

Village of Mamaroneck

123 Mamaroneck Avenue  
Mamaroneck NY 10543

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**Zoning Board of Appeals Minutes**

**VILLAGE OF MAMARONECK ZONING BOARD OF APPEALS MEETING**

**May 7, 2020 AT 7:30 PM - ONLINE**

**NOTICE OF FIRE EXITS AND REQUEST TO TURN OFF ELECTRONIC DEVICES**

**These are intended to be Action Minutes which primarily record the actions voted on by the Zoning Board at the meeting held May 7, 2020. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board's records.**

**PRESENT:**

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

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

**EXCUSED:**

**None**

The meeting was called to order at 7:30 p.m.

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

The Board agreed that all future meetings held through Zoom will begin at 7:00 p.m.

**A. DISCUSSION:**

**DOCUMENT SUBMISSION PROCESS AND PROCEDURE**

Chair Kramer:

We had talked some time ago about the submittal process in terms of timing. We talked about limiting and setting a date at which people had to submit their comments or applications. I had a thought subsequent to that which got reinforced in this process which is while we have a deadline by which applicants need to submit, I don't think we should have a deadline by which members of the public need to submit. Ideally, we want as much public input as we can, so I'd

like there not to be a limit on members of the public. I tried to find out what other locations did, I only got the answer from 2 places and both of them allow members of the public to comment up until the meeting. Of course, they could always just come to the meeting. That's what I propose unless anyone has an objection, that's the way I'd like to proceed.

Mr. Dunaway:  
Ok with me.

Ms. Heaney:  
My concern is if an applicant has something that he or she would like to submit and it's passed the deadline, what do we do with that item on the agenda? Do we just continue it for the next meeting?

Chair Kramer:  
They should submit it by the deadline. There's no reason why the applicant, who knows the time and should find out the time, doesn't have to submit by the deadline. I see no reason to give an extension to applicants.

Ms. Heaney:  
If the applicant comes up with information that they think is relevant, for instance Brixmor had an updated traffic study, or there's anything else, are we saying we're not going to consider it?

Chair Kramer:  
We're saying they can't submit it for that meeting. If they want us to consider something, we'd have to continue the hearing. If we let people submit things after, then applicants are going to submit things as late as possible because they'll have no incentive to submit by the deadline and that's just not acceptable.

Ms. Yergin:  
When the public submits something, Betty-Ann when do you add it to the public record online?

Ms. Sherer:  
I usually add the documents once I receive them. The primary issue, I believe, is that there's a span of time between the time the deadline ends and the agenda actually goes live on the Village website. The agendas go live the Friday before the meeting. It gives the public the weekend to view everything before the meeting.

Ms. Yergin:  
Unfortunately for us, it means if the public wants to submit it after the weekend. I know for me working regular hours during the week, it makes it more difficult for me when I get it during the week. I'm not saying I can't.

I'm also wondering when the public or somebody sends more information in, do you send it to the applicants so they're aware what's been sent in?

Ms. Sherer replied yes.

Ms. Yergin:

I think sometimes the applicant might want to respond when it could be maybe the Building Department has sent something new in, when the public has sent something new in, the applicant might want to respond and it would be in our interest to take it before the meeting so that we don't prolong it that we don't get it until the meeting happens and we didn't get to see it. I think sometimes the applicant is responding to materials and arguments that have been coming in after the application was closed.

Chair Kramer:

I disagree. To me, if the applicant wants to respond, they respond at the meeting. If they think they need to respond more, then we continue the hearing. I just don't like the idea that the applicants start submitting, if you think about when we get applicants that submit, a lot of times applicants, the public may not be supported by an attorney, an applicant may be. The public sends in a 1-page comment and we get a 15-page response memo from the applicant. Applicants should have the right to do it, but they shouldn't have the right to do it at the last minute. If they want us to read their 15-page memo, then they'll ask us to continue the hearing so they can respond.

I think we have to have a standard and follow up with it.

Ms. Yergin:

Of course, we can't prevent anyone from putting in an open hearing if they want to submit something, we'll accept it. It just seems in our interest to accept it whenever it (inaudible for several words) that we really appreciate it at a certain time. There's a good chance that this delay and we'll have to continue this at another month, but there is a chance if we get it in advance, we don't have to keep prolonging the hearing.

I also wonder, why is the date the Friday before the meeting date? Is it not possible for you to do it sooner than the Friday?

Ms. Sherer:

I have the material before that because I try to get the agenda items to the Board the Monday, Tuesday or Wednesday after that deadline because it takes a little bit of processing to get everything in order. I do know that at one point the Board was interested in keeping the Monday after the agenda was posted for the public to make their comments. That gave you whatever comments the public had if they viewed the documents over the weekend and then you'd get those documents on the Monday and then after Monday there wouldn't be an influx of documents coming in between Tuesday and Thursday.

Ms. Roberts:

That makes sense to me.

Chair Kramer:

The public has possibly only had only 2 days to review an application and we're not going to consider their comments if they can't get it in after only 2 days of review that requires them to review it over the weekend. I don't think that's fair. It's also not, the little that I could see, how it's normally done.

Ms. Yergin:

Betty-Ann, is it possible to move up the date that you actually publish it earlier in that week? Could you put it up online the Monday or Tuesday of that week and then they have until the following Monday? It would seem to give everybody more time.

Ms. Sherer:

I can do it. I would think that maybe by the Wednesday or Thursday before the meeting to give a full week of the documents being up. Would that help?

Ms. Yergin:

I guess so. I guess we're all saying that if we were going to make Monday the deadline for even the public, if it was a week before Monday doesn't seem so awful.

Chair Kramer:

I don't agree, but if the majority of you want to have a deadline, we'll have a deadline.

Ms. Roberts:

I agree with that too. I haven't seen so many public comments come in yet. How many do we have?

Chair Kramer:

Not a lot.

Ms. Roberts:

I like the idea of letting them comment.

Ms. Yergin:

It depends on the application. If we get a thornier one or one that the public is really involved in, we could get a lot.

Chair Kramer:

We don't tend to get a lot of comments, we may get a lot of people signing one thing and we may get people speaking but we rarely get a lot of e-mailed comments.

Ms. Roberts:

Then I agree with Robin, give them as much time as they can and don't make deadlines that they're not going to know about. That's very frustrating for the public who's not going to follow the deadlines the way the lawyers are.

Ms. Sherer:

It's hard for you, the Board members, to receive documents the day of the meeting and actually have an opportunity to review them. If it's something larger as well, it could be very challenging for you to get this influx of information on the day of the meeting.

Mr. Dunaway:

Betty-Ann, you said you could get it probably by the Thursday. Why don't we set it up to the Wednesday the day before the meeting as the last day we'll take comments from the public? Give the public at least 5 days.

Chair Kramer:

How does the public know that? If somebody down the block has an application and I know that it's going to be heard next Thursday. I've never been to a Board meeting, I want to send my comments. How do I know that my comments are due by Wednesday or whatever day we settle on?

Ms. Yergin:

It could be on the notice that goes to the neighbors.

Chair Kramer:

What if it's not the neighbor, what if it's somebody down the block? What does the Planning Board do, Greg?

Mr. Cutler:

They accept comments whenever.

Chair Kramer:

Do I have a consensus that we'll accept comments from the public until Tuesday or Wednesday before the meeting?

Mr. Dunaway:

They can always come to a meeting, written comments should go till Wednesday.

Ms. Roberts:

I think we should do what the Planning Board does and just let them come. Even if you have it up on the website when it's due, people aren't going to follow it. Human nature, they're going to procrastinate.

Ms. Yergin:

I don't think we should have a deadline and we should try to move up the date we make it public.

Chair Kramer:

No deadline for the public, the applicant has a deadline.

Remember, the reason this came up is many members of the Board were commenting months ago that it wasn't fair that people couldn't review applicant's additional information because it was coming too late and we had to have a deadline. It came up because it was a problem for Board members. People were adding submittals to their application, which is why we came up with having a deadline in the first place.

Ms. Heaney:

Did this issue come up this month, is that why you're bringing it up now?

Chair Kramer replied yes.

Ms. Heaney:

An applicant tried to submit information this week?

Chair Kramer:

Yes, and a member of the public. I said the member of the public could but not the applicant. The applicant knew when the deadline was and the request to Betty-Ann was I know it's after the deadline, can I submit it anyway? Applicants know what the deadline is.

Mr. Dunaway:

But the public isn't going to have a chance to respond to it. The applicants need to have a deadline.

Ms. Heaney:

Which application was it?

Chair Kramer:

Does it matter? Stuart Tiekert, somebody who knows the timing. We can't set different rules for different people. There's an applicant deadline and a public. They can be the same or they can be different.

Ms. Yergin:

The applicant deadline was put in place only a couple of months ago. Is it online, was it published? We're not talking about this 1 particular case. I'm not for a deadline, but if the majority wants a deadline, I would suggest that right now I don't think applicants understand that there is a deadline because it's not published anywhere.

Mr. Cutler:

It is, it's published at the beginning of the year every year. We post it on the Planning Department page and your page.

Chair Kramer:

And Betty-Ann tells them.

Ms. Sherer:

Every applicant has a deadline and meeting schedule for the whole year.

Ms. Yergin:

I'm not talking about the initial application. When it's an ongoing one and other materials are coming in, do they understand there's a deadline when the hearing is opened?

Chair Kramer:

At least once for every meeting Betty-Ann gets a request from an applicant saying I know it's after the deadline, can I submit it anyway? It happens monthly.

Mr. Dunaway:

I think we should publish it earlier and give the public more time, but the applicants, there is a deadline, they know what it is. They need to keep it. The public should have no deadline because they have the right to come to the meeting and speak on it.

Ms. Yergin:

When it's an open meeting, the next time were going to hear it, what is the deadline for the applicant? Is it the same as the original?

Ms. Sherer:

It is, it's 22 days before the agenda. The reason being is because all the information, you don't want to receive 12 e-mails from me with oh, just 1 more thing. I like to send you 1 complete package for the agenda and that's it, all the documents submitted by the applicant.

Ms. Yergin:

In general they're responding to other materials that were said at the last meeting and they might want to do research or something so I'm just thinking I know when I was challenging something and I came in as a public member, I never had a deadline.

I can understand to get it together so we can open the meeting is very important a certain number of days in advance, but once the meeting is going and other materials and information is coming in, I'm just wondering if we really think that it's fair to prevent the applicant from being able to submit in a timely fashion.

Ms. Heaney:

There's another aspect of this that we didn't discuss and that's the fact that a month ago I asked Counsel to submit cases pertaining to an application and the cases didn't come in. I had to send an e-mail to Betty-Ann to inquire about that request and then this week Counsel submitted the cases. This shouldn't have taken Counsel more than 5 minutes. It's extremely disappointing that those cases came just a few days before this meeting. I don't see why that was the case. It's not fair for the applicant and it's not fair for us especially given that this was totally not an onerous request.

Mr. Dunaway:

We can't hold the public responsible if it took too long to get information. Also, we shouldn't burden Betty-Ann with having to keep modifying applicants and including additional data into their packages, we'll never get through this. For 22 days before, if they can't submit it then, they can request an adjournment, submit the documentation and we can move forward from there. The public should have until the meeting.

Ms. Heaney:

That must apply internally to Village employees including Counsel.

Mr. Cutler:

Typically, the other Boards allow staff and consultants to provide their information the Friday before the meeting.

Ms. Roberts:

I think 22 days before seems like it's tough if you're at 1 of our meetings and have follow ups and then you don't have that much time. Would a solution be to cut that time somehow, maybe 15 days before?

Chair Kramer:

Betty-Ann, if the 22 days applies to new applications, and then for additional information we make it 15 days, is that burdensome for you to have to do?

Ms. Sherer:

It's not so long as it doesn't change our public hearing notice or anything like that. There are legal deadlines that I need to meet in order to get the public hearing notice together, draft that agenda and get it published in the proper amount of time and to make sure applicants have their signage up and their mailings completed.

Chair Kramer:

We could remind each applicant at the meeting, if you want to submit additional information you must get it to us 15 days before the meeting, it's easier to make it 2 weeks before the meeting. That seems to be reasonable. I support that idea.

Ms. Heaney:

What about staff?

Chair Kramer:

If the custom in the Village is to allow them to submit the Friday before, then that should be the practice for us.

**On motion of Chair Kramer and seconded by Mr. Dunaway, the Board adopted the practice that there will be no change in the date by which applications need to be submitted for the first hearing, applicants whose hearings have been continued can submit by 15 days before the next**



meeting, members of the staff and consultants who are submitting have to submit by the Friday before the meeting and members of the public can submit at any time.

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

Nays: Ms. Yergin

Excused: None

## B. APPROVAL OF MINUTES

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

The minutes were not voted on as some Board members hadn't read them. Ms. Sherer will re-circulate them including the March 5<sup>th</sup> minutes to be voted on next month.

## C. PUBLIC HEARINGS

1. **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, 19 NYCRR Section 1226.1 regarding complaints 19-4657 (9/10/19), 19-4658 (9/11/19), 19-4656 (9/12/19), 19-4667 (9/12/19 and 19-4655 (9/10/19).

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

Mr. Tiekert:

Can I comment on your previous discussion?

Chair Kramer:

No, this is about your application. We don't have general public meetings like the Board of Trustees do. We're not opening it up for public discussion.

Mr. Tiekert:

I think we left it last time that member Dunaway was going to review the Multiple Dwelling Law, so I'd be interested in hearing that.

Mr. Dunaway:

I took a look at the property, 4-54-27. It has 3 units on it, that would put it under the Multiple Dwelling Law. I'm going to ask Frank, because he is the authority having jurisdiction.

Ms. Yergin:

No, we're the authority, not the Building Department. It's us.

Mr. Dunaway:

The authority having jurisdiction on the Code is the Building Department. We have the authority to evaluate what he says.

Ms. Yergin:

Multiple Dwelling Law isn't a, it's the Zoning Code. It's a zoning matter.

Mr. Dunaway:

He has responsibility for all that Code.

