

VILLAGE OF



MAMARONECK

OFFICE OF
THE
BUILDING
INSPECTOR

Village Hall
Mamaroneck, N.Y. 10543

TELEPHONE
(914) 777-7731

Address Reply to:
Building Department
169 Mt. Pleasant Avenue

ZONING BOARD

APPLICATION

PART 1

**Village of Mamaroneck, New York
Zoning Board of Appeals
APPLICATION PACKET**

INCLUDED IN THIS ZONING BOARD OF APPEALS APPLICATION PACKET ARE THE FOLLOWING:

- Rules of the Zoning Board of Appeals of the Village of Mamaroneck and Instructions for Filing an Appeal
- Checklist for Initial ZBA Submission, which must be completed and submitted with Applicant's initial submission
- Zoning Board of Appeals Application, including the following additional forms that also need to be submitted by the Applicant:
 - 1) Certification Form
 - 2) Short Form Environmental Assessment Form ("EAF")
(See below for DEC website information)
- **Post Application forms including:**
 - a) Sample Notice Letter to neighboring property owners
 - b) Proof of Service Affidavit
 - c) List of Property Owners Notified sheet
 - d) Affidavit Verifying Placement of Required Notice Sign

NOTE:

- A fillable PDF version of the Zoning Board of Appeals Application is available at:
www.village.mamaroneck.ny.us
- A fillable PDF version Short Form EAF is available at:
www.dec.ny.gov/docs/permits_ej_operations_pdf/seafpartone.pdf
- If a long form EAF is required a fillable Long Form EAF is available at:
www.dec.ny.gov/docs/permits_ej_operations_pdf/feafpart1.pdf

**RULES OF THE ZONING BOARD OF APPEALS
OF THE VILLAGE OF MAMARONECK
AND INSTRUCTIONS FOR BRINGING AN APPEAL
(EFFECTIVE 2007)**

I. Time to Take Appeal

Appeals to the Zoning Board of Appeals ("ZBA") must be taken within sixty (60) days after any order, requirement, decision, interpretation, or determination of the administrative official charged with the enforcement of the local law that is being appealed.

II. Applications

1. The Applicant can pick up a ZBA Application Packet ("Application Packet") at the Building Department. (Note: There are separate instructions and application for a Special Permit renewal only. IF there is a change in ownership, the Applicant cannot submit a Special Permit Renewal Application
2. All applications to the ZBA shall be made on the forms provided in the Application Packet. Chapter 342 of the Code of the Village of Mamaroneck requires that the original plus sixteen (16) copies each of the Village of Mamaroneck Zoning Board of Appeals Application ("Application"), supporting plans, surveys, and other required documents shall be filed with the Building Inspector, along with all prescribed fees, which shall be paid at the same time.
3. The Application shall be signed and notarized by the person(s) or entity making the application who must either: (1) have a possessory interest in the property (tenant, lessee, purchaser or owner); or (2) be aggrieved by an order, requirement, decision, interpretation or determination of order, requirement, decision, interpretation, or determination of an administrative official. If a corporation or other business entity is the Applicant, certain other disclosures are required as detailed in the Application.
4. It is the Applicant's responsibility to complete all portions of the Application, including the "Checklist for Initial Zoning Board of Appeals Submission", carefully and to provide, together with the Application, all necessary information. Careful attention must be given to answer all questions on the forms and to provide all documentation. Failure to submit the required documents and information will delay the Applicants application or result in its denial, since the ZBA cannot review or grant relief based upon incomplete applications.

5. Notwithstanding the foregoing, the ZBA, in its discretion, may waive the furnishing of any part of such information in any specific case.
6. Although employees of the Village may provide you with assistance, it is the Applicant's responsibility to be familiar and comply with all applicable laws and to submit all necessary plans, documents and information. Copies of the Village Code are available for the applicant's review at the Village Clerk's Office. The applicant may be represented at the ZBA hearing
7. A survey duly certified by a licensed surveyor within the past twelve months of the application date, which accurately depicts the current status of the property shall be submitted with each application.
8. All documents must be submitted 22 days prior to the scheduled meeting.
9. Every application shall be accompanied by an escrow fee as follows:

New Variance	\$750.00
Special Permit Application	\$750.00
Special Permit Renewal Application	\$350.00
Appeal or Interpretation Application	\$ TBD by Building Inspector

10. Every application shall be accompanied by a filing fee as follows:

Notice of Appeal, Interpretation or Variance	
1 or 2 family house	\$ 150.00
3 to 5 family house	\$ 150.00
All other residential and commercial	\$ 425.00
Fence permit	\$ 150.00
Boat and boat trailer storage	\$ 150.00
Sign variance and appeal	\$ 225.00
Special Permit (residential)	\$ 179.00
Special Permit (commercial)	\$ 425.00
Special Permit renewal	\$ 150.00

III. AGENDA

1. Each application for a new matter will be assigned a number- one (1) through six (6) for each ZBA agenda.
2. Applicants should be aware of the deadline to get on the next Agenda- Applications must be submitted (3) weeks prior to the meeting.
3. There will be no more than six (6) new matter matters addressed at each meeting.

****Therefore, even if an Applicant submitted the application in time to meet the submission deadline, there is no guarantee the matter will be placed on the agenda for the next meeting**

CHECKLIST FOR INITIAL ZONING BOARD OF APPEALS SUBMISSION

- ☒ Applicable fee
- ☒ 1 Electronic Copy of All documents submitted

Applicant must submit sixteen (16) copies of the following:

- ☒ Completed Application
- ☐ All Certificates of Occupancy or Temporary Certificate of Occupancy for the property, or Letter from the Building Department in lieu thereof
- ☒ Violations on the property and proof that they have been corrected
- ☐ *Photographs* of the property (3" X 5" or larger) that depict the location and potential impacts of your application
- ☒ *Accurate survey*** of the current status of the property which has been prepared and certified by a licensed surveyor *within the past twelve (12) months* of the application date, shall be submitted with each application.

****ALL SURVEYS SUBMITTED FOR A VARIANCE REQUEST *MUST SHOW THE SETBACKS FOR ALL STRUCTURES ON THE LOT TO THE PROPERTY LINE***

Please Note: Where a survey certified within the past 12 months is not available and the application does not involve any change to the exterior of the property, the ZBA will accept a certification by the owner that to his/her knowledge the existing survey accurately depicts the current status of the property

- ☐ *Certified drawings*, prepared by a registered architect or professional engineer, and other supporting documents
- ☐ *Written consent of the owner*, if you are not the owner of the property
- ☒ *Certification*, as required by NYS General Municipal Law
- ☒ State Environmental Quality Review (SEQRA) *Short or Long Environmental Assessment Form*
- ☒ *Copy of the Determination* being Appealed
- ☐ NOTE: See Instructions regarding submittal of Supplemental Materials or New Plans (Item VII in the Rules of the Zoning Board of Appeals of the Village of Mamaroneck and Instructions for Bringing an Appeal


Applicant's Signature

12/18/20
Date

**Village of Mamaroneck, New York
Zoning Board of Appeals
(Effective _ 2007)**

- ☐ 16 Copies
- ☐ Completed Application
- ☐ COs or Letter
- ☐ Violations, if any
- ☐ Photographs
- ☐ Survey
- ☐ Certified Drawings
- ☐ Consent
- ☐ Certification/Affidavit
- ☐ EAF
- ☐ Copy of Determination being appealed
- ☐ Riders if Application is Corp./Business Entity

Application # _____
 Agenda DATE: _____
 SP: _____
 AV: _____
 UV: _____
 Fence: _____
 Sign: _____
 Interpretation: _____

