

# Village of Mamaroneck



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Mamaroneck, NY 10543*

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OFFICE OF  
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January 21, 2021

Hon. Robin Kramer and Members of the Zoning Board of Appeals  
of the Village of Mamaroneck  
123 Mamaroneck Avenue  
Mamaroneck, NY 10543

*Re: 130 Beach Avenue*

Dear Chair Kramer and Members of the Zoning Board of Appeals:

I write on behalf of the Building Department in response to Mr. Tiekert's letter of January 19, 2021 and in opposition to his appeal and application for a variance from the Building Inspector's October 22, 2020 letter and November 5, 2020 email. Mr. Tiekert's appeal should be dismissed and his attempt to avoid the consequences of this Board's September 10, 2020 decision should be rejected.

The relevant facts are not in dispute. On September 12, 2019, Code Enforcement Officer Charlotte Mountain issued seven notices of violation to Mr. Tiekert with respect to his residence at 130 Beach Avenue. Mr. Tiekert appealed to this Board. On September 10, 2020, this Board granted Mr. Tiekert's appeal only to the extent of holding that he had not forfeited the pre-existing non-conforming status of the building at 130 Beach Avenue "as long as the Appellant remedies the illegal alterations to eliminate the separate dwelling unit." A copy of this Board's decision is attached as Exhibit A.

The Village's Planning Director served the resolution on Mr. Tiekert on October 2, 2020. On October 28, 2020, Mr. Tiekert commenced a proceeding in the Supreme Court of the State of New York, pursuant to CPLR article 78, to set aside this Board's determination. Mr. Tiekert has also appealed to and requested a variance from the New York State Department of State with respect to the violations of the New York State Uniform Fire Prevention and Building Code.

After receiving a copy of the decision, Mr. Tiekert asked Building Inspector Frank Tivolacci, by email, what he would have to do to bring the premises into compliance. Mr. Tivolacci responded by letter dated October 22, 2020. On October 23, 2020, and again on November 5, 2020, Mr. Tiekert emailed Building Inspector Frank Tivolacci 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 alter my unit to be allowed to have a roomer?” Mr. Tavolacci responded, on November 5, 2020, as follows: “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.” Copies of the correspondence are attached as Exhibit B.

On November 16, 2020, following my discussion with the Board of Trustees at its November 9, 2020 meeting, I sent a letter to Mr. Tiekert, advising him that if he did not correct the violations within 30 days, the Board of Trustees would consider whether to institute an action in the Supreme Court to recover civil penalties, as it did with AVC Properties. A copy of that letter is attached as Exhibit C. Mr. Tiekert has not responded to that letter.

On January 11, 2021, the Board of Trustees authorized me to commence an action in the Supreme Court of the State of New York to enjoin Mr. Tiekert’s continuing violation of the Village Code and to recover the civil penalties, as provided by law. The Board of Trustees further directed me to advise Mr. Tiekert that the action will not be commenced if he brought the premises into compliance by January 31, 2021. A copy of that letter is attached as Exhibit D.

For the reasons that follow, the Building Department respectfully requests that Mr. Tiekert’s application be denied and that Mr. Tiekert be required to comply with this Board’s decision.

**1. Mr. Tiekert is requesting a rehearing, not an interpretation.**

The Zoning Board of Appeals determined that Mr. Tiekert created an illegal dwelling unit in his apartment at 130 Beach Avenue. Mr. Tiekert’s current application, presented as an appeal from the Building Inspector’s letter and email, effectively requests that the Zoning Board rehear that matter. There is no basis for doing so.

Pursuant to Village Law § 7-712-a(12), a rehearing requires the unanimous vote of the Board:

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur.

