

Village of Mamaroneck

123 Mamaroneck Avenue
Mamaroneck NY 10543

Zoning Board of Appeals Minutes

VILLAGE OF MAMARONECK ZONING BOARD OF APPEALS MEETING

June 4, 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 June 4, 2020. The full public record of this meeting is the audio/video recording made of this meeting https://lmctv.org/videos_list/village-of-mamaroneck-zoning-board-meeting-6-4-20/

PRESENT:

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

Christy Mason, Counsel to the Board
Michael Hartman, Counsel to the Board
Lori Lee Dickson, Counsel to the Board for the Tiekert Appeal
Frank Tavalacci, Assistant Building Inspector
Charlotte Mountain, Village Code Enforcement Office
Nina Peek, IT Meeting Facilitator

EXCUSED:

None

The meeting was called to order at 7:04 p.m.

Ms. Mason noted that Mr. Hartman will be Counsel to the Board beginning in September.

A. DISCUSSION:

Process for the adoption of resolutions

Chair Kramer:

- Currently when an application is closed and the Board discusses it and votes on it, Betty-Ann writes it up, we review/edit it and then it gets signed
- The question has come up should we be voting on an actual written up resolution

- For a particularly difficult/controversial application we have Counsel write up the resolution in advance, which requires a straw vote of the Board, the Board votes on the resolution in front of us
- We can keep the current system, or we can require every resolution to be written and then voted on, which wouldn't get done until the next meeting

Ms. Yergin:

- Can we vote to adopt a resolution but not take the final vote
- I'm proposing that we're making a more of a formal vote that we intend to vote that way so applicants aren't delayed
- If we have to make it an informal straw poll, I suggest we make it a straw poll and we have the text in front of us sent to us before the next meeting and take the final vote at that meeting

Ms. Roberts:

- I like the idea of having the resolution in front of us to vote on

Ms. Heaney:

- I think we'll have better resolutions, at least for me, if I can read it
- It does delay the process, but I think it'll be a better product

Mr. Dunaway:

- I'll agree to that

Chair Kramer:

- We're not going to vote on any applications tonight
- The most we'll do is tell Betty-Ann or Counsel what we want to do, we'll take a straw poll
- We'll vote on it at the next meeting
- We can say for a particular application we're not going to use the drafting the resolution in advance procedure

B. 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 complains 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:

- I've thought about the most efficient way to present to you regarding the multiple submissions not yet discussed, my submission at the last meeting and the 3 submissions by the Building Department and Village Attorney and my 2 late submissions
- Or I'm happy to wait until the next meeting

Chair Kramer:

- I haven't received anything from the Village Attorney

Ms. Sherer to Mr. Tiekert:

- This morning's e-mail declined distributing the supplemental submissions to the Board

Chair Kramer:

- At the end of this meeting I'm going to propose that we close the hearing
- The applicant can submit the 2 submittals today
- We may decide not to close the hearing tonight to take the submittals
- We can close the hearing and take the submittals

Mr. Tiekert:

- The properties on Mr. Tivolacci's letter to the Board show the creator and modifier being the Village Attorney
- The un-signed 5/19 document from the Building Department, the creator and modifier was Charlotte Mountain
- I would categorize Charlotte Mountain's 5/19 e-mail as a gotcha about my use of the work tenant
- He read from the e-mail
- He read the definition of tenant from the 2015 International Property Maintenance Code
- I believe Paul Stainkamp living on the 3rd floor is compliant with the law
- The 2015 International Property Maintenance Code 403.3 states that microwaves shouldn't be considered cooking appliances
- In Charlotte Mountain's 5/19 response to my last submission, point 1 3rd paragraph, I believe the assumption is made that a space without permanent cooking facilities is a self-sufficient housekeeping unit, I don't believe that's correct
- Point 1 in the 4th paragraph seems to ignore the fact that Village Code 342-1 says the Code must be construed in context with, not in lieu of other laws
- Point 1 in the 7th paragraph seems to ignore the 2015 Property Maintenance Code that requires me to provide a tenant with privacy
- Point 1 in the 8th paragraph claims I illegally altered the space, I didn't, as has been previously explained
- Point 3, if the Board is unclear whether the Village Manager and Village Attorney currently believe differently about the applicability of Multiple Dwelling Law, you should ask them for clarity
- Point 4, the Building Department has observed the occupancy of my 3rd floor, the permits for the electrical and plumbing Orders to Remedy aren't being acted on
- I'm unclear whether I should I file an appeal on those also
- In the last paragraph Ms. Mountain tells the Board how they must decide, she says the interpretation must be that the 3rd floor is a separate dwelling unit and that the Building Department's determinations are correct
- It's my understanding that the ZBA is the avenue for residents to question the interpretations of and determinations under the Building Code that the Building Department makes