For Official Use Only

**Village of Mamaroneck, New York
Zoning Board of Appeals
APPLICATION**

Date 12/18 2020

TO: ZONING BOARD OF APPEALS-VILLAGE OF MAMARONECK
 123 Mamaroneck Avenue
 Mamaroneck., New York 10543

I (we) Stuart Tiekert 130B Beach Avenue, Mamaroneck, NY 10543

(Name of Applicant)

Of _____ Zip: _____

(Insert Complete Mailing Address)

Daytime Phone # 9146987495 Daytime Fax # _____ EMAIL: tiekerts@yahoo.com

Apply to the Board of Appeals regarding property located at 130 Beach Avenue

Mamaroneck, NY 10543

(Insert Location of Premises)

Bearing Village of Mamaroneck Tax Map Number. 4 54 27B
~~3264~~ ~~3~~ ~~401~~
 (Section) (Block) (Lot)

Village of Mamaroneck,
New York Zoning Board of Appeals (Effective 2007)

1. This is an Application for the following: check one (1) or more as applicable

- ☒ **Area Variance** - This is to use land in a manner not allowed because of dimensional or topographical requirements in the Zoning Code
- ☐ **Use Variance**- This is to allow land to be used in a manner or for a purpose which is prohibited or not allowed by the Zoning code.
- ☐ **Special permit**
- ☐ **Sign Variance**
- ☐ **Fence Variance**
- ☐ **Appeal or Interpretation** (*Specify Code Section*)
- ☒ **Other: Specify:** Interpretation - Attached

2. The Date and Description of the determination that is being appealed (a copy of the determination must be attached)

October 22, 2020 letter and November 5, 2020 email from the Building Inspector

3. What is the present zoning of the property? R-5

4. This Application must be made in the name of the person or entity that has a *possessory interest in the property such as a tenant, purchaser or owner*. If you are the owner, on *what date did you acquire title*? 1992 If you are not the owner, list the name and address of the owner and describe your relationship to the property and the date said relationship commenced: _____

IF you have acquired title to the property within the past two years, provide the name of the prior owner:

NOTE:

If the Applicant or Property Owner is a:

Corporation: Attach a separate Rider listing all the corporation's officers, shareholders and their percentage of share ownership.

Partnership: attach a separate Rider listing the type of partnership and identify the partners and their partnership interests.

LLC: attach a separate Rider listing the LLCs members

**Village of Mamaroneck,
New York Zoning Board of Appeals (Effective 2007)**

5. If someone else is authorized to act as your representative or to appeal with you on your behalf before the Board, his or her name, address and telephone number must be provided:

Name: _____
 Address: _____
 Telephone: _____
 Email: _____

6. Has a prior variance, special permit, or interpretation Application ever been submitted for this property?



Yes



No

If YES, you must attach copies of the prior variance or resolution and describe them:

In 2019 applied for an interpretation of violations- Resolution attached

7. List **all permits** you must obtain in order to complete the subject project of this Application (include all permits or approvals necessary from any federal, state, county, or local agency or department):
Building Permit applications submitted for an electrical and plumbing connectio
as well as a permit application for interior walls and doors.

**Village of Mamaroneck,
New York Zoning Board of Appeals (Effective 2007)**

8. Is the property subject to any covenants, easement, or other restrictions or encumbrances? If so, list and describe these. (You may be required to provide copies of these documents establishing same to the Board.) Please be advised that nothing herein or within board purview will alter or modify any existing contractual rights with respect to the subject property.

NO

9. ☒ Check here if there has been any illegal use or violations issued with respect to the property, regardless of whether it has been removed or adjudicated.

If so, describe and provide the date(s) and details, including if the violation continues:

Please see attached violations

10. The following are the provisions of the Village Code from which either a variance is sought or a permit is requested (you must itemize each variance you seek, since a variance cannot be obtained unless it is expressly requested and is the subject of public notice:

Article	<u>IX</u>	Section	<u>342-64</u>	Subsection	<u>A</u>
Article	<u> </u>	Section	<u> </u>	Subsection	<u> </u>
Article	<u> </u>	Section	<u> </u>	Subsection	<u> </u>
Article	<u> </u>	Section	<u> </u>	Subsection	<u> </u>

NOTE:

IF this is an application for A *USE VARIANCE*,
COMPLETE QUESTION 11 on page 10.

IF this is an application for an *AREA VARIANCE*,
COMPLETE QUESTION 12 on page 11

IF this is an application for ALL OTHER APPLICATIONS-
INCLUDING A SPECIAL PERMIT
COMPLETE QUESTION 13 on page 12.

**Village of Mamaroneck,
New York Zoning Board of Appeals (Effective 2007)**

11. A use variance may only be granted if it is determined that zonings regulations and restrictions cause the property owner unnecessary hardship. New York law provides that: "In order to prove such unnecessary hardship, the property owner shall demonstrate to the Board of Appeals that:

- 1) Under the applicable zoning regulations, the owner is deprived of a reasonable return for each and every permitted use under the zoning regulations for the particular district where the property is located This deprivation must be established by competent financial evidence;
- 2) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- 3) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- 4) the alleged hardship has not been self-created

You must set forth the facts which support your Application request. (Attach additional sheets, schedules, or other information that you want the Board to consider):

Please see attached

**Village of Mamaroneck,
New York Zoning Board of Appeals (Effective 2007)**

12. Under State law, the Board of Appeals must consider the following factors in making a decision on your request for an area variance:

- 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

Please see attached

- 2) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance;

Please see attached

- 3) whether the requested area variance is substantial;

Please see attached

- 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Please see attached

- 5) whether the alleged difficulty was self-created...

Please see attached

13. If this Application is not for an area or use variance, provide information that supports your Application. You must refer to the appropriate sections of the Village Code and to other legal requirements necessary for the board to consider your application

(Article X Special Permit) § 342-71 Action on referral.

A. That the location and size of the use, the nature and intensity of the operations and traffic involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to the type, arrangement and capacity of streets giving access to it and the hours of operation are such that the proposed use will be in harmony with the appropriate and orderly development of the district in which it is located.

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

C. That operations in connection with the proposed use will not be objectionable by reason of noise, fumes, smoke, dust, vibration, glare, intensity or flashing of lights.

D. That the parking areas to be provided will be of adequate capacity for the particular use, properly located and suitably screened from adjoining residential uses and that the entrance and exit drives shall be laid out so as to achieve maximum safety.

E. That, where they are applicable, the standards and requirements established or approved by the Village Engineer have been satisfactorily met as evidenced by his certification and that all necessary approvals of any other governmental agency or board have been or will be obtained by the applicant.

**Village of Mamaroneck,
New York Zoning Board of Appeals (Effective 2007)**

It is my responsibility as the Applicant to complete this Application completely and carefully, and to provide sixteen (16) copies of this Application, together with all necessary papers, plans, surveys, documents or other required information.

Failure to submit the required documents and information will delay my Application or result in its denial, since the ZBA cannot review or grant relief to incomplete Applications.

It is my responsibility to comply with all related requirements in presenting this Application, and the ZBA reserves the right to request additional documentation and/or drawing, and to condition any requested relief upon the filing of covenants and restrictions.

Although employees of the Village may provide me with assistance, I understand it is my responsibility to be familiar and comply with all applicable laws and to submit all necessary papers, plans, surveys, documents or other required information. I understand that copies of the Village Code are available for my review at the Village Clerks office as well as the Village Website and that I may be represented at the ZBA hearing.

I HEREBY CERTIFY THAT ALL STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE.


