a place where multi-family housing was not otherwise allowed.

If we're going to be discussing cases, we should all be able to look at them. Meg, I think you're going to have to circulate the case because I don't know if everyone has the ability to get it.

Member Yergin:

I found a discussion of it I didn't read the case.

Chair Kramer:

If we're going to refer to cases, we need to read the case before we start quoting from cases. My experience with that blog is that he's just reciting the decision of the cases. I think we should share the cases not the blog. After this meeting, I will share the cases I mentioned with the other Board members and if we make them available to the public that's ok too.

Member Heaney:

Christy (Mason), if you could send the 2 or 3 cases that Bob felt were the most relevant in his determination that vesting wasn't met, that would be helpful too.

Member Dunaway:

Most of the cost that they spoke about is associated with the work that they did on the site which would have had to be done no matter what they built. The question comes out, if they had to put in 2 affordable housing units, is that going to change the footprint or the interior of the building? I believe it would only change the interior layout. I don't think it would require them to modify the footprint of the building.

Ms. Addona:

If depends upon whether with the 2 affordable units, it's feasible for the applicant to go forward with the plan as currently designed because they did propose a more costly loft style design with fewer units than they were contemplating with 21. If they do have to go forward with the 2 affordable units, they'll have to reevaluate whether it's feasible to go forward with that design with whatever interior modifications might have to be made or if they'd have to redesign it entirely. I don't think the building footprint would change.

Member Dunaway:

Your foundation would probably be the same, your exterior walls probably would modify slightly, where your costs would incur would be on the interior to allocate for 2 affordable housing units.

Ms. Addona:

Without knowing what the design is and without having contemplated that and presented it to the Village, it's impossible to know what the Village would require in terms of amended approvals if the density was increased. If they have to have the affordable units, it may be possible that they have to go back to the alternate design with 20 or 21 units in order to cover that cost. It will not impact the parking.

Ms. Mason asked the Chair if she would like a memo from the Village Attorney regarding Vesting
Chair Kramer- I don't think we need a memo but will poll the Board. If there are member so f the Board who think we need a memo from Counsel, please raise your hand.

No Board members raised their hands; therefore, a memo was not requested from Counsel.

Mr. Brescia:

The footprint will not change at all, what would change would be the loft style would be removed and we would have to do a typical style building which we were trying to avoid and go up 3 levels. Monetary wise, this is a much more complicated, superior design that we thought the Village would embrace. It's not a cookie-cutter that everyone else is doing. Going back to a 21 unit would help us as

far as the affordable aspect, but the costs of going back to the architects and so on and so forth and changing all these plans would be another hardship for this project and the carrying costs that go along with it. Had we known that we were going to be part of an affordable scenario, we probably would've gone with the 21 units because we had no choice economically and financially.

We'd be happy to share with this Board the real numbers to show the hardship that it would create in fair market for 16 units and what we would presumably get for the affordable, and you would see that we're in the red.

We're just asking this Board to be sympathetic to how this truly came to be. Going back to the permit, Frank Tavalacci knows that we've been trying to get this foundation permit for the longest time. The building itself, the retaining wall footings are also part of the building footprint. They act as both, as the old building did, it holds back the wall and it's also part of the back of the building. The permit that they released is a building permit for 1 portion of that building. We were trying to keep going with the project, but because they knew that the moratorium was soon approaching, they were reluctant months before to release the foundation permit so that we can keep on moving.

Physically, construction wise, it probably would be very close in the relation to construction costs except that the loft style is a higher end look, but we would also have to change the interior of the building to accommodate many other things. The soft costs process that we would incur in both time and expenditures from all the design professionals, would really put us in a bad spot.

Penny Chumley:

I would like to commend the Village for their attention to detail in ensuring that this major project in our Village aligns to the plan for the Village. There are lots of other opportunities in that space. The 21 unit building that the developer refers to, has not been before any of the boards as far as approvals. The conversation, should the design change, is going to need to be re-reviewed. There were significant conversations around the look and feel of the luxury 18 units that the developer has proposed, and there's still problems with it. I think it's the wrong project for the wrong space. They went ahead with the purchase and development of that property at a time when they were getting permits for other things in the Village, which we all know about, which would no longer be approved in any way, shape or form. I think they may have gotten a little ahead of themselves when they bought this property and started this development. I think in the in between time, the Village has had a moment to take a breath and realize that the development in this Village had gotten way out of control.

Chair Kramer:

Meg and I will circulate the cases we discussed. The applicant will prepare and submit information on financials, although I think the bigger question is, and I know that I suggested going for a common law vesting at the time, not having looked into or considered the facts here, are 2 questions which you might think about for the next meeting which are, can there be, is it reasonable to consider, the permit, that you got a building permit and given that the building permit, assuming it was a building permit, satisfied the requirement, why then, is that why the Building Inspector didn't consider that you hadn't vested because it wasn't a building permit. I think you need to think about that question in coming back for next month.

Mr. Cutler:

My understanding is the Building Department didn't issue a building permit, it was only for shoring up the site, the reason being that all of the conditions weren't met that were required by the Planning Board.

Member Dunaway:

Frank, did they put in an application for a building permit?

Mr. Tavalacci:

They put in an application for a demolition permit, which they got. They also put in an application for a building permit that we were holding on to until this variance issue was resolved.

Mr. Cutler:

If I recall correctly, there was a foundation permit application as well but only the portions that were necessary to stabilize the site.

Chair Kramer:

Before July 2019, when the variance would've lapsed, what permits had they applied for and what permits did they have?

Ms. Addona:

We had the demolition permit and to extract the underground storage tanks. I would need to look into what permits were applied for.

Mr. Tavalacci:

From memory I think it was just to remove the tanks and do the demolition.

Member Dunaway:

So, they had not applied for the permit to put the footing in and shore up the wall?

Mr. Brescia stated of course we did.

Mr. Tavalacci:

The application was for the demolition and to put up that wall.

Member Dunaway:

Even if they're using the footing underneath that wall that they're using for shoring, it was for shoring up that wall, correct?

Mr. Tavalacci:

I can't make the argument whether it's a building permit for the structure or just the shoring up of the wall, that's more for legal people to decide. The retaining wall is part of the foundation plan.

Member Dunaway:

They couldn't put up that building without the retaining wall up first, correct?

Mr. Tavalacci:

The retaining wall absolutely had to go up first. You had to protect that site because you had 2 buildings on top of that that were putting pressure on, it had to be addressed. It was a safety issue.

Mr. Cutler:

The whole permit wasn't issued because of certain conditions on the Planning Board approval.

Member Dunaway:

I'd like to see that record. Can you make it part of your submission to us?

Ms. Addona:

We can try to address that timeline. The applicant tried to move as quickly as possible, they didn't get the last approval until November 2018 and had demolished the structure by the following July.

Ms. Sherer:

There is a building permit application 17-0641 in the system for the construction of a new building with 18 one-bedroom units and onsite parking, it is dated December 18, 2017. The application date on the demo permit is June 18, 2019. The application for the construction of the rear retaining wall, and one last application that is open #19-0430 for the installation of footings and foundation as per approved plans and dated September 30, 2019.

Chair Kramer:

This application is adjourned.

Mr. Brescia:

Can we just talk out loud and can you let us know exactly what the next steps are going to be here to come to some sort of conclusion with this?

Chair Kramer:

The next time we'll close the hearing and we'll vote on 2 things:

1. Whether or not to grant you the common law vested rights application. If we agree that you are vested, that would be the end of it.
2. If we don't believe that you are vested, then we would go back to the Fair and Affordable Housing Unit area variance application and make a decision on that.

Member Yergin:

What about the 2 lapsed variances, would they have to reapply for the 2 that have lapsed?

Chair Kramer:

We gave them the height variance at the last meeting.

Mr. Cutler:

Not the FAR, just height.

Ms. Addona:

This isn't something that had previously come up at any point in time. We demolished the structure we were moving forward with everything and then we made the application to this Board and prior to tonight was there never a suggestion that the prior variances had lapsed.

Chair Kramer:

Oh, the height variance was a variance on the new zoning.

Member Yergin:

The letter from the applicant was for 2 additional variances, 1 for affordable housing and 1 for height. It didn't refer to the last 2 that we had.

Chair Kramer:

The Building Department is going to have to make the decision as to whether or not those variances lapsed. If they lapsed, they need new ones for that. The issue is whether or not there was a building permit issued in which case they didn't lapse, but if it wasn't, they did lapse.

Ms. Addona:

I would say they already made that determination because the denial letter that was issued in November only raised the issue of the 2 new variances. There was nothing raised with respect to the prior variances which would've been included in the denial letter if it was the Building Department's position that those variances had lapsed.

Chair Kramer:

It's up to the Building Department to make that determination, so Building Department, please confirm that in your view a building permit was issued so the variances didn't lapse or the other way around. You don't have to answer now Frank, you will need to give us an answer between now and the next meeting.

There are 3 possibilities of what can happen at the next meeting. If the Building Inspector determines they erroneously issued the objection, they forgot to say your prior variance lapsed, you would need to apply for new variances to get the variances that you previously got again. That's relevant whether or not we decide to give you vested rights, but it's certainly relevant to the question of, if we gave you no vested rights and gave you an area variance, if those prior variances have lapsed, you'd have to reapply for those prior variances.

That's in addition to what I previously said, you would either have vested rights or make a decision on the variance. Now we have a 3rd thing, which is possibly also to determine that you need to reapply for the 2 variances. I understand this isn't something you had been aware of so I'm going to ask the Building Inspector if he can make that decision as soon as possible. If it is that the applicant needs to apply for the 2 new variances, he may want to rethink what he wants to do rather than go through the process some more.

- 2. Application #1i-2020, Tiekert Appeal Re: 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, 19NYCRR 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).

Ms. Mason is recused from this application. Ms. Dickson will be Counsel for the Board.

