

Village of Mamaroneck

123 Mamaroneck Avenue  
Mamaroneck NY 10543

**Zoning Board of Appeals Minutes**

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

**July 23, 2020 AT 7:00 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 July 23, 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-7-23-20/](https://lmctv.org/videos_list/village-of-mamaroneck-zoning-board-meeting-7-23-20/)

**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  
Frank Tapolacci, Acting Building Inspector  
Will Long, Village Director of Planning  
Nina Peek, IT Meeting Facilitator  
Lori Lee Dickson, Counsel to the Board for the Tiekert Appeal

**EXCUSED:** None

Chair Kramer called the meeting to order.

**A PUBLIC HEARINGS**

- 1. BOARD TO ENTERTAIN THE APPLICANT'S REQUEST FOR AN EXTENSION OF TIME TO FILE THE SPECIAL PERMIT RENEWAL APPLICATION:**  
**Application #37SP-2018, Anthony Russo for Parkview Station LLC, Modern on the Rails, 1 Station Plaza** (Section 9, Block 2, Lot 2A1) Renewal of outdoor seating special permit per resolution 37SP-2018. (C-1 District)

Chair Kramer:

- When we granted the special permit for the outdoor space, we said they had to apply for the renewal 4 months in advance, which they didn't do

- I believe they'll be applying for the renewal at the next meeting

Anthony Russo:

- I knew I had to apply 4 months in advance, but I was thinking 4 months ahead of outdoor dining, not before the end of the permit
- We were closed for Covid
- I submitted my application
- I intend to be at the September meeting
- We haven't received any complaints from neighbors or the police

There was no public comment.

**On motion of Mr. Dunaway and seconded by Ms. Roberts the public hearing was closed.**

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

**Nays: None**

**Excused: None**

**On motion of Mr. Dunaway and seconded by Ms. Roberts, the Board granted Modern on the Rails an extension to file the renewal of their special permit.**

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

**Nays: None**

**Excused: None**

2. **1SP-2014, HAMPSHIRE CLUB, INC.**, Renewal of special permit, 1025 Cove Road (Section 9, Bloc 72, Lots 1, 2, 3, 11, 17B, 17c, 18D, 24, 25, 28 and 29 – Section 9, Block 89B, Lots 15 and 16 – Section 9, Block 89C, Lots 22A and 23 – Section 9, Block 89D, Lots 24, 25, 26, 27 and 28) Application for the renewal of a special permit to host non-member events (MR and R-20 Districts)

Ms. Roberts is recused from this application as she owns a property that borders on top of Hampshire and has year-round views of Hampshire. As a result, she has a material financial stake in Hampshire as expressed over the years by brokers, property listings and appraisals.

David Cooper of Zarin & Steinmetz:

- The Board issued a special permit in 2014 to conduct non-member events
- The special permit was renewed in 2017
- The legal standard governing renewal applications is that in the absence of a material change to the conditions or evidence of a violation of the permit's terms, the renewal should be granted
- There haven't been any material changes to the conditions since the initial issuance of the permit
- The operations haven't changed
- We submitted evidence demonstrating compliance with the terms of the permit
- Your Code sets a threshold of no more than 20% of the events being non-member

- We've submitted a spreadsheet showing that the number of non-member events has been under 20%
- I understand that the Police and Building Departments have reported that no complaints have been filed in the past 3 years
- We have e-mailed the Clerk-Treasurer the 990 forms
- The record before you is substantially the same record that was before you in 2014 and 2017

Ms. Yergin:

- It's our precedent to ask if it's an LLC for their members or an Inc. for their Board of Directors and to get certification form for the Board of Directors

Mr. Cooper:

- I don't believe that's a requirement for a special permit application, certainly not for renewal

Ms. Sherer:

- It's in the original application, not the renewal application

Mr. Cooper:

- It can be provided, but it's not a requirement for renewal
- If the Board is going to act on the renewal tonight, you can act on it conditioned on that being provided