(Applicant's Signature)

Sworn to before me this 18th

Day of December, 2020


Notary Public

ROBERT G. STARK
Notary Public, State of New York
No. 01ST4846635
Qualified In Westchester County
Term Expires November 30, 2021

CERTIFICATIONStuart Tiekert

(Required by New York State General Municipal Law)

states as follows:

(Applicant's name)

1. I am interested in this application for a variance or special use permit now pending before the Village of Mamaroneck Board of Appeals,
2. I reside at 130B Beach Avenue
3. The nature of my interest in the aforesaid application is as follows:
Owner

4. If the Applicant or owner is a corporation, list the corporation's officers:

President: _____ Vice President: _____

Secretary: _____ Treasurer: _____

5. Do any of the following individuals have an interest, as defined below, in the owner or Applicant:

- a. Any New York State officers, or
- b. Any officer or employee of the Village of Mamaroneck, Town of Rye, Town of Mamaroneck, or Westchester County.

☒ Yes☐ No

For the purpose of this disclosure, an officer or employee shall be deemed to have an interest in the owner or Applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:

- a. is the Applicant or owner, or
- b. is an officer, director, partner or employee of the Applicant or owner, or
- c. legally or beneficially owns or controls stock of corporate Applicant or owner; or
- d. Is a party to an agreement with such an Applicant or owner, express or implied, whereby he may receive any payment or other benefit, whether or not for service rendered dependent or contingent upon the favorable approval of such application.

A PERSON WHO KNOWINGLY AND INTENTIONALLY FAILS TO MAKE SUCH DISCLOSURE SHALL BE GUILTY OF A MISDEMEANOR AS PROVIDED IN GENERAL MUNICIPAL LAW, SECTION 809

If "Yes," state the name and nature and extent of the interest of such individual:

Stuart Tiekert 130B Beach Avenue


(Name & Residence)

Owner

(Extent of interest)



Applicant's Signature

Sworn to before me this 18th day of December, 2020

NOTARY PUBLIC

ROBERT G. STARK

Notary Public, State of New York

No. 01ST4846635

Qualified in Westchester County

Term Expires November 30, 2021

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information

Name of Action or Project:

130B Beach Avenue

Project Location (describe, and attach a location map):

130 Beach Avenue, Mamaroneck NY, 10543

Brief Description of Proposed Action:

Request for a determination or variance.

Name of Applicant or Sponsor:

Stuart Tiekert

Telephone: 914-698-7495

E-Mail: tiekerts@yahoo.com

Address:

130B Beach Avenue

City/PO:

Mamaroneck

State:

NY

Zip Code:

10543

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.

NO

YES



2. Does the proposed action require a permit, approval or funding from any other government Agency?
If Yes, list agency(s) name and permit or approval:

NO

YES



3. a. Total acreage of the site of the proposed action? .66 acres
b. Total acreage to be physically disturbed? acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? .66 acres

4. Check all land uses that occur on, are adjoining or near the proposed action:

☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☒ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify):
☐ Parkland

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	N/A <input type="checkbox"/> <input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input type="checkbox"/>	<input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Stuart Tiekert</u> Date: <u>12/18/20</u>		
Signature: <u><i>Stuart Tiekert</i></u> Title: <u>OWNER</u>		

Interpretation

This is a request for 1) an interpretation that the Building Inspector's October 22, 2020 letter (Attachment 1) and November 5, 2020 email (Attachment 2) to me requiring alterations to my dwelling unit may not be enforced because they are unrelated to the Zoning Board of Appeals Resolution on 130B Beach Avenue, and/or alternatively, (2) a variance to allow my third floor to be occupied by a roomer without requiring changes to the configuration.

The Building Inspector's letter has seven-items that require me to either remove or reconfigure parts of my condominium that existed prior to my purchase or remove items where I am aware of no code prohibition barring the improvements. In a follow-up email, Mr. Tapolacci instructed, "If you wanted to keep your tenant/boarder in the residence he would have to live in your second-floor apartment, share your kitchen and bath facilities and reside as a common household residence or sleeping place." My tenant already lives in my condo unit. Neither he nor I wish to share kitchen, bath or sleeping area.

It is unreasonable to impose "sharing" or cohabitation requirements for my tenant when the Village of Mamaroneck zoning Code provides no restrictions on where or how a roomer/boarder may be housed. No Village official has identified any public health or safety interest in requiring two adults living in a large, multi-story condominium to share kitchens and bath facilities, or bedrooms. The present configuration is much safer than the changes proposed by the building inspector.

Below are the seven items from the letter with why I believe they are inconsistent with the ZBA's Resolution.

1. "With your application for a Building Permit, supply Architectural drawings showing the partial second floor stair and landing and complete third floor proposed finished space."

2. "Remove the 220-volt electric line down to the panel. Remove any backsplash outlets that serviced the kitchen. Remove the separate 3rd floor meter and associated wiring for the same."

Complaint 19-4653 was a violation under 164-4 of Village Code and was for "Inspection required; procedure and reinspection." I have had a licensed electrician inspect the work and he has informed that the installation is to code. As I understand it, my electrician has also informed the Building Department that the work is to code and is awaiting a Building Permit so he may have the work inspected by an electrical inspector.

I see nothing in the ZBA resolution of Village Code that prohibits a 220 volt electrical line in my dwelling.

The ZBA Resolution does not require that any electrical lines be removed.

3. "Remove the kitchen sink and faucet and cap all plumbing lines back to its source."

Complaint 19-4654 was for a violation of "278-11. Plumbing and drainage permits:fees".

I have had a licensed plumber inspect the work and he has informed me and the Building Department that the work is to code.

I see nothing in Village Code that prohibits ~~two~~ a sink on my third floor den.

The ZBA Resolution does not require that a sink be removed

4." Remove all wall and base kitchen cabinetry and countertops. Restore the area now used as a kitchen back to a den."

I read nothing in the violations, ZBA resolution or Village Code that prohibits having cabinets or countertops in my third floor den.

5." Remove the lower section of sheetrock walls in kitchen to expose any penetrations that were made to extend mechanical utilities. All penetration have to be fire caulked and inspected."

The only mechanical connection made through the lower section of the sheetrock wall is the 220V line that a licensed electrician has said is installed

to code. If it needs additional fire caulking that can be done without removing any walls.

6. Remove the complete walls that enclosed the previously open stairwells.

Village code permits up to two roomers or boarders as an accessory use in a residential dwelling unit. Section 404.1 of both the IMPC and the NYSPMC, which are both incorporated into the NYS Uniform Building Code requires that "Dwelling units.....shall be arranged to provide privacy and be separate from adjoining spaces."

7. Remove the doors and deadbolt locks at the entrance to the third-floor stair.

Please see the response to number six.

Additionally, the IPMC at 304.18.1 requires "Door. Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the use of keys, special knowledge or effort and shall have a minimum lock throw of 1 inch (25mm)."

Removal of the doors and locks would prohibit my using any portion of my third floor for a roomer and deny me a reasonable return on my property.

If the ZBA does not decide the interpretations in my favor I will comply with the noticing requirements and submit the required escrow amount to request a variance

Variance

If the ZBA determines that the Building Inspector's direction is correct, I am requesting in the alternative, a variance pursuant to Village of Mamaroneck Code §342-64A to permit the use of my third floor as a rooming unit as defined in the IMPC and NYSPMC. "Rooming units" were ~~and~~ expressly defined by Village of Mamaroneck code Chapter 226 "Housing Standards" until 2014 when the Village formally adopted NYS Building Codes. Now "rooming units" are described in the IPMC and my third floor satisfies the definition of rooming unit.