Chair Kramer:

Please do not repeat what you have said in the prior 2 meetings. Mr. Cutler has control, if you just repeat what you've said, I'm going to ask him to mute you. We know what you previously said, if you have anything else to add, we're happy to hear it. Not happy to rehear everything that you've said.

Mr. Tiekert:

I've read and believe Mr. Salanitro's submissions of the historic records are important to the Board's decision on this matter. I have disagreements with his accompanying letter, he's entitled to his opinion. I would like to comment on a couple of things I believe are relevant from the transcript of the 1986 ZBA meeting. Page 2 of the 1986 Notice of Appeal states that there were 2 COs at the time. I provided the 1941 CO to the Board at the last meeting. I believe the 1948 CO may be the CO issued when the main house was converted to 2 families, but apparently, it's missing at this time.

I don't believe I made it clear to the Board that the current configuration of my 3rd floor is not what the 1986 Notice of Appeal was for. The plan in 1986 to the ZBA involved structural changes to the 3rd floor with a 50% increase in square footage. Mr. Tivolacci stated in his January 3rd letter to the Board that it appears Mr. Tiekert has constructed the space to what was denied by the Zoning Board. I did not and I don't think I made that clear. Page 20 of the June 5, 1986 ZBA minutes, that Stemm Associates

architect informed the ZBA that the large house is a lovely house on a large lot. We're talking about a pitched roof that comes down too low and expanding it out.

I would also like to ask that the Board make a ruling applicability of the Multiple Dwelling Law on this matter. None of the violations issued reference Multiple Dwelling Law. The Buildings Department's last communication relied solely on the violations. That's all I have.

Charlotte Mountain, Village CEO:

Mr. Tiekert is saying that Multiple Dwelling Law was not mentioned in 1986. At that time, the Village wasn't actually using Multiple Dwelling Law, so that wouldn't have been applicable at that time.

Whether there is a small change in square footage that he would've wanted to make, what he has done is essentially what was proposed at that time. There really is no significant difference that I can see.

Chair Kramer:

The issue before us is not whether it is subject to the Multiple Dwelling Law, and I don't think we have to or should have to be making that decision. The issue before us is whether or not the configuration of Mr. Tiekert's house and the rental of this space to a 3rd party is in fact creation of a unit that would increase the degree of non-compliance or in another way make it violate, it already violates the Zoning Code because it's got 3 families in there. It's really a determination of whether or not it's adding an additional unit. If we determine that, then whether or not that makes it subject to the Multiple Dwelling Law is something that the law decides, not something that we decide.

Member Dunaway:

The property is already 3 families, so it already falls under the Multiple Dwelling Law, it has to be considered.

Chair Kramer:

I've got the Multiple Dwelling Law in front of me. I don't know the answer to that, I'll take your word for it without having done any research into it.

A dwelling is a building or structure, a multiple dwelling is a building or structure. We've got a 3-family property, but whether or not this building, the property has a multiple dwelling on it is a separate question and I'm not sure why it matters to our decision today.

Member Dunaway:

It's going to matter in the determination of whether that is a dwelling unit itself, and the definition is in fact 3 families right now. Even though they're separate, they're on that lot and it's a 3-family. The definitions and terms that you need to look at are within the confines of the Multiple Dwelling Law.

Chair Kramer:

I disagree. We are determining the applicability of our Zoning Code and our Code has some definitions, however incomplete they might be, so the place to look is our Zoning Code for those definitions, not to look at the Multiple Dwelling Law for those definitions. The Building Code has additional definitions which also vary. The State Building Code, which may or may not apply to this. They're all different, the only one we're concerned with is our Village Zoning.

Member Dunaway:

In order for you to make the determination whether or not that non-conforming use has expanded is based on the applicable codes that are in place. We have the Village Code and we have the State Code. The State Code has a relatively clear definition, you are a resident if you have 2 families or

less. You fall under the Building Code if you are in excess of 2 families. The Village Code, any project that comes before us, how many times did we look at the Code in relation to other applications that came before us, quite a few. Whatever we conclude, we need to make sure that we make a determination based on all of the available information in front of us, and that includes every Code. Building Codes are strictly minimal requirements for life safety.

Chair Kramer:

Has the Village determined that this house is a multiple dwelling? In the Building Department's determination this is a multiple dwelling under the State Multiple Dwelling Law?

Mr. Tavalacci:

Yes. I believe that is a multiple dwelling property. You have 2 residences in the main house that we now think there's a 3rd and you have 1 over the garage. To me it's definitely a multiple dwelling. If it's a 3 family and a 1 family, I believe it's a multiple dwelling.

Chair Kramer:

Lori Lee, what if any powers does the Board have with respect to the Multiple Dwelling Law?

Ms. Dickson:

You have powers because you are tasked, the Village has adopted the enforcement of the Building Codes, Uniform Codes, as its Code for purposes of minimum house standards and building standards. The Multiple Dwelling Law is among the codes that the Village is tasked with enforcing, so part of the analysis, from what I understand in the record, the Building Department is asserting that this analysis would look to the Multiple Dwelling Law in order to provide the appropriate definitions of dwelling, alteration and those items that were highlighted in the actual violation notices. You're not looking to interpret that, what you're looking at is a conglomeration, is this a non-conforming use, and in order to determine that you look at all the evidence and definitions of the Codes that the Building Department is tasked with enforcing.

Chair Kramer:

I don't necessarily agree that this is a multiple dwelling without that 3rd family because of the definitions in the Multiple Dwelling Law. I think that's the 1st discussion we'll have to have among the Board members is whether or not the Multiple Dwelling Law applies here. That doesn't change the fact of whether under the Zoning Code it's a 3-family house, 2 very different sets of definitions, 2 very different sets of laws. It could be a 3-family property without being subject to the Multiple Dwelling Law because of the way the definitions vary in the different Codes.

Ms. Dickson:

Are you saying that because it's 2 separate buildings on 1 property?

Chair Kramer:

Under the definitions in the Multiple Dwelling Law that's correct.

Ms. Mountain:

Under either definition my feeling is that the first structure, 130 Beach Avenue, is now being used as a 3-family house. We don't have anything that would document that such as a CO or a building permit because we could not issue that because the 3rd unit has been installed illegally. The way the building is currently configured, under any of the definitions, there are 3 separate units in the building.

Chair Kramer:

You're saying it doesn't matter whether the property as a whole is a multiple dwelling right now, because assuming that this is a 3rd unit, that would bring it under the

Ms. Mountain:

It would be a 3-family under Multiple Dwelling, it would be a 3-family under the local zoning.

Member Yergin:

I believe the definition says that it has to be in the building, so we would have to determine if we really think this is 3 different units and our Board hasn't determined yet if we think it's 3 separate dwelling units. I don't think it falls under Multiple Dwelling because there's 3 on the property, the way I read the definition of multiple dwelling.

Chair Kramer:

Without this 3rd unit I'm not sure there's a multiple dwelling on the property, with this 3rd unit there would be. The question is, that we're determining, is whether or not there is in fact a 3rd unit, that's what we're determining.

Member Yergin:

I want to discuss the affidavit and we've got the materials from the 1980s, past resolutions we've received both of those things since our last meeting. I don't understand why, it seems the Building Department is saying that Mr. Tiekert actually followed what the plans were when they applied to make it a 3-condo unit and got turned down. Mr. Tiekert said he was going to expand the floor plan and I also see that they intended to seal off the common staircase between the floors and add a separate entrance to the 3rd floor. That was part of the plans for making it 3 separate units, which they got turned down for. They didn't go through with the plans that they described in the 1980s to make these 3 separate units.

The affidavit that we received from the boarder, I was interested to see that he has freedom to use the kitchen whenever he wants, freedom to use all the other spaces, the lawn area. To me it's definitely a roommate type of situation, it doesn't have a lease, he's not paying insurance. If they had boarded off the stairway or had a separate door to go to the 3rd floor, I could see how other things would come into play.

Chair Kramer:

If you go into a townhouse in much of the world, there's 1 staircase in the building. There's 1 staircase that goes up, somebody gets off at the 1st floor that's their apartment, somebody gets off on the 2nd floor that's their apartment. The existence of a common staircase doesn't mean it's not.

Member Yergin:

I was just pointing out people are saying that Mr. Tiekert constructed what he had asked for and he did not.

Member Heaney:

When I read the affidavit by Mr. Steinkamp, he referenced working in Judge Gallagher's chambers, and I'm married to Judge Gallagher so for sake of transparency I asked my husband whether he knows him and my husband said he doesn't recall meeting him and doesn't recall who he is, so I don't think there's a conflict.

Public Comment

Benny Salanitro:

I sent the Board documents from the 1985-86 Board of Appeals that Stemm Associates had made. I felt compelled to supply this information because to me it should make the job of the Board extremely easy. The history on this property is full of valuable information that supports, unequivocally, in my view, supports the Building Department's position.

The timeline of Stemm Associates from their acquisition in December of 1984, within 6 – 7 months thereafter they sought a use variance. This is an R-5 District and an application was made for a use variance, those are almost impossible to get but they got a use variance to convert the garage to further conforming use to convert the gatehouse to what we now know is a larger single-family use separate from the rest of the house.

Six months later, since the first use variance was easy to get, they went back for a second use variance. What's telling about that is that it was further aggravation to the neighborhood to the fact that this is now an application for a 4-family use.

I disagree with Meg with because I believe without the roof renovations, they did create an interior separate stairwell to the upper floors that was clearly mentioned by Ms. Mountain in the first application in the first hearing. There is a separate entrance, there is a wall that divides the staircase from Mr. Tiekert's residence to the unit above him. There's clearly a second use, a third use in that primary dwelling.