Ms. Heaney:

- David Smith signed the application but didn't indicate his capacity
- How does Sunday brunch qualify as an event

Mr. Cooper:

- David Smith is the general manager
- Sunday brunch was listed as an event in the past
- The Code defines the denominator of the 20% as events or activities of the club
- Hampshire hasn't taken that approach, it considers only what we would define as special events – theme parties, holidays, celebrations
- Reservations are required and there's a special menu
- It's hosted by and guaranteed by members of the club

Dan Pfeffer, co-owner:

- Each Sunday brunch is an event
- People are invited, there's a special menu
- Each invited person is a member
- We don't invite the public
- Each person is responsible for the payment of the bill

There was no public comment.

**On motion of Mr. Dunaway and seconded by Ms. Yergin the public hearing was closed subject to the receipt of the list of the Board of Directors and their certification forms.**

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

**Nays: None**

**Excused: Ms. Roberts**

**Deliberations:**

Chair Kramer:

- There haven't been any complaints
- How non-member events is defined is a problem
- The Board of Trustees has to fix the definition

Ms. Yergin:

- We've let them have that list in the past

Ms. Heaney:

- The interpretation of the definition allows any club to inflate the denominator so that it becomes a totally meaningless provision

Mr. Dunaway:

- I'm ok approving it

Mr. Hartman will draft a resolution granting the special permit renewal.

- 3. 3A-2020, PAMELA AND ALEXANDER HORN, 401 Rushmore Avenue, (Section 9, Block 71, Lot 1D2)** Application to convert the existing first floor laundry room and garage to a family room and construct a 2-car garage and add 2 second floor bedrooms above the existing kitchen and garage where the proposed construction to convert the existing laundry room and garage to a family room, construct a new 2-car garage and add 2 additional second story bedrooms is in violation of Chapters 342-27 Schedule of Minimum Requirements where the lesser side yard setback allowed is 15', existing is currently 11.7' and the applicant proposed 9.5' and where the combined yard setback allowed is 35', existing is currently 32.1' and the applicant proposes 29.9' and 342-65 of the Village Code where a building that is conforming in use but which doesn't conform to the height, yard, land coverage, lot area and dimensions, minimum floor area per family, parking or loading space requirements of this chapter shall not be considered to be non-conforming within the meaning of this article. A variance from the Zoning Board of Appeals shall not be required for an addition to, enlargement or expansion of any such building unless the proposed alteration increases or expands the existing non-conformity of the building or creates new non-conformities. (R-15 District)

Mike McCann, R.A.:

- The current side yard setback is 11.7', we'd like to go to 9.5'
- It's a very small variance on the north side of the house
- It ends up being .06% of the lot
- It looks like this property and the house next door were part of an that was subdivided, and the configuration of the lot is a little abnormal
- The next door neighbor has written a letter approving what we want to do
- We also have a letter from the neighbor across the street

Ms. Heaney:

- On the EAF 5B was left blank and 17 requires an explanation

Mr. Long:

- Single family homes are Type II Actions, no further environmental investigation is required
- The EAF isn't required for a Type II Action

Ms. Heaney:

- I don't agree that it's not a substantial variance
- It's a 37% variance, which is substantial
- The photos don't give guidance on the side yard distances

Mr. and Mrs. Horn, the homeowners:

- Our neighbors at 408 received a side yard variance in 2017
- Our neighbors closet to our expansion did basically the same thing, added a second floor
- The side yard where we plan to encroach is at an angle, we'll encroach on the front corner, but we'll keep the existing side yard of the existing garage

The drawings and plot plan were shared on screen.

There was no public comment.

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

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

**Nays: None**

**Excused: None**

**Deliberations:**

Ms. Yergin:

- I'm ready to approve it
- A lot of it is about the configuration of the lot line
- It's a small portion that interferes

Mr. Dunaway:

- I don't have an issue with it

Ms. Roberts:

- I don't have any problems with it

Ms. Heaney:

- I think it's substantial but balancing all the factors I would vote for it

Mr. Hartman will draft a resolution granting the variance.