A variance to allow my third floor to be used for a roomer depends on the ZBA applying a balancing test requiring that the benefit to the neighborhood outweighs the detriment to the community. Allowing my third floor to be used for a roomer promotes affordable housing – a Village of Mamaroneck zoning goal. My third floor is safe, commodious and affordable for a single tenant. Not only does Village of Mamaroneck housing become affordable for my tenant but it becomes more affordable for me because I can earn income from residential space that is more than I require.

My roomers have been assets to the neighborhood. For example, one teacher lived on my third floor for 13 years, befriending neighbors, getting to know children and sometimes tutoring them. My current tenant has done painting jobs for neighbors and pitched in maintaining the property. These folks have been and continue to be neighborhood assets.

I know of no detriment to the community. Two unrelated people can live in a dwelling unit without infringing on the concept of a single-family residential district.

The granting of a variance will cause no undesirable change to the neighborhood. My third floor has been occupied by a roomer for the last 25 years. My present and past tenants have formed lasting relationships to the neighborhood and community. Eliminating the use of my third floor for a roomer would alter the essential character of the neighborhood more than continuing it.

There will be no impact on the environment because my dwelling unit has only two occupants –the owner and the roomer—as it has had for decades and neither places demands on the school system.

When purchasing my unit in 1992, the existing electrical panel, electrical meter, electrical wiring, door, locks were all existing. The added cabinets, countertops and sink, as far as I understand, are permitted in a residential dwelling unit if properly installed.

Prior to the issuance of a number of violations in 2019 I was unaware that there was any need for a variance for my third floor to exist as presently configured. The variance is the minimum necessary.

This hardship began when the Village gave violations for space that had been previously inspected for use by a tenant and approved. This hardship is not self-created hardship but rather arose from a change in treatment by the Building Department.

Attachments

1. Building Inspector's 10/22/20 letter
2. Building Inspector's 11/5/20 email
3. Survey
4. 2019 Violations
5. Chapter 226
6. ZBA Resolution on Application 1i-2020

Attachment 1

VILLAGE OF



MAMARONECK

OFFICE OF THE
BUILDING INSPECTOR

*Village Hall
Mamaroneck, N.Y. 10543*

TELEPHONE
914-777-7731

FAX
914-777-7792

*Address Reply to:
Building Department
169 Mt. Pleasant Avenue*

Mr. Stuart Tiekert
130 Beach Avenue
Mamaroneck, New York 10543

October 22, 2020

Dear Mr. Tiekert,

As a result of the Zoning Board Resolution dated September 10, 2020, the following steps are necessary to bring your condominium unit back into conformity:

- 1- With your application for a Building Permit, supply Architectural drawings showing the partial second floor stair and landing and complete third floor proposed finished space.
- 2- Remove the 220-volt electric line down to the panel. Remove any backsplash outlets that serviced the kitchen. Remove the separate 3rd floor meter and associated wiring for same.
- 3- Remove the kitchen sink and faucet and cap all plumbing lines back to its source.
- 4- Remove all wall and base kitchen cabinetry and countertops. Restore the area now used as a kitchen back to a den.
- 5- Remove the lower section of sheetrock walls in kitchen to expose any penetrations that were made to extend mechanical utilities. All penetrations have to be fire caulked and inspected.
- 6- Remove the complete walls that enclosed the previously open stairwells.
- 7- Remove the doors and deadbolt locks at entrance to the third-floor stair.

When all of the above items are restored, your residence can be returned to the correct legal non-conforming use.

If you have any questions, please don't hesitate to contact the Building Department.

Sincerely,

Frank Tivolacci
Frank Tivolacci

Building Inspector
Village of Mamaroneck

Cc: Robert Spolzino
Jerry Barberio

Attachment 2

Re: 130 Beach Ave

From: Frank Tavalacci (ftavalacci@vomny.org)
To: tiekerts@yahoo.com
Cc: rspolzino@abramslaw.com; jbarberio@vomny.org; sjimison@vomny.org
Date: Thursday, November 5, 2020, 06:29 PM EST

Mr. Tiekert. If you wanted to keep your tenant/border in the residence he would have to live in your second floor apartment, share your kitchen and bath facilities and reside as a common household residence or sleeping place. Your focus should be responding to the ongoing violation. Frank Tavalacci

Sent from my iPhone

On Nov 5, 2020, at 5:39 PM, Jerry Barberio <jbarberio@vomny.org> wrote:

Ok. Good. Frank should reiterate what he said in the letter to answer the questions he is asking and cite him when his time is up. Portico Painting has to move out.

Thank you,

Jerry Barberio
Village Manager
Village of Mamaroneck

On Nov 5, 2020, at 5:36 PM, Robert Spolzino <RSpolzino@abramslaw.com> wrote:

Frank already addressed this in his letter. Frank told him he has to take out the kitchen. This is just Stuart being Stuart.

Robert Spolzino, Esq.

<image0a7c87.JPG>

Partner

Tel: 914-607-7010

Direct Dial: 914-607-7102

Fax: 516-368-9596

Email: RSpolzino@Abramslaw.com

<image4bac6.JPG>

Westchester Office

81 Main Street

Suite 306

White Plains, New York 10601

CONFIDENTIALITY NOTICE: This e-mail may be an attorney-client communication and may contain information that is privileged and confidential and is therefore subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient you are prohibited from copying, forwarding, distributing, disseminating, or otherwise viewing this e-mail and any attachments hereto. Please notify the sender and delete this e-mail if you are not the intended recipient.

From: Jerry Barberio <jbarberio@vomny.org>
Sent: Thursday, November 5, 2020 5:33 PM
To: Frank Tavalacci <ftavalacci@vomny.org>; Robert Spolzino <RSpolzino@Abramslaw.com>; Christy Mason <CMason@Abramslaw.com>
Subject: Fwd:

Caution: This email originated outside of the organization

Frank,

Legal can help us with this, but I would say he needs to remove the door and what is left of the kitchen by Monday. A roomer has to have access to his kitchen and fridge. That is what I think not what I know.

Thank you,

Jerry Barberio
Village Manager
Village of Mamaroneck

Begin forwarded message:

From: stuart tiekert <stuart@tiekerts@yahoo.com>
Date: November 5, 2020 at 4:44:56 PM EST
To: Frank Tivolacci <ftivolacci@vomny.org>
Cc: Robert Spolzino <RSpolzino@Abramslaw.com>, Jerry Barberio <jbarberio@vomny.org>, Shawn Jimison <sjimison@vomny.org>
Subject: Re: 130 Beach Ave

Dear Mr. Tivolacci,

Thank you for the reminder.

I did receive an email from Kathy Guagdanolo with your October 22 communication and told to contact your office with any questions.

On October 23 I responded with two questions.

1. Do I have to evict my tenant or am I allowed to have a roomer based on the ZBA resolution?
2. What do I have to [do to] alter my unit to be allowed to have a roomer?

Please let me know.

Sincerely,

Stuart Tiekert

On Thursday, November 5, 2020, 04:16:46 PM EST, Frank Tavalacci
<ftavalacci@vomny.org> wrote:

Mr. Tiekert It has been almost 60 days since the Zoning Board Resolution directed you to bring the third floor dwelling unit into conformity. My correspondence to you of October 22,2020 outlined the steps necessary to achieve this goal. To date we have not received any application from you to conform to the zoning board directive. Due to the fact that this has been an open violation since September of 2019 and if this violation remains open to December 10 2020 we will issue a court appearance ticket for this ongoing violation Sincerely Frank Tavalacci

Attachment 3

68

Attachment 4

NOTICE OF VIOLATION



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

9/11/2019

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4653

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

PLEASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND THE NEW YORK STATE BUILDING CODE

at the premises hereinafter described in that you have allowed or caused to allow:
WORK WITHOUT A PERMIT- ELECTRICAL

ON 9/9/2019, AT PROPERTY 130 BEACH AV

I observed that AN ELECTRICAL INSTALLATION WAS MADE IN THE THIRD FLOOR OF THE UNIT WITH PERMIT. A 220 VOLT LINE WAS INSTALLED IN A ROOM THAT IS DESIGNATED AS A DEN IN A PRIOR SUBMITTED TO THE ZONING BOARD OF APPEALS IN 1986.