It's an application for an interpretation and an appeal of violations issued by the Building Department. I fear this will backdoor a variance that he once asked for. In my view this is not an application for a variance, this is an application for an interpretation and for the violations to be reconsidered as appropriate or not. If the Board goes down the slippery slope by suggesting that it's ok for him to have this other tenancy. I don't believe the paper you got from the affidavit is worth anything because, look at the history on this property, people change, things change. A single person can grow into a family, these are families, it's a single-family zone.

I believe it's incumbent upon the Board to recognize and also to understand where we go from here. In this single-family zone, which I reside in, I pay \$34,000. a year in taxes. I reside here with my family. My house is big enough to have an occupant to help subsidize that.

Whether this is Multi-Family Law or the Building Code it doesn't matter. As a single-family residential zone, we're not permitted to have other inhabitants regardless of whether there's a stove or not, there are other mechanisms to provide for heating and cooking of food. Can I rent my basement, can I rent something out in my house? We're living in an economic time where people will look at these types of decisions of the Zoning Board, in my view, and say wait, if Mr. Tiekert can do this, why can't I? The Code Enforcement Officers are charged to ensure the safety of the general public. There's a lot of overcrowding, people are renting individual rooms. What gives the right to this application for its use, but what gives a person the right to further increase the residents in a home? I think it's so unfair.

Meg, I disagree with you. There is a separate constructed wall that goes up to the 4th floor. Those pictures were provided to the Board.

Member Yergin:

Our Code does allow for people to have boarders, for sure.

Mr. Salanitro:

So, it becomes a linguistic argument as to whether it's a tenant or a boarder. If you give somebody the opportunity to call it something that gives them what they want, they're going to call it what you say it is. If he's receiving rent, he is subsidizing on the backs of others in this community in a single-family zone. If you look at the minutes from 1985-86 where residents spoke out against the

application, they made it very clear that their homes were equally as large yet they didn't seek to divide their homes into more than 1-family, they left it alone.

We can all have boarders in our homes now, is that what you're saying? That is a slippery slope. It's not in the Code the way you're saying it's in the Code, I disagree with that. (inaudible) has been used since 1986 as a separate apartment. He first used it for his own family, there's nothing wrong with that, but then you start going down where it's ok to have a single person living there. Can you have 3 boarders living there, can you have 4 boarders living there?

It's a difficult thing to talk about that you're allowed to have boarders. I don't think this is what was the intent of the Code and I think it's a backdoor of granting somebody an illegal use of a facility that they tried to get permission for and it was denied and this is a second way of doing it.

A lot of people come looking for help from the Zoning Board. Don't think we have to bend over backwards on this one, they've reaped the benefits of the Zoning Code and the Zoning Board with use variances in a single-family zone.

I've been living here over 30 years, I'm a professional, I understand the Code, I've been before your Board many times, so I understand what's at stake. I hear real estate agents speaking about other homes that have 3rd stories or they have a door going up to the attic. Enforcement is enforcement, this comes down to the enforcement issues that have been gone after by our Code Enforcement and I applaud them for it.

End of Public Comment

Mr. Tavalacci:

Charlotte also made a very important point today. She said this Board has to consider what's going to happen to this apartment should you approve it. Say 5 years down the road when the occupants who are there now may not be there anymore and you could have families and kids in there, it's more cars, it's too much for a single-family residence in that zone.

Mr. Tiekert:

I think it's a reasonable discussion, I think you need some more information perhaps. As I understand how our Zoning Code is written, the only way my 3rd floor qualifies as a dwelling unit is perhaps under Multiple Dwellings Law. I do think the Multiple Dwellings Law should be resolved by the Board before you move forward.

Chair Kramer:

Board members, do we need any additional information, do we want anything else before we close this application? Do we want to think about it and not close it now to go through everything?

Member Dunaway:

Adjourn it, I want to go back and review all the data.

Chair Kramer:

So, we'll adjourn this. This matter is adjourned until the May 7th meeting.

- 3. Application #2A-2020, Paterno, 606 Rockland Avenue, (Section 8, Block 104, Lot 37A) for a variance to construct a front second story addition. The proposed construction is in violation of 342 Attachment 2 of the Village Code where the minimum front yard setback required is 20' and the Applicant proposes 19.5' and where the maximum allowed lot coverage is 35% and the Applicant proposes 39.7% and where the required side and rear lot line setbacks for one and two family dwelling is 5' and the Applicant proposes 2'. (R-5 District)**

Member Roberts is recused from this application as Mr. Paterno has worked with her on private matters.

Mr. Paterno, the homeowner:

At the last meeting you asked to clarify the plot plan with all the dimensions in the front yard, we have done that. The setback for the proposed covered porch comes to 19' 5" which is a 7" projection in the front yard. The proposed addition, the garage, all are within the envelope of the setbacks. The proposed covered porch is within the envelope of the setbacks except on the right corner, which is that 19.5, a 7" projection.

Chair Kramer:

What is to your east? It looks like vacant land. Do you know who owns it or anything about it?

Mr. Paterno:

It's owned by the County; It's more of a retention area for the Sheldrake River.

The Board members did not have questions/comments for the applicant. There was no public comment.

On motion of Member Dunaway and seconded by Member Yergin, the Public Hearing was closed.

Ayes: Member Heaney, Member Dunaway, Chair Kramer, Member Yergin

Nays: None

Recused: Member Roberts

Deliberations:

Member Yergin:

We had questions mostly about the alignments to the front yard. To my satisfaction it's clarified on the survey.

Chair Kramer:

The variance to the front yard is very small. The one that concerned me the most is the 2' side yard setback from the driveway but given that it is County owned and not a development site, I think that would be the only reason I don't think this is a significant variance.

It is significant, 5' going down to 2' is significant, but I think it's ok to do it is given that there's not a neighbor or development site there.

Member Dunaway:

We granted a variance on Grand Street that was less than 2'. I don't have any issue with the 2' on this particular application.

Member Yergin:

I feel the same way, it's not going to impact a neighbor. It would be difficult to achieve this by other means because of the weird shape of the lot and the position of the driveway. I don't think it's an undesirable change in the neighborhood, it's tucked in the corner. The largest variance, the side yard is not impacting another person. The side yard request is substantial but because of where it's located on the street, it doesn't have an undesirable impact. The alleged difficulty is self-created because they want a bigger house.

Member Heaney:

In terms of the feasibility, they don't have to have such a big driveway. It's only because of this unique placement where the property is that when you balance all of the factors, a variance is reasonable.

On motion of Member Dunaway and seconded by Chair Kramer, the variances were granted for Application #2A-2020, Paterno, 606 Rockland Avenue.

Ayes: Member Dunaway, Member Heaney, Chair Kramer, Member Yergin

Nays: None

Excused: Member Roberts

The following resolution was adopted:

APPLICATION NO. 2A 2020

Name: Joseph Paterno
Premises: 606 Rockland Avenue
District: R-5
Section 8, Block 104, Lot 37A

WHEREAS, Joseph Paterno ("Applicant") has appealed to this Board for a variance from a determination made by the Building Inspector concerning an application to construct a front second story addition at the Applicant's property situated at 606 Rockland Avenue (Premises"); and

WHEREAS, said determination denied the Applicants' request to construct such a front second story addition because it is in violation of Section 342 attachment 2 of the Village Code where the minimum front yard setback required is 20' and the Applicant proposes 19'5" and where the maximum allowed lot coverage is 35% and the Applicant proposes 39.7% and where the required driveway setbacks for One and two family dwellings is 5' and the Applicant proposes 2'; and

WHEREAS, after due notice this Board held a public hearing on such application on March 5, 2020, and there were no speakers other than the applicant; and the public hearing having been closed on April 2, 2020; and

WHEREAS, after duly considering all the proofs and evidence before it, this Board finds as follows:

1. This Board has engaged in a balancing test of several factors, which are set forth herein below, and upon weighing and balancing the compelling interests, has made a determination to grant the variances requested.

2. On a balancing of all the credible evidence, the Board finds:

- (a) There will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variances as the property is located at the boundaries of the Village and is adjoined on the east by a Westchester County retention area for the Sheldrake River;
- (b) The benefit sought by the Applicants cannot be achieved by some other method feasible for the Applicants due to the unique shape of the lot and angle of the driveway;

- (c) The requested variances for front yard setback and lot coverage are not substantial, but the requested variance for the driveway setback is substantial but due to where the property is located on the street it will not adversely affect the property to the east that is nearest to the driveway
- (d) The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (e) The alleged difficulty is self-created, but is not of such a nature as to require denial; and although the Applicant could have reduced the size of the driveway, due to the unique location of the property it was determined that the benefit to the Applicants outweigh any detriment, as outlined above, including any detriment to the health, safety or welfare of the community or the neighborhood.

3. The variances to be granted are the minimum variances necessary and adequate to provide the relief requested for the Applicants, and, at the same time, to preserve and protect the character of the neighborhood.

4. The Applicants are entitled to the variance requested.

NOW THEREFORE, on motion of Member Dunaway, seconded by Chair Kramer:

BE IT RESOLVED, this Board finds the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA), and it is further;

RESOLVED, in accordance with the vote of this Board taken on April 5, 2020, that the request for a variance is hereby granted, subject to the following conditions:

A. That any work done hereunder shall be in strict compliance with the plans as filed with this application, except as may be approved by the Building Inspector, provided any modification of the plans approved by the Building Inspector shall not affect the approval granted herein.

B. That the granting of this application shall not be deemed to relieve the Applicants 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 project.

C. That the Applicants shall procure a building permit from the Building Department within one (1) year where a building permit is necessary to comply with federal, state, or local codes, laws, regulations or requirements and all work shall be completed within one (1) year from the date of the building permit, otherwise this approval shall lapse; and any request for extending the time within which to obtain said building permit shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.

D. That the failure to observe and perform these conditions shall render this resolution invalid.

In Favor:

Kramer, Yergin, Dunaway, Heaney

Opposed:


None

Absent: None
Abstained/ Recused: Roberts

4. Application #3SP-2020, Marco Varriale for Padre Pio Osteria, 501 Halstead Avenue, (Section 4, Block 26, Lot 1A) Application for a special permit to operate a new restaurant in an existing restaurant space. (C-1 District)

Mark Mustacato, R.A.:

He shared his screen, showing a Certificate of Occupancy Search.