To Mr. Tapolacci - The property 4-54-27 has 3 units on it. I'm not going into me being a certified NYS Building Code Official, I'd rather ask the authority having jurisdiction, which is you. In your evaluation of that property, did you apply the Multiple Dwelling Law?

Mr. Tapolacci:

I did because there are presently existing 3 dwelling units and a possible 4<sup>th</sup> on the 3<sup>rd</sup> floor of the main house. That's what I've said from the beginning.

Mr. Dunaway:

I couldn't find anything in the Town of Mamaroneck records, but I know that it falls under the Town of Rye. Did you guys discuss anything with the Town of Rye?

Chair Kramer:

The Town of Rye Code isn't relevant. It's the Village of Mamaroneck Zoning Code that's relevant.

Mr. Dunaway:

I understand, but our rolls in the Village show it as 3 units on the 4-54-27 property, which indicates it falls under the Multiple Dwelling Law. The thing is the property also falls in the Town of Rye and I'd be curious what the Town of Rye would think. I'm curious how the Town of Rye would view the property as it sits right now with the addition of that 3<sup>rd</sup> floor.

Mr. Tapolacci:

I believe Charlotte did some research. I believe the Town of Rye is now going to consider that 3<sup>rd</sup> floor a separate taxable dwelling unit.

Ms. Mountain:

I had a conversation with Gordon Casement, the Town of Rye Assessor, because I wanted to know what they found especially in light of knowing that at this time they are doing a reassessment and so they're evaluating all of the properties that sit within the Town of Rye. The Assessor's Office is now considering the main structure to be 3 dwelling units and the garden house or garage building to be a separate dwelling unit, giving us a total of 4.

Mr. Dunaway:

The Town of Rye, I think, developed the Multiple Residence Law which is more stringent than the Multiple Dwelling Law when it comes to the definition of a dwelling unit. I don't know if the Town of Rye actually adopted it.

Ms. Yergin:

The Multiple Dwelling Law talks about multiple dwellings in a single building or structure. Under the Multiple Dwelling Law under the definition of chapter #4 it says, a dwelling is a building or structure or portion thereof and then it discusses the dwelling. It talks about it being in 1 structure, so if our Board should find that the 3<sup>rd</sup> floor is a 3<sup>rd</sup> unit, then I suppose it would be a multiple dwelling, but the fact that there's something else on the lot over a garage, a separate building doesn't make the other building a multiple dwelling. It doesn't talk about a lot or how many buildings are on the lot, it's how many different units are inside the 1 structure.

Chair Kramer:

The difference of opinion is being our Zoning Code and the Multiple Dwelling Law. The Multiple Dwelling Law speaks specifically to a building or structure. Under the Zoning Code it speaks of lot and the use of this lot is the permitted use, it's not more than 1 dwelling. Whether it's 1 dwelling or 5 dwelling units, there's not more than 1 allowed, so if there's more than 1 on a property, that relates to the Code.

With respect to the dwelling itself, it's a building or structure and you can tell that because of things like a building designed for and occupied exclusively by 1 family is a single-family private dwelling. A building designed and occupied exclusively by 2 families is a 2-family private dwelling, so it's the building that matters.

If we determine that that 3<sup>rd</sup> floor unit isn't a separate dwelling unit, then you have a 2-family dwelling and a single-family dwelling on this property.

If we determine under the Multiple Dwelling Law that the 3<sup>rd</sup> floor is a separate dwelling unit, then we have a 3-family dwelling which isn't defined as such but is in fact a multiple dwelling and a 1-family dwelling on this property.

They're not the same, the Code and the Multiple Dwelling Law are intended to accomplish 2 different goals.

Ms. Heaney:

I think there's a 3<sup>rd</sup> choice and the 3<sup>rd</sup> choice is not that it's a 2-family but that it's a legal boarder as permitted by Village Code. There are various options, but definitely the original option of is this arrangement a boarder relationship, which is legal, is something that should be considered also. It's a really important consideration because other residents who are allowed to have boarders need to know what's acceptable and what's not.

Mr. Dunaway:

If you want to consider it a boarder, the definition of boarder in any 1 of them is relationship to a family. They co-exist in the same space, so a boarder would have to move into your apartment.

Ms. Heaney:

Where are you getting that definition?

Mr. Dunaway:

Try the Multiple Dwelling Law, the Building Code and the Village Code.

Ms. Heaney:

You can't use that definition. That's ridiculous.

Mr. Dunaway:

It's in the Building Code.

Ms. Yergin:

The Building Code isn't a Zoning Code.

Chair Kramer:

They're 2 different sets of laws, they may or may not both apply.

Ms. Yergin:

What the applicant asked us about was Multiple Dwelling Law. The definition of a family in multiple dwellings is a person maintaining a household with not more than 4 boarders or roomers. Our Code is more restrictive where we only allow 1 – 2 boarders but at the same sense that you can be a family unit with 1 – 2 renters, roomers, boarders. We have to make our way through that definition, but a family can have

Mr. Dunaway:

I agree. The issue comes out, as you pointed out, the more restrictive rules apply. The more restrictive of any Code applies.

Chair Kramer:

Meg, you're only reading a piece of the definition of family in both definitions and there's a key that you're all ignoring which is that the boarders have to be living together as a single housekeeping unit and there are a fair amount of decisions, not related to 2 and 3 families, but there are court decisions on the question that came up and this came up primarily in the issue of when is a group home a single household. The decisions all relate to it doesn't look like a single household. Do they eat together, do they make 1 set of buying decisions, is it a single household? If it isn't a single household, then it isn't a single family.

The definition of the Multiple Dwelling Law of family (I'll read the definition), "Either a person occupying a dwelling and maintaining a household with not more than 4 boarders, roomers or lodgers or 2 or more persons occupying a dwelling living together and maintaining a common household with not more than 4 boarders, roomers or lodgers."

The Village of Mamaroneck Zoning Code, 1 or more persons occupying a dwelling unit living together as a single housekeeping unit in a familial relationship with not more than 2 unrelated persons living together as a single housekeeping unit.

You have to comply with both of them, so you have to comply with the more restrictive but if 1 of them has additional requirements you can't say I don't have to comply with that. The concept of familial, boarder is separate except that in the Multiple Dwelling Law a boarder still is occupying within the household.

Ms. Yergin:

I thought we were going to talk about the Multiple Dwelling Law and whether or not it applies. Now we're switching up what it says family in 1 thing and trying to bring it back to Multiple Dwelling. If we could just look at the Multiple Dwelling and in terms of that definition of family, I don't think we take a definition of family, this is definitely something we all have to come to terms with and discuss and see where we come out on this.

We're looking at Multiple Dwelling right now and in the Multiple Dwelling it doesn't talk about a familial relationship. It does give the opportunity that it could be renters living in the same space. I'm just trying to get us instead of all over the place, talking about the Multiple Dwelling Law that I don't see that it applies unless when we go through it and we feel that has created a separate dwelling unit entirely or if there are people feeling that they're living in some way that it's not compliant with the Code, then Multiple Dwelling Law would. There's nothing in the Multiple Dwelling Law that's obvious that it's, we have to go back to reviewing it.

Ms. Heaney:

As I understand it, the Multiple Dwelling Law was adopted by Mamaroneck in 2005, so before then residents had this right to have a roomer or boarder without these multi dwelling definitions or application at all. They had this right, everyone on Beach Street had the right to have a roomer or boarder. I think that really should be the starting point of what a roomer or boarder is as opposed to applying the Multiple Dwelling Law that was adopted later.

Mr. Dunaway:

The applicant submitted an application just recently, so he falls under every 1 of the codes. If the definition of family which includes the term boarder in it, is more stringent and more restrictive in the Village Zoning Code, then that's the definition you have to go by, not the Multiple Dwelling Law. You have to look at every one of the applicable codes and laws in effect and the more stringent of every 1 of those apply.

If our Zoning Code said that it had to be a familial relationship, that indicates that the boarder must live within the confines of your place.

Ms. Yergin:

You can't take a definition from 1 Code for family and try to put into Multiple Dwelling. If we get to the Village Code, we'll have to talk about family, but we're using the definition of family to understand if Multiple Dwelling Law pertains.

Chair Kramer:

We're not. We're using 2 different laws to understand 2 different things. Let's break this down. Let's take the issue first whether or not it's a multiple dwelling is separate and apart from whether or not the unit on the 3<sup>rd</sup> floor is an increase in a non-conforming condition because it's adding a new unit. That's the first issue that we have to decide.

Ms. Yergin:

We were allowing the applicant to speak, and he asked us to talk about Multiple Dwelling Law. I think if we're going to go on to something else, we should ask Stuart what he would like as this is his time to present.

Chair Kramer:

I don't think it's a question of what he'd like us to consider.

Mr. Tiekert:

I think you should defer the discussion of Multiple Dwelling Law until members have seen what I submitted because I was told by the Village Manager, after a series of meetings with the Building Department and Village Attorney that because 1 of the dwelling units is in a separate structure, however the main building isn't a multiple dwelling as that term is defined in Section 126-11 of Village Code.

It's the Board's decision whether Multiple Dwelling Law applies here, but I think you probably need to look at my submission before you go further down this road.

Chair Kramer:

Is this a new submission?

Mr. Tiekert:

This is the submission I put in on Monday because I didn't realize there was a drop-dead date of Friday. If that's going to be the rule maybe you want to put that on the agenda or somewhere else so people can be aware of it.

Mr. Dunaway:

I would recommend 1 - we should look at what Stuart submitted, 2 - I'm going to ask Frank and Charlotte how, actually Frank, probably go up to DCEA even though they don't get into the zoning aspects of it, because we need the parameters and the guidelines of what DCEA says on 1 - the stringency of the codes and which codes and laws would be into effect, because I know the definition of boarder for the Zoning Code is more stringent than any of the other codes and laws then that's the governing factor, but when you look at the definition of a dwelling unit, the more

stringent regardless of which code it's in because Mamaroneck covers the Zoning, the Building and the State Code and they are all governed regardless of what anyone thinks that we only look at the zoning. We have to look at how it's in compliance with all of the codes, so I think that we need that kind of definition.

Chair Kramer:

Doug, I don't agree. I think that unless the 3<sup>rd</sup> floor unit makes this building, in other words, if this 3<sup>rd</sup> floor unit isn't a separate unit in which case there are 2 units in the main building and 1 unit in the 2<sup>nd</sup> building. Is that correct?

Mr. Tiekert:

There are 2 in the main building and 1 in the other building.

Chair Kramer:

The main building becomes a multiple dwelling if the 3<sup>rd</sup> floor is a separate unit. If the 3<sup>rd</sup> floor isn't a separate unit in that building, that structure, isn't a multiple dwelling. The question is, is it a separate unit? Because it's putting us potentially into a separate set of law, i.e. the Multiple Dwelling Law, we have to look for that 3<sup>rd</sup> floor unit, we have to look in both places because if that 3<sup>rd</sup> floor unit isn't a unit under the Multiple Dwelling Law regardless of what the Village of Mamaroneck says, then it isn't a multiple dwelling under the Multiple Dwelling Law.

If it's a separate unit under the Village of Mamaroneck Code but it's not a separate unit under the Multiple Dwelling Law, we can't make it be a multiple dwelling by something we do in the Village of Mamaroneck.

The Village of Mamaroneck can't say we're going to decide every time you have 2 bedrooms that's a separate unit if the Multiple Dwelling Law somehow doesn't define it.

We have to look at both. We have to start with 1 and then go to the other.

Mr. Dunaway:

The 1<sup>st</sup> thing you have to do, and by the way, I'm going to say that I totally disagree because it's based on dwelling units on the property but that's a whole separate issue. The 1<sup>st</sup> thing you have to look at is the definition of boarder. You have 2 definitions. The Village says a familial setting in the same occupancy in the same building. So, if you have a boarder that's sitting in a separate unit in itself with a doorbell, with a mailbox, isolated by a hallway, is that a familial setting?

We have to be very careful with what we do with this particular application because there are other places within this Village that fall under the same category and whatever decision this Board makes at this particular point of time is going to impact every 1 of the other units in here. It depends what we want to create for this Village.

If you say, and I'm only putting out hypotheticals, the boarder has to live in the same unit as #2, then you've already answered your question, that's a separate isolated unit and that makes it multiple dwelling.

Ms. Yergin:

Is there a definition for roomer in the Code?

Mr. Dunaway:

No, it falls under family in the Zoning Code.

Ms. Yergin:

He's allowed to rent to 1 or 2 roomers.

Mr. Dunaway:

Roomers and boarders and classified in the same category.

Mr. Yergin:

Not in our Code. We have to as a Board determine what exactly, we have to interpret

Chair Kramer:

We don't have a definition in our Code of boarder. The fact that it talks about a boarder in 1 definition isn't a definition of the word boarder itself or a definition of roomer. There's no definition of boarder or roomer. The reference we have for boarder is in some other definition.

Ms. Roberts:

It's in permitted accessory uses and it says roomer or boarder. It's in 342-21 and it's also in 342-56.

Ms. Heaney:

Is there any legislative history on this or is it just too old and it doesn't exist?

Ms. Dickson:

There's no designation of when this was amended or effective, so I would assume it's a carry over from when the entire Zoning Code was adopted. You'll see the other provisions have a notation of amendment and effective dates. This 1 was made law when this version of the Zoning Code was made law.

Chair Kramer:

Which takes us back to where we were when we started this whole thing which is what the question is. Is the person who lives on the 3<sup>rd</sup> floor of this building a roomer or boarder or are they a separate unit?

The applicant is saying they're a roomer or boarder, which is a permitted accessory use and the Village is saying no they're not, they're a separate unit.



Ms. Roberts:

We could look at the definition of dwelling unit.

Ms. Yergin:

The physicality of the space and that it needs complete housekeeping facilities, which is what I thought we always relied upon before like a kitchen with a stove or an oven, a completely outfitted kitchen, and without that you don't have housekeeping facilities regardless of whether anybody's in there, even if it's empty you would say you need to remedy that because you can't have it sitting there.

Chair Kramer:

Where do you see something in our Code that says that a unit has complete housekeeping facilities and defines what those housekeeping facilities are?