- The 2nd paragraph of the May 28th e-mail claims that I consider my 3rd floor a rooming suite, I don't believe I've ever used that term
- It further states that I consider Paul Stainkamp my boarder, I never claimed that I provide meals for Mr. Stainkamp
- The 4th paragraph states that Mr. Tiekert hasn't been charged with violating the Multiple Dwelling Law
- The letter then goes on using the term Multiple Dwelling Law 6 times
- I hope the Board will decide if the Multiple Dwelling Law is applicable to the building that I live in
- The 8th paragraph, in as with the Building Department doesn't consider the stove to be required for complete housekeeping
- In the 9th paragraph the letter states the 3rd floor isn't a rooming unit as defined in the Property Maintenance Code, even if that mattered Mr. Tiekert hasn't been charged with violating the Property Maintenance Code
- My Order to Remedy #19-4655 reads, the above noted condition is in direct violation of 101.2.7.4, Unlawful Structure (he read the definition)
- I also submitted the 1999 violation that I received from Lenny Russo
- My handwritten notes at the time say that Lenny said I could have a sink, fridge, microwave
- He was here and inspected and said everything was ok

Mr. Dunaway to Mr. Tivolacci:

- Is there any documentation in the file that Lenny Russo inspected the place and passed it

Mr. Tivolacci:

- No, there's not

Ms. Heaney to Ms. Mountain:

- You submitted a memo clarifying that Mr. Tiekert admitted to you that he had a tenant on the 3rd floor
- He said he thought it was legal under the Code
- Who helped you with the search warrant

Ms. Mountain:

- Dan Gray and Christy Mason helped with the warrant, we had 1 meeting with Dan Sarnoff and Jerry Barberio

Mr. Heaney:

- In the warrant you don't mention that Village Code allows Mr. Tiekert to have a roomer or boarder
- Why did you omit that Village Code 342-21 (6) allows no more than 2 roomers or boarders

Ms. Mountain:

- There wasn't anything indicating that Mr. Tiekert had a roommate living inside a unit with him
- The information we gathered pointed to a tenant living in a separate unit from Mr. Tiekert

Ms. Heaney:

- He advised you that he had a tenant and he thought it was legal
- Didn't you think he was relying on that provision

Ms. Mountain:

- I did not, he didn't mention that provision
- He didn't say I have a roommate or a tenant who lives with me
- I asked him about a 3rd floor tenant, not someone who lives on the 2nd and 3rd floor with him
- If the answer had been he shares space with me, that would've been the end of it

Ms. Yergin:

- At the time that you requested the search warrant what other evidence did you have that is was something that wasn't compliant with the Code

Chair Kramer:

- Why are we asking about what evidence there was to support or not support the search warrant

Ms. Heaney:

- This line of questioning is important and at the end of it I'll explain to you why I find it important

Ms. Mountain:

- There's much more evidence that was presented in the search warrant
- The information was found to be legally sufficient by a judge
- One was the initial conversation that I had with Mr. Stainkamp when he told me he lives on the 3rd floor
- There are 2 doorbells on the single-entry door at the 1st floor
- Mr. Tiekert didn't say Mr. Stainkamp lives with me
- He gave the indication Mr. Stainkamp is a 3rd floor tenant
- There are 3 utility services going into the building
- Mr. Tiekert never used any language indicating he was relying on 342-21 (6)

Ms. Heaney:

- The e-mail he sent said, in part, it's no secret I've had a tenant on the 3rd floor for 30 years, I believe by Code I'm allowed to have 2 tenants
- It's obvious to me he's relying on 342-21 (6)