MUNICIPAL DATA SERVICES
 25 Hyatt Street - Suite 301
 Staten Island, NY 10301
 Phone - (718) 815-0707
 Fax - (718) 815-9101
 www.munidata.com

PARCEL HISTORY

Village of Mamaroneck
 169 Mt. Pleasant Ave
 Mamaroneck, New York 10543
 914-777-7731

2/12/2020

Search Date: 02/25/2020

County: WESTCHESTER
 City/Town: Town of Rye
 Village: Village of Mamaroneck

Title/CoNo.: RRTA RR-W-40105-20

Address: 501 HALSTEAD AVENUE

Section: 154.34
 Block: 1
 Lot: 39

Address: 501 HALSTEAD AV
 Parcel ID: 4-26-1A

Issued Date	Item	Status	CO/CC #	CO/CC Date
9/16/1930	PERMIT #5381	VOID		4/11/2012
Owner: Wm. Steigler sign business				
7/28/1933	PERMIT #5919A	VOID		4/11/2012
Owner: Chas. Puma sign electric				
7/28/1933	PERMIT #5919	CLOSED		7/28/1933
Owner: Gerson Mordo operation bar/restaurant				
8/3/1933	PERMIT #5920	CLOSED		8/3/1933
Owner: Selma Mordo alteration cellar and foundation wall				
2/15/1934	PERMIT #5998	CLOSED		2/15/1934
Owner: Selma Mordo alteration store and apartment				

CERTIFICATE OF OCCUPANCY SEARCH

We have been advised by the Building Department that a search of their records has been made for the above captioned premises. The following information has been found:

No Certificate of Occupancy on file for original structure

NO CERTIFICATE OF OCCUPANCY ISSUED OR REQUIRED FOR BUILDING PERMIT # 5919 ISSUED 7/28/1933 FOR BAR/RESTAURANT

NO CERTIFICATE OF OCCUPANCY ISSUED OR REQUIRED FOR BUILDING PERMIT # 5920 ISSUED 8/3/1933 FOR CELLAR AND FOUNDATION WALL

NO CERTIFICATE OF OCCUPANCY ISSUED OR REQUIRED FOR BUILDING PERMIT # 5198 ISSUED 2/5/1934 FOR ALTERATIONS TO STORE AND APARTMENT

NO CERTIFICATE OF OCCUPANCY ISSUED OR REQUIRED FOR BUILDING PERMIT # 8372 ISSUED 7/30/1936 FOR ALTERATION

NO CERTIFICATE OF OCCUPANCY ISSUED OR REQUIRED FOR BUILDING PERMIT # 10423 ISSUED 12/11/1951 FOR FIRE ESCAPE

ATTACHED PLEASE FIND CERTIFICATE OF COMPLIANCE # C-20366 ISSUED 5/30/2001 FOR FIRE SUPPRESSION SYSTEM

We did some research to try and find evidence that this use does predate the 1968 date. This was submitted to you it is something the owner's attorney found showing that there was a bar/restaurant in July 1933.

BUILDING RECORD

BUILDINGS	TYPE	YEAR BUILT	RENOV	CONDITION	REPLACEMENT COST	DEPR. PERCENT	SOUND VALUE	ASSESSOR'S VALUE	BOARD TAX REV
B. STALL 2	3	1920	2	9	38960	30	27300		

DO.	CONST.	ROOF	FLOOR	O.H.D.	STY.	SIZE	AREA	UNIT

MAIN BUILDING CONSTRUCTION	STY.	DIMENSIONS	SQ. FT.	UNIT	REPLACEMENT	TOTAL VALUE BUILDINGS
TYPE	ROOF SHAPE	FLOORS	2 1/2	30 x 32	1920	24680
1ST	GABLE	CEMENT CELLAR				
2ND	FLAT	HARDWOOD				
3RD	SHED	CONCRETE				
4TH	FLAT	CONCRETE				
5TH	FLAT	CONCRETE				
6TH	FLAT	CONCRETE				
7TH	FLAT	CONCRETE				
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97TH	FLAT	CONCRETE				
98TH	FLAT	CONCRETE				
99TH	FLAT	CONCRETE				
100TH	FLAT	CONCRETE				

Height Stories: 3

Rooms and Interior Finish:

Room	Finish
1	1
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4	4
5	5
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100	100

PAVED
SEMI-PAVED
DIRT

MODERN
RANCH TYPE
SPLIT LEVEL
CONVENTIONAL

He presented the Town of Rye assessment cards on screen. This area here, it describes the space as a tavern. Another drawing again describes it as a tavern. I can't find the records of when these were drawn, they appear to be rather old but I don't know for sure.

Again, it's not indicated when the drawing was done, but again, it shows it as a tavern.

When did La Fiamma cease operation? Did it cease more than 6 months ago?

I'm not sure when it ceased. Yes, it was more than 6 months ago.

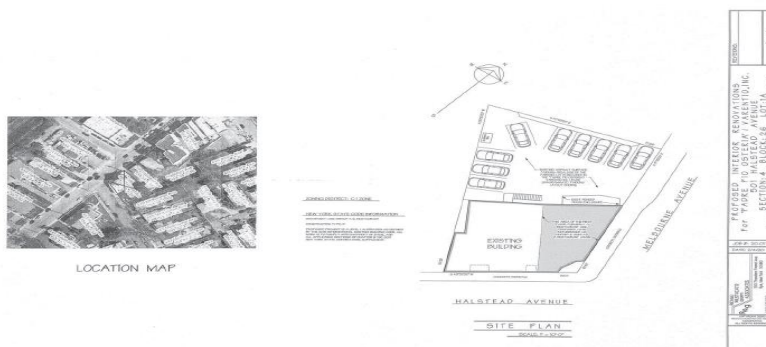
If I'm not mistaken, if an operation ceases more than 6 months it is no longer considered what that operation was.

It's not a non-conforming use, it requires a Special Permit.

I believe it's 342-63 Non-Conforming use of Land.

I remember we had someone from the audience talking about insufficient parking. Did you put dimensions on those spaces in the parking lot?

No, I didn't. I did just a diagrammatical layout to show how there could be parking. I laid them out as 9' spaces; we have 9 spaces if we needed to comply with Zoning, we'd need 11. The only reason we showed parking is because he is the only tenant that has it in his lease that he had the right to use the lot.



Mr. Cutler:

Just to be clear, in the past the Building Department has considered situations like this to be exempt from the parking requirements because so many buildings in the Village are non-compliant and non-conforming and were built before the Zoning Code existed. Many businesses exist within the spaces and do not have the requisite parking.

Member Yergin:

Is it also necessary that the use didn't change? We understand they were in use that way before the parking requirement, as long as they stay with that same use.

Mr. Cutler:

As long as there's no increase in the use, in the requirements within the use.

Member Yergin:

When you're looking at this kind of situation, are you looking at the whole sharing the lot? Are we looking at all of the uses having been the same and have not increased in impact? I don't believe we have a consistent record for knowing whether or not the space was a restaurant or a tavern. I know there are other uses and if it was a space that had to conform with our parking regulations now, we'd have to figure out how many (inaudible) it would be a parking lot supporting all of those different uses.

I'm looking at the Town of Rye assessment record, it says beauty shop, tavern, decorator and a 4-room apartment. If they split it up into 3 apartments and have different uses in the other spaces of the building, could we consider that as having more impact on the parking? Is it just the use that we're looking at or the totality of the use?

Chair Kramer:

It's just the use that we're looking at but if the Building Department didn't require when it changed the use, that it provide parking then we would have to first make a determination that those uses shouldn't be permitted. This use doesn't do anything to the existing non-conformity and if none of the other units have the right to use the parking lot, then it's mute anyway.

Member Yergin:

There are generally 4 – 5 cars in the parking lot when I drive by. Is the landlord going to make sure that nobody else parks there when this restaurant is open, are they actually going to enforce it to stay empty for the use of this space that's empty right now?

Mr. Varriale:

Unfortunately, nobody has a contract for rights to the parking in the lot, the parking lot is exclusive for the restaurant. The landlord has never given anybody the right for parking. We're going to pay for re striping for the parking lot, so we are responsible for the parking lot for everything. We are the only one with a contract to park inside. It was important when signing the lease, that we have the parking. There was no one before us that had rights to the parking lot. At the last meeting you only asked to prove the restaurant, nothing was said about the parking. He spoke to Mr. Fritz from the historic society, they did not have much on the property, but their memory was it was a restaurant.

Member Heaney noted the document provided doesn't say the lot is exclusive to you. Could you provide us with some evidence that states it's exclusive? I didn't see the word exclusive.

Mr. Mustacato:

The Special Permit for Fiamma was granted without them having the right to parking. As far as we see it, this is an improvement.

He read the language from the lease regarding use of the parking lot. It doesn't say it excludes everybody else, but the landlord doesn't allow it for other people.

Article 11. Parking. Tenant shall have the use of the parking lot during business hours. Customers shall not park vehicles in the lot overnight. Tenant must include the parking lot area in its liability insurance policy coverage.

Member Dunaway and Mr. Mustacato had a brief discussion regarding how to reconfigure the parking lot to get more spaces necessary.

There were no further questions/comments from the Board.

On motion of Member Dunaway and seconded by Chair Kramer, the Public Hearing was closed.

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

Nays: None

Excused: None

Deliberations:

Chair Kramer:

It's a site that has been a restaurant. It has not previously had dedicated parking, it's not clear in the lease that it is dedicated parking, whether it is dedicated parking or not, I think it adds to it. It's a restaurant, which will make it more amenable to the neighbors as opposed to takeout or a pizza place. I don't have any issues granting the Special Permit with the hours they've asked for.