Ms. Roberts:

There's a definition of dwelling unit in 342-3. It reads, the definition of a dwelling unit – "A building or entirely self-contained portion thereof containing complete housekeeping facilities for only 1 family including any domestic servants employed on the premises and having no enclosed space other than vestibules, entrances or other hallways or porches or cooking or sanitary facilities in common with other dwelling units."

Chair Kramer:

It says cooking facilities, it doesn't say it has to have a stove.

Chair Kramer:

We are the Board of Appeals we aren't the Board of Trustees. We are making a decision based on 1 application before us. If it has implications for other properties and that causes, whichever way we go, and our decision is going to cause a problem or not a problem for other properties, then that's something they have to take up with the trustees. It isn't our obligation or in fact we shouldn't be determining what the answer to this is because it's going to affect other properties. We have 1 application and that's all we have before us and based on this application and this application alone, what do we think. We can't say lots of other people have the same thing so if we're going to let this be a 3<sup>rd</sup> unit that's going to cause problems for other people or if we're not going to let this be a 3<sup>rd</sup> unit then anyone else can do it, that's not our issue. Our issue is for Mr. Tiekert and the use of this building and this property, is that 3<sup>rd</sup> floor a separate unit and/or not a separate unit. It's as simple as that. That's our decision.

Ms. Yergin:

I was alluding to the fact that when we make a decision, we are setting a precedent because we should follow the same precedent if we have anything come before us or the Building Department should be listening to that precedent. If we're looking at some ambiguity in the Code that has never come up before the ZBA and we start to interpret it and we start to figure out what it means to us we are setting a precedent, that's all I meant.

Chair Kramer:

Everything the Zoning Board does sets a precedent. If we grant somebody a variance, we're setting a precedent because of similar applications. The fact that something's never come to the Board before doesn't mean that anything, lots of times, Mamaroneck is too small so it might not happen, if you go to any big city there are many, many properties that have been operating illegally in violation of 1 law or another for many years, nobody's enforced it, that doesn't make it legal and that doesn't mean it's the 1<sup>st</sup> time it's ever come up so we can't do it.

Just because no one's looked at it before because it hasn't been considered doesn't mean, we're making a decision we should make the best decision we can make based on the evidence before us based on what we think the applicable law is and based on that we make the decision.

Mr. Dunaway:

I agree, but to do that we have to take into account all of the facts, every one of them.

Chair Kramer:

As applied to this property only.

Mr. Dunaway:

How are you going to look at this Board that already set a precedent way back when, when it denied an application for the 3<sup>rd</sup> floor apartment, for a 3<sup>rd</sup> apartment in that building back in, I don't know what year it was. It was denied by the Zoning Board of Appeals. The Board has already set a precedent.

Ms. Heaney:

This isn't that application. That application wanted another unit to buy and sell. This isn't a unit the 2<sup>nd</sup> floor can't be sold. It's not the same application from 1986.

Mr. Dunaway:

Frank, what's the address of the guy who did work in the Village?

Mr. Tavalacci:

I think he made his application as the 3<sup>rd</sup> floor of 130 Beach Road.

Mr. Dunaway:

There you go, he's not living in Stuart's unit.

Mr. Tavalacci:

Whether you use Multiple Dwelling Law or our Zoning Law, I don't care. From a practical standpoint that is a de facto dwelling unit.

Chair Kramer:

Just making it simple, it seems to me trying to break it down, the question of whether or not under the Village Zoning Code, which allows roomers or boarders and how do you define it, I

don't know, but I would say since it does talk about housekeeping facilities and cooking facilities without defining and technology changes over time, at 1 point, stoves were different. The question, I think, is pretty simple for us, is the existence, does this unit as configured and as it exists, is it a separate unit? I used the word unit, let's say does the 3<sup>rd</sup> floor as it exists and is used a separate unit or is the person who lives there simply a boarder in this building? That's the simple question. The issue is how do we decide that? Let's go back to that basic question.

Ms. Roberts:

Have we finished with the public discussion? I'm just worried that we're having the discussion already and I'm wondering what our process is with this.

Ms. Yergin:

Mr. Tiekert, do you have other things that you were going to submit in your submittal, other information?

Mr. Tiekert:

Yea, there are a lot of exhibits and there's my basic understanding of what you've discussed so far, so I just wanted to get it into the record. I'm happy to wait until the next meeting since you don't have it before you and it kind of has to be there.

Chair Kramer:

Based on what Abby said and she's making a good point, is there anybody from the public? Stuart, right now, do you have anything else you want to say today regardless from what you have to submit? Not discussing what you tried to submit but didn't get submitted because it was after the deadline. Do you have anything else you want to say now before I open it to the public?

Mr. Tiekert:

I'd like to make 1 comment about your submission policy.

Chair Kramer:

Your comment is that people need to know it. If that's the comment, we understand.

Mr. Tiekert:

That's not the comment.

Mr. Dunaway:

Robin, we shouldn't take the comment. We've already made a decision. It shouldn't be open to public comment.

Mr. Tiekert:

It's more about what the law requires as far as the public being informed about your meeting. What Open Meetings Law requires of the Zoning Board is that what you're going to be reviewing at the meeting is made available on the Village website as early as practicable. I'm hearing from

Betty-Ann that 22 days out you've got everything you need. You can't be placed on the agenda if it's not complete, I thought that's what I heard.

Chair Kramer:

The issue isn't whether the application from the applicant is complete. The issue is when other things are submitted, but we're not discussing this anymore. Do you have anything else you want to say about your particular application?

Mr. Tiekert:

No, not until you review what I submitted.

Chair Kramer:

Is there anybody from the public who wishes to speak on this application?

Public Comment

Benny Salinitro:

There is in fact no definition for roomers or boarders and in the online Code there's only 2 references, 342-21 which you just looked at and 342-56. I think this is more important because sometimes when you read things that are similar it almost goes to the definition. 342-56 is the Schedule of Off-Street Parking. The parking requirements for if someone has a roomer or a boarder requires 1 parking space per room that is being occupied by the boarder.

We talked about the 3<sup>rd</sup> floor being a separate unit, it is a separate unit because it has a separate entrance to it. I believe the documents that were submitted indicate there are 2 bedrooms, a living room, a kitchen, so there's probably 4 rooms which would imply by definition of the Village's Zoning Code 342-56 that that roomer or boarder requires 4 parking spaces because those are the number of rooms that boarder is occupying. That seems like a stretch, why would you need 4 parking spaces for 1 person, but that's the problem with the lack of definition.

A boarder or roomer in the traditional sense occupies 1 room and lives with the family in the same unit so it's 1 additional parking space, so you can't make it something it's not. I'm sorry Gretta doesn't agree with this, but it's painfully obvious that a boarder lives with the family. You take on a boarder, he or she has his own room, they eat together, they utilize the same facilities and you provide 1 parking space. If you give that boarder 5 rooms, not a bedroom because the Code is very defined, it's 1 per room, so if that boarder is occupying 5 rooms then they have to provide 5 parking spaces. It's kind of like common sense, we're arguing against something that doesn't make sense.

My concern is what I said last time, that this is a 1 family neighborhood and the limitations that are sought to be extended, it just doesn't fit. If there were no separate door, no separate wall and the 2<sup>nd</sup> and 3<sup>rd</sup> floors flowed where the tenancy or the use was by the same occupancy, then maybe that would work, so the current occupant on the 2<sup>nd</sup> floor shares the space with the occupant on the 3<sup>rd</sup> floor, no doors. I think Frank and Charlotte have explained the position of

the Village Code very well and I just hope that the Board recognizes what limitation we have on lack of definition is provided for in the parking regulations for the number of spaces.

Ms. Heaney:

I haven't made a decision on this case. My comment is I don't like necessarily the process and some issues that I don't are relevant to the determination of the issue, but I strongly disagree that I've come to a definitive conclusion on this.

#### Public Comment Continued

Gina Von Eiff:

I'm concerned about when I project this out to my home or other people I know that have multiple levels in their house, a 2-family house maybe, and you're older and your spouse died and you live alone and you rent to a person on another floor you may not use that floor even though it's available to you because you have bad hips or knees and you get to an age where you don't need your 2<sup>nd</sup> floor but you're renting to a boarder to get some extra income so you can pay your taxes. I thought that there were special laws concerning condominiums and 3<sup>rd</sup> floor fire issues and I do remember the inside of Mr. Tiekert's house. He is often outside and leaving doors open downstairs that are common in an entrance way and I think that I remember reading the condominium law with boarders, you must provide locks to keep them secure. By virtue of the way the house is built and it's the 3<sup>rd</sup> floor not a 2<sup>nd</sup> floor that for fire reasons to prevent fire and to also prevent somebody from coming in on him. If I had this in my house, I wouldn't take a door down, I would keep the door. I don't see why a door would be an issue on another floor, you still have access to that floor if you want it.

I think it's dangerous for a lot of elderly people who want to stay in this neighborhood that need the extra income from a boarder or the safety or the company and they never use that 2<sup>nd</sup> floor or 3<sup>rd</sup> floor of their apartment so they don't have to or they physically can't. That's what concerns me about this.

I'm not sure how the condominium law plays into it, you guys can look at that, but I wouldn't want to be restricted that I couldn't have a boarder in my home because I can't access the floor or because I have a door on the 2<sup>nd</sup> floor, that doesn't make any sense.

Sue McCrory:

I want to suggest that I believe the way the Code is structured roomer and boarder are distinct categories of individuals and we really, I think, should look at the definitions of each. I guess dictionary definitions in light of the fact that there's no definition in the Code. I think that would be the typical way of trying to figure what a statutory definition interpretation is here. When I've looked these terms up, it seems like a roomer is somebody who rents rooms. There's no obligation that a roomer takes meals or be otherwise integrated into the household.

I'll leave it to you to look up those definitions. I feel like we're, that the Board would benefit from for lack of a definition just going to a dictionary definition for these terms and seeing how they apply and then you can move from if there's a person in the household who isn't a family

member and is living somewhere in that unit, and in this case it's a condominium unit so if there was going to be a 4<sup>th</sup> dwelling unit, it has to be a condominium.

I would suggest look at the definitions to understand and try to ascertain what would convert a space that a roomer could live in into a dwelling unit and see if you can figure out the definition. I believe you may have precedent from the Zoning Board about what is the distinction between a space having cooking facilities and becoming a dwelling unit. I say that because my property has a small guest house/cottage and that house needed a variance to be reconstructed. I was told that the variance was granted, and the reconstruction was allowed only because the cottage was built without cooking facilities. It has a refrigerator it doesn't have a stove or oven and that's been my 20-year understanding of the distinction that the Zoning Board itself has used to distinguish. My little cottage could be a place that a roomer could be, but if I put a stove in there, I've always been told that would make it an illegal additional dwelling unit. You may have some precedence from other cases that would bear on this question because I'm not the only application. I think you may have already reached this question, at least on my property, that if you put a space that could accommodate a separate family it isn't a dwelling unit until it gets cooking facilities. That's what sort of happened at my property or at least that's what I was told.

End of Public Comment

Chair Kramer:

We Board members need to have a long, it appears that we're going to have some long discussions about this, and we also need to get all the materials that Mr. Tiekert and anyone else wishes to submit. My suggestion is that we table the rest of our discussion today. We will get Mr. Tiekert's materials not later than 15 days before the next meeting and that at the next meeting we reserve or recognize that we need time to discuss this.

Ms. Heaney:

It would be great if we could find some applications that dealt with this issue so we could see how this was decided by previous Boards so we can be in line with those decisions.

Chair Kramer:

Based on Sue McCrory's comment I vaguely recall that some time earlier in my tenure we had an issue like that, but that didn't answer the question of whether or not a microwave satisfied the requirement. The issue of whether a microwave is adequate to suffice is different from, is part of our issue now, I think, whether a microwave suffices. I don't know that we ever dealt with that one. I do think he's right that something came to the Board where there was discussion about it with a separate cottage. I have no recollection of exactly what it was or where it was.

Ms. Yergin:

I remember it was on Oak Lane. There was a pool house, it had been a gate keepers house. They wanted to do some renovations and neighbors brought it to the ZBA. I remember the questions we asked them was do you have cooking facilities inside, and they actually did. I

thought you had said that sounds like a separate dwelling, that made a big difference. We found that they were simply doing what was required by health or whatever to fix, so that's why they were able to go on with what they were able to do.

Chair Kramer:

That didn't answer the question that we have here, does a microwave satisfy the requirement of cooking facility? I know we didn't deal with that question then.

If anyone remembers the address, we'd be good to get a copy of that to see what the decision actually said.

This will be continued to the next meeting where we'll get all submittals by Mr. Tiekert 15 days before the meeting and we will make sure to reserve a significant amount of time to discuss. This matter is adjourned.

- 2. Application #31A-2019, Dominic Brescia for Cappetta Inc., 172 East Prospect Avenue,** (Section 9, Block 19, Lot 21A) Application to construct a new building with 18 one-bedroom units with parking on site. The proposed development is in violation of Chapter 342-50(B) (6) of the Village Code where the approved 18-unit development requires 2 Fair and Affordable Housing Units and the applicant proposes 0 and Chapter 342 Attachment 3 Schedule of Minimum Requirements where the maximum allowed FAR is 20.085 sf and the applicant proposes 22.671 sf and the maximum number of stories allowed in the C-2 District is 4 and the applicant proposes 5. (C-2 District)

Ms. Mason rejoined the meeting.

Christie Addona of Silverberg Zalantis:

There are several issues before the Board this evening. Just to briefly recap why we're here and how we started. We were just trying to go forward with the project that was approved. It went through a nearly year long land review process and was approved by 4 different Boards with the preferred design by all of the Boards that provided for less units and was a zoning compliant design. As you know, the applicant has already started construction on the site including demolishing the existing structure. Right now, all we have is a vacant lot, which doesn't really benefit anyone.