Contact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

Description of Violation: 164-4. Inspection required; procedure and reinspection.

A. Inspections shall be made during the installation of an electrical device or wiring system to assure compliance with this chapter. It shall be a violation of this chapter for any person, firm or corporation to install or cause to be installed or to alter or to repair electrical wiring for light, heat or power in or on properties in the Village until a permit has been issued and an application for inspection has been filed with a duly authorized and qualified independent electrical inspection agency or bureau.

YOU MUST RESPOND TO THIS NOTICE OF VIOLATION WITHIN 5 DAYS TO DISCUSS A RESOLUTION (THIS NOTICE.

FAILURE TO RESPOND TO THE AFORESAID AND TO COMPLY WITH THE APPLICABLE PROVISIONS OF LAW MAY RESULT IN AN ORDER TO REMEDY.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

NOTICE OF VIOLATION



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

9/11/2019

VICTOR

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4654

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

PLEASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND THE NEW YORK STATE BUILDING CODE

at the premises hereinafter described in that you have allowed or caused to allow:
WORK WITHOUT A PERMIT- PLUMBING

ON 9/9/2019, AT PROPERTY 130 BEACH AV

I observed that A PLUMBING INSTALLATION WAS MADE IN HE THIRD FLOOR UNIT WITHOUT A PERM KITCHEN SINK WAS INSTALLED IN A ROOM THAT THAT IS DESIGNATED AS A DEN IN A PRIOR PLAN SUBMITTED TO THE ZONING BOARD OF APPEALS IN 1986.

Contact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

Description of Violation: 278-11. Plumbing and drainage permits; fees.

A. Application. Before any plumbing, drainage system or plumbing system work is started in the Village or be additions or alterations are made to old work, an application on regular printed forms, properly filled out in int signed by a licensed master plumber, shall be filed in the office of the Inspector, together with plans and des in duplicate, showing and describing the proposed work and repairs to existing plumbing, drainage system or plumbing system. No plumbing, drainage system or plumbing system work shall proceed until the appropriat and specifications referred to in this section have been approved, in writing, by the Inspector.

B. Modifications. Modifications of original approved plans shall not be permitted, unless such changes are ap by the Inspector, on written request, made by the owner, architect or licensed master plumber.

C. Permit fees. Plumbing permit fees, payable to the Village of Mamaroneck, are as set forth in Chapter A34

Charlotte Mountain

9/9/2019

Date Issued

NOTICE OF VIOLATION



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

9/10/2019

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4655

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

PLEASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND/OR THE NEW YORK STATE BUILDING CODE

at the premises hereinafter described in that you have allowed or caused to allow:
UNLAWFUL STRUCTURE

ON 9/9/2019, AT PROPERTY 130 BEACH AV

observed that UNIT B, THIRD FLOOR WAS ALTERED CONTRARY TO LAW. THERE IS AN ELECTRICAL INSTALLATION WITHOUT PERMITS, A PLUMBING INSTALLATION WITHOUT PERMITS, AND A SEPERATE DWELLING UNIT CREATED WITHOUT PERMITS. THESE CONDITIONS RENDER THE SPACE UNLAWFUL.
Contact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

Description of Violation: 101.2.7.4.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under the 2015 IPMC, or was erected, altered or occupied contrary to law.

YOU MUST RESPOND TO THIS NOTICE OF VIOLATION WITHIN 5 DAYS TO DISCUSS A RESOLUTION OF THIS NOTICE.

FAILURE TO RESPOND TO THE AFORESAID AND TO COMPLY WITH THE APPLICABLE PROVISIONS OF LAW MAY RESULT IN AN ORDER TO REMEDY.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

NOTICE OF VIOLATION



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

9/12/2019

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4656

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

PLEASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND/OR THE NEW YORK STATE BUILDING CODE

At the premises hereinafter described in that you have allowed or caused to allow:
PERMIT REQUIRED- ALTERATION

ON 9/9/2019, AT PROPERTY 130 BEACH AV

It was observed that UNIT B HAS BEEN ALTERED FROM ONE DWELLING UNIT TO TWO DWELLING UNITS. THIS VIOLATION INCLUDES BUT IS NOT LIMITED TO THE RECONFIGURATION AND ADDITION OF INTERIOR DOORS AND LOCKING HARDWARE.

Contact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

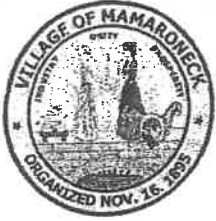
Description of Violation: VOM 126-4
Building permits.

Building permits required. Except as otherwise provided in Subsection B of this section, 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 the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Building Inspector.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

NOTICE OF VIOLATION



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

9/12/2019

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4656

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

YOU MUST RESPOND TO THIS NOTICE OF VIOLATION WITHIN 5 DAYS TO DISCUSS A RESOLUTION OF THIS NOTICE.

FAILURE TO RESPOND TO THE AFORESAID AND TO COMPLY WITH THE APPLICABLE PROVISIONS OF LAW MAY RESULT IN AN ORDER TO REMEDY.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

NOTICE OF VIOLATION



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

9/10/2019

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4657

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

PLEASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND/OR THE NEW YORK STATE BUILDING CODE

At the premises hereinafter described in that you have allowed or caused to allow:
CERTIFICATE OF OCCUPANCY REQUIRED- UNIT B THIRD FLOOR

ON 9/9/2019, AT PROPERTY 130 BEACH AV

It was observed that UNIT B HAS BEEN CONVERTED FROM A SINGLE DWELLING UNIT TO TWO DWELLING UNITS. BOTH UNITS ARE OCCUPIED. NO CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED FOR THE CHANGE OF USE.

Contact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

Description of Violation: 126-7 A Certificates of occupancy or certificates of compliance required. A certificate of occupancy or certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy or certificate of compliance.

YOU MUST RESPOND TO THIS NOTICE OF VIOLATION WITHIN 5 DAYS TO DISCUSS A RESOLUTION OF THIS NOTICE.

FAILURE TO RESPOND TO THE AFORESAID AND TO COMPLY WITH THE APPLICABLE PROVISIONS OF LAW MAY RESULT IN AN ORDER TO REMEDY.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

NOTICE OF VIOLATION



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

9/11/2019

cord Owner of Title: TIEKERT, STUART
dress: 130B BEACH AV

Complaint: 19-4658

MAMARONECK, NY 10543

rcel ID: 4-54-27B

EASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND/OR
IE NEW YORK STATE BUILDING CODE

the premises hereinafter described in that you have allowed or caused to allow:
ONING CESSATION OF NONCONFORMING USE

9/9/2019, AT PROPERTY 130 BEACH AV

bserved that THE NONCONFORMING USE OF THE BUILDING HAS CEASED. A NONCONFORMING TWO
AMILY HAS BEEN ALTERED WITHOUT PERMITS AND APPROVALS TO A THREE FAMILY. A PERMIT MUST
E APPLIED FOR TO RETURN THE STRUCTURE TO A CONFORMING USE IN THE ZONE.

ontact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

escription of Violation: Chapter 342. Zoning
ticle IX. Nonconforming Uses and Buildings

If any nonconforming use of a building ceases for any reason for a continuous period of more than six months o
changed to a conforming use or if the building in or on which such use is conducted or maintained is moved for
y distance whatever, for any reason, any future use of such building shall conform and be subject to the prevailir
andards specified by this chapter for the district in which such building is located.