Member Dunaway:

I agree.

Member Yergin:

I agree it will probably have less impact than a pizzeria would. I'm concerned I don't have documented evidence that it's always been this use and concerns about the fact that we're not requiring the adequate parking.

Chair Kramer:

The Code clearly says that you don't need a parking variance. If anyone on the Board wants additional information you could've gotten it. Our measuring date for what we're doing is today.

Chair Kramer and Member Yergin had a discussion about parking and previous uses.

Member Heaney:

The issues that Meg is discussing would be inherent for any application for this property. If the applicant doesn't have the information, the next applicant might not have the information. I think we have to go forward imposing conditions perhaps that we think we may need. I don't think it should hold up the granting of the application necessarily.

Member Roberts:

I agree with Gretta. It's been a restaurant they've provided as much information as they could. I think we should move on in good faith.

On motion of Chair Kramer and seconded by Member Dunaway, the Special Permit was granted for Application 3SP-2020, Varriale, 501 Halstead Avenue with the condition that the parking be exclusive for this restaurant during their business hours.

Ayes: Member Dunaway, Member Heaney, Member Robert, Chair Kramer

Nays: Member Yergin

Excused: None

The following resolution was adopted:

APPLICATION NO. 3SP-2020

Name: **Marco Varriale for Padre Pio Osteria**

Premises: **501 Halstead Avenue**

District: C-1

Section 4, Block 26, Lot 1A

WHEREAS, Marco Varriale for Padre Pio Osteria ("Applicant") has applied to this Board for a special permit to operate a new restaurant in an existing restaurant space to Article X Chapter 342 of the Village Code; and

WHEREAS, after due notice, this Board held a public hearing on such application on March 5 and April 2, 2020, at which times it heard all parties and received their evidence and proofs; and the public hearing having been closed on April 2, 2020; and members of this Board being familiar with the premises; and

WHEREAS, the evidence before the Board showed that the premises were used as a tavern and bar in 1933, prior to the date that parking was required for such use, and at numerous other times and there was no evidence of other uses; and

WHEREAS, the restaurant will have a dining room and a bar within the dining room; and

WHEREAS, after duly considering all the proofs and evidence before it, this Board finds as follows:

1. The location and size of the use, the nature and intensity of the operation, and the traffic involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to the type, arrangement, and capacity of streets giving access to it, are such that the use, as set forth by the Applicant, will be in harmony with the appropriate and orderly development of the district in which it is located.

2. The location, nature, and height of buildings, walls and fences, and the nature and extent of the landscaping and screening on the site, as existing or proposed, are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. The proposed restaurant will utilize existing commercial space at the Premises and proposes no changes to the exterior.

3. The operation in connection with the use, as set forth by the Applicant, will not be objectionable by reason of noise, fumes, smoke, dust, vibration, glare, intensity, or flashing lights.

4. The use, as set in the Application, will not adversely affect the public health, safety and welfare, and the comfort and convenience of the public in general, and of the residents of the neighborhood in particular.

5. The application is in compliance with special permit standards and requirements as set forth in Sections Article X of the Code of the Village of Mamaroneck.

6. The Applicant is entitled to the granting of the special permit under the circumstances of this application.

NOW THEREFORE, on motion of Chair Kramer, and seconded by Member Dunaway:

BE IT RESOLVED, this Board finds that the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA), and it is further;

RESOLVED, that in accordance with the vote of this Board taken on April 2, 2020 that the application for such special permit is hereby granted, subject to the following conditions:

- A. That the special permit granted herein shall be valid for an initial probationary period of three (3) years beginning April 2, 2020, with the renewal application having to be made by Applicant 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 hours of operation shall be 10:30am to 11:00pm 7 days a week, with a total staff not to exceed 4 people.
- C. That the special permit is granted only for the proposed use as set forth in the Application and described by the Applicant and shall expire upon a change in the use of the Premises.
- D. That any work done hereunder shall be in strict compliance with the plans as filed with this application and the conditions of this special permit, except as a modification of the plans may be approved by the Building Inspector, provided any such modifications do not affect the use or the conditions set forth herein.
- E. That the rear parking shall lot be exclusive to this restaurant during the hours of operation.
- F. That the granting of 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.
- G. That the Applicant shall procure a building permit from the Building Department within one (1) year where a building permit is necessary to comply with federal, state, or local codes, laws, regulations or requirements and all work shall be completed within one (1) year from the date of the building permit, otherwise this approval shall lapse ; and any request for extending the time within which to obtain said building permit shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.
- H. That the failure to observe and perform any of these conditions shall render this permit invalid.

In Favor: Kramer, Heaney, Dunaway Roberts

Opposed: Yergin

Absent: None

5. Application #7SP-2020, Frank Novello for Hillside Ave Deli, 901-905 Mamaroneck Avenue, (Section 8, Block 61, Lot 6) Application for a Special Permit to continue to operate a delicatessen (C-1 District).

Nadia Andreoli and Frank Novello, business owners:

We're here to ask the Board to renew our Special Permit to continue to operate our delicatessen. This deli has been operating for over 30 years. Frank and I have operated it for almost 2 years.

Chair Kramer:

The outside space in front, did you put that in, has it been there for a while?

Ms. Andreoli:

It was there when we purchased it. We have a permit for a sidewalk café, we renew it every year. We are continuing to use it the same way the existing Special Permit has been using it, no changes.

Member Yergin:

People with outdoor cafes and outdoor seating, we've mentioned that we don't want it to be used past a certain hour or have live music outside to respect the residents in the area. Do we want to put a similar condition?

Ms. Andreoli:

We close the business at 5 p.m. each night and we don't have any outside music.

There were no additional questions or comments from the Board.

Mr. Novello asked the Board if the three-year term for the special permit could be waived?

Chair Kramer- the initial approval of a special permit is usually three years, after that we generally approve without a term. We haven't discussed it but that is most likely what we would do here.

Public comments:

there were no public comments

On motion of Member Dunaway and seconded by Member Heaney; the Public Hearing was closed.

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

Nays: None

Excused: None

Deliberations:

Member Dunaway:

That place has been there forever. I don't have an issue with it. No one has ever complained about Hillside Deli that I know of. I would make a motion to approve it.

Ms. Sherer:

We have something from the Police Chief that says there have been no complaints or violations in the past 2 years.

Member Yergin:

I definitely think we should approve it. When it comes to food establishments, I have concerns with it having no term, food establishments have a potential for having a high impact on the neighbors. I would want to put a term on it.

Member Dunaway:

We should put the same conditions that were on the other Special Permit and say they can have no outdoor music or entertainment.

Member Heaney:

Why not have a term, let's ensure that there are no issues.

Member Dunaway:

We just did the application at Madison, Special Permit no term limit.

Member Yergin:

Food establishments with outdoor eating space have more of a potential for impacting the neighborhood in a negative way. These people are running it terrifically, but they could always sell it and it may not be run as well.

Member Dunaway:

The same thing could happen with the swimming pool establishment.

Member Yergin:

In my mind there's less chance of that with the swimming pool establishment, that's where I see a distinction.

Chair Kramer:

I could come up with lots of ways that a swimming pool establishment could have an impact on the neighbors.

Member Roberts:

The timing is there, 5 a.m. – 6 p.m. it's a delicatessen, that's pretty reasonable. I'd go for the 10-year term or no term.

Member Heaney:

I would prefer a 5-year term, but I would go with a 10-year term if that's the consensus. I won't go with no term.

On motion of Member Yergin and seconded by Member Heaney, the Special Permit for Application #7SP-2020, Novello, 901-905 Mamaroneck Avenue was granted with the same conditions in the past and the new condition that there will be no music or amplified sound outside in the seating area with a 10 year term limit.

Ayes: Member Yergin, Member Heaney

Nays: Chair Kramer, Member Dunaway, Member Roberts

Excused: None

Member Dunaway:

I won't approve it with a 10-year term. We did Madison no term, I think we have to do the same thing for the deli. Madison is significantly closer to neighbors. If it goes to a different type of swimming, it could be worse than a fast food takeout place that Hillside Deli is. I'll abstain from voting, take my no vote out. I don't think we should impose a restriction on something that we already allowed another application to go through.

Member Roberts:

I see Meg's point though. It's different especially because the swim tank is so sectioned off, it's not going to bother neighbors.

Chair Kramer:

The more I think about it, the more I think we shouldn't have a term. We don't have a policy of imposing terms on a Special Permit after the first. There's very few uses that can be the same hours that would cause a problem.

On motion of Member Dunaway and seconded by Member Roberts, the Special Permit for Application #7SP-2020, Novello, 901-905 Mamaroneck Avenue was granted with the same conditions as last time and the conditions of closing at 6 p.m. and no music outside without a term limit.

Ayes: Member Roberts, Member Dunaway, Chair Kramer

Nays: Member Yergin, Member Heaney

Excused: None

AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, HELD ON APRIL 2, 2020, THE FOLLOWING RESOLUTION WAS ADOPTED:

APPLICATION NO. 7SP-2020

Name: Frank Novello d/b/a Hillside Deli

Premises: 901-905 Mamaroneck Avenue

District: C-1

Section 8, Block 61, Lot 6

WHEREAS, Frank Novello d/b/a Hillside Deli, has applied to this Board for a special permit to operate an existing deli at the above premises located within a C-1 District; and

WHEREAS, after due notice, this Board held a public hearing on such application on April 2, 2020, at which time it heard all parties and received their evidence and proofs; and the public hearing having been closed; and members of this Board being familiar with the Premises; and

WHEREAS, the application is for a take-out deli business only that will sell lotto tickets, beer, cigarettes, hot and cold food prepared on the premises, and similar items;

WHEREAS, after duly considering all the proofs and evidence before it, this Board finds as follows:

1. The use, as set forth in the Application, will not adversely affect the public health, the safety and welfare, and the comfort and convenience of the public in general, and of the residents of the neighborhood in particular
2. The use, as set forth in the Application, will not adversely affect the public health, safety and welfare, and the comfort and convenience of the public in general, and of the residents of the neighborhood in particular.
3. The application is in compliance with special permit standards and requirements as set forth in Sections 342-45 and 342-71 of the Code of the Village of Mamaroneck.
4. The Applicant is entitled to the granting of the special permit under the circumstances of this application.