- I consider not including that in the search warrant a material omission, it's a relevant provision
- In the next paragraph in the e-mail he said the word apartment was never used in our conversation, I'm concerned about its introduction now
- Paragraph 20 of the search warrant says Mr. Tiekert assured me that it's a legal apartment and that the Village had inspected it in the past, Mr. Tiekert admitted it's a 3rd floor apartment
- Ten days before he sent an e-mail to the Village saying I didn't use the word apartment
- The characterization in paragraph 20 is in direct contradiction to that
- Did you have any conversation with anyone in the Village about that paragraph

Ms. Mountain:

- No, I wrote my recollection
- We're close to a year since the conversation happened
- Maybe he wrote that to retract something he said in the conversation

Mr. Dunaway:

- Let's look at it in its totality
- He read from the Building Code Section/Chapter 105 regarding getting permits, that never happened

Ms. Yergin:

- We don't consider the Building Code as the Zoning Board, it's not part of our jurisdiction

Mr. Dunaway:

- You need to consider all codes, that's the obligation of this Board when it's making a determination
- In Mr. Tiekert's submission he said, because 1 of the dwelling units is in a separate structure the main building isn't a multiple dwelling as the term is defined in Section 126-11 of the Village Code
- The Town of Rye is going to assess it as a 3rd floor apartment

Chair Kramer:

- Whether or not the search warrant was correct, whether or not someone called the Town of Rye, that's not before us, let's stick to what's before us
- What's before us is an appeal of the violations that were issued
- Our determination is whether or not those violations were valid

Ms. Heaney to Ms. Mountain:

- In the search warrant you mentioned the 1986 application 3 times, a 35-year-old application seeking the alienation of the 3rd floor unit, which was denied
- There's no allegation in this present application that Mr. Tiekert has tried to alienate that unit
- When I read the warrant for the 1st time and read that provision, I got a significant negative inference that Mr. Tiekert was doing something nefarious

- Why did you put that in 3 places in the search warrant

Ms. Mountain:

- The reason is from every indication we had gotten up to that point, Mr. Tiekert had asked for a 3rd apartment in that building, Mr. Tiekert was denied a 3rd apartment
- If he hadn't separated the 2 units, he wouldn't have a problem
- If there weren't locks on the doors there wouldn't be violations
- In my view he can solve the problem by taking the locks off the doors, but he'd rather do this

Ms. Heaney:

- Upon s 2nd reading of the search warrant I found it disturbingly lacking and biased
- Not including exploratory material/information is unacceptable
- Including a 35-year-old case about alienation which is prejudicial and has little value is prejudicial and biased
- Including misleading information about the apartment when Mr. Tiekert didn't believe it was an apartment, was misleading
- Paragraphs 15 and 16 really showed me a bias that the Building Department really wanted to get Mr. Tiekert
- I believe the Village the State and the government has to act evenhandedly with all residents
- This warrant is evidence of bias and makes it difficult to proceed

Chair Kramer:

- Why is it relevant to the issue before us today, which is were the violations valid because this is a 3-unit structure rather than a 2-unit structure
- Do you really think it's fair to attack somebody like this for the first time on this type of presentation
- It sounds like you have ethical concerns about something going on in the Village, don't you think there are more appropriate forums than this to raise them

Ms. Heaney:

- I apologize, it's hard to talk in Zoom, it's hard to be interrupted
- It came off harsher than I would have liked it to have been
- You make a good point and I apologize to the extent that I was strident, rude and accusatory
- There are other situations in the Village where we have roomers and boarders
- We have Airbnbs
- The Village can easily go on Airbnb and see what residences may be violating the Code
- The Village doesn't go after those type of roomer/boarder situations
- They went after this roomer/boarder situation
- I'm concerned it was a target
- We have to act evenhandedly you can't target someone who may be difficult

Ms. Dickson:

- Can we bring this back to the evidence
- If Mr. Tiekert chose to take this to court, he would've had an opportunity to challenge the validity of the search warrant
- At this juncture it's really outside the scope of the Zoning Board because the judge found enough with which to issue the search warrant
- The search warrant resulted in these violations
- The violations are what you're being to interpret