OU MUST RESPOND TO THIS NOTICE OF VIOLATION WITHIN 5 DAYS TO DISCUSS A RESOLUTION OF
HIS NOTICE.

AILURE TO RESPOND TO THE AFORESAID AND TO COMPLY WITH THE APPLICABLE PROVISIONS OF
AW MAY RESULT IN AN ORDER TO REMEDY.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

NOTICE OF VIOLATION



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

9/12/2019

Record Owner of Title: TIEKERT, STUART
Address: 130B BEACH AV

Complaint: 19-4667

MAMARONECK, NY 10543

Parcel ID: 4-54-27B

PLEASE TAKE NOTICE THERE EXISTS A VIOLATION OF THE VILLAGE OF MAMARONECK CODE AND/OR THE NEW YORK STATE BUILDING CODE

at the premises hereinafter described in that you have allowed or caused to allow:
ALTERATIONS NOT IN CONFORMITY WITH APPLICABLE ZONING CODE

ON 9/9/2019, AT PROPERTY 130 BEACH AV

observed that A PRE-EXISTING NONCONFORMING 2 FAMILY STRUCTURE LOCATED IN ZONE R-5 HAS BEEN ALTERED WITHOUT PERMITS AND ZONING BOARD OF APPEALS APPROVAL TO A THREE FAMILY STRUCTURE.

The permitted uses in the zone are contained in Village of Mamaroneck Code § 342-21. One-Family Residence Districts.

Contact Code Enforcement Officer, Charlotte Mountain at (914) 825-8714, Email Cmountain@VOMNY.org.

Description of Violation: VOM 342-9 Compliance required; interpretation and scope.

A. No building shall be erected, constructed, moved, altered, rebuilt or enlarged nor shall any land, water or building be used, designed or arranged to be used for any purpose except in compliance with this chapter.

YOU MUST RESPOND TO THIS NOTICE OF VIOLATION WITHIN 5 DAYS TO DISCUSS A RESOLUTION OF THIS NOTICE.

FAILURE TO RESPOND TO THE AFORESAID AND TO COMPLY WITH THE APPLICABLE PROVISIONS OF LAW MAY RESULT IN AN ORDER TO REMEDY.

Charlotte Mountain
Code Enforcement Officer

9/9/2019
Date Issued

Attachment 5

PRIVACY — The ability of a person or persons to carry on an activity without interruption or interference, either by sight or sound, by unwanted individuals.

PUBLIC AREAS — Areas available for common use for storage purposes or for mechanical dwelling.

PUBLIC AREAS -- Areas available for common use for storage purposes or for mechanical dwelling.

PUBLIC SEWER — Sewer operated by a public authority for public utility and available for public use.

RAT HARBORAGE — Any place where rats or seek shelter.

RATPROOFING — A form of construction that will prevent the ingress or egress of rats to or from a given space or building or gaining access to food, water or harborage. It consists of the closing and keeping closed of every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk gratings, sidewalk openings and other places that may be reached and entered by rats climbing, burrowing or other methods, by the use of materials impervious to rat gnawing or by other methods approved by the enforcement officer.

RODENTICIDE — Any substance, not a fumigant, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

ROOMING HOUSE — A building or part thereof which contains one (1) or more rooming units and which space is occupied or intended to be occupied by five (5) or more persons who are not husband or wife, son or daughter, mother or father or sister or brother of the owner or operator.

ROOMING UNIT -- Any room or group of rooms forming a single habitable unit used or intended to be used for living or sleeping but not for cooking or eating purposes.

RUBBISH — All combustible and noncombustible waste, except garbage.

SPACE HEATER -- A self-contained heating appliance of the radiant type or the convection type and intended for any other fixture or equipment, such as one (1) space heater, which heats only a limited space or area.

STRUCTURE -- Combination of any materials, whether permanent or temporary, forming a construction, including building or portable, forming a "structure" shall be construed as though followed by the word "structure" or "structure thereof."

RECEIVED FACILITIES -- Facilities paid for, furnished or

TEMPORARY HOUSING — Any tent, trailer or other structure supplied and under the control of the owner or operator, which is designed to be transported for human shelter to the ground, to another site and which is not attached to any utility system for more than thirty (30) consecutive days. Any tent, trailer or other structure occupied for more than thirty (30) consecutive days shall meet all requirements of this chapter.

TOILET ROOM OR COMPARTMENT — Enclosed space containing one (1) or more toilets which may also contain one (1) or more lavatories, urinals and other plumbing fixtures.

VENTILATION -- Supply and removal of air to and from any space by natural or mechanical means.

VENTILATION, MECHANICAL -- Ventilation by power-driven devices.

VENTILATION, NATURAL — Ventilation by opening to enter air through windows, skylights, doors, louvers or stacks with or without wind-driven devices.

Whenever the words "building," "rooming house," "dwelling unit," "rooming unit," "premises" or "structure" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

MAMARONECK CODE

(5)

Maintenance and work shops and storage rooms for bedding, furniture, supplies and tenants' equipment and effects.

(6)

Rooms or space for the incidental sale or display of food, candy and cigar stands.

(7)

Garages within a residential building or on the premises thereof used primarily for the storage of passenger cars, motor vehicles.

APPROVED --

Approved by the Building Inspector under the provisions of this chapter or the rules and regulations adopted pursuant thereto or approved by the authority designated by law or by this chapter.

BASEMENT --

The portion of the building that is not measured from clear floor to ceiling, above the average finished grade of the ground adjoining the building.

BATHROOM --

Enclosed space containing one (1) or more bathtubs, showers, or both, and which may also include toilets, lavatories or fixtures serving similar purposes.

BUILDING --

A combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed, when used herein, as though followed by the words "or part or parts thereof," unless the context clearly requires a different meaning.

BUILDING INSPECTOR --

The Building Inspector of the Village of Mamaroneck or his legally designated representative.

BULK CONTAINER --

A garbage container having a capacity of two (2) cubic yards or greater, which is equipped with fittings for hydraulic and/or mechanical emptying, unloading and/or removal.

CELLAR --

The lowermost portion of the building partly or totally underground having one-half (1/2) or more of its depth

HOUSING STANDARDS

measured from clear floor to ceiling, below the average finished grade of the adjoining building.

COMBUSTIBLE -- Material or combination of materials used in the construction of a building which, when heated to any temperature up to one thousand three hundred fifty degrees Fahrenheit (1,352° F.) [seven hundred fifty degrees Celsius (150° C.)] during an exposure for five (5) minutes, will ignite.

CONDEMN -- To adjudge unfit for use or occupancy.

DEPARTMENT -- The Building Department of the Village of Mamaroneck.

DWELLING UNIT -- One (1) or more rooms located within a residential building and forming a single habitable unit, containing living, cooking, sanitary and sleeping facilities therein, arranged with one (1) family with whom may reside not more than two (2) lodgers or boarders.

EGRESS -- An arrangement of exit facilities to secure a safe means of exit from a building.

ENFORCEMENT OFFICER -- The Building Inspector of the Village of Mamaroneck and the Assistant Building Inspector.

EXIT -- A means of departure from the interior of a building to the exterior at a street or to a yard, court or passageway leading to public open area, including doorways, passageways, hallways, corridors, stairways, ramps, fire escapes and all other elements necessary for egress or escape.