**Findings:**

- There won't be an undesirable change in the character of the neighborhood
- Other houses in the neighborhood have narrow side yards
- There isn't another feasible method to achieve the benefit
- It's substantial to the extent that they're reducing the side yard from the requirement, but the increase from the existing condition is small
- It won't have an adverse effect or impact on the physical and environmental conditions
- It wasn't self-created as it's a pre-existing lot

A straw poll was conducted on approving the variance. Chair Kramer and all the Board members voted yes.

- 4. 5A-2020, BRYAN AND YLORIE TAYLOR, 600 Lorraine Street, (Section 4, Block 18, Lot 15B)**  
Application for a variance to construct a second floor where the proposed construction is in violation of Chapter 342-27 Attachment 2 of the Village Code where in the R-5 District the minimum required lesser side yard setback is 6' and the applicant proposes 5.3' and where the required combined side yard setback is 14' and the applicant proposed 8.5' and where the required FAR for this property is 2373 and the applicant proposes 2818. (R-5 District)

Chair Kramer:

- Is this a 2-family house

Sid Schlomann, R.A.:

- Yes, it's a legal owner occupied 2-family house

Ms. Yergin to Mr. Tavalacci:

- Review Chapter 342-64 – non-conforming use of buildings, paragraph A
- If the variance is granted and they proceed with the enlargement of a pre-existing non-conforming building, they need to get a variance first or they'll lose their right to have the non-conformity

Chair Kramer:

- When you expand a non-conformity, our Zoning Code requires an additional variance
- The additional variance wasn't applied for tonight

Mr. Schlomann:

- The non-conforming use is the 2<sup>nd</sup> unit
- We're expanding the owner-occupied residence
- We're not touching the 2<sup>nd</sup> unit
- If an additional variance is required, we request that it be reviewed as well
- It wasn't part of the denial of our application otherwise it would've been included with our application

Chair Kramer:

- The Board is an appellate body and only has jurisdiction to review the Building Inspector's determination
- We can't independently decide to review an additional variance
- There's nothing that says this unit is the conforming and the 2<sup>nd</sup> one isn't
- You're expanding the size of a non-conforming 2-family house
- We can proceed on the application tonight as it's been filed
- We can't close it tonight because Frank is going to have to look at it and reach a determination as to whether an additional variance is required

Mr. Dunaway:

- The whole property is non-conforming
- It will require the variance

Mr. Schlomann:

He shared the survey, drawings and pictures on screen.

- The requested variances are due to the existing non-conformities to the rear and side yards
- The proposed addition sits exactly on top of a portion of the house
- It doesn't increase the non-conformity into those yards
- The percentages seem significant, but in terms of effect on the site and the neighborhood, the effect is barely felt
- The addition will be on the left side of the house
- There's no excavation, no added drainage or stormwater
- It's self-created but it's also the result of the existing non-conforming lot
- There will be a minimal effect to the neighbors and the environment
- We have letters in support of the project from 2 neighbors
- The new rooms won't be over-grand

Ms. Yergin:

- How many cars fit in the driveway
- I think you're required to have more spaces for a 2-family home

- I wonder if that's part of the pre-existing non-conformity though

Mr. Taylor:

- 1 car, it's very uncomfortable to fit 2

Chair Kramer:

- If the house is legal non-conforming and the parking hasn't been changed, it's appropriate

The application was adjourned.

## **B. ADVICE OF COUNSEL**

The Board entered into an Advice of Counsel Session at 8:43 p.m. and returned at 9:17 p.m.