In the letter and email from which Mr. Tiekert appeals, the Building Inspector did nothing other than respond to Mr. Tiekert’s request for information as to how he could bring his unit into compliance. This Board had already found that Mr. Tiekert had altered the second floor of his unit to replace a den with a kitchen. Specifically, the Board found that “a portion of [what was the den] is now clearly arranged, designed, equipped, used and dedicated solely for the preparation of food for consumption by the occupant separate and apart from Appellant’s cooking facilities on the first floor of Unit B.” The Board concluded:

Appellant’s illegal alteration of his “den” to create a separate dwelling unit has jeopardize the legal nonconforming status of the entire premises for use as three residences.

This Board also found that the second floor of Mr. Tiekert’s unit was a separate dwelling unit within the meaning of Village Code § 342-3 because it is “‘an entirely self-contained portion’ of a building ‘containing complete housekeeping facilities.’” The evidentiary basis for Board’s determination in this regard was the photographic evidence submitted by Code Enforcement

Officer Charlotte Mountain:

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 third floors of the duplex by providing distinct entrances for each floor of the duplex from the second floor landing.

Mr. Tiekert's "appeal" is that the Building Inspector was wrong in advising him that in order to comply with this Board's decision he had to remove the kitchen facilities that this Board found had made the den kitchen and the walls and doors that this Board found had made the third floor a separate dwelling unit. Essentially, Mr. Tiekert argues that despite this Board's decision that he had created an illegal apartment, he does not have to do anything but call his tenant a "roomer" in order to make it not an illegal apartment.

Mr. Tiekert's apparent rationale is that the Building Inspector is unreasonably imposing "'sharing' or cohabiting requirements" that prohibit him from maintaining his "roomer" in what this Board has found to be a separate dwelling unit. This is wrong on a number of levels.

To begin with, the Building Inspector is not imposing any requirements. The Building Inspector has simply advised Mr. Tiekert that in order to come into compliance he must remove the facilities and physical features related to the second floor of his unit that this Board has found make it an illegal apartment.

This is not about Mr. Tiekert's "roomer," who is actually a tenant, since they live in separate dwelling units. This is about the configuration, facilities and physical features of Mr. Tiekert's unit, regardless of who lives where and how. Mr. Tiekert illegally created a second dwelling unit out of the second floor of Mr. Tiekert's unit. It is a dwelling unit whether Mr. Tiekert lives there, Mr. Stainkamp lives there or no one lives there. As this Board found, the second floor of Mr. Tiekert's unit is a dwelling unit within the meaning of Village Code § 342-3 because it is "'an entirely self-contained portion' of a building 'containing complete housekeeping facilities.'" Unless those complete housekeeping facilities and the walls, doors and locks that make it entirely self-contained are removed, the second floor of the unit will continue to be a separate dwelling unit. That is what Mr. Tivolacci advised Mr. Tiekert and that is all that he advised him.

Mr. Tiekert's argument that he is allowed to have a "roomer" has also been debunked by this Board, which found specifically that "the use by Mr. Stainkamp of the third floor does not appear akin to that of a roomer" because:

"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.

Calling Mr. Stainkamp a "roomer" does not make him one, even if a "rooming unit" were permitted without a variance.

Rehearing is appropriate where there are new facts. *See Matter of Pettit v. Board of Appeals of the Town of Islip*, 160 A.D.2d 1006, 1007 (2d Dep't 1990), quoting from (*Matter of Hoerner v.*

*Tormey*, 24 A.D.2d 597 (2d Dep't 1965) ("a zoning board of appeals may entertain an application for a rehearing when new facts are presented changing the aspects of the case \* \* \* the board is not required to entertain or grant the application for a rehearing"). There are no new facts in Mr. Tiekert's application, only an attempt to obtain a rehearing without asking for one.

**2. Mr. Tiekert has not demonstrated the undue hardship that is required for a variance.**

Mr. Tiekert requests a variance from Village Code § 342-64(A), which authorizes the Zoning Board of Appeals to grant a variance for the "alteration, enlargement or new construction" of a non-conforming use. It provides as follows:

A building or structure the use of which does not conform to the use regulations for the district in which it is situated shall not be altered, enlarged or extended, unless the use therein is changed to a conforming use. Notwithstanding the above, the Board of Appeals, after public notice and hearing, may grant a special permit to allow a nonconforming use to be extended throughout those parts of a building which were manifestly arranged or designed for such use prior to the time of enactment of the chapter provision that made the use nonconforming, and provided that no structural alterations, other than those required for health or safety, are made therein. Any other alteration, enlargement or new construction shall require a variance to be granted by the Board of Appeals.