EXTERIOR PROPERTY AREAS -- Open space on the premises and vacant open space on adjacent premises.

EXTERMINATION -- The control and extermination of insects, rodents, vermin and other pests by eliminating their

Attachment 6

**AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE
OF MAMARONECK, HELD ON SEPTEMBER 10, 2020, THE FOLLOWING
RESOLUTION WAS ADOPTED:**

APPLICATION NO. 11-2020

Name: Stuart Tiekert
Premises: 130 Beach Avenue ("Premises")
District: R-5
Village Tax I.D.: Section 4, Block 54, Lot 27B

RECEIVED
CLERK'S OFFICE
2020 OCT - 1 P 4: 04
VILLAGE OF MAMARONECK

WHEREAS, the Premises is located in the R-5 "One Family Residence District" and classified in Village Building Department records as legally pre-existing nonconforming with three dwelling units in two principal structures, one two-family residential structure having three stories (the "Building") and a third dwelling in a garage structure with a mailing address of 515 Pine Street; and

WHEREAS, the three dwelling units at the Premises have been held in condominium ownership since 1991 as evidenced by the recording of a declaration which included floor plans for a duplex unit on the top two floors of the two-family structure ("Unit B") with the Westchester County Clerk at Liber 10175 at Page 266; and

WHEREAS, prior to the condominium conversion in 1986, then property owner STEMM Associates, a general partnership of five individuals that included Stuart Tiekert ("Appellant"), made an unsuccessful appeal #25A-1986 to this Board for a variance to convert the non-conforming two-family use of the Building into a three-family use by separating the two floors of the duplex apartment, now Unit B, into two separate dwelling units to be occupied separately and eventually offered for sale; and

WHEREAS, on September 9, 2019, pursuant to a court issued search warrant, the Village Code Enforcement Officer and the Fire Inspector conducted an inspection of Unit B at the Premises, the approximately 2,400 square foot duplex condominium unit owned by Appellant located on the second and third floors of the Building during which they observed and recorded evidence that Appellant was in violation of several provisions of the Village of Mamaroneck code and the New York State building code including the addition of a separate dwelling unit on the upper floor of Unit B

WHEREAS, the new unit is comparable to the configuration previously denied by this Board in 1986 and supports the Code Enforcement Officer's conclusion that Appellant had created an illegal fourth dwelling unit at the Premises; and

WHEREAS, based on the inspection of Unit B, the Code Enforcement Officer on September 26, 2019 served seven Notices of Violation on Appellant who was given five days to respond to the notices and discuss their resolution with the Building Department: (1) Complaint #19-4653 alleging violations of Village Code § 164-4 with the installation of a 220-volt electricity line without inspection or permit; (2) Complaint 19-4654 alleging violation of Village Code § 278-11 with the installation of plumbing without inspection

or permit; (3) Complaint #19-4655 alleging violation of NYS Building Code § 101.2.7.4.4 with the alteration of the second floor of Unit B by installing an electrical outlet and plumbing and creating an additional dwelling unit without permits; (4) Complaint #4656 alleging violation of Village Code § 126-4 with the failure to obtain building permits to alter and reconfigure Unit B from a single dwelling unit into two dwelling units by enclosing the interior stairway and adding interior doors and locking hardware; (5) Complaint #19-4657 alleging violation of Village Code § 126-7 A by absence of certificates of occupancy or compliance for the conversion of Unit B into two dwelling units constituting a change in use; (6) Complaint #19-4658 alleging violation of Village Code § 342-64 C with the alteration of the nonconforming two-family use of the building without permits and approvals for use as a three-family dwelling; and (7) Complaint #19-4667 alleging violation of Village Code § 342-9 with the alteration of a preexisting nonconforming two-family structure located in Zone R-5, without permits or other approval, into a three family structure; and

WHEREAS, upon Appellant's failure to respond to the Notices within the stated five-day timeframe, on September 26, 2019 Appellant was duly served with Orders to Remedy which provided Appellant with the opportunity to remedy or cure the violations by a deadline of October 28, 2019; and

WHEREAS, on October 28, 2019 Appellant submitted an application to this Board appealing five of the seven violations¹ as enumerated in Code Enforcement Officer complaints #19-4655 (NYS Building Code §101.2.7.4.4²), #19-4656 (Village Code §126-4³), #19-4657 (Village Code §126-7 A⁴), #19-4658 (Village Code §342-64 C⁵) and #19-4667 (Village Code §342-9⁶) and seeking an interpretation that the referenced violations do not apply to the current configuration, use and occupancy of Unit B and requesting that "if the Board determines the situation at the Premises requires a Special Permit" then Appellant requests the ZBA to grant a special permit (Appeal #11-2020); and

¹ Appellant does not appeal the violations in Complaint #19-4653 (Village Code § 164-4) or Complaint 19-4654 (Village Code § 278-11) concerning his unlawful installation of a 220-volt electricity line and plumbing without inspection or permit.

² Pursuant to NYS Building Code §101.2.7.4.4 An unlawful structure is one "found in whole or in part to be ... erected, altered or occupied contrary to law."

³ Pursuant to Village Code §126-4 "...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, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof...." "General alteration" is defined in Section 201 of the NYS Uniform Code as "any construction or renovation of an existing structure other than a repair or addition."

⁴ Village Code §126-7A requires that a "certificate of occupancy or certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another."

⁵ In accordance with the mandates of Village Code §342-64C if "any nonconforming use of a building ceases for any reason for a continuous period of more than six months ... any future use of such building shall conform and be subject to the prevailing standards specified by this chapter for the district in which such building is located."

⁶ Village Code §342-9 commands that "no building shall be erected, constructed, moved, altered, rebuilt or enlarged nor shall any ... building be used, designed or arranged to be used for any purpose except in compliance with this chapter."

WHEREAS, after due notice this Board conducted a public hearing, opened on January 9, 2020 and adjourned to March 5, 2020, April 2, 2020, May 7, 2020 and June 4, 2020⁷ on which date the hearing was closed, over the course of which the Appellant was provided opportunity to present the basis for the requested relief and the Board received testimony, submissions and written and verbal comments from all parties desiring to be heard on the matter; and

WHEREAS, on July 23, 2020 following public deliberation on the record and the polling of its members, the Board requested a draft resolution be prepared detailing the basis for denial of Appellant's appeal; and

WHEREAS, on September 10, 2020 after duly considering all the proof and evidence before it, the Board makes the following determinations, findings and interpretations in connection with Appeal 11-2020:

- **The permitted use of the Premises is as a non-conforming use comprising three dwelling units in two principal structures: the Building, which has a two-family residential structure with a duplex unit and a separate first floor unit, and a separate garage structure with one residential unit⁸.**
- **Exhibit I to the Affidavit of Village Code Enforcement Office Charlotte Mountain dated January 3, 2020 ("Mountain Affidavit") contains photographs documenting walls enclosing a previously open stairway and doors with deadbolt locks, all constructed and installed by alterations to the previous legal configuration of Unit B without any permits, which serve to separate the second and the third floors of the duplex by providing distinct entrances for each floor of the duplex from the second floor landing.**
- **Exhibit I to the Mountain Affidavit reveals that Appellant altered the second floor of duplex Unit B by:**
 1. **installing plumbing to supply hot and cold water to a kitchen sink and a 220 volt electrical service sufficient to power an electric stove and oven in violation of Village Code §278-11 and §164-4⁹.**
 2. **installing a kitchen sink in a countertop which is connected to the plumbing and lower kitchen cabinetry having a vacant, standard-sized gap with a 200 volt electric receptacle in the wall sufficient to accommodate and operate a conventional, combination stove and oven appliance.¹⁰**
- **The Mountain Affidavit provides sworn statements and exhibits evidencing that the second floor of Unit B includes living space, heretofore labeled as a "den" on the floor plans annexed to the recorded Declaration of Condominium for the Premises, a portion of which is now clearly arranged, designed, equipped, used and dedicated solely for the preparation of food for consumption by the**

⁷ Appellant granted an extension to permit this Board to make its determination later than 62 days from the close of the public hearing.