The applicant is certainly in a unique situation. Mr. Cutler already confirmed for this Board that it's the only project that has gotten all of its' approvals and started construction that is required to comply with the new zoning and it's a project that when the Village Board was looking at the zoning text amendments, it didn't contemplate any fair and affordable housing units for this property. That being said, as we included in our most recent submission, if the Board were agreeable to it the applicant would be willing to reduce the variance request to only 1 fair and affordable housing unit.

The issue that was raised initially at the last meeting was the status of the variances that were granted with respect to the FAR, the floor area ratio as well as the stories for the structure. We did submit an application for an interpretation and alternatively an extension for renewal of those variances. The way that the condition was worded in the approval resolution wasn't the same as what's in the Code and it said that a building permit must be issued in a year only when necessary to comply with law. There's not that qualifying language in the Code with respect to having to comply with law, and so, in this situation it kind of makes sense given that it's a complicated application. There were several approvals that were required, and we had to go through a lengthy and thorough land use review process. The argument could be made and we admit that we weren't required to get a building permit within 1 year because of the different language in the condition of the resolution, but if the Board were to find that we were required to get a building permit within a year, we actually did so and we provided a lot of language from the Code to support that the permit that the applicant received for the demolition of the structure and removal of the tanks was in fact a building permit. That was issued less than a year after this Board's original approval of the FAR and stories variances.

The applicant was required to pay a building permit application fee and a building permit fee and the permit itself actually refers to itself as a building permit. In addition, the Code requires a building permit for certain levels of construction, and it lists various different items, 1 of them is demolition. So, anything that you do requires a building permit under the Code, that's how it's provided for in the Building Code and Zoning Code and so, where we got a permit for demolition, that was in fact a building permit because it permitted activities that under the Code are only allowed with a building permit.

So, that is our request for an interpretation that the Board determine that we did actually, that we weren't first of all, that it wasn't required to get 1 within a year but if we were required to get a building permit within a year that we did in fact do so.

Chair Kramer:  
Are you done, Christie?

Ms. Addona:  
I can go through everything else and then you can address them.

Chair Kramer:  
Please go through anything new, you don't have to repeat anything that you've previously stated.

Ms. Addona:  
Those 2 variances were directly related to the loft style design of the units. The stories were because each level of units was considered 2 stories even though it was only 1 apartment on each level and the FAR because of the height of the ceilings calculated the FAR at a factor of 1.5, which is higher than for standard 1 bedroom units. We submit that because they're just related to the design of those units that there's a legitimate basis to extend or reapprove those variances.



To our vesting argument, we submitted that at the request of this Board. We understand and we were forthcoming with this Board that it was the Village Attorney's position that we weren't vested. We did provide an analysis of the Exeter case that was referenced last month and how it does actually support the premise that a conditional final site plan approval could form the basis for a vesting argument. In that case, the Court of Appeals, which is the highest Court in the State found that while they didn't get to that question but left it open as a possibility that is wasn't appropriate to have vesting in that case because there wasn't reasonable reliance on the approvals. The reliance wasn't reasonable because the property had already been zoned when the approval was granted and the applicant knew that, it was in the actual resolution and the Court agreed. That's certainly not the case here because as you all know, the property wasn't rezoned until many months after the last approval was granted.

We did also receive the additional case law that was provided by the Village Attorney earlier this week. We didn't have a lot of time, but we were able to look at them and we don't believe that any of them are conclusive on this issue. One of the cases, in addition to the Court of Appeals Exeter case that I just referenced was the Intermediate Appellate Division Exeter case which had a different holding which said that the conditional final site plan approval wasn't a basis for vesting. The higher court, the Court of Appeals said no, we don't agree with that necessarily. It could possibly be, but we don't get there because there wasn't reasonable reliance.

The Marvera Court case that dealt with subdivision approval and general improvements that were made not with respect to a specific development and the RC Enterprises case was a very unique situation in that site plan approval had been granted in 2 phases in 1972. Phase 1 was fully constructed which was its' own multi-family residential, but nothing was ever done with Phase 2. The applicant came back in after the property was rezoned in 2005 and tried to rely on that. It's obviously very different given that decades had passed since the original approval and so the Court found that there was no basis for vesting and reliance on those approvals. Here, that's not the case. We relied upon the approvals, the applicant went forward, they did site work. I won't repeat what you already know.

The other alternative that we discussed at prior meetings is that if the Board isn't inclined to find a finding of vesting, then there's still the issue of the variance. The requirement for fair and affordable housing units is in the Zoning Code, and so, this Board is authorized by law, both State Law and the Code to vary those requirements so we would ask that if you're not inclined to find that we're vested, then that you move forward with considering the variance application which we have previously argued and submitted information to this Board tried to show that it is an area variance. I've made all those arguments to you. The use doesn't change, it's still a residential use. It's just like all of the other requirements on that use, but it's not something that's prescribed by the Zoning Code which is what you see with use variances.

Lastly, there was a case raised at the last meeting, which we were provided afterwards, Homes of Hope, Inc. and we did address that case in our submission. We don't think it's controlling because it's a New Jersey case that was governed by New Jersey statutes and case law. In addition, in those facts it was very different. The reason why the applicant needed a use

variance didn't have to do with the fact that they were actually proposing affordable housing but because they were planning to expand a pre-existing non-conforming multi-family dwelling in a single-family residential district. The relevance of the affordable housing in that case was based upon the applicant's argument that the existence of affordable housing formed a basis for approving the use variance. That's really apples to oranges with respect to something like this.

We've submitted to you our analysis of why we believe we satisfy the criteria for an area variance. I've gone over it with you before. I will just remind the Board that the applicant is willing to reduce the variance requested from 2 units to 1.

Chair Kramer:

Does anyone on the Board have questions for Ms. Addona? No one did.

Public Comment

Glenn Tippet:

Just to point out something with the history of this application. One of the reasons they took so long, because they started the process long before the Village changed its' laws and 1 of the reasons is they could've by right built a cookie cutter building that was larger without any style or ambiance to the neighborhood and just dumped it on the Village of Mamaroneck. They went through a lengthy, lengthy process with the Planning Board because the Planning Board wanted, and the other Boards wanted. They wanted the way the windows were, they wanted the setbacks, they wanted restrictions on the use of the roof. They went through and jumped through hoops in order to satisfy the different Boards and actually made a project that was less dense than they could've actually built if they just built as an as of right.

One of the reasons they got caught in this problem is that it took such a long process for them to get through in order to come to an agreement on what the plans looked like and such that a clock that they didn't even know existed suddenly ran out on them. You've had a lot of talk in this Village about good development, bad developers and such. This is a developer who (inaudible) to the community, tried to put a project that fit the needs of the community as was written, went out of their way above what they had to do in order to satisfy the Planning Board, the Board of Appeals and every other Board and now they're put in a position where literally it's not their fault, it's the government letting them down. This is your chance to right something that went wrong with the system. That's 1 of the things you're looking at.

The fact that they're willing to compromise with the 1 apartment, I think at this point you have to look at as a whole the amount of time that they've spent on this project. We're talking 2 – 3 years in order to get this project done working with all of our boards. At this point, it's your duty as the trustees of the Board of Appeals to honor the work that they've put in working with the Village of Mamaroneck to do a project that would better our Village.

Sue McCrory:

I sent in comments and I don't want to belabor the point, but I do believe the Board needs to determine whether or not this building complies with Multiple Dwelling Law. I'm concerned that it doesn't and that the whole question of vested rights turns on the fact that the plans that were approved, whether you think a site plan is enough, it really requires it to be compliant with laws that preceded the zoning amendments and I'm unconvinced that the 18 unit application meets Multiple Dwelling Law.

Penny Chumley:

I have a couple of comments. I've commented about this project on numerous occasions as it is right across the river and therefore is going to be a big part of our lives should it be completed. Unlike Glenn, I feel that this process is working well. This project was the last project in a series of really horrible decisions that were made for multi-family dwellings in this Village that actually led to the moratorium. What this process does, it's actually making sure that this group is doing what's right for the Village and ensuring that our Village maintains the integrity, the charm and the appeal that it does today.

There's a conversation in the new application about the time limit and how they were so expedient with the time, never mind the whole building permit being a building permit when it's actually a demolition permit. The reason they didn't get to this building in the time that maybe would've been considered expedient is really because they had so many other building projects going on in the Village that were enmired in their own messes that they didn't have time to focus on this 1. They focused on the ones that they were already working on thinking that they had this in the bag and that they beat the moratorium and could just come back to it whenever they felt like it. The fact that they only got a demolition permit, which isn't a building permit, is actually their hubris in thinking that they would be able to continue to develop in the Village as they had in all their previous time of development. For them to ever have any sort of feeling or opinion that they were caught by surprise or didn't know that there were going to be these zoning changes that were going to be coming, conversations about the moratorium had been happening for quite some time, it didn't just come upon the Village out of nowhere. The conversations around the new Comprehensive Plan for the Village has also been a conversation that's been going on for quite some time. As active developers in the Village for as long as they have been on as many projects as they have been, for them to think in any way that this project, that all of the changes were somehow a surprise to them is ingenuous at the very least.

As far as the question of vesting, I'm not an attorney therefore I don't have an opinion about vesting, however, what I can say is Cappetta could certainly recoup the costs that they have had to invest because the work that they've done would've had to be done no matter what was to going to go in the place that House of Honda was. They could certainly sell that property for more than they paid for it plus cover their costs for the development of a project that's more appropriate to that location and to the Village.

Finally, I would like to say that on page 12 they cited a couple of different reasons why they should be approved. One of them is whether an undesirable change will.

Ms. Yergin:

Is that the last letter the attorney sent in?

Ms. Chumley:

Yes, page 12 of the last letter they sent. Whether an undesirable change will be produced and the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. As someone who is a homeowner of a nearby property, I can tell you without question that this project will be a detriment to the value and character of our neighborhood and the neighborhood around our beautiful river. Our beautiful river doesn't need to have another gigantic multi-family dwelling.

On the next page, whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district. I would again say we don't need it. Anyone who lives in this area knows that all of the noise, every sound comes into this area where the little valley where the river runs through and it echoes through. To have an additional 18 – 22 units crammed into our already crowded little space, we've had numerous conversations about the traffic and what that's going to do.

Finally, there's a note in there that's also strikingly ingenuous about how the developer intends to comply with affordable housing requirements for future development, I'm not loving that statement.

Finally, on the variance it's not about the 4 stories vs. 5 stories, it's actually the height. When you look at the height of the building they propose in either of their proposals, the height is higher than a story, a 9' room vs. a 12' ceiling vs. a 14' ceiling, it's all 1 story but the height is very different. It's about the building height. I think I concur with the previous caller and I will continue to say this isn't the right project for that space. Three variances on zoning seems like a lot of variances to me and what's the point of having zoning if you just get variances for all of it.

I would strongly recommend that this Board decline all of the variances and that this developer sell the property and we look for something that's more appropriate for our neighborhood to go in that space.

End of Public Comment

Chair Kramer:

This is another 1 that's going to require a lot of discussion, but I kind of broke it down for what the Board needs to, cause there's a lot of pieces here. In order to get to them we have the following decisions we have to make and each one leads to something else.

The first question is, because we can't decide what variances they need or whether they're vested unless we decide first whether the prior approval lapsed. I'm not reaching any conclusions I'm just laying out the issues we have to deal with. The first question we have to decide is did the prior approval lapse. If we determine that the prior approval lapsed, then they

will need either, we need to grant an extension of those variances or we have to grant completely new variances for those 2 variances that they got before. If we decide that the prior approval didn't lapse, that simply means they don't have to get new variances for those 2 items that they got variances for before.

The next step, once we've determined whether or not those previous variances have to be reissued or renewed or extended is if we determine that the prior approval didn't lapse then we go straight to the next question of are they vested. If they did lapse, then we have to grant new ones or extend. If they didn't lapse, then our issue is are they vested.

If we determine that they are vested, then this whole review ends. If we determine that they aren't vested, then we get back to the original question which is that they will need a variance and the only question then is, is it a use or an area.

I think we need to take those 3 sets of questions separately to move on to the next, because without getting to the earlier ones, we can't get to the later one. I think the first question we have to discuss is did the prior approval lapse?

Ms. Yergin:

I like the way you're making it in these steps. We did get the information from Ms. McCrory that she wonders if it was, if Multiple Dwelling Law had been applied and if they are in compliance with Multiple Dwelling Law and perhaps we could ask Frank, but whether or not they would get approval or was this another variance. Because they never got a building permit, they got site plan approval, the Planning Board isn't a Zoning Board, are they compliant with Multiple Dwelling Law?

Chair Kramer:

I don't think the information Ms. McCrory gave was complete, so I want to give you some information. What she seems to be saying is whether they have windows, where the windows open out. What the Multiple Dwelling Law says is the following, there are 2 kinds of windows, euphemistically they're called legal windows or not windows. Under the Multiple Dwelling Law every room except a hallway and a bathroom and possibly a kitchen needs to have what's called legal light and air that meets certain size requirements, depth requirements, various requirements of the Multiple Dwelling Law.

If a bedroom has 2 windows and 1 of those windows satisfies the requirements for legal light and air, i.e. it provides the right amount of light and air and meets the Multiple Dwelling Law it doesn't matter what the other window does. So, if the other window looked out on something that you could build a building right next to it, it doesn't matter at all. However, if the only window is a window that looks out on a side yard and somebody could build a building abutting that, then that isn't legal. We have to separate that with respect to where the windows are because one point she raised was, there are windows that open right next to the property to the side.

The Multiple Dwelling Law says, what does it mean to have legal light and air, and again it doesn't use the term legal light and air, it's sort of a euphemism that's used all the time. In order to have legal light and air, you have to have a window meeting the size requirement that, and I will read the Multiple Dwelling Law provision from Sec. 30 of the Multiple Dwelling Law. Every room, blah, blah, blah, shall have at least 1 window opening directly upon a street or upon a lawful yard, court or space above a setback upon the same lot as that occupied by the multiple dwelling.

What she was saying is that we have 2, we have windows that are on essentially a property line and face the neighbor, and again as I said, if those are not needed to provide legal light and air then it doesn't matter. Then she says that there are windows that open up on like the porch, the 2<sup>nd</sup> floor which is a lower level. That would be a legal setback upon the same lot, those windows would comply with the requirements of the Multiple Dwelling Law. I think that's the simplest answer to her points. Frank, do you want to give your comments on this, please?