The application must be denied because Mr. Tiekert is not requesting a variance to allow the "alteration, enlargement or new construction" of a non-conforming use. He is requesting a variance to add an additional non-conforming use – a "rooming unit" – to an existing non-conforming use. There is no authority for this Board to grant such a variance. But even if there were, Mr. Tiekert has failed to submit any evidence of undue hardship, which is what he is required to prove to obtain a variance for a non-conforming use.

There are already three dwelling units on this property zoned for single-family use. 130 Beach Avenue is in the R-5 zoning district, in which the only permitted residential use, other than a planned residential use, is "one-family dwellings, not to exceed one such dwelling on each lot." Village Code § 342-21. 130 Beach Avenue, however, is a prior lawful non-conforming two-family residence. There is a third dwelling on the premises above the garage, which was permitted by a variance granted by the Zoning Board of Appeals.

What Mr. Tiekert requests is not an "alteration, enlargement or new construction" of this non-conforming use. It is an entirely new use. An alteration or enlargement of a non-conforming use is when a property owner wants to make the existing non-conforming structure on the property larger. See, e.g., *Matter of Calvi v. Zoning Bd. of Appeals of City of Yonkers*, 238 A.D.2d 417 (2d Dep't 1997); *Matter of Levine v. Korman*, 185 A.D.2d 323 (2d Dep't 1992). Mr. Tiekert wants to introduce an entirely new, and otherwise not permitted, use into the non-conforming use. That requires a use variance. See *Matter of Rudolf Steiner Fellowship Found. v. De Luccia*, 90 N.Y.2d 453, 460 (1997) ("the creation of additional apartments in a nonconforming multifamily building is at odds with the underlying zoning of petitioner's property for single-family residences, and is an impermissible extension of a nonconforming use.") And if it could be permitted, it would require proof of "undue hardship." See *Matter of DePaola v. Zoning Bd. of Appeals of Vil. of Dobbs Ferry*, 226 A.D.2d 371 (2d Dep't 1996). The standard of proof for that is clear:

To qualify for a use variance premised upon unnecessary hardship there must

be a showing that (1) the property cannot yield a reasonable return if used only for permitted purposes as currently zoned, (2) the hardship resulted from unique characteristics of the property, (3) the proposed use would not alter the character of the neighborhood, and (4) the alleged hardship was not self-created. With regard to the first element, the applicant must establish that no permissible use will yield a reasonable return by means of proof, in dollars and cents form, of all matters bearing upon the return available under existing zoning.


*Matter of Westbury Laundromat, Inc. v. Mammina*, 62 A.D.3d 888, 891 (2d Dep't 2009) (internal quotation marks and citations omitted); *see* Village Law § 7-712-b(2)(b). There is no such proof here.

In addition, Mr. Tiekert is requesting a variance that this Board has already denied. In 1986, STEMM Associates, the entity that owned the property at the time and of which Mr. Tiekert was a member, applied for the same variance that Mr. Tiekert seeks today. This Board denied the variance, finding that there were no circumstances unique to the property, that the strict application of the zoning ordinance in effect at the time would not deprive the property owner of its reasonable use and that "[g]ranting the variance will constitute a radical departure from the general purpose and intent of the Ordinance; it will be otherwise detrimental to the general welfare of the Village and its residents." A copy of the decision is attached as Exhibit E. There is nothing in Mr. Tiekert's submission which suggests that the situation has changed. A zoning board may depart from its prior decision only by articulating a valid basis for doing so. *See Matter of Knight v. Amelkin*, 68 N.Y.2d 975, 977 (1986). There is no basis for doing so here.