⁸ The uses of the first floor in the Building and the garage structure are not at issue in this case.

⁹ Appellant has not challenged these violations for alterations made without permits. Neither of these violations is currently stayed from enforcement by the Village.

¹⁰ Later photos submitted on February 26, 2020 by Appellant show a bookcase installed in the stove opening in the cabinetry covering the 220 volt receptacle apparent in Ms. Mountain's photos.

occupant separate and apart from Appellant's cooking facilities on the first floor of Unit B. Appellant's illegal alteration of his "den" to create a separate dwelling unit has jeopardized the legal non-conforming status of the entire Premises for use as three residences.

- The Mountain Affidavit indicates that she could find no evidence of any permits, certificates or other approvals having been issued by the Building Department for Unit B since 1986 and Appellant provided no evidence that any such permits were issued, and none of those previous permits, certificates or approvals are related to the alterations which resulted in the current configuration of Unit B or the addition of a third dwelling unit on the top floor of the Building.
- In his March 10, 2020 affidavit, the occupant of the upper floor of Unit B, Paul Stainkamp, states that he "share[s]" the basement laundry and a daily copy of the New York Times" with Appellant but indicates that he "principally uses the third floor" and has "no need" to use living area, bedrooms or bath facilities on Appellant's floor. He admits to only occasionally accessing the first floor to adjust the thermostat when Appellant is not home or using Appellant's kitchen "when I need to." All of these statements support the conclusion that Appellant has added a third, separate dwelling unit in the Building in violation of Village Code §126-4 (Complaint 19-4656).
- The record before this Board provides no evidence that Appellant shares the living space on the second floor of Unit B with Mr. Stainkamp, but rather that Appellant accesses the second floor only in a role more analogous to a landlord.
- The Mountain Affidavit states that the Building is served by three separate electric meters and in his affidavit, Mr. Stainkamp confirms that he pays the electric service associated with the upper floor of Unit B which is separately metered from Appellant's space.
- Appellant alleges that Mr. Stainkamp is a roomer or a boarder¹¹, neither of which is defined in the Village Code. However, the use by Mr. Stainkamp of the third floor does not appear akin to that of roomer or boarder. Mr. Stainkamp clearly maintains his own household on the upper floor of Unit B in space that provides complete housekeeping and sanitary facilities separate and apart from Appellant's facilities on the first floor, and the parties only regularly and actively share common space in the Building consisting of the landing outside of their respective locked doors on the second floor landing, the stairway to the ground floor entrance to the Building, and the laundry and shared storage area in the basement.
- Appellant also argues that Mr. Stainkamp occupies the upper floor of Unit B as a "rooming unit", a term not defined in the Village Code, and points to the definition found in the Property Maintenance Code¹². However, a "rooming unit" is not listed as a permitted principal or accessory use in an R-5 zoning district and there is no evidence that there was a rooming unit at the Premises at the time the non-conforming use was established. The use of the Premises to

¹¹ Village Code §342-21 (B)(6) permits as an accessory use "not more than two roomers or boarders" in One Family Residence Districts.

¹² Chapter 2 "Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes."

include a rooming unit would be an increase in the degree of non-conformity and thus require a variance.

- The Stainkamp Affidavit reveals that he pays a “monthly fee” to Appellant to live on the upper floor, considers their arrangement to be a “tenancy” and considers his space to be self-sufficient in terms of its size and living facilities such that he has no need to regularly obtain access to or use Appellant’s space and the facilities downstairs.
- A dwelling unit is defined in the Village Code as “a building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family. Family is defined in the Village Code as “not more than two unrelated persons living together as a single housekeeping unit.” The occasional use by the tenant on the third floor of the stove on the second floor does not mean that the applicant and his tenant are a single housekeeping unit. The two occupants of Unit B do not function or live together as a “family” as defined in Village Code §342-3¹³
- As altered by Appellant in violation of NYS Building Code § 101.2.7.4.4 (Complaint 19-4655), the upper floor of the duplex Unit B meets the definition in Village Code §342-3 of “Dwelling Unit” because it is an “entirely self-contained portion” of a building “containing complete housekeeping facilities” and the addition of this dwelling unit violates Village Code § 126-4 (Complaint #19-4656).
- Although the Village Code at Section 342-1 states that such code shall be read in context with other laws, that section further states that, if there is a clear conflict between any provisions of this chapter and that of any other ordinance of the Village, the terms of this chapter shall be deemed to prevail.
- The totality of the use and occupancy of the third floor unit by Mr. Stainkamp demonstrates that the third floor is a separate dwelling unit;
- The legal use of the Building is a two-family non-conforming use and any alteration thereof shall require a special permit or a variance pursuant to Section 342-64 of the Village Code, and no such special permit or variance was obtained.

NOW THEREFORE, on motion of Ms. Kramer, seconded by Ms. Roberts:

BE IT RESOLVED, in accordance with the records, proceedings and above findings, the Board hereby

1. Denies the Appeal #11-2020 as it relates to Complaints #19-4655, #19-4656, #19-4658 and #19-4667 and supports the interpretation that the Building, a preexisting non-conforming two-family residence, has been altered without permit, authority or certificate of occupancy by Appellant’s actions illegally creating a third, separate dwelling unit on the top floor of Unit B in contravention of NYS Building Code §101.2.7.4.4, Village Code §126-4, Village Code §342-64 C and Village Code §342-9.

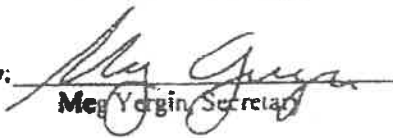
¹³ §342-3 FAMILY – One or more persons occupying a dwelling unit and living together as a single housekeeping unit in a familial relationship or not more than two unrelated persons living together as a single housekeeping unit.

2. Approves the Appeal #11-2020 as it relates to Complaint #19-4657 and disagrees that the Building has lost the status of preexisting non-conforming use as a two-family residence and decides that as long as the Appellant remedies the illegal alterations to eliminate the separate dwelling unit he retains his non-conforming use status
3. Denies the Applicant's request for a special permit because there is no provision in the Village Zoning Code or elsewhere to issue a special permit to legalize Appellant's alterations to Unit B which have resulted in the unlawful addition of a third dwelling unit in the Building which results in the increase of non-conformity at the Premises of an additional dwelling unit. Nor has Appellant cited to a specific provision of law or ordinance which would permit the issuance by the Board of a special permit for such purpose.¹⁴ Appellant has offered no testimony or evidence in support of his request for a special permit and his request that the Board "offer zoning guidance" and his conclusion that the remedy for the unlawful alteration "would appear to be a 'special permit'...." are without basis, authorization or justification in law.

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

Date Approved: September 10, 2020

By: 
Robin Kramer, Chair

By: 
Meg Yergin, Secretary

¹⁴ Village Code §342-94 requires an applicant to refer to the specific provision of law or ordinance when seeking an interpretation or special permit. Section 342-64 authorizes a special permit to allow a nonconforming use to be extended throughout those parts of a building, but only if they were manifestly arranged or designed for such use prior to the time of enactment of the chapter provision that made the use nonconforming use. The use of the third floor as a separate dwelling unit was not designed for such use, as evidenced by the prior denial of a variance to permit such use.