Mr. Tavalacci:

To the point about whether it complies with Multiple Dwelling, what we go by in the Building Department is the 2015 Energy Code, and to that Code for new construction, that's what we're looking for and it does comply. The Multiple Dwelling Law was created in 1930, I'm not going by that, I'm going by the Energy Code of 2015 and it does comply for light and air.

Ms. Yergin:

We did adopt the Multiple Dwelling Law so even if it was something that you could easily explain is fine the way it's set up now and is an antiquated law, we don't have anything codified that if you satisfy whatever it is that you just mentioned, that everything's fine, it would seem that they would need a variance if they're not complying with the Multiple Dwelling Law. I understand Robin is explaining to us about the windows. She doesn't seem to think that they're not complying, but I wanted to bring up that I went to look at the Multiple Dwelling Law and it talks about the requirement of a rear yard. It seems to say it's an interior lot, because I think it's a road that curves around, that needs a rear yard and for sure I need help with this, but it certainly seems the rear yard is supposed to be at least 30' and I could be misreading this but I do see something about a rear yard in the back.

Chair Kramer:

This is a corner lot, corner lots don't need rear yards.

Ms. Yergin:

I understand that. I think on their other project across the street, they're saying that that one's not on a corner. They're talking about Prospect is just 1 street and it curves, so I think there's a little bit of question of whether or not they're calling their other 1 not a corner, I think there's a little bit of a question.

Also, when I'm reading this it talks about windows needing to open out onto a yard or court.

Chair Kramer:  
Or lawful setback.

Ms. Yergin:

The windows in the back, I'm sure they're great light and air, I'm not saying that, but are they overlooking a court of a certain size or are they so close to the lot line that they're not actually overlooking a court as required by the Multiple Dwelling Law.

Chair Kramer:

They would only need to be overlooking a yard, a court or a setback on the same lot if they're providing legal light and air. If they're the additional window, then it doesn't matter at all.

Ms. Yergin:

They have a bedroom in the back of the loft because the loft doesn't extend all the way to the front, so the bedroom loft area must have to have a window, so the 1 that sticks towards the back, I would think has to be 1 of those required windows that you're referring to because it's the only place where it would be. I look in the back it seems to be a diagonal line and it seems to be quite skinny in places behind, so I wonder if it has the right size court or rear yard assuming that those bedroom windows are required windows or if this is considered an interior lot and not a corner lot, then it requires a rear yard. I don't know if the Building Department looked into that or the applicant themselves.

Ms. Addona:

We did receive a copy of this comment which was also raised earlier this week so we did look into it a little bit and what we found is that, just as an initial matter this is a project that was before the Boards for a year and was before this Board. We got our approvals, and this was never raised as an issue, so it's really not something that has been anything that we could address previously. There are other residential developments including this 1 that were approved without having to comply with those bulk requirements. We've seen numerous denial letters from the Building Inspector throughout this process and he hasn't opined that it's not in compliance. That being said, the bulk requirements are set forth in the Zoning Code. I understand that this Board's position is that there's separate requirements for each Code, but the Zoning Code is what looks at the bulk and where a project can be located. The Village Board, as you all know, looked at the C-1, the C-2 and the TOD District for zoning and specifically residential uses for a long time and what they ended up doing was they adopted rules and regulations including bulk requirements and including setback requirements that they thought were appropriate for the locations where these zones are located. In the local law that they adopted, there's Section 10 of the law that says, this law will supersede the provisions of Village Law to the extent they are inconsistent with this law. The Multiple Dwelling Law doesn't automatically apply to any specific municipality. The Village had to adopt it into its' Code, therefore it has adopted as part of this local law a (inaudible) saying what we did in the Zoning Code, what we looked at for over a year, what we adopted as far as setbacks go, that's going to supersede what's inconsistent with other provisions of the Code and so I think that kind of puts in context where Multiple Dwelling Law fits in this situation.

If you started applying this to all of the properties that it could potentially apply to, it would significantly diminish the amount of properties that would be able to develop residential properties as the Village Board was contemplating when it looked at all these issues and decided on the text amendments.

The reality is that the Multiple Dwelling Law is antiquated and general. It's not specific to this zone, to this Village. They have a permitted FAR of 12, the Village allows a FAR of 2. They require a setback of 30' for up to 125' structure, that's 12 stories. The Village only allows 4 and 40', so there's some serious discrepancies between what's in the Multiple Dwelling Law and what the Village Board adopted, and it did seem to specifically say what's in the Zoning Code is what governs. So, I would ask that the Board consider that also.

Ms. Yergin:

As we were saying in our last application, we're just looking at this building, we're not looking at what this means for other buildings. We're not looking at whether or not other buildings were built and didn't comply or should've complied. We're not looking at that, we're looking at this particular application.

Whenever 1 law is more restrictive than the other, that's the 1 that will take precedent. If it requires a backyard and our Village Law doesn't require a rear yard, that's what will take precedent.

However, Christie I am interested in what you cited that you were saying that it said it's not to the contrary and I will take a look at that.

Mr. Cutler:

This won't help your decision, but I was with the Village when the Multiple Dwelling Law was adopted and there was no discussion about the adoption of it superseding Zoning Code in any way. I think it might be based on what the Code says, but at the time there was no intention to adopt the FARs or the bulk requirements of the Multiple Dwelling Law. It was mostly focused on safety requirements, lighting, locks on doors and things of that nature. It doesn't change your decision.

Chair Kramer:

There's some confusion here. The Multiple Dwelling Law doesn't tell us what our FAR is. The Multiple Dwelling Law sets maximums and minimums for certain things and that's it. The fact that there's a maximum FAR of 12 has nothing to do with what the maximum FAR in the Village is. The maximum heights and the required height and setbacks have nothing to do with what the Village is. It's not like they're superseding, it's unrelated. You can't mix apples and oranges.

Christie, can you repeat what law said this thing that you were just talking about. The second thing is, I have a question for our Counsel. We are an appellate body. The whole issue of whether or not this complies with the Multiple Dwelling Law, because it's not really a question before us. We're an appellate body, can we raise issues like that in our consideration? It's come



up before, but I really think we need to make sure we can. We're raising completely new issues that weren't raised by the Building Inspector, haven't been briefed by the applicants, haven't been discussed, can we do that?

Ms. Mason:

I think you're allowed to do what's reasonable. If you want me to look further into it, I'm happy to and write a memo for you. I think as long as your reasonable as the Board and you're not being arbitrary or capricious, I think you're allowed to do so.

Ms. Addona:

The provision I'm referring to is the actual local law that was adopted by the Village Board in August of 2019.

Chair Kramer:

If the Village Law that you're referring to was adopted in 2019, it wouldn't apply to the application that was approved prior to 2019. If you're vested, you're vested with respect to the law that existed before 2019, because then the 2019 law wouldn't apply. You can't say this piece of the 2019 law applies but not the rest of the 2019 law applies. I'm not sure that it's relevant.

Mr. Dunaway:

Whatever the more stringent applies, whatever it is. If Zoning is more stringent than the Multiple Dwelling, Zoning applies. If there's sections of the Multiple Dwelling that are more stringent than the Zoning, they would apply. The question I have is, we're now hearing about Multiple Dwelling Law compliance on this application that we've never heard before.

Mr. Cutler:

I just wanted to be clear that what I was trying to say is when the Board was adopting Multiple Dwelling Law, was providing tenants a recourse for unsafe conditions so that there would have to be people's mailboxes, lighting and things of that nature.

Mr. Dunaway:

They adopted everything except 3 sections. I know what the intent was because I remember the arguments when that was going up, but they adopted everything except 3 sections. If I'm not mistaken, they've excluded 6, 7, 8 and 9. The Multiple Dwelling Law goes up to Article 11 which goes all the way up to Section 365-67. They didn't adopt everyone of the Articles. They adopted sections that were removed out of those Articles. I'm trying to find the memo or the law that tells me exactly which ones they accepted, but there are some that weren't included in the law.

What Greg was saying was that's what the gist of what they were talking about, but when they adopted the law, they only took out some sections and didn't go through and take out everything except for the safety of the tenants.

Mr. Cutler:

I agree, they adopted almost all of it.

Mr. Dunaway:

They adopted the entire law but that's not what they were looking at. They were looking at a narrow section of law and they adopted almost all of it.

Ms. Yergin:

So, then it's a part of our Zoning Code and if it seems archaic people can come for a variance.

Mr. Cutler:

It's not part of your Zoning Code, it's a separate code, separate law.

Mr. Dunaway:

It's a separate law that falls under the Building Department Building Code. With that being said, the Energy Code, in my opinion, would hold more precedent than the Multiple Dwelling Law when it comes to these types of applications, and that's only my opinion.

Ms. Yergin:

I'd like to understand that better. I didn't understand it was a Building Code, we don't opine on the building, you know.

Mr. Dunaway:

If it has to deal with the compliance of a zoning application, I believe we do have to consider it because most the determinations in the Building Department, first they look at the Building Code sections of it and where the Building Code and there appears to be a variance request, they don't comply with the Zoning, they will pin point that and bring it to Zoning, but if there's a Building Code discrepancy that can also be brought to Zoning.

Ms. Roberts:

Robin, before we go on here, you had said that the first thing we need to decide is

Chair Kramer:

Whether the prior approval lapsed.

Ms. Roberts:

So maybe we should focus on that first.

Chair Kramer:

The issue with the Multiple Dwelling Law is what Meg was saying in response to what Sue McCrory aggrieved. If the application didn't in fact comply with the Multiple Dwelling Law, then arguably it was never permitted in the first place and therefore you didn't have something.

I think this whole issue of figuring this out, I think the whole Multiple Dwelling Law get into. Until this year, I don't recall the Board ever considering whether or not something complied with the Multiple Dwelling Law. It just didn't come up, that was something left to the Building Department. This is all sort of new issues that hadn't been previously raised.

I'm with you, I think this is the question we need to come up with. Did the prior approval lapse? We can get bogged down on the Multiple Dwelling Law not knowing the answer to the question.

Mr. Duanway:

The prior approval is associated with a building permit, correct? I think the question is, a demolition permit isn't a building permit.

Chair Kramer:

I think the applicant is saying something else. The applicant is quoting from and set forth in her statement was that, so 2 things, let's separate the 2 things.

The first point is, what was the condition of the variance? It said a building permit has to be granted. It doesn't say what that means, it just says a building permit. She read to us from Village Code, she quoted 126-4 that says, except as otherwise provided and I'm assuming that doesn't apply, a building permit shall be required for any work which must conform to the Uniform Code and or the Energy Code including but not limited to demolition.

Ms. Yergin:

Are we deciding this now? Is this something that we're just discussing?

Chair Kramer:

We're just discussing. We could vote on it because we have to narrow it down, but we don't have to vote. Let's lay it out now so we know what we're talking about next meeting. Did it lapse and was a building permit issued? She's saying what is a building permit. We don't define building permit per se and here it says a building permit shall be required for any work which must conform to the Uniform Code and the Energy Code including demolition. That the piece of paper that was issued and then it says no person shall commence any work for which a building permit is required without first having obtained a building permit. So, if a building permit, the term not defined, is required for demolition, as this seems to say, then the document that the Building Department issued is arguably a building permit. This was a very interesting concept it's certainly never been raised before but that's what our Code says.

Mr. Tavalacci:

It was a demolition permit.

Chair Kramer:

But that doesn't mean it wasn't a building permit. Did the demolition have to conform to the Uniform Code and or the Energy Code?

Mr. Tavalacci replied yes.

Mr. Dunaway:

In terms of what?

Chair Kramer:

I have no idea what, this is what our Code says. Look at Village Code 126-4.

Ms. Yergin:

Can we guess whether or not we think that it means a building permit prior to construct what you got the variance for? We have a resolution to approve a variance and it says in some shape or form that you have a certain length of time to get the permit and then to complete the construction. I can't imagine that they were saying you need you got a building permit to do a garden shed in the corner that that would be ok. It happens to be on the same lot, but it has nothing to do with what you got the variances for. That seems pretty arbitrary that you could just find some way to get a building permit to satisfy this requirement. I don't think that's what it is, I think it's the building permit to enable you to construct the project that you got the variance for. I understand that they're arguing that the demolition was part of it, but I don't agree. I think that it was preparation to be any kind of project, so it wasn't specific to the building of this building.

Mr. Dunaway:

Robin, you said does it have to comply with the Building Code and the Energy Code. A demolition permit doesn't have to comply to any Energy Code whatsoever. I don't think it has to comply with the Uniform Code.

Mr. Tavalacci:

I think it does.

Mr. Dunaway:

The only thing that would comply to it is the safety with respect to fencing. It has nothing to do with the Building Code. It has to deal with site safety and the requirements of what you can do in your demolition.

Ms. Yergin:

We're starting to discuss this application and it's late and we have more applications and people are waiting to present their applications. It seems like we should wait to have this discussion.

Chair Kramer:

And we may need, depending on how many applications are pending, Betty-Ann how many applications are pending for the next meeting?

Ms. Sherer:

The next agenda isn't really full. We have 1 pending application so whatever you carry over, you carry over.

Chair Kramer:

So, then I think let's carry over this discussion, but think about the way I laid it out.

Mr. Dunaway:

I think it'll give us time to do some research and to get some real answers.

Ms. Yergin:

Are we going to close the application and then go into discussing this or are we keeping the application open?

Mr. Dunaway:

I think we're going to need to give the applicant a chance to respond to whatever we're talking about.

Chair Kramer:

I think we should leave it open for new points from everybody.

Ms. Heaney:

This resolution, this is the language the Board created, correct?

Chair Kramer:

This is boiler plate language that's on every single one. The Board didn't specifically, as it never does, sit there and go how long do they have to get a building permit, what's the requirement? It's boiler plate that's put in every application, so there was no specific discussion.