NOW THEREFORE, on motion of Member Dunaway; seconded by Member Roberts:

BE IT RESOLVED, this Board finds that the within application is a Type II action not subject to review under the State Environmental Quality Review Act (SEQRA), and it is further;

RESOLVED, that in accordance with the vote of this Board taken on April 2, 2020 that the application for such special permit is hereby granted, subject to the following conditions:

- A. That the special permit shall be granted with no term limit.
- B. That the special permit is granted for the use set forth in the Application and shall expire upon a change in the use of the Premises.
- C. That any work done hereunder shall be in strict compliance with the plans as filed with this application and the conditions of this special permit except as may be approved by the Building Inspector, provided any such modifications do not affect the use or the conditions set forth herein.

- D. That the granting of 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 nature of this business.
- E. Applicant shall maintain an additional garbage receptacle outside the building on the premises which shall be cleaned and removed at the end of each day to avoid accumulation of garbage around the property.
- F. That there shall be no outside music or entertainment and the Applicant shall continue to obtain an annual Cabaret license from the Village for their outdoor seating.
- G. The hours of operation shall be no greater than between the hours of 5:00AM- 6:00PM Monday through Sunday.
- H. That the failure to observe and perform any of these conditions shall render this permit invalid.

In favor: Kramer, Dunaway, Roberts
Opposed: Yergin, Heaney
Absent: None

6. Application #6SP-2020, Elizabeth Smoltz for 120 Madison LLC, 120 Madison Street, (Section 8, Block 87, Lot 5) Application for a Special Permit to continue to operate a swim school pursuant to Article X Chapter 342 of the Village Code (C-1 District).

Christie Addona of Silverberg Zalantis:

We're requesting a Special Permit for an indoor recreation use. The site currently operates as Swim Tank, a recreational swim school for children. It is run by Aqua Tots, the lessee of the property. This Board granted a Special Permit for the current use by resolution in 2016. As the prior Special Permit has expired, the applicant is seeking a new Special Permit.

The property is the site of the former Strait Gate Church. This project was the subject of an extensive land use review in 2015 that required approvals from the Village Board to extend the C-1 Zoning District, from HCZMC for a Consistency Determination, from this Board for a Special Permit and site plan approval from the Planning Board. All the approvals were granted after the Planning Board issued a Negative Declaration. A CO was issued in 2017 and the swim school has been operating since the fall of 2017. JSL has a 20-year lease for the operation of the school.

Site and drainage improvements were made, and the plan eliminated 2 curb cuts on a residential street. In 2017 the Westchester Municipal Planning Federation gave an award to the Village for this project and related Adaptive Reuse Legislation.

We aren't aware of any violations or complaints that have been made with respect to the property or the use. The use is consistent with what the Board originally considered in 2016.

The school caters to children. It only operates in the morning through early evening. The classes are between 9:30 a.m. and 7:15 p.m. on weekdays and between 8:30 a.m. and 5:30 p.m. on weekends. There are no more than 25 students in any one class, but most classes are less than that with between 15 -20 students. The classes range from 30 – 60 minutes long and all activities take place within the structure.

The exterior lighting was approved by the Planning Board as part of the site plan approval and was installed in accordance with the approved plan. The lighting was designed to meet the Building Code and the Energy Conservation Code.

The property has 60 parking spaces where only 46 were required. There is a maximum of 25 students in any class, often students carpool with 1 adult or there are multiple kids from 1 family in the class, so there's usually even less parking needed. There is usually 8 – 10 staff on site, staffing is staggered and most of them don't drive so they don't take up a lot of parking.

It's consistent with what was originally presented to the Board and approved at that time. Chair Kramer asked if there were any changes in the application since it was first given a special permit

Ms. Addona replied no, this is consistent with everything that was approved, as it is consistent with the business design and operation of the school.

The Board didn't have any questions/comments.

Public comments:

there were no public comments

Ms. Addona asked- As with the prior application, they ask if the Board would consider making the new special permit an unlimited period of time? As noted, the Applicant has a 20 year lease and they are conforming to the previous permit granted.

On motion of Member Dunaway and seconded by Member Yergin, the Public Hearing was closed.

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

Nays: None

Excused: None

Deliberations:

The Board agreed to approve the Special Permit without a term limit.

On motion of Member Yergin and seconded by Member Dunaway, the Special Permit was granted for Application #6SP-2020, Elizabeth Smoltz for 120 Madison Street with the same condition as before but without a term limit.

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

Nays: None

Excused: None

The following resolution was adopted:

APPLICATION NO. 6SP-2020

Name: Elizabeth Smoltz for 120 Madison LLC

Premises: 120 Madison Street

District: C-1

Section 89, Block 32, Lots 84, 104, 109 and 124

WHEREAS, Elizabeth Smoltz, the Applicant has applied to this Board for a special permit to operate a swim school at the Premises within a C-1 District, pursuant to Article X Chapter 342 (Zoning) of the Code of the Village of Mamaroneck; and

Where a previous special permit was issued on February 4, 2016 and had expired on February 4, 2019 without an application to renew; therefore, the Applicant presents for a new Special permit

WHEREAS, after due notice, this Board held a public hearing on such application on April 2, 2020 at which time there were no public comments; and the public hearing having been closed; and members of this Board being familiar with the Premises; and

WHEREAS, there was no evidence of any problems or violations caused by the use and operations during the prior special permit; and

WHEREAS, after duly considering all the proofs and evidence before it, this Board finds as follows:

1. The location and size of the use, the nature and intensity of the operation, and the traffic involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to

the type, arrangement, and capacity of streets giving access to it, are such that the use, as set forth by the Applicant, will be in harmony with the appropriate and orderly development of the district in which it is located.

2. The location, nature, and height of buildings, walls and fences, and the nature and extent of the landscaping and screening on the site, as existing or proposed, are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

3. The operation in connection with the use, as set forth by the Applicant, will not be objectionable by reason of noise, fumes, smoke, dust, vibration, glare, intensity, or flashing lights.

4. The use, as set forth by the Applicant, will not adversely affect the public health, safety and welfare, and the comfort and convenience of the public in general, and of the residents of the neighborhood in particular.

5. The application is in compliance with special permit standards and requirements as set forth in Sections 342-42 and 342-71 of the Code of the Village of Mamaroneck.

6. The Applicant is entitled to the granting of the special permit under the circumstances of this application.

NOW THEREFORE, on motion of Member Yergin and seconded by Member Dunaway:

BE IT RESOLVED, that in accordance with the vote of this Board taken on April 2, 2020 that the application for such special permit is hereby granted, subject to the following conditions:

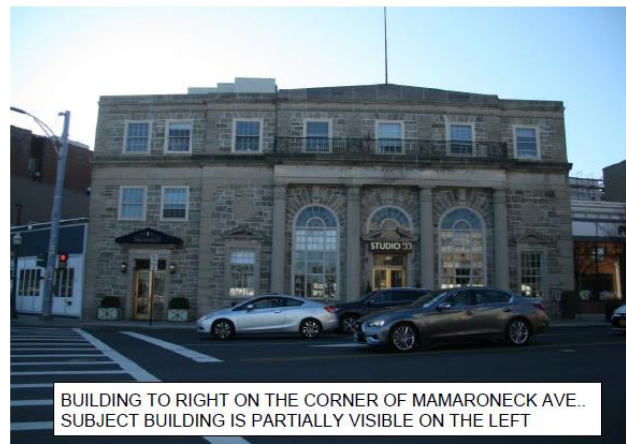
- A. That the special permit granted herein shall be issued with no term limit.
- B. That the special permit is granted for the use as set forth in the Application and shall expire upon a change in the use of the Premises.
- C. That the existing use has been consistent with the conditions of the previously granted special permit with the hours of operation remaining 9:30am to 7:15pm weekdays and 8:30am to 5:30 pm weekends. Classes ranging from 30 – 60 minutes with a maximum not to exceed 25 students per class and a maximum of no greater than 10 Staff Members on site.
- D. That compliance with all laws and ordinances of the Village of Mamaroneck is required in addition to the conditions imposed herein.
- E. That the failure to observe and perform any of these conditions shall render this permit invalid.