Chair Kramer:

- Let's assume you're 100% correct and the Village was biased when it issued the search warrant and began this proceeding
- Are you suggesting that the Board determine the violations are invalid because the Village began the process in a biased manner, if not, why is it relevant

Ms. Heaney:

- In my view, given the bias the Village is acting in bad faith
- Based on what seems to be a targeting of 1 resident, I think we dismiss it

Ms. Mountain:

- The reason there's a list of potential violations in the application for a search warrant is because when we bring a search warrant to a judge, we need to outline whatever potential violations may be there
- The evidence we have leads us to believe there may be violations
- I give the judge information of what codes we think may be in violation
- Mr. Tiekert wasn't targeted, this rolled out of a conversation with Mr. Stainkamp
- It happened organically
- It's happened many times, but we've never gotten here with any of them
- People ask, what do I do

Mr. Tiekert:

- I think the Board needs to focus
- I don't think you've decided whether Multiple Dwelling Law applies
- The search warrant didn't say in so many words they were looking for evidence of an illegal kitchen, which seems to be what this all hinges on
- If I'm running a boardinghouse, you've got 2 people living in 2,400 sf
- At the end of the last meeting the Chair said, it's a simple question, is the existence of this unit as it's configured and exists a separate unit
- I believe the question needs to be, is it a separate dwelling unit
- I've asked for the records of the communications with the Town of Rye
- I'm a little concerned about going to other municipalities to exercise control through taxing, it seems not right

Chair Kramer:

- The search warrant isn't before us

- We don't have jurisdiction over the search warrant
- We don't have the power to determine the validity of the search warrant
- I don't believe we have the power to dismiss, we're not a court
- We have the power to approve or reject the application

Mr. Dunaway to Ms. Mountain:

- When you inspected the building, what did you find

Ms. Mountain:

- A separate dwelling unit from Stuart's behind a locked door
- It was substantially similar to the one this Board rejected
- There wasn't a permit to construct it

Mr. Tavalacci:

- Was the stove in the apartment when Lenny Russo inspected it
- The stove was there from 1992-1995
- When did Mr. Russo inspect it and what did he say

Mr. Tiekert:

- The violation was issued August 31, 1999
- My notes say Lenny said it could have a sink, a fridge and a microwave
- The stove was removed in 1995

Public Comment

Gina Von Eiff of Jefferson Avenue:

- I live in a 2-family house
- I stated my concerns at the last meeting
- I'm going to have to rent out a room or rooms on another floor
- There's an opinion for the Department of State General Counsel on the definition of family in the zoning law, it's LU05 Memo of Law
- They say that a unit provides complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation for 1 or more persons is a dwelling unit
- The issue of whether or not the 3rd floor makes Mr. Tiekert's house a 3-family dwelling, it only makes it a dwelling on the 3rd floor if there are permanent kitchen facilities
- I did research on the definitions of roomer and boarder
- A roomer is someone who eats there and doesn't pay for their food
- A boarder is someone who pays for their food
- A boarder can have a doorbell and a mailbox
- If you have a boarder, you have to put a lock on their bedroom door
- Mr. Tiekert's downstairs door is always open, he has to put a lock for safety for his roomer
- Multiple rooms can be rented to a roomer

- There aren't permanent kitchen facilities up there
- I can under the law rent to more than 1 person, it's in the Code 27-2078
- I suggest we get Code Enforcement from the State to evaluate the definitions

Chair Kramer:

- 27-2078 is the New York City Administrative Code, it wouldn't have direct application in the Village

Glenn Tippet:

- Anything you find for Mr. Tiekert goes for every boarder in the Village
- Are you saying that every boarder doesn't have locks on their doors, I don't believe that
- Are you saying the every boarder doesn't have a hot plate or microwave, very tough for me to believe
- Are you saying that every boarder doesn't have separate utilities
- If you say that's what Mr. Tiekert needs that means every single similar unit has to have the exact same
- It borders on ridiculous, do you really expect people to be renting their homes with no locks
- Do you expect a boarder to want to have an open room
- You have to have a small expectation of privacy when you rent a room
- You've gone so far awry with attacking Mr. Tiekert on this
- Gretta and Meg, I think you should refer this to the Ethics Board or whoever you have to refer it to
- I think it stinks how this whole thing came about

End of Public Comment

Mr. Tiekert didn't have any questions or comments.