Finally, Mr. Tiekert is barred by the condominium declaration from seeking a variance. The declaration provides that: "The use of a Residential Unit shall be consistent with the terms of the Certificate of Occupancy and any applicable zoning laws or ordinances, effective on the date of the recording of this Declaration, and as may be amended from time to time." Declaration § 8.2. Copies of the relevant pages of the declaration are attached as Exhibit F. Nothing in Mr. Tiekert's submission suggests that the declaration has been amended to accommodate his request, that he has the consent of the other unit owners in the condominium or that he has even notified them of his application.

For all of these reasons, the Building Department submits that Mr. Tiekert's application should be denied.

Respectfully submitted,

  
Robert A. Spolzino  
Village Attorney

cc: Mayor Murphy and the Board of Trustees  
Jerry Barberio, Village Manager

# Exhibit A



## Village Zoning Board of Appeals

Department of Planning and Development  
169 Mount Pleasant Avenue - Third Floor  
Mamaroneck, New York 10543  
(914) 825-8758

Thomas Murphy and Board of Trustees  
Mayor

Robin Kramer, Esq.  
Chair

October 2, 2020

Stuart Tiekert  
130 Beach Avenue  
Mamaroneck, NY 10543

**RE: 130 Beach Avenue (Village Section 4, Block 54, Lot 27B)**

Mr. Tiekert:

At the Zoning Board Meeting held on September 10, 2020, the above application was approved by Board Members present.

Enclosed is a copy of the signed Zoning Board Resolution from the Zoning Board which is now filed in the Building Department and Village Clerk's Office. You may now follow up with the Building Department or continue with other land use board review; whichever, is appropriate.

If any comments, questions and/or concerns arise, please contact me.

Respectfully,

William Long  
Planning Director

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**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. 1i-2020

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

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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 violations<sup>1</sup> as enumerated in Code Enforcement Officer complaints #19-4655 (NYS Building Code §101.2.7.4.4<sup>2</sup>), #19-4656 (Village Code §126-4<sup>3</sup>), #19-4657 (Village Code §126-7 A<sup>4</sup>), #19-4658 (Village Code §342-64 C<sup>5</sup>) and #19-4667 (Village Code §342-9<sup>6</sup>) 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 #1i-2020); and

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<sup>1</sup> 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.

<sup>2</sup> 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."

<sup>3</sup> 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."

<sup>4</sup> 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."

<sup>5</sup> 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."

<sup>6</sup> 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, 2020<sup>7</sup> 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 unit<sup>8</sup>.
- 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 §164-4<sup>9</sup>.
  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.<sup>10</sup>
- 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

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

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

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

<sup>10</sup> 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 boarder<sup>11</sup>, 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 Code<sup>12</sup>. 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

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

<sup>12</sup> 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 §342-3<sup>13</sup>
- 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 #1i-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.

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<sup>13</sup> §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.<sup>14</sup> 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

<sup>14</sup> 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.

## Exhibit B

# VILLAGE OF



# MAMARONECK

OFFICE OF THE  
BUILDING INSPECTOR

*Village Hall  
Mamaroneck, N.Y. 10543*

TELEPHONE  
914-777-7731

FAX  
914-777-7782

*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 3<sup>rd</sup> 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 Tapolacci  
Building Inspector  
Village of Mamaroneck

Cc: Robert Spolizio  
Jerry Barberio

THE FRIENDLY VILLAGE



Re: 130 Beach Ave

From: Frank Tivolacci (ftivolacci@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 Tivolacci

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**

<imaged4bac6.JPG>

**Westchester Office**

**81 Main Street**

**Suite 306**

**White Plains, New York 10601**

<image432ac6.JPG>

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 Tivolacci <ftivolacci@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.tiekert@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 Tivolacci  
<[ftivolacci@vomny.org](mailto:ftivolacci@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 Tivolacci