<u>In favor:</u>	Kramer, Yergin, Dunaway, Heaney Roberts
<u>Opposed:</u>	None
<u>Absent:</u>	None

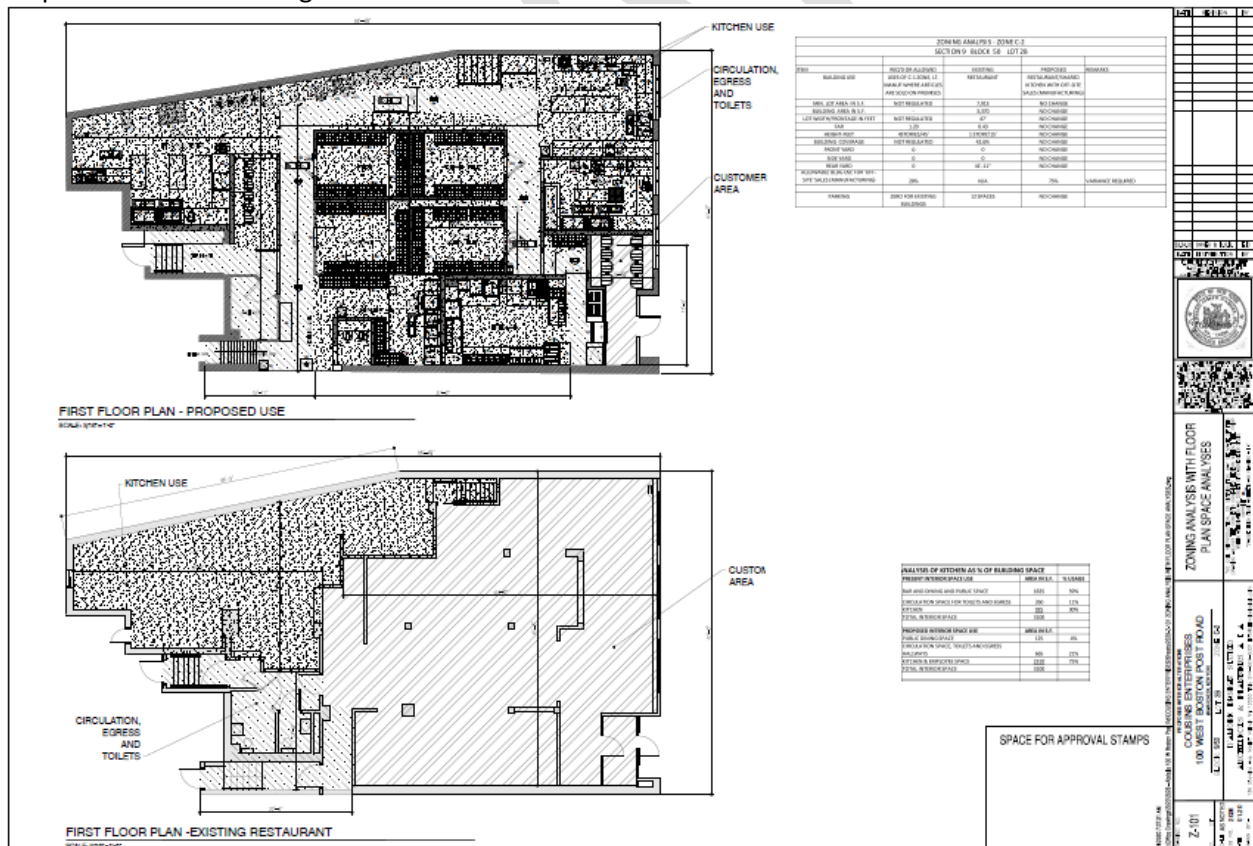
- 7. Application #8SP-2020, 9SP-2020 and 9A-2020, Gene Lum for Lum & Hong Realty, Inc., 100 W. Boston Post Road,** (Section 9, Block 50, Lot 2B) 8SP-2020 Application for a Special Permit to operate a new restaurant in an existing restaurant space. 9SP-2020 Application for a Special Permit to manufacture in the in the C-2 Zoning District and 9A-2020 Application for a variance to expand the kitchen where the proposed expansion of the existing kitchen is in violation of Chapter 342-47 of the Village Code where such areas shall not exceed 20% of the area devoted to retail sales and the applicant proposes 75% (C-2 District).

Member Dunaway:

Eugene Lum and my youngest son were friends. It won't impact my determination whatsoever.



He presented the drawings on screen.



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its restaurant and has a smaller area for the kitchen. The Special Permit and variance are about using a building for manufacturing, although it's only cooking, it's for use of a product that sold off-site, not just on-site. The zoning allows only 20% of the floor area devoted to preparing things or use off-site, we have 75%. We need the Special Permit to operate the restaurant. It's still a restaurant, we'll have a lot of takeout. The Special Permit is to manufacture in the C-2 Zone and the variance is to manufacture in the C-2 Zone.

We need the variance because we have been unable to attract another restaurant to go into the space. Since 2018 only 1 restaurant has gone in, they only lasted 8 months. The building has been vacant since they left.

This is just an interior alteration and wouldn't change the character of the neighborhood. There's no proposed change to the façade or increase in parking. They'll be little change to traffic. They'll be trucks delivering food, as there would be to any restaurant, and vans picking up prepared food to take to restaurants being served from this location.

Whether the benefits can be achieved by some other method, the applicant has had no success in trying to find another tenant in over a year. Because it's already set up for cooking, it's an excellent fit for the new tenant.

Whether this is a substantial variance, we think it's a minimal variance because it's only related to the interior space.

Will this have an adverse effect on the physical impact or environmental conditions of the neighborhood, because it's a restaurant and remains a restaurant and won't have any change to the parking, it won't have an adverse impact on the neighborhood.

Whether this was a self-created hardship, the Lum family has had this property since the 70s. they couldn't operate the business anymore, they retired, and they haven't been able to rent it to anyone else. It's a financial hardship and he's not able to make a reasonable return on his investment to the community.

Chair Kramer:

How many people are going to be working in this space?

Mr. D'Amore- no more than 10

Chair Kramer are there going to be more than 5 people working in the manufacturing part?

Mr. D'Amore- no.

So, there will be 5 people in manufacturing and 5 in the take out portion

Response- let me turn it to Abe

Mr. Abe Abdullah:

It's not really manufacturing food we're just preparing food. There's not a lot of cooking happening, it's more preparation of falafel, hummus and salads in the back to supply my front store and my other locations on the avenue. The trucks will be coming through the back-parking lot which has 12 parking spaces, dedicated to me.

Chair Kramer- the code says no more than 5 engaging in the manufacturing, if it's more than 5 you'll need a variance from that too.

Mr. Abdullah We'll have 10 – 15 employees there won't be more than 5 people in the back or the front. We're going to open the restaurant, so there'll be double shifts. They'll be 5 – 6 people working in the restaurant with 4 or 5 in the back part for food preparation. We will not be selling to other food establishments. The delivery truck will come by 2 – 3 times a week, pick-up will be once or twice a day at most at 20 minutes each time in the morning.

Chair Kramer:

So, this is really like a ghost kitchen.

Frank, is there a difference between the exhaust from this type of kitchen operation versus a full restaurant?

Mr. Tavoracci:

It's the same type of exhaust. The prior restaurant had a pizza oven, they put an additional stack that came out of the roof, which I assume will come out. The rest of the exhaust is the same.

Mr. Abdullah:

We'll be doing the cooking around 9 – 10 a.m. Takeout customers could also use the rear parking lot. The pickup truck will be parked in that lot.

Member Yergin noted this is the C-2 district where we normally do not look at parking. 342-47 is the section of code which references the number of employees in the manufacturing.

Member Yergin and Chair Kramer had a brief discussion of Chapter 342-31 A 1 e regarding manufacturing and retail versus wholesale distribution and would this require a use variance.

Mr. Abdullah:

I promise you I'm not selling to anybody else I'm just maintaining my restaurants. I will sign an agreement if you want me to that no one else will be buying anything from me but for my own restaurants in Mamaroneck, but I am looking to expand.

Member Yergin:

Are we certain that we're going to call cooking light manufacturing? It's not one of the uses listed under light manufacturing.

Chair Kramer:

We could call it processing. You're processing raw foods into finished foods. The issue of ghost kitchens is an issue everywhere, it's a new thing. This is a little different because he's manufacturing for himself.

Member Yergin:

If you sold the product to your other businesses, you would be Code compliant because you have the right to (inaudible). Taking it away and selling it seems not to be Code compliant.

Member Dunaway:

Are you actually selling it to your other businesses or are you just producing it for your other restaurants?

Mr. Abdullah:

I'm producing it, no sale. The same food will be sold to the public.

Member Dunaway:

What percentage of your processing area is dedicated to producing food for your restaurants versus the retail takeout space within the confines of this building?

Mr. Abdullah:

It's hard to say, hopefully 40 – 50% goes to the front.

Member Yergin:

It says in the Code that he can't sell the product that he's manufacturing there anywhere else except on that site. If he doesn't sell it to his other businesses, that seems to be not compliant. It says if you're manufacturing in the C-2 you have to sell the products right there on site. You can't sell it anywhere else.

Member Dunaway:

I think you have 2 operations here. You have a takeout restaurant and then you have a food processing facility housed within the same building. If I'm not mistaken, the takeout cooks up front and sells at the takeout counter. The processing operation at the back processes the food for transportation to his other restaurant. The way I see it, if he sold the food out of the processing operation to his other restaurant, even if he sold it for \$1.00, it's still a sale. If he does that then he's compliant.

Member Yergin:

Yes, that's what I'm thinking. It says sold exclusively on the premises it doesn't say it's sold by the same business.

Chair Kramer:

I would interpret that's what it's intended as, point is you're producing goods for your business you're not producing goods to be sold elsewhere. I think the retail would have to be one business and that one business would have to be selling retail.

Member Yergin:

I was saying it's a use variance to the point of using it as a ghost kitchen to supply product for another restaurant.

Member Dunaway:

I think we agree on that. How can it work is the bigger question. I don't know what that is unless he opens the separate restaurant portion upfront and sells to both his takeout and his other restaurant.

Mr. D'Amore:

We're talking about whether or not this project should be classified as a use variance or an area variance or just a Special Permit. We know we need a variance to operate here, but we put before you the proofs that we are not a self-created hardship. The applicant is Mr. Lum, not Abe Abdullah. The variance is needed by Mr. Lum so he can rent the space, and he has a severe financial difficulty here. We think we've made the proofs for you to consider that it should be granted a variance.

Chair Kramer:

I think you could apply for a use variance, but if you're going to apply for a use variance, you'd have to file an application for a use variance and make the application with the findings as needed for a use variance.

Mr. D'Amore:

Besides proving that you're not a self-created hardship and giving the financial information that you have in front of you with this application package, what more would be needed?

Member Heaney:

I would like to see some evidence from a realtor to say that the owner couldn't rent the property at the market rate.