Ms. Heaney:

The applicant is coming with a very clever legal argument. That being said, when the Board passes resolutions, they had a common understanding of what building permit meant. You have a very technical, clever legal analysis or you can go with really what the common understanding of what that was when it was approved and Robin and Meg were the 2 people on the Board who were involved in approving that.

Chair Kramer:

I have never until this application came before us, I've never sat and thought about what we mean when we put in every variance application that a building permit has to be obtained within 1 year. I can't say what was my common understanding, I didn't have a common understanding. I didn't think about it. It's just boiler plate.

Mr. Dunaway:

Frank is correct. You have to read the first chapter of the Building Code, that's where it defines what's going on.

Mr. Tavalacci:

You can make the argument how can they go ahead with the rest of the project if they don't do the demolition first. So, their argument is probably their intent was to get a demolition permit in order to build the building and it's taken a lot longer than they thought and this is where we're at right now.

Mr. Cutler:

I can't speak to the Zoning Board's understanding of the building permit, but I know that on the Planning Board resolution we say prior to the issuance of a building permit you have to meet X, Y and Z conditions. This has nothing to do with the expiration, but in those circumstances the building permit was to construct the building because at the time they submitted the demo permit and it was issued, some of those conditions hadn't been met.

Mr. Dunaway:

If you look up the definition of building permit in the Building Code, there is none.

Ms. Addona:

I understand that this Board has spent a lot of time on this application and we certainly appreciate your efforts on this. We've been before this Board for several months now and we will get you that additional information that you requested, but we would hope that the Board can really consider trying to come to some sort of resolution next month so that we can try to figure out how to move forward with this. If we don't get relief from this Board, we have to come up with something else and that's going to be the zoning compliant plan with more units. That's the next step in this if we don't get that relief here. That's not necessarily beneficial either because of the positive elements we've already discussed.

I understand that you want to put the time in and you have applicants waiting, but if we can implore the Board to get some resolution one way or another and if the Board can start thinking about that for the next meeting, we'd appreciate it.

Mr. Dunaway:

I did find the definition of permit, an official document or certificate issued by the Building Official that authorizes performance of a specified activity.

Chair Kramer:

That doesn't answer the question of whether this is a building permit as meant.

Mr. Dunaway:

A building permit is a very specified activity, a demolition permit is a very specified activity. Plumbing is very specified, electrical is very specified. If you're looking at in in those terms, if they issued a demolition permit and they didn't issue anything other than that, that is a very specified activity that they're permitted to perform.

Chair Kramer:

We'll continue this hearing for the next meeting where, just like with respect to the prior application, we will devote significant time to both of these discussions. This is continued and hopefully resolved or at least close both of these hearings and possibly vote or at least come close to some conclusion on both of these next time.

- 3. 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).

Ted D'Amore, R.A.:

We started speaking about the project last month. After we discussed it for a while the Board decided that perhaps we should've gone for a use variance. We went back and took a look at the requirements and we submitted data to support a use variance.

The points that have to be reviewed by you and proven by the applicant for a use variance are:

1. Whether the applicant is deprived of the economic use of the property. We have submitted data that for the past year and half since the owner went out, they've only leased for a little while and they haven't been able to find another tenant or buyer to develop this property. We have supporting documentation from a realtor that shows that he's been trying to lease it and to sell it and we haven't had success except for the 1 tenant that was there for a short while. Whether we had a financial loss, that information is in front of you. In 2018 there was a \$59,000. loss. In 2019 there was a \$85,000. loss. In 2020 it's been a loss for the past 4 months. There has been severe economic hardship.
2. Whether the hardships are unique and applied to this property and not to other properties in the neighborhood, the unique thing about this building is it has a very low ceiling height and that's unlike any of the other commercial buildings in Mamaroneck. The rear 1/3 of the building, where the restaurant kitchen was, was built at only 7' 10 ceiling height and that has discouraged everyone from coming in because that extra 1/3 of the building means that the restaurant dining area can't expand into that area. That has discouraged people because they can't expand the number of tables, they can't maximize their income out of the space. There aren't any other uses such as retail or other permitted uses in the area that have a use for a ceiling height for 1/3 of the space that's only 7' 10 high. It's just too low and that's the unique characteristic of this building that points to why we need a variance for that.
3. The third item is whether the variance will alter the use of the neighborhood. The proposed use for this tenant is to use it as a ghost kitchen. One third of the building has been used as a kitchen for the past 50 years and the fact that we want to use the whole area for a kitchen doesn't really point to a change in the neighborhood at all. We'll have a few more people working there but we won't have nearly as many customers coming in so there'll be a lot less traffic in the area.
4. The fourth item is whether this hardship was self-created. It wasn't self-created it was caused by economic conditions. The older Mr. Lum wanted to retire, he got out of the restaurant business. Gene Lum went to find another job. They have a building that they haven't been able to sell or rent except they have 1 potential tenant to come in and it's

not an approved use for this neighborhood. It's not a self-created hardship, it's a circumstance.

I believe that proves the case. We submit that this application is complete in this way. I have drawings of the building with me if you'd like me to get into the particulars.

Mr. Dunaway:

On the real estate, you did have an offer on that building.

Mr. D'Amore:

Gene can point to that. There was an offer, when they started talking about it the guy never came back. He wasn't serious.

Mr. Lum:

The offer that was presented to us had too many contingencies on financing. It wasn't an offer that (inaudible).

Ms. Yergin:

In the particulars of the building, how does your restaurant compare to others on the Avenue in terms of a 1/3 of it being used for a kitchen and how many tables you can put up front? Are there other restaurants on the Avenue that have a lot more tables than what's available for you to be able to put in the serving area?

Mr. D'Amore:

The conversations I've had with the restauranteurs that have come in is that everyone of them wanted more dining area than they had. They thought the kitchen was too big. Regardless of the proportion of space of the other restaurants on the Avenue, for this space in particular the restauranteurs that came in, they all wanted more room for more tables.

Ms. Yergin:

You have a parking lot. You haven't arranged that the parking lot, you can use by going through the back door, that some way that parking lot could be accessible to people who want to patronize the restaurant? It seems that you're not utilizing that parking lot for possible customers.

Mr. D'Amore:

There was a Planning Board resolution many years ago and it's in the package that you have in front of you. The resolution says that the parking lot isn't to be used by customers. They didn't want that much traffic because of the residential buildings around it, possibly.

Mr. Lum:

There are (inaudible) spaces in the parking lot. As to why customers didn't use it, that was a big question for my family for many years. Even with signage out front pointing to the parking lot, we had customers that were clients for 20+ years who didn't know there was a parking lot in back.



Mr. D'Amore:

I'm sorry, I said the opposite. The parking lot was exclusively for patrons of the restaurant, not for the employees.

Chair Kramer:

They told us at the prior hearing that there was a parking lot back there with a certain number of spaces for customers and they would be using it for deliveries. Based on what you just said, if it's exclusively for customers, then you wouldn't be able to use it for the delivery trucks. You would need to go back to the Planning Board to.

Mr. D'Amore:

That's only when it's a restaurant, we're not putting a restaurant in. it's just for take-out.

He shared the floor plan on screen.

The take-out area is in the front where the oven of the last restaurant used to be. This is the entrance. This is the place they can sit if they want to have it there. This is the cash counter. We have walk-in boxes, food preparation and cooking. This area here is where the low ceiling is.

Chair Kramer:

Why is it low? Is the building set back? Is there an increase in the floor at ground level?

Mr. D'Amore:

I think this was built first, up here and this part has a basement. From this point back, it got built over time and I think the last fellow that built, who knows why he built it so low.

Chair Kramer:

From grade to the top of the roof in the front, is that higher than from grade to the top of the roof in the back?

Mr. D'Amore:

They're different levels.

Chair Kramer:

So, the elevation of the building or the height of the building in the front and the back are different heights on the outside? Not the inside, just the outside.

Mr. D'Amore replied yes.

Chair Kramer:

So, there's a natural physical difference in the outside height of the building?

Mr. D'Amore replied yes.

Mr. Lum:

Originally the building was 3 separate stores. You have an elevated ceiling in the front facing Boston Post Road that slopes down towards the back towards Library Lane.

Ms. Heaney:

Why can't a dining area be 7' 10"? Why is that too low for a dining area?

Mr. D'Amore:

That's up to the restaurateur and his interior designer. Everyone that came in just didn't like it.

Chair Kramer:

I don't understand, you had a rental offer for \$9,000. The tenant refused to increase their offer above \$9,000. What happened to the \$9,000. a month offer?

Mr. Lum:

The tenant wanted us to build out the kitchen and also have TI improvements to the dining area for him.

Chair Kramer:

The prospective sale for 2.3 million, there were too many conditions, correct?

Mr. Lum:

It wasn't a legitimate offer because of all the contingencies.

Chair Kramer:

I looked at the numbers you sent, and I could be wrong on my math, but your expenses are \$89,219. for a year. That was your cost in 2019. If you divide that by 12, that means that in theory if you rented it, in order to net 0, no return, if you got something like \$7,400. a month you would have 0 profit which isn't reasonable, and no one expects that. I don't know what the number is that would allow you a reasonable return, whether it's \$8,000. or \$8,500. Did you try to rent it for either or those that would give you a reasonable return?

Mr. Lum:

Honestly, at this point we've been more than negotiable with any prospective tenants coming in. With Abe Abdullah coming in with his proposed use of the property, we felt that this was the best use and best prospect for success for a potential tenant. At this point we just want to break even and not have to bleed the money coming out of our pockets for more than a year and a half. It's very discouraging and sad because of the history that we have with the property for my family and myself. I literally grew up in this location. I was born in 1972 and my parents opened the restaurant in 1972. I have a special affinity to this location.

Chair Kramer:

Does the applicant have anything they want to add?

Mr. D'Amore:

I think we've covered all the major points and I think we have the proofs to prove those points. We aren't changing the neighborhood. We won't be a detriment to the neighborhood. We'll be an asset to the neighborhood.

Chair Kramer:

How many people do you expect to be using this, not the customer base, the employees?

Mr. Abbdullah:

Employee wise we'll probably have 14-15, give or take on the time of the day.

Mr. Cutler:

Just to correct something was said earlier, it was a Special Permit that had that condition on the parking. It was done by the Zoning Board not site plan.

Chair Kramer:

Does anyone on the Board have any questions for the applicant's team? None did.  
Does anybody from the public wish to address this application?

Public Comment

Glenn Tippet of Hill Street:

Sit-down restaurants on Boston Post Road over the last 40 years, you've lost about 20-25 of them. People don't go out to eat in that fashion anymore. You can start with the Crab Shanty on one end and Washington Arms on the other end. Over the last 40 years, McGuire's, another one that went out. Continental Manor was a catering hall. On the other side of town, 3 Jalapenos. Those big dining room restaurants, we used to have Tung Hoy, which was another large Chinese restaurant that faded with the dining habits in the 80s and 90s.

As for the parking, people never realized there was parking around the back because you had to go past 2 other buildings to go into the back to where their parking lot was. I as a long-time resident would know I could legally park back there. Anyone who was casually going to the restaurant never realized that you had legal parking. A lot of people assumed it was the building on the corners parking lot. Other people assumed it was parking for the apartments in the back. Unless you were a very familiar, regular customer you didn't know that you could park in the rear.

As you were bringing up, what you need to make a profit, understand that doesn't include that if you get a tenant in there that your building maintenance goes up substantially and you're going to have long time capital costs. At some point you have to put a new roof on and do the windows. Even if you have a tenant, you have to do fans, you have to rugs, there's a lot of maintenance on a property like that that has to be done that doesn't necessarily reflect in what your costs are in any given year.

If I took the value of my house, I'd have to say I need to spend 5-10% of the value of it every year to maintain it. You would have to take that into account, what percentage value of the property would you have to spend in order to keep it in general good maintenance.

You're going to have more proposals like this. Coming out of the pandemic, if you have a dining room, they're talking about 6' spacing and things like that and I don't know if it's economically feasible to be able to run a restaurant. This is a very viable alternative to a very difficult property.

End of Public Comment

Mr. Dunaway to Chair Kramer:

They're going to have a take-out place, they're not going to require a Special Permit?

Chair Kramer:

This is one of the questions we started talking about last week. The question is, if they're getting a use variance and at the end of the day it all goes to what their actual application for a use variance is for. They might need a Special Permit but maybe it's subsumed in the variance because the variance is for the use. Are we giving a variance to operate something that is what they're showing us and if so, why do they need a Special Permit? We've already given them a variance to operate this use as it's shown in the plans. Its difference is we give a variance for height. If they need a parking variance, we're only dealing with 1 element we still haven't decided that the use itself is appropriate given the Special Permit standards. By giving them a use variance, we're sort of including all of that as part of it. I don't think they need a Special Permit because I think the use variance subsumes it. These are the uses we're allowing them. I think it's all subsumed.

Mr. Dunaway:

I don't know the answer to that question.

Ms. Yergin:

You said that we already gave them a variance, you meant we already gave them a Special Permit. They already possess a Special Permit.

Chair Kramer:

Yes, but the Special Permit wouldn't apply now anyway because what they're proposing is different from what they've gotten the Special Permit for. I said variance, I meant Special Permit.

Mr. Dunaway:

I think I want to know if we are required to give a Special Permit strictly for the take-out section because the take-out section is a very small space and most of the large space is a ghost kitchen that's going to feed other restaurants.

Chair Kramer:

They're going for a manufacturing use, a variance to allow a manufacturing use.

Mr. Dunaway:

Does the take-out area have its' own little kitchen area?

Mr. D'Amore:

The kitchen that serves the whole place makes the food that a little from each cooking area gets used for the take-out place. If you take a look at the use of manufacturing, manufacturing often times has a retail component where they sell things that they make. Our take-out place is just a retail aspect of selling what we're manufacturing. I don't think we need the Special Permit at all, we're just selling things that we make on the site.

Ms. Yergin:

Would it need a site plan since it's changing use?

Mr. Cutler:

If you change the use and that increases the requirements under the Code, and that's any requirements under the Code, parking, circulation, drainage, all the site type of issues.