On motion of Chair Kramer and seconded by Mr. Dunaway, the hearing was closed except for the receipt of documentation from Mr. Tiekert that he wasn't allowed to submit for today's meeting.

Mr. Dunaway:

- What if Mr. Tiekert's documentation refers to someone else's documentation and we don't have that documentation, what do we do

Chair Kramer:

- Then we have to leave the hearing open so we can get Mr. Tiekert's submittal and any other documentation that someone wants to submit
- This has been extended for 5 months, it has to come to an end
- I'm willing to take the chance that we'll want to ask someone something based on what Mr. Tiekert submits

Ms. Roberts:

- Is it worth taking a straw poll so we can have a draft resolution in front of us for discussion purposes next month

Mr. Dunaway:

- I won't give an opinion until I see what Mr. Tiekert submitted

Votes on the motion

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

Nays: None

Excused: None

2. 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 square feet and the applicant proposes 22.671 square feet and the maximum number of stories allowed in the C-2 District is 4 and the applicant proposes 5. (C-2 District)

Christie Addona, Esq.

- We respectfully request that the Board make a decision on the 2 issues before you
- The first issue is the variances that were previously granted for FAR and number of stories
- It's our position that the previously granted variances haven't lapsed as a demolition permit was issued less than 1 year after the variances were granted
- If the Board finds that the variances have lapsed, we ask for them to be extended or re-approved
- The project hasn't changed, the variances haven't changed, the requirements haven't changed, and the degree of the variances needed is exactly the same
- This project required multiple approvals and coordination with the Village
- The second issue is the Fair and Affordable Housing Unit
- As I indicated in May, the applicant is no longer pursuing that position
- We're asking the Board to grant the area variance from this requirement
- It's our position that it's an area variance, not a use variance, as it's a dimensional or numerical requirement in the Code
- It's not a use in the district where a use variance would be required
- The applicant received their approvals by November 2018, the Village Board adopted the text amendments in August 2019 including the FAHU
- The applicant has reduced the variance request from 2 Fair and Affordable Units to 1 Unit

Chair Kramer to Mr. Tavalacci:

- Did the Building Department review this application under the Multiple Dwelling Law

Mr. Tavalacci:

- The ICC Codes and Rules were followed in conjunction with the Multiple Dwelling Law
- I felt our Zoning Laws superseded the Multiple Dwelling Law

Chair Kramer:

- I think the Multiple Dwelling Law applies to this
- I don't think that prevents our consideration of the 2 actions before us

Public Comment

Penny Chumley:

- Anyone who does as much development in the Village as Cappetta does, should've known the Zoning changes were coming
- Cappetta applied for the demolition permit before they were truly ready to start on the project
- Cappetta delayed the start of the project as they were working on other projects
- It's imperative that they are required to apply for all the variances based on current Codes
- I'm opposed to them providing 1 of the 2 required Fair and Affordable Units
- There will be an undesirable change to the character of the neighborhood as the first floor won't be retail, it's going to be the stark exterior of the parking lot
- The homeowners on the south side of Spruce Street will be negatively impacted by loss of privacy, property value and quality of life
- The height of the building is outside of the Zoning Code
- The project can be redesigned to align with Code
- They're asking for at least 4 variances, which is substantial
- Noises echo through the river basin
- Construction will be a major environmental disturbance
- When the project is complete, we'll lose our skyline and privacy
- The residents of Spruce Street, Tompkins Avenue and the west side of the Regatta will feel a deep negative impact
- Sue McCrory's e-mail regarding the egress windows is extremely concerning
- This is the wrong project for this site
- They did the bare minimum to get the project in under the wire before the moratorium
- Would the same variances be granted today, my answer is no

Sue McCrory:

- We shouldn't look at variances piecemeal
- You may be segmenting them under SEQRA
- I would be reluctant to allow someone to get a permit other than the permit for the building for which the variances have been granted