Chair Kramer:

If we're finding for an area variance, and I'm not saying we are, then hardship is irrelevant, and we don't need anything else. If we're finding for a use variance then you have to make the findings:

- The applicant is deprived of all economic use or benefit. You'd have to have proof from realtors that they couldn't rent it out.
- The alleged hardship is unique and doesn't apply to a substantial portion of the district or neighborhood.
- It won't alter the essential character of the neighborhood.
- It has not been self-created.

Mr. Cutler:

The Notice of Disapproval was based on 342-47 and not 342-31(e), but it does not specify that it's being disapproved as a use variance or an area variance.

Mr. D'Amore:

If we don't want to go down the road towards a use variance, we can continue discussing the area variance and take the use variance off the table.

Chair Kramer:

I think you have a problem with an area variance that both Doug and Meg have pointed out. The requirements are that you sell it exclusively on the premises. If you sell it at retail to your other restaurants, that in a sense you have 2 separate entities, then I think it could work.

Mr. D'Amore:

It's an accounting thing, he would be doing that.

Mr. Abdullah:

It is going to happen that way, they're all different entities. They're not the same corporation. The takeout and the kitchen are the same entity. Hash O Nash and the bagel shop are under different corporations.

Chair Kramer:

I don't think he needs a separate entity for the takeout.

Member Heaney:

I have a problem with this. We're going against the plain meaning of the regulation. We're twisting it to try to accommodate this applicant, who may be really sympathetic, but this is not the plain meaning of what the rules are.

Member Yergin:

I definitely think the Code is written that it's supposed to be that you're able to make things for yourself to sell right on the moment. That's what the intent of the Code is, they didn't want to start something.

Chair Kramer:

I think the use variance is the solution to his problem.

Mr. Abdullah:

The place has been for rent for a long time, nobody's taking it. He had to drop the rent down for me to be able to take it. I got it for under market value because nobody wants to take it.

Chair Kramer:

Then there's no reason why you couldn't turn this into an application for a use variance. I don't know that they'd need a Special Permit, because they'd be coming for a use, and the use they'd be coming for is light manufacturing/ food processing. They would need a Special Permit for the takeout portion, but the manufacturing portion would be covered by a use variance and they wouldn't need a Special Permit.

The crux of a use variance is financial hardship, you'd have to demonstrate the financial hardship.

The Board and Ms. Mason had a brief discussion about the Notice not specifying whether it's for an area or use variance.

Member Yergin felt the notice is deficient, I don't know if we're going to allow this, the idea that you don't know what you're going for and we decide, people getting it don't really know what the Applicant is applying for.

Mr. Cutler noted this was requested of the Building Inspector by Counsel. This came from the Building Inspector stating it was one form of variance and the ZBNA overturning that decision without a third-party appeal.

Ms. Mason:

We don't think it's ultimately the Building Inspector's decision as to who decides whether it's a use or area variance. Ultimately the decision should be up to the Board. I personally don't feel that it's a deficient Notice; it's obvious they're coming for a variance.

Chair Kramer:

The Notice is fine, it does not state this is an area or use variance. The sign shows this is for a variance and special permits. He needs to amend his application to turn this into a use variance with all the proof necessary about financial hardship needed to get a use variance as well as continuing the application for a Special Permit for the restaurant.

There were no public comments; there were no additional comments from the Board.
The application was adjourned to the next meeting

- 8. 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. Appeal of Condition A of the variance granted February 6, 2020 where it states A No more than 75% of the space in the building not occupied by the owner may be occupied by one or more tenants (M-1 District).

Chair Kramer:

I don't see that there's any reason for this Board to hear the exact same application that we heard last month. I thought there were additional points, but as I read it, all you're doing is providing us the same information. My questions for Counsel is, do we have to re-hear the exact same application filed as soon as we turned it down? I don't want to set that as a precedent.

Ms. Mason:

It's your discretion as a Board. I don't think you have to hear anything especially if it's the exact same application. I think that perhaps we give them an opportunity to explain why they're before the Board again.

Anne E. Klein, Esq.:

The variance was granted however, a condition was added to the resolution that we think is inappropriate. We're asking for that to be removed.

The variance was calculated on the entire building being used for office which is how we came up with the 26 parking spaces that were required and why we needed as 10 parking space variance. The condition specifically says that it is for future unknown uses by the potential tenants, the space shown on the 2nd floor plans. it isn't an unknown use, it's office use. If another use comes in that requires more parking than office, they will require another variance and will have to come before you.

There's really no basis for the condition, there might have been some confusion in deliberations. We think tying that condition to this resolution is hurtful to the applicant in not letting him use his entire building.

Chair Kramer:

Part of the argument that the applicant made was that the operation of his business only needed a few spaces. The Code requires a requirement for office, it requires 10 more than your providing. The argument for why you didn't need that many was in part because the kind of use the applicant himself has. If he rented it to something like a WeWork and he had 20 people each having a different phone operation in there he might need a lot more parking spaces than he would for the kind of operation that he's proposing. That was the issue that we considered in imposing this condition. You're saying we should be granting the variance without the condition we thought the condition was important to the variance.

Member Dunaway:

My thoughts were very clear when we voted on this application. I voted no because that condition was put into the application. I said you're imposing a hardship on the owner, she just said that.

Chair Kramer:

If we didn't impose this condition, we might've ended up turning down the application.

Member Yergin:

I don't hear anything new coming from the attorney for us to consider.

Member Roberts:

I agree, it doesn't sound like there's anything new here.

Member Heaney:

I agree.

There was no public comment.

On motion of Member Heaney and seconded by Member Yergin, the Public Hearing was closed.

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

Nays: None

Excused: None

Deliberations:

Chair Kramer:

There's nothing new, they just want to argue with the condition. It would set an enormous precedent with no with nothing new.

The condition was imposed because we were concerned about the granting of the variance. Before and when we granted the variance, we thought the condition was necessary to mitigate the impact of that variance. If we take away this condition, that concern wouldn't be mitigated.

Member Dunaway:

We didn't discuss the restriction with the applicant during the application at all. They were blindsided with the restriction of 75% usage of the property. They didn't know about it until they got the resolution. They had an opportunity to address it and they did say it was a hardship. I believe we had an obligation, if you were looking to restrict somebody's property usage, it should've been discussed with them and brought to their attention during the application process and not blindside them with it as a condition that they couldn't speak to because the application was closed.

Chair Kramer:

That's food for thought for future applications. The applicant said they had a hardship, didn't explain why, didn't explain anything else.

On motion of Member Yergin and seconded by Chair Kramer, Application #25A-2020, Agency Construction Corp. for Urban Manpower and Supply, 526 and 530 Fayette Avenue, to remove a condition, was denied on the basis that no new information was provided that would change what was decided last time.

Ayes: Member Roberts, Member Yergin, Member Heaney, Chair Kramer

Nays: Member Dunaway

Excused: None

The following resolution was adopted:

APPLICATION NO. 25A -2019

Name: Agency Construction Corp for Urban Manpower & Supply
Premises: 526 and 530 Fayette Avenue
District: M-1, Section 8, Block 93, Lot 32B & Section 8, Block 93, Lot 31

WHEREAS, **Agency Construction Corp for Urban Manpower & Supply** ("Applicants") appealed to this Board for a variance from a determination made by the Building Inspector concerning the Applicants' property situated at 526 and 530 Fayette Avenue (Premises"); and

WHEREAS, the determination found that the proposed development was in violation of Chapter 342-56 of the Village Code where 26 parking spaces are required as the premises are located in the M-1 district and the Applicant proposed 16; and

WHEREAS, after due notice, this Board held a public hearing on the application on November 7, 2019, ; and

- A. WHEREAS, after duly considering all the proofs and evidence before it and upon weighing and balancing the competing interests, the Board made a determination to grant the variance requested on February 6, 2020, subject to several conditions, including that No more than 75% of the space in the building not occupied by the owner may be occupied by one or more tenants.

; and

WHEREAS, the Applicant appealed to this Board to amend the variance by removing Condition A ("No more than 75% of the space in the building not occupied by the owner may be occupied by one or more tenants"); and

WHEREAS, after due notice, this Board held a public hearing on the application on April 2, 2020, at which there were no speakers other than the applicant and the public hearing was closed,

NOW THEREFORE, on motion of Member Yergin, seconded by Chair Kramer:

RESOLVED, in accordance with the vote of this Board taken on April 2, 2020, that the request for an amendment to the variance is denied on the basis that the Applicant has not provided any new information, issues or conditions to justify the amendment and that the purpose of Condition A was to mitigate the Board's concerns regarding the impact of the variance and if that condition was taken away, the Board's concerns would no longer be mitigated:

In Favor: Kramer, Yergin, Heaney, Roberts
Opposed: Dunaway
Absent: None
Abstained: None

C CLOSED APPLICATIONS

1. **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 violations 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)
2. **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 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)

Mr. Cutler:

The applicant is here requesting to be heard. The application is closed, so it's at your discretion.

Chair Kramer:

No. we don't normally take comment for a closed application. He did submit a survey, I believe, so we have that new piece of information to look at.

Ms. Sherer:

You told me to only circulate the request for re-opening the hearing but not to circulate the documents that were submitted.

Chair Kramer:

He did ask to re-open the hearing. I guess we should vote whether we want to re-open the hearing.

Ms. Mason:

Keep in mind you don't have to re-open the hearing just to accept that document.

Chair Kramer:

We should distribute it, so everyone has a chance to consider it.

All those in favor or re-opening the hearing raise your hand.

None of the Board members raised their hand.

Chair Kramer:

Betty-Ann will circulate the survey. We'll all consider it and make our decision at the next meeting. In his notice he said that he consented to extending it, the decision taking more than the 62 days.

D. ADJOURN MEETING

On motion of Chair Kramer and seconded by Member Yergin, the meeting was adjourned at 11:55 p.m.

In Favor: Kramer, Yergin, Heaney, Roberts, Dunaway

Opposed: None

Absent: None

Abstained: None

Respectfully Submitted,

Betty-Ann Sherer

Betty-Ann Sherer