# Exhibit C

# Village of Mamaroneck



*Village Hall at the Regatta  
P.O. Box 369*

*123 Mamaroneck Avenue  
Mamaroneck, NY 10543*

<http://www.villageofmamaroneck.org>

OFFICE OF  
**ROBERT A. SPOLZINO**  
VILLAGE ATTORNEY

Tel (914) 777-7737  
Fax (914) 777-7769

November 16, 2020

**By Email (tiekerts@yahoo.com) & Certified Mail**

Mr. Stuart Tiekert  
130 Beach Avenue  
Mamaroneck, NY 10543

*Re: 130 Beach Avenue*

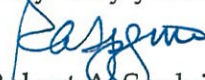
Dear Mr. Tiekert:

On September 10, 2020, the Zoning Board of Appeals denied your appeal from the Building Inspector's determination that you altered the premises at 130 Beach Avenue without permit, authority or certificate of occupancy by illegally creating a third, separate dwelling unit on the top floor of Unit B, in violation of the New York State Building Code and chapters 126 and 342 of the Village Code.

Mamaroneck Village Code § 126-15(C) provides that any person who violates the New York State Building Code and Chapter 126 of the Village Code is liable, in addition to any other penalties, to a civil penalty of \$250 per day for each day of the violation.

The Board of Trustees has directed me to advise you that if you do not remedy the violations as directed by the Building Inspector within 30 days, it will consider whether to authorize the commencement of an action in the Supreme Court of the State of New York to recover the civil penalties provided for by law.

Very truly yours

  
Robert A. Spolzino  
Village Attorney

cc: Jerry Barberio, Village Manager (jbarberio@vomny.org)  
Frank Tavalacci, Building Inspector (ftavalacci@vomny.org)



Exhibit D

# Village of Mamaroneck



*Village Hall at the Regatta  
P.O. Box 369*

*123 Mamaroneck Avenue  
Mamaroneck, NY 10543  
<http://www.villageofmamaroneck.org>*

OFFICE OF  
**ROBERT A. SPOLZINO**  
VILLAGE ATTORNEY

Tel (914) 777-7737  
Fax (914) 777-7769

January 12, 2021

By Email (tiekerts@yahoo.com) & Certified Mail

Mr. Stuart Tiekert  
130 Beach Avenue  
Mamaroneck, NY 10543

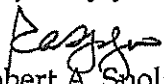
Re: 130 Beach Avenue

Dear Mr. Tiekert:

At its meeting last evening, the Board of Trustees authorized me to commence an action in the Supreme Court of the State of New York for an injunction prohibiting your continued use of the premises at 130 Beach Avenue in violation of the Village Code and to recover the civil penalties provided for by law.

The Board of Trustees further directed me to advise you that the action will not be commenced if you bring the premises into compliance by January 31, 2021.

Very truly yours

  
Robert A. Spolzino  
Village Attorney

cc: Jerry Barberio, Village Manager (jbarberio@vomny.org)  
Frank Tavalacci, Building Inspector (ftavalacci@vomny.org)



7019 2280 0002 2481 2071

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<input type="checkbox"/> Return Receipt (hardcopy)	\$	
<input type="checkbox"/> Return Receipt (electronic)	\$	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	
<input type="checkbox"/> Adult Signature Required	\$	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	

Postage

\$

Total Postage and Fees

\$

Postmark  
Here

Send to

Mr. Stuart Tickert

Street and Apt. No., or PO Box No.