- A permit for demolition shouldn't qualify for vested rights

Glenn Tippet:

- This wasn't a devious plot by the developer
- They went through a long drawn out process
- Many changes were made
- They could've built more units by right
- They're willing to concede 1 of the affordable units

End of Public Comment

Meg Yergin:

- I don't understand why we aren't asking the applicant to have an architect or engineer tell us how this stacks up against Multiple Dwelling Law
- There are 2-bedroom units that have windows that open onto the bulkhead of the stairwell
- The rear and front elevations don't match the floor plan
- The parking spaces are undersized, a variance is required for that
- I don't think the supports in the parking garage are drawn to scale
- We need to think about the totality of the variances
- The loft design doesn't accommodate wheelchairs

Chair Kramer:

- The Multiple Dwelling Law isn't part of our Zoning Code, it's part of the Village Code
- We do have the right to grant variances from the Multiple Dwelling Law if someone asks
- We can only review applications on appeal
- We're not going to review some law that hasn't previously been determined to see if it does or doesn't comply, that's up to the Building Inspector
- We're not asking for a Zoning table because the applications before us don't require it
- We can ask the Building Inspector to re-look at the parking requirement

Ms. Mason:

- There is Case Law that says in order for the Board to take action on a matter, there has to have been a determination from the Building Inspector or other administrative official

Chair Kramer:

- There's only 1 variance of necessity before us today, the affordable housing unit variance
- The variances that were previously granted aren't before us
- What's before us is the determination as to whether or not the permit lapsed
- If we determine that the permit lapsed, we have to deal with the variances
- If we determine that the permit didn't lapse, that means the prior variances are still valid and binding

Ms. Yergin:

- I believe they've lapsed
- I don't believe getting the demolition permit was what the resolution was referring to
- They could've come to us to extend the variances

Mr. Dunaway to Mr. Tavalacci:

- Is the retaining wall part of the foundation wall
- Did the demolition permit include the retaining wall

Mr. Tavalacci:

- The retaining wall is the back wall of the foundation
- There's a separate permit for the retaining wall

Chair Kramer:

- Under the Code, it's a building permit
- I don't think the variances lapsed

Mr. Dunaway:

- In my opinion they applied for a portion of a building permit

A straw poll was conducted based on Chair Kramer's motion that the variances hadn't lapsed. Ms. Yergin was the only Board member who didn't agree with Chair Kramer's motion.

Ms. Yergin asked if anyone knew the date the permit for the retaining wall was issued.

Ms. Sherer:

- The retaining wall permit was issued August 22, 2019, Permit #19-0801
- The variance was granted July 12, 2018
- The demo permit was issued July 10, 2019

Chair Kramer:

- The demo permit was the only one issued within a year of the variances being granted

Ms. Heaney:

- My vote has changed

Chair Kramer to Mr. Tavalacci:

- When they got the demo permit, had they filed plans for the building

Mr. Tavalacci:

- Yes, and the demo permit has to be closed before the building permit can be issued

Ms. Heaney:

- Demolition and building are opposites

- A building permit is required

Christie Addona:

- The demo permit also included the removal of the underground storage tanks
- That permit was issued within the 1-year deadline
- The tank removal was a condition of approval from the Planning Board and HCZMC
- We didn't ask for an extension earlier as we didn't have a reason to think it was an issue
- The Code says a building permit is required for demolition

Public Comment

Stuart Tiekert:

- 3 permits have been issued, the demo permit, a commercial alterations/renovation permit for construction of a rear retaining wall for reinforcement of buildings (the buildings behind it) and a temporary construction trailer permit
- Building permits generally say building permit on them

Penny Chumley:

- We have pictures of the building not ready for demolition as of July 23, 2019

Martin Hain:

- The only permit labeled as a building permit, which is for the retaining wall, is dated after the 1 year had expired

Sue McCrory:

- You've said before that you have appellate authority from the Building Inspector's determination
- New York State Law makes clear that a sophisticated developer getting a site plan or subdivision has a direct right of access to the Board of Appeals for an area variance
- The applicant doesn't need the Building Inspector to make a disapproval
- This applicant had site plan approval

End of Public Comment

Christie Addona:

- The Zoning Code is in derogation of property rights and should be interpreted in favor of the applicant
- If there's any ambiguity as to whether the demo permit is a building permit, under law it has to be found in favor of the applicant
- If we can't go forward with the project, we have no alternative but to go back to the zoning compliant design

On motion of Chair Kramer and seconded by Ms. Heaney the public hearing was closed.