## **C. CLOSED PUBLIC HEARINGS**

- 1. 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 C-2 Zoning District. 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)

Chair Kramer:

- Those applications were based on the Building Inspector's determination that what was needed for this application was an area variance and special permits
- In June we determined that a use variance was needed because food was being produced for sale off the premises
- We just became aware of the fact that in order for us to consider the application we needed a determination from the Building Inspector
- We can't vote on the application as it was filed
- If we vote on the area variances today, there's a potential issue for the applicant as it's not a permitted use and an objection could be filed
- We're proposing to ask the Building Inspector to make a determination as to whether a use variance is needed or not
- We would schedule a special meeting as soon as possible
- The applicant would have to re-notice the neighbors
- The special meeting could be held on the 13<sup>th</sup>
- You need to submit a cover page and say see prior submittal
- A new EAF needs to be submitted
- We'll make a new SEQRA determination



- 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 proposed 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 proposed 5. (C-2 District)

Chair Kramer:

- We had a straw poll at the last meeting, Counsel drafted a resolution based on that poll

The Board and Counsel had a discussion regarding edits to the to the draft resolution.

**On motion of Chair Kramer and seconded by Ms. Yergin, the Board adopted the resolution finding that the previous variances had lapsed.**

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

**Nays: Mr. Dunaway**

**Excused: None**

**On motion of Chair Kramer and seconded by Ms. Heaney, the Board adopted the resolution extending the prior variances.**

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

**Nays: Ms. Yergin**

**Excused: None**

AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF  
MAMARONECK, HELD ON JULY 23, 2020, THE FOLLOWING RESOLUTION WAS

**ADOPTED:**

**APPLICATION NO. 31A - 2019 (Lapsed Variances)**

Name: Cappetta Inc.  
Premises: 172 East Prospect Avenue  
District: C-2 District  
Tax I.D.: Section 9, Block 19, Lot 21 A

WHEREAS, Cappetta, Inc. (the "Applicant") appealed to the Village of Mamaroneck Zoning Board of Appeals (the "Board") for review of determinations made by the Village of Mamaroneck (the "VOM") Acting Building Inspector, dated April 9, 2020, that issued in connection with floor area ratio ("FAR") and story requirements at the property situated at 172 East Prospect Avenue within the C-2 District have lapsed; and

WHEREAS, on July 12, 2018, this Board approved two (2) variances in connection with the Project relating to FAR and story requirements, where the proposed construction was in

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violation of Village Code 342-24, Schedule of Minimum Requirements, which provides that the maximum allowed FAR is 20,000 sq. ft. and the Applicant proposed 22,617 sq. ft., and the maximum number of stories permitted in the C-2 District is four (4) and the Applicant proposed five (5); and

WHEREAS, the variances were granted on the condition that the Applicant procure a building permit from the VOM Building Department within one (1) year from July 12, 2018 where necessary to comply with federal, state or local codes, laws, regulations or requirements; and

WHEREAS, there have been no changes to the size of the building and no changed circumstances that were previously the subject of the variances; and

WHEREAS, on November 12, 2019, the Applicant applied for a building permit and on April 9, 2020, the Acting Building Inspector made a determination that the variances had lapsed because the Applicant did not obtain a building permit within the one (1) year period specified in the July 12, 2018 resolution; and

WHEREAS, on April 15, 2020, the Applicant accepted the Acting Building Inspector's decision but requested, in the alternative, that if the Board does find that the variances have lapsed, that the Board extend the variances; and

WHEREAS, after due notice, this Board discussed the application at the public hearing on May 7, 2019, which was closed on June 6, 2020, and all parties wishing to be heard were heard.