Chair Kramer:

Did we consider what parking would be needed for this manufacturing use? I don't recall seeing anything in the application about it.

Mr. D'Amore:

In this district, no parking is needed.

Chair Kramer:

What about for the manufacturing use? How do we deal with that?

Mr. D'Amore:

Restaurants have 1 of the highest proportions of square footage to the parking requirement of all the uses in your Zoning Code. Manufacturing has close to the least, they're not equivalent. We would be less.

Mr. Cutler:

The Parking Code states that other than residence uses in the C-1 District, parking isn't required. I meant C-2.

Chair Kramer:

It's not required, so it's moot.

If we decide to give them the variance, I think we need to address the parking question just because while they're not required in the C-2 for any permitted uses, this isn't a permitted use so once we give them a variance I think we probably have to address that.

Ms. Yergin:

Will there be seating? Will there be tables in the front where people can eat their orders?

Mr. D'Amore:

There's space for 6-8 people to sit and eat family style. There aren't individual tables, there's not service to them, there's not waiters. They can eat their take-out and someone will clean up after them.

About the parking, it didn't say parking for permitted uses isn't required. It said parking isn't required for anything residential. Isn't that what you said Greg?

Mr. Cutler:

I'll read straight from the Code it says, "other than for residence uses under Sec. 342-50 this Article shall not apply to the C-2 Commercial District". It's the Parking Article.

Chair Kramer:

The parking doesn't apply.

Does anyone on the Board have anything they want to ask? Is there any more information you want otherwise do we want to close the hearing?

Ms. Yergin:

I'll move to close.

Ms. Roberts:

I'll second.

**On motion of Ms. Yergin and seconded by Ms. Roberts, the Public Hearing was closed.**

**Ayes: Mr. Dunaway, Ms. Heaney, Ms. Yergin, Ms. Robert, Chair Kramer**

**Nays: None**

**Excused: None**

Chair Kramer:

This is closed. We will not be discussing it tonight. Presumably we will have to discuss it at the next meeting because then we have the summer, whatever we're doing over the summer.

- 4. 30A—2019, INTRAVALIA, 1330 Mamaroneck Avenue** (Section 8, Block 12, Lot B7)  
Application to construct a second-floor addition. The proposed construction is in violation of 342-27.1 of the Village Code where in the R-5 District for a non-conforming building the required lesser side yard setback is 6' and the applicant proposes 3.8 and where the combined side yard setback is 14' and the applicant proposes 10.5' and where the allowed FAR is 40.55 and the applicant proposes 40.95 (R-5 District)

Michael Boettcher, designer for the project:

The homeowner and his family have grown. They have 3 kids who are getting older, they need more space in their home. They're looking to do a master bedroom and family room addition on top of what is an existing first floor with a flat roof deck that was there, we're looking to build on top of that.

The existing home, on both sides, and as well as that first-floor piece on the back, is already over the setback. The setback is 6' and the existing structure is 3.8 off the property line. We're not trying to encroach to the property line any further than what is already existing. We're just going on top of the existing first floor. We're not encroaching anywhere near on the left side of the home, which is already over the setback, it's 8' and the existing house is 6.7. The addition has nothing to do with that setback line.

Also, with the addition the FAR, we went over by .4%. although very minor I still wanted to have that in there to show that is the calculation.

We spoke with the neighbors to the right side, their homes are nowhere near the property line and they wrote a letter which is included in the package, that they're both ok with it. They saw the plans and are ok with everything. The design is to look as if it was always there. As far as the neighbor to the rear yard, is about 100' away. Again, no where near the addition.

Chair Kramer:

Just to clarify something, I climbed up those steps and looked, you're very close to the property on the left. You got the neighbors on the right too.

Mr. Boettcher:

Yes, they both wrote letters.

Ms. Yergin:

If you could show us your intention for the first floor. On the existing first floor I see a dining room with some dotted lines and then I see a space that doesn't have a name. What is that room?

She repeated the question as Mr. Boettcher had gotten disconnected.

Mr. Boettcher:

That used to be an old kitchen. When they reverted to single-family home, all the appliances were taken out. It still has a sink and refrigerator. When I had my meeting with them there weren't any table-top appliances there. They cook upstairs.

Someone shared the drawings on screen.

Ms. Yergin:

You have separate entrances to the upstairs and downstairs floors?

Mr. Boettcher replied correct.

Ms. Yergin:

I did some research you get mail that says unit 1 and unit 2?

Mr. Boettcher:

I don't know, I don't live there.

Chair Kramer:

The plans show that it was a 1 family then it went to a 2 family and then it went back to a one-family. They could be getting mail some things never go out of, you know, you get.

Ms. Yergin:

I'm looking at plans from July 2019. It shows some burners on the first floor.

Mr. Boettcher:

These clients have been my clients for over 12 years. When I used that plan, I mistakenly pulled that plan from an older project, but I didn't realize the stove was still in.

Ms. Yergin:

It's all 1 family living upstairs and downstairs?

Mr. Boettcher:

Yes, her parents also live with them. There's 4 adults and 3 kids.

Chair Kramer:

I think we want to clarify if we give them whatever relief we give them we would want to make it clear that this is 1 unit only, they couldn't have a separate unit/apartment.

Mr. Boettcher:

There's no separate apartment. There's no separate doorway to block them off.

Ms. Yergin:

When you go through the front door, it kind of looks like the front door, you can close the doors to the downstairs and just go upstairs. It looks like there could be privacy there.

Mr. Boettcher:

Those are interior doors, there aren't any locks on them.

Ms. Yergin:

There are interior doors and then you have a separate entrance to the downstairs through a mudroom in the back. You also have the stairs that go up to the top. I'm finding a lot of



similarities in this to another application that we're looking at that a stove is disconnected. This one has 2 separate exterior entrances it doesn't share 1 common entrance.

The parents are there. Do they pay rent or do they live for free in the house?

Mr. Boettcher:

As far as I know, they live for free. As being my long-time clients, they don't pay rent. It's family.

Mrs. Intravaia:

It's my parents living with us. They're in their 70s, they're living with us. Our kitchen is upstairs, my mother prepares a lot of the meals upstairs during the week because I'm not home at that time. She cooks for all of us.

They sleep downstairs, they have a living space downstairs. We didn't need both kitchens and we never intend to rent. That's why we didn't feel the need to have a kitchen downstairs. It's a second-generation family living situation.

Ms. Yergin:

When did it go from a 2 family to a single-family?

Mrs. Intravaia:

I don't know what year we applied for that, but we went through the right channels to get it done. It was a few years ago, maybe.

Ms. Yergin:

You have 2 parking spots. How did you handle things when it was a 2 family?

Mrs. Intravaia:

There are 3 spots and we're technically on Mamaroneck Avenue so we can park in front of the house as well. I grew up in this house and my grandparents lived downstairs. It wasn't until my grandparents passed away that my parents had tenants for a very brief time before we decided to take over the house and move in. My parents bought it as a 2 family in 1975 but it functioned as a 2 family as far as collecting rent for a very brief period of time.

The entrance downstairs to the mudroom and the den, that all functions as my space with my children. My parents use the other area. We never use the Mamaroneck Avenue front entrance because we have access through Crown Court. The mudroom used to be a garage. We wanted access through the main level so we could come in downstairs and just go up the stairs. My parents are off to the left, they can shut the door if they want privacy. We share the mechanical room and the laundry room. We function as a single-family home.

Ms. Heaney:

In terms of the locks, is there 1 lock for all the outer doors or does each door have a separate lock? Can you open all the outer doors with 1 key or does each outer door have a unique key?

Mrs. Intravaia:

All of the doors are operated by 1 key except for the door where the porch is and the sliding door. Where we want to build, we used to have a deck there. We don't ever enter the home through that way, but there is a lock on that door. When we do the addition, it'll come out. That'll be like the doors that come from our current dining area into the new den area. It won't be external anymore.

Mr. Boettcher:

They'll be interior French doors.

Ms. Heaney:

The former kitchen which has the refrigerator and sink but the burners have been removed, what other kitchen like items are in that old kitchen area? Is there a microwave, a toaster oven, a coffee pot?

Ms. Intravaia:

They have a coffee pot. The cabinets, refrigerator and sink are there. The dishwasher is still there. There isn't a microwave or toaster oven.

Chair Kramer:

Any other questions? There weren't any other questions.

Anyone from the public wish to address this application? There wasn't any public comment.

Mr. Dunaway:

I recommend we close.

**On motion of Mr. Dunaway and seconded by Ms. Heaney, the Public Hearing was closed.**

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

**Nays: None**

**Excused: None**

Deliberations:

Ms. Yergin:

The terrace is already stuck out there. I feel it's increasing the non-conformity, but over a section where, I always feel differently when it's a second floor on top of something. The FAR is pretty de minimis.

Chair Kramer:

It's weird that they have such small side yards given that's a pretty decent sized property. It is close on the right side, but if the neighbor doesn't object and any future purchaser would understand that that's there then it seems like it's not an issue. I think it otherwise satisfies the

requirements of a variance. It isn't going to have a material impairment of the neighborhood. It isn't going to adversely affect the surrounding, it's not substantial. I don't think it'll have an adverse effect on the physical or environmental conditions. All variances are self-created, it's not an undesirable change. I think it's ok. Does anybody else have any thoughts before we move on?

I'll make the motion to grant the variance as shown in the plans. I don't think it's an undesirable change because the buildings in this area are mostly 2 story buildings and it's not increasing the footprint. There's no other benefit that can be achieved, that's feasible, because any other increase in size would require a whole reconfiguration that would take up more land, which would actually be a bigger impairment because there would be a lot more impervious surface that would be worse for the neighborhood.

It's not substantial, it won't have an adverse effect on the physical or environmental conditions. As discussed above and while it's self-created, they didn't create the actual condition of the non-conforming condition of the house.

I want to put a couple of conditions, which is that this can only be a 1 family house. They can't create a separate locked doorway up to the second floor.

**On motion of Chair Kramer and seconded by Mr. Dunaway, the variances were granted for Application 30A-2019, Intravaia, 1330 Mamaroneck Avenue.**

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

**Nays: None**

**Excused: None**

- 5. 8A-2020, MAURA, 619 Third Street** (Section 4, Block 19, Lot 3) Application for a variance for the entrance stairs which project more than 3' into the front yard setback. The construction of the front stairs is in violation of Chapter 342-27 Attachment 2 of the Village Code where in the R-2F District the required front yard setback is 25' and the applicant proposes 12.3' for one set of stairs and 12.4' for the second, which also increases the level on non-conformity as per Chapter 342-63 A of the Village Code. (R-2F District)

Mark Mustacato, R.A.:

It's an existing 2 family house in the R-2F District. Mr. Moura did a restoration of the house a number of years ago. In that renovation they added these steps to this porch.

He shared a picture of the house and the drawings on screen.

This is the front of the existing house. Mr. Moura is the victim of a series of missteps that aren't his own fault in my opinion. The original plans that he had done for the addition showed a number of steps, 10 steps basically.

This is the site plan of the original plans that were done for this renovation. If you look at the elevation difference between the first floor and this porch and the driveway, the minimum

number of steps you could have by Code legally is 13 steps to comply with maximum height for a step and this showed 10. It just didn't work. If you built the number of steps that were on this plan, at the end of the steps you would've been about 24-30" above the ground. Mr. Moura built the steps with the required number of steps he would need to basically get to the driveway elevation. It was inspected by the Building Department it was approved by the Building Department and he was issued a CO. Subsequently, within this past year it came to light that these steps encroach into the front setback beyond the front of the house and he was issued a violation and now he needs a variance in order to remedy this. There's nothing else he can do, this is the only alternative he has really is to come to this Board and seek relief for these steps that were built and approved and issued a CO and then that CO was basically taken back. The CO was issued in March 2018.

Mr. Dunaway:

What ended up happening, you got a CO based on the plans that you submitted and were built to and now you got cited for violating the Code.

Mr. Mustacato:

Yes, because there's more steps in reality in existence than are on that original plan.

Mr. Tavalacci:

The front yard setback was already pre-existed by the house that was already there. Their proposed plan when they were going for the building permit, the steps showed it back further not coming past that front structure, but in the final analysis they did go past it.

Mr. Dunaway:

Frank, you were there 2 years ago?

Mr. Tavalacci replied yes.

Ms. Yergin:

I believe this came to light when the homeowner came to us with an application to subdivide the property. I mentioned how it looked that the steps were intruding into the front yard. What normally happens when a new house or renovation like this has gone? Isn't there something in the Village Code that you submit an as built? Do you ask for an as built so you can compare it next to the plans and if you see anything that went funny you can send them to get a variance?

Mr. Tavalacci:

That's correct, this was missed. Multiple people made inspections on this house, but I was 1 of them. I did the final CO for this house, but I did realize that there was a problem there with both sets of stairs. That's why they're here before the Board.

Mr. Mustacato:

Basically, that's our situation. Obviously, it's the minimum variance that's going to relieve the hardship. There really isn't another alternative. Nothing was done in a malicious manner or to do something that shouldn't have been done. Unfortunately, it was just missed.

Mr. Dunaway:

There's a difference of 12.7'?

Mr. Mustacato:

Yes. There are basically 3 more steps than were on the original plan. The building is non-conforming to begin with, it's 12 ½' from the property line.

Ms. Yergin:

Both stairs were increasing the non-conformity so they needed a variance because they were increasing the non-conformity of the existing building.

Chair Kramer:

Does anybody on the Board have any other questions? No one did.

Does anybody from the public wish to speak on this application? No one did.

Ms. Heaney:

So, the existing non-conformity was increased by just a couple of inches? We're talking 2"?

Mr. Mustacato:

Basically, yes.

**On motion of Mr. Dunaway and seconded by Ms. Yergin, the Public Hearing was closed.**

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

**Nays: None**

**Excused: None**

Deliberations:

Mr. Dunaway:

The variance isn't significant, there won't be an impact on the neighborhood, the benefit can't be achieved by any other means and if you took the steps out they'd have to jump 30" down to land in the driveway.