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

Nays: None

Excused: None

Chair Kramer suggested that the Board provide Ms. Mason with reasons why they think the variances have lapsed.

Mr. Dunaway:

- A building permit wasn't issued within the designated time frame in the original resolution

Ms. Heaney:

- Demolition is materially different than building
- A demolition permit isn't a building permit

Chair Kramer:

- We don't know what a building permit is, which is why I disagree with the rest of you
- You need a building permit for demolition
- You can get a demo permit even if you're not planning on building
- The demo permit is considered a building permit

Ms. Mason read a portion of the Code regarding building permits which in part says, "an application for a building permit for alteration, removal or demolition of a building or structure".

Ms. Yergin:

- They didn't get approval and a building permit to construct what the variances were for

Chair Kramer read from Chapter 126-4 of the Village Code regarding building permits which in part says, "a building permit shall be required for any work which must conform to the Uniform Code and the Energy Code including but not limited to the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Building Inspector".

Mr. Dunaway:

- If that's what it says, I'm going to have to change my position

Ms. Roberts:

- It sounds like the demolition and retaining wall weren't actually related to the request for the going through and the architectural plans in the first place
- They're like 2 separate items

Ms. Yergin:

- I agree with that
- I think the resolution of referring to constructing what it was they needed the variances for
- The demolition of something can lead to lots of different projects
- You're not making a commitment to build what was reviewed and approved
- They didn't get a building permit and final approval for plans to construct the structure for which they had applied for the variances

Ms. Heaney:

- I agree

On motion of Ms. Yergin and seconded by Ms. Heaney the Board voted to direct the Building Inspector to review the application in terms of the Multiple Dwelling Law and the undersized parking spaces and to make a determination on what variances are needed and to hold off voting on the other variances until they hear back from the Building Inspector.

A straw poll of the Board found that Mr. Dunaway, Chair Kramer and Ms. Roberts didn't agree with the motion.

Chair Kramer:

- Do we want to extend the variances
- What do we think about the affordable housing issue

Mr. Dunaway:

- I don't have an objection to them providing 1 affordable housing unit as long as they don't alter the design and add additional units

Ms. Yergin:

- If it was in a zone that didn't permit affordable housing and you wanted to put affordable housing in, you'd have to ask for a use variance
- Residential zones always specify what type of residential use is permitted
- A building in the C-2 Zone of a certain size must have a proportionate number of affordable units
- I think it's a use variance

Ms. Heaney:

- I agree that it has to be a use variance
- An area category deals with the dimensional and physical requirements of the land
- This is dealing with how the property is being used

Mr. Dunaway:

- It falls under Chapter 342-50

Chair Kramer:

- You've said that affordable dwelling units aren't the same as regular dwelling units
- I think we have to decide if we can extend the 2 variances
- If we don't extend them, we have 3 variances to consider

Ms. Yergin:

- I'm certain there are additional variances
- I'm waiting to see the totality of the variances, so I don't want to extend them
- I think it makes a difference how many variances are required

Chair Kramer:

- The Code for the variances hasn't changed
- I don't think there's a basis for not extending them

Ms. Heaney:

- I agree with Meg
- I think there are a lot of open questions

Mr. Dunaway:

- We should extend the variances

Ms. Roberts:

- I agree to extend the 2 variances for the number of stories and FAR

The Board agreed to extend the variances with the condition of construction beginning within 6 months based on the plans submitted with the application in 2018.