NOW, THEREFORE, on motion of R. Kramer, seconded by M. Yergin:

RESOLVED, in accordance with the vote of this Board taken on July 23, 2020, this Board finds that the variances issued on July 12, 2018 have lapsed because the Applicant did not obtain a building permit within one (1) year of July 12, 2018 to construct the Project:

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

, and be it further,

NOW, THEREFORE, on motion of R. Kramer, seconded by G. Heaney:

RESOLVED, in accordance with the vote of this Board taken on July 23, 2020, this Board

RESOLVED, that this Board grants the Applicant's request to extend the prior variances issued for the FAR and story requirements, subject to the following conditions:

1. Any work done hereunder shall be in strict compliance with the plans as filed with the application before the Board on July 12, 2018, except for immaterial modifications that do not increase the building envelope, change the location of the building or increase the number of units in the building.
2. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval from any other board or agency or officer prescribed by law or ordinance with regard to the plans or construction or any other phase of the Project or its obligation to comply with any other laws.
3. The Applicant must obtain a building permit that allows for the complete construction of the Project that is pending before the Board within six (6) months of the date hereof.

4. The use of the roof deck shall be in compliance with all applicable laws, codes and regulations, and subject to the following additional conditions:
- a. There shall be no grilling or cooking;
  - b. There shall be no amplified sound; and
  - c. There shall be no music of any kind after 10:00 p.m.
5. The failure to observe and perform the above conditions shall render this resolution invalid.

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

Abstained: None

Dated: July 23, 2020  
Mamaroneck, N.Y.



Chairman  
  
Secretary

**On motion of Ms. Yergin and seconded by Ms. Roberts, the Board adopted the resolution denying the area variance reducing the number of required Fair and Affordable Housing Units.**

**Ayes:** Ms. Yergin, Ms. Heaney, Ms. Roberts  
**Nays:** Mr. Dunaway, Chair Kramer  
**Excused:** None

**AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, HELD ON JULY 23, 2020, THE FOLLOWING RESOLUTION WAS ADOPTED:**

APPLICATION NO. 31A-2019

Name: Cappetta, Inc.  
Premises: 172 East Prospect Avenue  
District: C-2 District  
Village Tax I.D.: Section 9, Block 71, Lot 1D2

Area Variance Application for Fair and Affordable Housing Units

WHEREAS, on November 13, 2019, the Applicant applied for an area variance from Village Code § 342-50(B)(6) where two (2) FAHUs are required for the Project and the Applicant had proposed using none of the units as FAHUs;

WHEREAS, on May 20, 2020, the Applicant amended its application to apply for an area variance from Village Code § 342-50(B)(6) where two (2) FAHUs are required for the Project and the Applicant proposed using one (1) unit as a FAHU;

WHEREAS, New York Village Law § 7-712 provides that area variance “shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations”; and use variance “shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations” ;

WHEREAS, the requested variance does not impact the Project’s permitted dimensional or physical requirements and therefore does not meet the definition of an area variance as defined by New York Village Law;

WHEREAS, this Board finds that the Applicant's request for an exception to the number of fair and affordable housing units is not an area variance as requested in the application under review but requires a use variance for the following reasons;

1. A multi-residential building consisting of five or more units without the provision of the requisite number of affordable housing units as required by chapter 342-50 of the Village Code is an unpermitted use within the Central Commercial District of the Village.
2. Section 342-3 of the Village Code defines multiple types of residential uses such as “single-family dwelling;” “two-family dwelling;” “multifamily dwelling;” and further specifies those uses by “market rate housing units” and “fair and affordable housing unit,” the last of which is defined as “a dwelling unit reserved for rental by a Fair and Affordable Housing Family”;
3. Section 342-50(B)(6) of the Village Code requires that units within multifamily dwellings be used as FAHUs in accordance with Article XV of Chapter 342 of the Village Code in support of affordable-housing inclusionary policies established by the Village Comprehensive Plan to promote wider housing opportunities for a variety of income groups, rather than to regulate the physical dimensions of multifamily dwellings;
4. Section 342-103 of the Village Code provides bonus provisions for below-market-rate housing in order to provide a choice of housing opportunities for a variety of income groups within Village, further demonstrating that the Village Code considers affordable housing to be a beneficial use to the community;

WHEREAS, use variance standards provide the appropriate standards for relief from FAHU zoning requirements and uphold the legislative intent to regulate the multifamily market in the Village of Mamaroneck;

NOW, THEREFORE, on motion of Meg Yergin, seconded by Gretta Heaney:

RESOLVED, in accordance with the vote of this Board taken on July 23, 2020, this Board finds that the request for an area variance for an FAHU is denied.