130 Beach Ave

City, State, ZIP+4®

Manhasset Neck, NY 10943

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

## EXHIBIT E

EXHIBIT "I"

Board of Appeals. Name: STEMM ASSOCIATES  
Village of Mamaroneck Premises: 130 Beach Avenue  
No. 25A-1986 District: R-5  
Section 4, Block 54, Lots 25, 26, 27, 25A1

The following resolution was moved by Mr. Rogers and seconded by Mr. Mustich:

WHEREAS, Stemm Associates has appealed to this Board from a determination dated May 16, 1986 made by the Building Inspector; and

WHEREAS, said determination denied appellant's application to convert a nonconforming two-family use to a three-family use in an R-5 District on the grounds that the proposed conversion would violate Section 443.2 of the Zoning Ordinance; and

WHEREAS, the appellant has petitioned, pursuant to Section 704 of the Zoning Ordinance, to vary or modify the provisions of Section 443.2 (Nonconforming Use of Buildings) with respect to the above premises, for permission to convert the two-family premises to a three-family premises in an R-5 District; and

WHEREAS, after due notice, this Board held a public hearing on such appeal on June 5, 1986, at which time it heard all parties and received their evidence and proofs; and the public hearing having been closed; and members of this Board having made personal inspection of the premises and being familiar therewith; and

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

1. Appellant has not established to the satisfaction of this Board that unnecessary hardship exists in the instant matter.

2. The physical conditions applying to the premises are not peculiar to such land or building; they do apply generally to land and buildings in the neighborhood; they have resulted from an act of the appellant or a predecessor in title subsequent to the adoption of this Ordinance.

3. The strict application of the provisions of this Ordinance would not deprive the appellant of the reasonable use of such land or building; the granting of the variance is not necessary for the reasonable use of the land or building.

4. Granting this variance will constitute a radical departure from the general purpose and intent of the Ordinance; it will be injurious to the neighborhood; it will change the character thereof; it will be otherwise detrimental to the general welfare of the Village and its residents.

5. Appellant is not entitled to a variance.

No. 25A-1986

BE IT RESOLVED, in accordance with the vote of this Board taken at public hearing on June 5, 1986, that the determination appealed from is hereby denied.

On the resolution:

In favor: Rogers, McCarty, Carducci,  
Mustich, Messina

Opposed: None

## EXHIBIT F

# Declaration of Condominium

NOV. 20, 1977



\*G00191354\*

LIBER 10175 PAGE 266



WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE  
(THIS PAGE FORMS PART OF THE INSTRUMENT)

ADDITIONAL COMMENTS

RECORD AND RETURN

TITLE COMPANY NUMBER

THE FOREGOING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT N.R.  
(SEE CODES FOR DEFINITIONS)

THE PROPERTY IS SITUATED IN  
WESTCHESTER COUNTY, N.Y. IN

- 02 TOWN OF BEDFORD
- 06 TOWN OF CORTLANDT
- 09 TOWN OF EASTCHESTER
- 11 TOWN OF GREENBURGH
- 12 TOWN OF HARRISON
- 16 TOWN OF LEWISBORO
- 17 TOWN OF MAMARONECK
- 19 TOWN OF MT. KISCO
- 20 TOWN OF MT. PLEASANT
- 21 CITY OF MT. VERNON
- 22 TOWN OF NEW CASTLE
- 23 CITY OF NEW ROCHELLE
- 24 TOWN OF NORTH CASTLE
- 26 TOWN OF NORTH SALEM
- 28 TOWN OF OSSINING
- 30 CITY OF PEEKSKILL
- 31 TOWN OF PELHAM
- 35 TOWN OF POUND RIDGE
- 36 CITY OF RYE
- 37 TOWN OF RYE
- 38 TOWN OF SCARSDALE
- 39 TOWN OF SOMERS
- 42 CITY OF WHITE PLAINS
- 43 CITY OF YONKERS
- 44 TOWN OF YORKTOWN

LIBER 10175

PAGE 266

STAT'Y CHARGE 5.25

REC'ING CHARGE 219

REC. MGT. FUND 4.75

CROSS REFERENCE

CERT/RECEIPT

TOTAL  
229

\$ \_\_\_\_\_

CONSIDERATION

RECEIVED

\$ \_\_\_\_\_

REAL ESTATE  
TRANSFER TAX  
WESTCHESTER COUNTY

MORTG. DATE \_\_\_\_\_

MORTG. AMOUNT \_\_\_\_\_

EXEMPT YES \_\_\_\_\_ NO \_\_\_\_\_

REC'D TAX ON ABOVE MTGE:

BASIC \$ \_\_\_\_\_

ADDTL \$ \_\_\_\_\_

SUBTOTAL \$ \_\_\_\_\_

SPECIAL \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

SERIAL No. \_\_\_\_\_

DWELLING: ☐ 1-6 ☐ OVER

☐ DUAL TOWN

☐ DUAL COUNTY/STATE

☐ HELD

☐ NOT HELD

ANDREW J. SPANO  
WESTCHESTER COUNTY CLERK

TERMINAL No. 913546001 DATE RETURNED

EXAMINED BY [Signature]  
WITNESS MY HAND AND OFFICIAL SEAL

ANDREW J. SPANO  
WESTCHESTER COUNTY CLERK

0000130000 12/20/91CPA/DC 229.00  
09:58

THE RECORDING DATE OF THIS INSTRUMENT AS INDICATED BELOW IS THE OFFICIAL DATE ON WHICH  
THE WESTCHESTER COUNTY CLERK RECEIVED THIS INSTRUMENT.  
QUESTIONS REGARDING DELAYS PRIOR TO THIS DATE SHOULD BE ADDRESSED TO YOUR  
REPRESENTATIVE OR ATTORNEY.

92 JAN 13 PM 12:00

ANDREW J. SPANO  
WESTCHESTER COUNTY CLERK

DECLARATION

Establishing a Plan for Condominium Ownership  
of the Premises located at 130 Beach Avenue and 515 Pine Street  
Mamaroneck, New York  
Pursuant to Article 9-B of the Real Property  
Law of the State of New York

Name

130 Beach Avenue Condominium  
located at 130 Beach Avenue and 515 Pine Street  
Mamaroneck, New York

Declarant

Stemm Associates  
130 Beach Avenue  
Mamaroneck, New York 10543

Date of Declaration

NOVEMBER 26, 1991

The land affected by the within instrument  
lies in Section 4, Block 54, Lot Nos. 25, 25A-1, 26 and 27  
on the Tax Map of the Village of Mamaroneck,  
Town of Rye, County of Westchester, State of New York

Debra Silber  
Attorney for Declarant  
305 Broadway  
Suite 1201  
New York, New York 10007



7.2-2 Limited Common Elements. Each Unit Owner (and his or her guests, invitees, lessees and residents of his or her Unit) shall have the exclusive use of the porch, porches or deck to which there is direct access from the interior of his or her Unit. The exterior entrance doors to the Units and any stairs leading thereto shall be Limited Commons Elements. The roofs on the Buildings shall be Limited Common Elements.

#### ARTICLE 8

##### USE OF UNITS

8.1 As more particularly set forth in the By-Laws, Residential Units may be used only as residences. A Residential Unit may be owned or leased by an individual, corporation, partnership, fiduciary or any other entity, and may be occupied by said Residential Unit Owner. A Residential Unit Owner shall be (a) an individual, (b) a designated officer, director, stockholder or employee of a corporation, (c) a designated partner or employee of a partnership, (d) a designated fiduciary or beneficiary of a fiduciary or (e) a designated principal or employee of any other entity. Nothing contained in this sentence shall be deemed to prohibit the exclusive occupancy of any Residential Unit by members of the household of such designated Residential Unit Owner.

8.2 The use of a Residential Unit shall be consistent with the terms of the Certificate of Occupancy and any applicable zoning laws or ordinances, effective on the date of the recording of this Declaration, and as may be amended from time to time. Residential Units may only be leased in accordance with the By-Laws and the Rules and Regulations.

#### ARTICLE 9

##### CHANGES IN THE CONDOMINIUM

With the written permission of the Board (and subject to all applicable laws), which shall not be unreasonably withheld, any Unit Owner may be given, with respect to such owner's Unit, the right to (a) make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon his or her Unit; (b)