Regarding the affordable unit variance:

Chair Kramer:

- They applied for an area variance
- If we think it's a use variance, we'd have to deny their area variance application

Mr. Dunaway:

- I think they're right

Ms. Yergin:

- I would deny the area variance
- I think the detriment to the community is greater than the benefit to the applicant

Ms. Roberts:

- Me too, I agree with Meg

Mr. Dunaway:

- Denying the area variance could be more detrimental to nearby properties than granting it
- They have the right to put 21 units there
- The impact will be more in what the building will look like and how much bigger it will be
- That's more detrimental than giving the area variance and having a better-looking building
- They conceded 1 unit

Ms. Heaney:

- We can make a determination that we don't have to determine whether it's a use or area variance because it doesn't meet the threshold of requirements of the balancing test for an area variance

Chair Kramer:

- I think we do have to make the determination

Ms. Mason:

- If you don't want to set a precedent as to what qualifies as an area variance, you should vote on whether you believe it's a use or area variance

Chair Kramer:

- We have 3 choices:
- It's an area variance and we grant it
- It's an area variance and we deny it
- It's a use variance, which they didn't apply for
- My view is it's an area variance and we should grant it

Mr. Dunaway:

- We should grant the area variance

Ms. Heaney:

- It's a use variance

Ms. Yergin:

- I would deny it as an area variance because the beneficial use to the community for affordable housing outweighs what the applicant needs

Ms. Roberts:

- I can't see how it's an area variance when the area isn't changing, but I struggle with use also
- I would deny it

Ms. Yergin:

- I would like the Board to direct the Building Inspector to make a determination on the MDL and parking

The Board agreed.

C. CLOSED APPLICATIONS

1. **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)

Deliberations:

- The hours specified in the application
- The doors and windows will be closed when there is amplified sound inside (music or voice)
- 3-year term
- No outside amplified sound

Leo Napier, attorney for the applicant:

- The hours are 6 a.m. – 10 p.m. with the last class at 8:30 p.m. on weekdays
- 6 a.m. – 5 p.m. on Saturday
- 7 a.m. – 1 p.m. on Sunday

Chair Kramer:

- That's a long day for a gym
- The term should be for 2 years
- 1 year to get a building permit for alterations to construct the gym

On motion of Ms. Yergin and seconded by Chair Kramer, the Board approved the special permit for 10SP-2020, Project Journey, 108 Mamaroneck Avenue with the conditions stated above.

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

Nays: None

Excused: None

2. **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 C2 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)

Mr. D'Amore, the architect for the project, gave approval for the Board to take more than 62 days since the close of the application to approve a resolution, with the hope that it will be finalized at the July meeting.

On motion of Chair Kramer and seconded by Ms. Yergin, the Board granted the use variance to allow a ghost kitchen to use 75% of the space and 25% to be used for take-out restaurant purposes only, as shown on the plans

Deliberations:

Chair Kramer:

- He's demonstrated a hardship by not being able to rent the space for a permitted use that would grant him a reasonable return

Ms. Yergin:

- Has he demonstrated that all uses in the C-2 Zone wouldn't work for him
- I'm ready to say they attempted all uses and couldn't find anybody
- What's particular about this site is the low roof in the back, it's a lot of square footage that can't be used for purposes that would make a lot of money
- It won't alter the essential character of the neighborhood because the front facing part is going to be retail take-out, which is similar to the rest of the Avenue
- The industrial kitchen space can't be seen from the street

Chair Kramer:

- Cooking is done on the rest of Mamaroneck Avenue the difference is the cooking isn't done for on premises eating
- The hours will be 6 a.m. – 10 p.m. for the workers and 10 a.m. – 10 p.m. for the public
- It won't alter the character of the neighborhood because it has the same hours as the rest of the neighborhood
- The parking area in the back has to be kept for all the delivery trucks
- The ghost kitchen is to be used for the owner's own businesses
- No deliveries before 8 a.m.

For the special permit for the food establishment

- It's take-out only
- The hours will be the same as for the ghost kitchen
- The take-out is related to the ghost kitchen
- The windows and doors must be closed by 10 p.m. if there is amplified music or sound

D. APPROVAL OF MINUTES

1. APPROVAL OF MINUTES – 1-9-20, 1-21-20, 2-6-20 and 3-5-20 meetings

The minutes were carried over to the next meeting.

E. ADJOURN MEETING

On motion of Ms. Yergin and seconded by Mr. Dunaway, the meeting was adjourned at 12:22 a.m.

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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