Total Members: 5  
Members Present: 5  
Ayes: 3 (Heaney, Roberts, Yergin)  
Nays: 2 (Kramer and Dunaway)  
Abstain: 0  
Absent: 0  
Recused: 0  
Vacancy: 0

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On September 10, 2020, the language of the approved [resolution](#) was modified and the above Resolution includes  
Ayes: 3 (Heaney, Roberts, Yergin)  
Nays: 1 (Kramer)  
Abstain: 1 (Dunaway)

By: \_\_\_\_\_  
Robin Kramer, Chair

By: \_\_\_\_\_  
Meg Yergin, Secretary

Chair Kramer read a Statement of Dissent stating why she voted no on the area variance resolution.

I disagree with the resolution adopted by the Board, as I believe that a variance to reduce the number of Fair and Affordable Housing Units to be provided is an area variance and not a use variance. Section 7-712(1) of New York State Village Law and Section 342-89.1 define use variance as a variance for the “use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.” Area variance is defined as a variance “for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.” While the number of Fair and Affordable Housing Units does not relate to the dimensions or other physical requirements of the Village of Mamaroneck Code, the New York Court of Appeals has previously determined that a variance for the number of required parking spaces is an area variance, saying that: “while the change in this case is not strictly one of **area**, the **variance** is to be treated as an **area variance**. . . Stated differently, [the applicant’s] proposed alteration would conform to approved uses for Business A zones.” Matter of Colin Realty Co., LLC v. Town of N. Hempstead, 24 N.Y.3d 96, 106, 996 N.Y.S.2d 559, 564 (2014), citing Matter of Overhill Bldg. Co. v. Delany (28 NY2d 449, 453 (1971)). And in Mobil Oil Corp. v. Vill. of Mamaroneck Bd. of Appeals, 293 A.D.2d 679, 679-680, 740 N.Y.S.2d 456, 457-458, 2002 N.Y. App. Div. 2d., the court said: “The variance sought by the petitioner was an **area variance**, not a **use variance**, since the petitioner was not seeking to change the essential use of the property (*internal citations omitted*). . . The essential use of the property will remain as a gas station even with the erection of the canopy.”

So too in the instant case, the essential use of the property, which is the permitted use of the property, will remain residential, regardless of whether the applicant provides 2 FAHUs or 1 FAHU. To consider this a use variance means that the use of the property for affordable housing is essentially different than the use as market rate housing. Whether a unit is rented for \$100/month or \$10,000/month, the proposed essential residential use remains. The Village Zoning Code makes this clear. Section 342-30 lists the permitted uses in general commercial districts, and residence use is a permitted use under subsection (p). The use is subject to certain requirements set forth in Section 342-50, but this does not make it a “nonpermitted use.” Service stations, restaurants and clubs, among other permitted uses, are also listed in Section 342-30, subject to certain other sections, but this does not make them unpermitted uses.

Section 342-50 is in Article VII of the zoning chapter of the Mamaroneck Code, and is titled “Standards for uses subject to special permit procedure.” There are more than 10 uses which are listed in Article VII, none of which has ever been considered a non-permitted use by this Board.

The language of 342-50 says that special permits from the Planning Board are required for residence uses in commercial districts. Section 342-50.B provides six requirements for such uses where permitted, which include, among others, requirements for separate entrances for residential and commercial uses, limits on developments within 50 feet of certain waterways, and, in subdivision 6 of such section, the requirement that "residence uses must provide fair and affordable housing units in accordance with the following schedule." The use, as recognized by our code, is residential, and the affordability requirement is similar to the other requirements in the same section; in other words, they go to the standards for such buildings, not the use. It is worth noting that if this building had fewer than 5 residential units, no fair and affordable housing units would be required.