**On motion of Mr. Dunaway and seconded by Ms. Roberts, the Board granted the variance for Application 8A-2020, Maura, 619 Third Street.**

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

**Nays: None**

**Excused: None**

- 6. 10SP-2020, BRERETON for Project Journey 108 Mamaroneck Avenue** (Section 9, Block 50, Lot 5A) Application for a Special Permit to operate a Sports/Fitness Club pursuant to Article VII and Section 342-42 of the Village Code. (C-2 District)

Leo Napier, Esq. of Harfenist, Kraut and Perlstein:

He shared a drawing on screen.

The application is pretty straightforward. There's no changes to the footprint of the structure. It's limited to interior renovations and light change to the storefront, just relocating the door. The applicant is proposing to occupy the space that's presently occupied by Pinot's Palate with a Shred415, which is essentially a class-based boutique physical fitness. The operation focuses largely on treadmills and floor exercises.

Before you is the first floor plan which would be the exercise area with the restroom and a small office space or entryway area. In the basement would be restrooms and locker rooms as well as some storage space and mechanicals.

Chair Kramer:

It looks like there are 13 mats, I'm not sure what these things are.

Mr. Napier:

I believe those are little step up, like steps kind of thing for step exercises.

Chair Kramer:

Does that mean that each class has 13 students?

Mr. Napier:

I believe the operation is that they alternate between the treadmills and the floor exercises. I don't know if they have people using the treadmills and the floor at the same time and they alternate or if it's just 1 thing in use at a time.

Joe Brereton:

Leo, you're correct, they're rotating between so there are 26-28 people in the studio. The treadmills and the floor, which are step up benches, would be occupied at the same time. They switch throughout the classes. A class is 60 minutes.

The first class would be between 5:30 and 6:00 a.m. The 5:30 class, if we decide to do it would be a 30 minutes express class. Then you'd have a class at 6:15, 7:30 and 8:45 and then not again until 4:30 p.m., 5:45, 7:00 and 8:15.

On Saturday you would start at 7:00 a.m., your last class midday would be 1:00, then there'd be a break and then 1 class at 4:00 p.m. on Sunday the first class would be at 7:00 a.m. and the last class would be finished by 2 p.m.

Chair Kramer:

So, you're talking about 56 people coming and going every hour that you're in operation.

Mr. Brereton:

There's a 15-minute transition period between classes to clean and move people in and out.

Mr. Napier:

That would be max capacity though. I don't know that in reality you're going to have every class maxed out like that.

Mr. Brereton:

We're profitable at 25% capacity.

Ms. Yergin:

Do you have windows or doors that open up? A lot of times when we speak to someone in this situation we ask if you're going to be playing music or having amplified voices and if you can keep your windows and doors closed whenever you're having amplified sound.

Mr. Brereton:

The only windows to the studio space that's playing the music are on the storefront, but those don't open. There's sound attenuation in the walls to help minimize the sound. The wall against the treadmills, there's an alleyway so it's not up against any other building. There isn't anything above the studio. We'll put in soundproofing in the roof of the studio itself, they'll be drop ceiling in there to eliminate the sound from bouncing around.

Mr. Napier:

This portion of the property is owned by the same property owner, on the same lot there's a residential development in the rear, so clearly he'll have an interest in not having any noise pollution or noise attenuation so his tenants and residents aren't complaining to him.

Mr. Brereton:

I believe Pinot's Palette has a sound system in there and plays music during there business hours.

Ms. Yergin:

The wall on the right, is there another building behind the stairs?

Mr. Brereton:

No, that's the apartment complex that Leo was referencing. The empty space is a courtyard.

Ms. Yergin:

If we grant this permit, you wouldn't have a problem if we told you you had to keep the doors closed while you were in operation?

Mr. Brereton:

Absolutely not, correct.

Chair Kramer:

Does anybody else on the Board have any questions for the applicant? No one did.

Does anybody from the public wish to address this application?

## Public Comment

Glenn Tippet of Hill Street:

I would like to point out that the location of where they're looking to place this business and the hours that they're proposing is actually probably the least used part of Mamaroneck Avenue. In fact, across the street you have the bank which has been out of business for 20 years. You have the historian's office and then you have Village Hall, which I would assume doesn't start to get busy until 9:00 and they're out of there at 4-5:00. So, the hours that they're looking to run the gym actually kind of fold in very nicely with how Village Hall is used, which gives them a lot of parking directly across the street from their location.

End of Public Comment

Chair Kramer:

Let me point out to the Board since this use is across the street, there's a new synagogue across the street. There are other uses across the street.

**On motion of Mr. Dunaway and seconded by Ms. Heaney, the Public Hearing was closed.**

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

**Nays: None**

**Excused: None**

Deliberations:

Chair Kramer:

We're adding 56 people every hour. I don't think it's a big deal in the morning, there's not a lot of people on Mamaroneck Avenue at 6:00 a.m. except the health club/gym/yoga studio next door. There will be potentially 56 people coming to the Avenue between 6:00 – 9:00 p.m. that's my concern.

Mr. Dunaway:

That's an issue and the other issue is between 11:30 a.m. – 2:30 p.m.

Ms. Roberts:

There won't be any parking issues on Mamaroneck Avenue for the foreseeable future.

Ms. Yergin:

When the movie theater came before us and I raised issues with the parking, it was pretty much told to me there's the big parking lot, it's in the C-2 we don't look at parking.

Mr. Dunaway:

I'm not raising the issue of parking I'm raising the issue of traffic.



Ms. Yergin:

Since there are parking lots in the area, if there wasn't that, if it was near a neighborhood, I'd have a much different feeling. I realize there are people in residences there, but they bought in a C-2, it's a commercial area.

Ms. Roberts:

There's a lot of parking there.

Mr. Dunaway:

The bigger issue is the traffic. If the movie theater goes in and there's stuff going on in that gym till 9:00 p.m. and the theaters are going and there's 100 people coming out of there and you have the restaurants, it's going to be a lot of traffic.

Ms. Heaney:

I think they said they expect to be 50% full, this 56 may be an inflated number.

Mr. Dunaway:

That's the maximum and they probably will maybe build up to that, we don't know that answer. If you take 75% of that, that's a lot of people.

Chair Kramer:

You can't equate every use because the standard for clubs and recreational uses, which is presumably the section of the Code that requires them to get a Special Permit says, "Clubs and other recreational structures and uses shall be on lots of adequate size with sufficient parking and screening as determined by the Board of Appeals". It doesn't say that for every use.

Ms. Roberts:

It sounds like we all agree that parking isn't the issue in this case.

Mr. Dunaway:

If you have social distancing in there, they're going to be down to 1/3 or less for people in there.

Chair Kramer:

We don't know what the requirements are going to be for when gyms finally get to re-open.

Ms. Roberts:

I think it's appropriate.

Mr. Dunaway:

I don't object to the fitness center. I'm thinking in terms of 3-4 years from now and it's still operating and we have restaurants and the movie theater kicking people out.

Ms. Yergin:

It's getting really late, can maybe we table this until next month?

Chair Kramer:

That's fine. I've raised the issue we'll vote on it next week. It's something to think about that will require some discussion.

#### **D. CLOSED APPLICATIONS**

- 1. 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 Manage/Trustee determination under Village Law Section 4-400(1)(d) and Village Code Section 126-15(d). (R-5 District)
- 2. 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 Manage/Trustee determination under Village Law Section 4-400(1)(d) and Village Code Section 126-15(d). (R-5 District)

Chair Kramer:

We were supposed to get a survey. Betty-Ann, did they submit a survey?

Ms. Sherer:

What they did submit and was provided to the Board just before the last meeting were surveys for the properties and they did show the window wells. I believe Frank had gone to the site.

Mr. Dunaway:

Did they show the building footprint, that was a requirement?

Mr. Tavalacci:

What he showed was the 6' offset, which was the building envelope and the window wells within the building envelope. He did conform. The shed wasn't shown on the survey.

Ms. Mason:

Frank, does the survey show the building envelope?

Mr. Tavalacci replied yes.

Ms. Mason:

It does show the building envelope, so it delineates where the building envelope is?

Mr. Tavalacci replied yes.

Mr. Dunaway:

But it doesn't show the shed.

Ms. Yergin:

We're looking at some Notices of Disapproval and he brought them to us and wanted us to interpret them. At the time, what if we find that these Notices of Disapproval were correct and he has since remedied them, but the Notice wasn't wrong to have been given the Notice of Disapproval, how do we find if something was remedied after?

Chair Kramer:

Since the survey is only here now, that's a good question Meg. I'm going to look at exactly what the application said.

Ms. Yergin:

I thought it was the window envelopes, it was the fact that he removed a tree and it was the shed. He's arguing he doesn't need a permit for the shed. We have to find on those things. What if we find it was a perfectly fine Notice of Disapproval, but now they could decide that it's remedied? Are we supposed to find that they remedied something that had an appropriate Notice of Disapproval or are we just supposed to think about the Notice of Disapproval?

Chair Kramer:

The issue had to do with a Certificate of Occupancy that was revoked because it didn't comply. The Code Enforcement ticket for 1017 Grove that he was occupying the property in violation of the lack of a Certificate of Occupancy, so that was the violation.

Ms. Yergin:

There are other violations that were put into the application. 19-4301 is the tree removal. The shed was one, that didn't have to do with the occupancy. He also had one for revoking the occupancy.

Chair Kramer:

The violations were 19-4302, 19-4301 and 18-4081. 19-4301 was trees removed without approval.

Mr. Dunaway:

Did he submit an arborist's letter indicating that the tree was dead and had to be removed? That was one of the requirements.

Ms. Yergin:

Is he arguing that he never should've gotten the Notice or is he arguing that he's remedied it with that letter? I think we all know that he didn't submit the letter at the time that the Building Department had requested it, so it would seem to me that the Notice of Disapproval is proper, but are we now supposed to be the judge as to whether or not something's been remedied or.

Mr. Dunaway:

Frank, did he satisfy all the requirements of the violations that you issued?

Mr. Tavalacci:

The primary violations were the window wells. As far as I'm concerned, they now comply.

Mr. Dunaway:

Can you withdraw the violation?

Mr. Tavalacci:

For the window wells I can. The other violation was for the fence, but he removed the fence, so that's a moot question. He didn't show the shed on the survey and I'm not sure where the shed is.

Mr. Dunaway:

In effect, was the shed part of the violation of the Certificate of Occupancy?

Ms. Yergin:

No, the one for the occupancy was the window wells, the fence and he had to go to the BAR for approval and confirm that the landscaping plan was correct. He did have proof that the landscaping plan was correct, he did go to the BAR, he did remove the fence. The one thing that was still outstanding was that he didn't have the window wells within the building envelope.

Mr. Dunaway:

In effect, he satisfied all the violations which caused the revocation of his C of O?

Mr. Tavalacci:

That's correct.

Mr. Dunaway:

If Frank withdraws all of those.

Ms. Yergin:

The one for C of O is 19-4302, he satisfied that.

Chair Kramer:

The C of O was revoked, and the violation was occupying the property in violation of not having a C of O. he didn't do anything about that. The C of O has still been revoked, it hasn't been reissued yet. What has been determined is that the basis for revoking the C of O can be withdrawn but he hasn't done that yet, so there still isn't a C of O on the property.

Mr. Dunaway:

Frank, if he satisfied all of the violations associated with his revoked C of O, you can withdraw those violations as being satisfied and issue a C of O.

Mr. Tavalacci:

That's correct.

Mr. Dunaway:

Why are we talking about it? Frank can do that we don't have to do anything. He satisfied the requirements to Frank. He came to us and we pushed him into the direction of satisfying the

requirements. He finally agreed to satisfy them and submitted the documentation for it. All Frank has to do is withdraw those violations and issue a C of O.

Ms. Yergin:

But if we're supposed to look at this, at the violation itself it seemed appropriate to me that it wasn't wrongly given because at the time he didn't comply. It seems like we should vote and we'll find no you should've gotten that. What happens in the future is up to the Building Department. We don't make that determination, that's the Building Department I believe.

Mr. Dunaway:

The Building Department makes the determination. He's asking us if he received these wrongly. My answer is, he didn't receive them wrongly. He was in violation of those items, but he corrected them. My position is hey you know.

Ms. Yergin:

We're deciding whether or not these were issued wrongly, and I don't think he had a letter for the tree and that was part of the landscaping plan. He wasn't supposed to change anything in the landscaping plan without really good proof, so the Building Department required an expert letter. I thought that was the same as the shed, it isn't a normal shed it was outside the building envelope and he was required by what he had received from the Planning Board that he couldn't make any improvements outside of the building envelope. I don't think any of the violations were improper.

Mr. Dunaway:

I agree, all the violations were proper. I have no doubt, but the question is, have they all been remedied?

Chair Kramer:

I think Meg laid it out right. Our question is, he's appealing the issuance of these violations, so we'd be determining were the violations properly issued yes or no? We could have a second question, should they be continuing, but he didn't appeal that, but I think we could determine that since there seems to be evidence that, but the Building Department hasn't made a formal determination yet unless this is the formal determination.

Ms. Yergin:

I still say he didn't submit the letter for the tree, and he didn't do anything about the shed, so we're talking about the Certificate of Occupancy it seems that he's remedied, I'm not so sure. I think it's up to the Building Department to decide when he's remedied these others.

Ms. Roberts:

It sounds like we all agree that it was issued property, right? Ms. Yergin, Mr. Dunaway and Chair Kramer replied yes.

**On motion of Ms. Yergin and seconded by Mr. Dunaway, Application #28A-2019, 1017 Grove Street, Violations 19-4301, 19-0432 and 18-4081 was denied as the Notice(s) of Violation were proper.**

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

**Nays: None**

**Excused: None**

**On motion of Ms. Yergin and seconded by Mr. Dunaway, Application #29A-2019, 1019 Grove Street, Violation #19-4346 was denied as it was properly administered.**

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

**Nays: None**

**Excused: None**

The Board discussed and voted on Applications 30A-2019, 8A-2020 and 10SP-2020. (See pages 50-58).

#### **E. ADJOURN MEETING**

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

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

**Nays: None**

**Excused: None**

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

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