The resolution adopted by the board seems to make a point of noting that Section 342-3 of the Village Code includes definitions of fair and affordable housing unit and market rate housing unit. However, such definitions do not make such units a separate use.

While the provision of affordable housing is critical to our Village and society, the application was correctly submitted as an area variance and the building that will be built is and remains a permitted residential use.

Mr. Dunaway stated that he agrees with Chair Kramer.

Ms. Yergin stated that to have a multi residential building that's over 5 units without any affordable housing isn't permitted in the Village.

**3. 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 and Mr. Hartman are recused from this application. Ms. Dickson will be Counsel to the Board.

Chair Kramer:

- This is an appeal of 5 violations issued by the Village
- 19-4655 – allowed or caused to allow the creation an unlawful structure
- 19-4656 – alteration of 1 dwelling unit into 2
- 19-4657 – alteration of 1 dwelling unit into 2 without a C/O
- 19-4658 – loss of non-conforming use
- 19-4667 – non-conforming use altered without a permit
- Possible ramifications to others in the Village and whether or not the search warrant was illegal are not before us
- The impact on the Village is up to the trustees to change if we determine that the unit is a separate unit
- This isn't an area variance we don't have to determine impact on the neighborhood
- If the applicant wanted to challenge the search warrant, he could've had it adjudicated in Village Court
- I want to make sure that every member of the Board feels that they can make an impartial issue decision solely on the 5 issues before us without the other testimony

Chair Kramer and the 4 other Board members stated that they can make an impartial decision without consideration of the search warrant or the ramifications on other applicants in the Village which questions aren't before us.

Ms. Yergin:

- 4655 – creation of unlawful structure, I had trouble with this violation
- Unlawful structure is a term used in NYS Building Code, I didn't find it in the Village Code
- The violation references more persons permitted than allowed by law, it seems to be health and safety concerns not zoning concerns
- No one said that this is an unhealthy or unsafe structure
- According to 342-21(B)(9)(6) property owners are allowed to rent to 1 or 2 roomers or boarders
- I find this a roomer, there aren't too many people in the space
- I find in favor of the applicant in terms of 4655
- I don't think it's unlawful, unhealthy or unsafe and it doesn't have too many people in it
- The others seem to hinge on whether we find this to be a separate dwelling unit
- I don't find it to be a separate dwelling unit because Village Code describes a separate dwelling unit as having complete housekeeping facilities
- It lacks permanent cooking provisions as it doesn't have a stove or oven
- That was our precedent in the past
- The Property Maintenance Code states that portable devices such as microwaves aren't considered permanent housekeeping facilities
- The Property Maintenance Code states that rooming units should be arranged for privacy and be separate from other adjoining spaces
- It requires a door and a lock
- I don't think we'd be in conflict with the Board's determination of the STEM application
- That was to make a 3<sup>rd</sup> condo unit
- 4656 – alteration without a building permit, I don't think it was altered
- 4658 – loss of non-conforming use, he didn't create a separate dwelling unit
- 4667 – it's not a separate dwelling unit so he didn't alter a non-conforming use without permits

Mr. Dunaway:

- Mr. Tiekert admitted that he built an apartment for his mother on the 3<sup>rd</sup> floor
- It has a private electric meter and private entrance and he built walls
- It's a separate unit
- It was built in violation of the rules without a building permit
- In Mr. Tiekert's submitted documentation he calls the 3<sup>rd</sup> floor person a tenant, not a roomer
- No one knows when the stove was taken out
- The Multiple Dwelling Law says you don't need a kitchen to be classified a dwelling unit
- The definition of roomer and boarder is found under family in the Village Code
- I think we should uphold what the Building Department said and have Mr. Tiekert go through the appropriate channels

Ms. Heaney:

- I agree with Meg
- She read from the New York Property Maintenance Code definition of dwelling unit, which in part says “including permanent provisions for living, sleeping, eating, cooking and sanitation”
- Permanent provisions wouldn’t include countertop appliances, which by definition aren’t permanent
- The Property Maintenance Code specifically exempts coffee pots and microwaves as not being considered as cooking appliances
- Toaster ovens and other countertop appliances also wouldn’t be cooking appliances
- The Property Maintenance Code is pretty clear as to what is a dwelling unit and what isn’t
- She read the Property Maintenance Code definition of a rooming unit, which in part says “occupied or intended to be occupied for sleeping or living but not cooking purposes”
- The key issue has to do with cooking, are there permanent cooking facilities or not
- The unit didn’t have permanent cooking facilities when it was inspected
- We have an affidavit from Mr. Steinkamp saying it doesn’t have a stovetop or oven

Mr. Dunaway:

- New York State Code says the more stringent rules govern
- If the local municipality has more stringent rules and regulations, those rules and regulations govern over any Code
- The Multiple Dwelling Law says you don’t need a kitchen to be classified a dwelling unit

Chair Kramer:

- I agree with Doug
- She read from our Village Code which in part states “a dwelling unit is a building or self-contained portion thereof containing complete housekeeping facilities for only 1 family”
- If it’s 1 dwelling unit, the occupancy by Mr. Steinkamp has to be permitted some other place
- “A family is 1 or more persons occupying a dwelling unit and living together as a single housekeeping unit”
- Mr. Steinkamp and Mr. Tiekert don’t live together as a single housekeeping unit
- Rooming units aren’t a permitted use under our Code
- The fact that they’re permitted under the Property Maintenance Code doesn’t make them permitted in our Village
- A roomer or boarder is essentially someone who uses a portion of your house, they don’t have a separate apartment
- There’s no case law that says you have to have a stove
- To me it’s a separate apartment
- I would deny all of Mr. Tiekert’s appeals

Ms. Yergin:



- He can use the downstairs kitchen whenever he wants, that's why they're sharing a housekeeping unit
- 342-3 says a family can be 2 unrelated people living as 1 single housekeeping unit
- Putting a lock on a door doesn't characterize creating a dwelling unit

Chair Kramer:

- Case law makes clear what a single housekeeping unit is, it's something that looks like a family, it doesn't refer to the situation we have here

Ms. Roberts:

- This is a complicated issue it should be clarified because it's ambiguous
- We need clear criteria
- I feel an oven is often looked at as the determining factor when looking at a separate dwelling unit
- I think it's a dwelling unit

Ms. Yergin:

- Generally, in Zoning Law if there's ambiguity, the precedent is to find for the applicant

Chair Kramer:

- She read the definition of alteration from the Code, which in part says "to change or rearrange the existing facilities of a structure"
- I would say changing the walls and adding a door is changing the facilities
- I don't think he loses the non-conforming use for a 2 family

Ms. Roberts:

- At the last meeting the Building Department said he could remedy this by simply taking the lock off that door

Ms. Dickson:

- He would need to get the necessary permits

A straw poll was taken for Ms. Dickson to prepare the resolution denying the application.

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

Nays: Ms. Yergin, Ms. Heaney

As the resolution won't be voted on within 62 days of the hearing being closed, Ms. Sherer will contact the applicant to find out if he wants to grant the Board an extension. If he doesn't, the application will be denied.

## **C. APPROVAL OF MINUTES**

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

The minutes weren't discussed.

**D. ADJOURN MEETING**

**On motion of Ms. Yergin and seconded by Mr. Dunaway, the meeting was adjourned at 11:45 p.m.**

**All in favor?**

**Aye.**

DRAFT

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

All Board of Trustee Regular, ZBA, Planning Board, and HCZM Meetings are Broadcast Live on LMC-TV: Verizon FIOS Channels 34, 35 & 36 Cablevision Channels: 75, 76 & 77 And Streamed on the Web: [www.lmc-tv.org](http://www.lmc-tv.org)