

AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, HELD ON MAY 4, 2023 THE FOLLOWING RESOLUTION WAS ADOPTED:

APPLICATION NO. 03-SP-23

Name: Sean Christie of Christie Property Group, d/b/a Dragon Tea ("Applicant")
Premises: 317 Mamaroneck Avenue
District: C-2
Tax I.D.: Section 9, Block 19, Lot 14A1

WHEREAS, The Applicant has applied to the Zoning Board of Appeals ("Board") for a Special Permit and an Area Variance to operate a new bubble tea shop (the "Application") in an existing space at 317 Mamaroneck Avenue (the "Premises") which was formerly occupied by a salon; and

WHEREAS, as set forth in the Building Determination letter dated March 10, 2023, a special permit is required to operate this food establishment ("Food Establishment") in the C-2 District subject to the approval procedure set forth in Article X of the Village of Mamaroneck Zoning Code ("Zoning Code"); and

WHEREAS, Section 342-3(B) of the Zoning Code defines "Food Service Establishment":

Any use which includes the serving of food and/or beverages that requires an eating place permit, or is otherwise required by either county or state law to be licensed, including, but not limited to, restaurants, carry-out restaurants, delicatessens and fast-food restaurants. No drive-up or car service shall be permitted; and

WHEREAS, as set forth in the revised Building Determination letter dated April 14, 2023, an area variance is also required to operate a carry-out restaurant ("Carry-Out Restaurant") within 200 linear feet of another carry-out restaurant on the same side of Mamaroneck Avenue as set forth in Section 342-45 of the Zoning Code; and

WHEREAS, Section 342-3(B) of the Zoning Code defines "Restaurant, Carry-Out":

A business enterprise primarily engaged in the retail sale of food or beverages, which may include grocery items, for consumption off the premises, but which also includes the incidental sale of ready-to-consume food and beverages from a counter-type installation for consumption on the premises, provided that the area devoted to customer seating is clearly accessory to the main business and complies with the area requirements of the New York State Uniform Fire Prevention and Building Code. No drive-up or car service shall be permitted.

WHEREAS, the Applicant proposes no exterior construction except for a new sign, approval for which is sought under separate application, but will make interior renovations to adapt the former salon for use as a bubble tea shop including millwork and installing an ice machine, partition wall and counters; and

WHEREAS, the Applicant has submitted an interior renovation and occupancy plan, dated February 14, 2023, providing details of the proposed interior layout of the establishment; and

WHEREAS, the Applicant has represented that there is only one other Carry-Out Restaurant, identified as Garden Catering, within 200 linear feet of the proposed bubble tea shop; and

WHEREAS, after due notice, the Board conducted a Public Hearing on the Application on May 4, 2023, at which the Board heard all parties, reviewed and considered the materials related to the Application and received no comments from the public; and

WHEREAS, the proposed action is classified as Type II pursuant to the New York State Environmental Quality Review Act (SEQRA) regulations, 6 NYCRR §617.5(c)(18).

WHEREAS, the Board deliberated on the application at its May 4, 2023 public meeting and determined it was prepared to vote on the Application.

NOW, THEREFORE BE IT RESOLVED, that, after duly reviewing the Application and related materials and information provided during the public hearing process, the Board hereby grants a Special Permit and Area Variance to operate a Food Service Establishment as a Carry-Out Restaurant on the Premises.

In making this determination, the Board makes the following findings as to the **Special Permit**:

- 1) The Premises is located in a commercially zoned area of the Village along with a variety of other Food Service Establishments. As such, the proposed use is consistent with the neighborhood.
- 2) The Premises is located on Mamaroneck Avenue along with a variety of uses including residences potentially occupied by school-aged children. The Application materials support the conclusion that the proposed use will not adversely affect the public health, safety and welfare, and the comfort and convenience of the public in general, and any residents of the neighborhood.
- 3) The Application is in compliance with Special Permit standards and requirements as set forth in Zoning Code Sections 342-45 and 342-71 subject to the conditions set forth herein.

In making its determination as to the **Area Variance**, the Board finds that the benefit to the Applicant from granting the requested area variance outweighs any detriment to the community or neighborhood based on the following findings:

- 1) The area variance will not result in an undesirable change to the character of the neighborhood or a detriment to nearby properties since the size and intensity of the proposed use are consistent with former use and other nearby uses.
- 2) The specific benefits associated with the Applicant's ability to open the Carry-Out Restaurant at the Premises cannot be achieved by some other method, feasible for the Applicant to pursue, other than the Area Variance, because the Applicant's proposed bubble tea shop is within 200 linear feet from a pre-existing Carry-Out Restaurant which is operating under its own Special Permit.
- 3) The Board finds that the area variance related to distance between Carry-Out Restaurants is not substantial because there is only one other qualifying entity, and the Applicant has proposed to serve a menu different from the offerings at the nearest Carry-Out Restaurant and will introduce something unique which will add to the mix of goods available along Mamaroneck Avenue.
- 4) The area variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because the proposed use involves no change in footprint to the existing building or exterior alterations.
- 5) Although the Board does find that the requested Area Variance is self-created since the Applicant entered into a lease for the Premises without compliance with the 200-foot separation, in balancing the factors that the Board is to consider, this consideration is given less weight.

AND BE IT FURTHER RESOLVED, that, the Special Permit and Area Variance granted herein are subject to the following conditions:

- A. That the approvals granted herein are conclusively limited to the specific use as proposed in the Application and shall be valid for an initial period of one (1) year during which the Applicant must apply for and obtain a building permit (Zoning Code Section 342-73). If the Applicant acquires the building permit as required by the Zoning Code, then the Special Permit shall be deemed valid for a period of three (3) years, commencing on the date of this Resolution, with the Applicant obligated to submit a renewal application no less than four (4) months prior to the expiration date; and, upon the Applicant's failure to make said renewal application, the Special Permit and Area Variance granted herein shall expire without further notice to the Applicant.
- B. That the Special Permit granted herein shall terminate upon any change in the use, a cessation of use for more than twelve (12) months, a change in the

intensity of the use, a change in goods/services provided, a change in operations, and/or a change in the configuration of the Premises.

- C. That the granting of the approvals in connection with this Application shall not be deemed to relieve the Applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the use, plans, construction or any other phase of the proposed project.
- D. The permitted hours of operation shall be **11:00 a.m. to 8:30 p.m.** seven (7) days a week.
- E. That any work done hereunder shall be in strict compliance with the plans as filed with this Application, except as expressly modified by the conditions herein or such non-material changes to such plans as may be approved by the Building Inspector.
- F. A copy of the Special Permit shall be onsite at all times, and available upon request.
- G. Any exterior lighting must be downward illuminating.
- H. All sound levels must comply with the requirements of the Village Code.
- I. The Applicant must comply with all applicable local, state, and federal laws and regulations.
- J. That the failure to observe and perform any of these conditions shall render this Special Permit invalid.

BE IT FURTHER RESOLVED, that, the Board directs that a complete copy of this resolution be filed with the Village Clerk in compliance with New York State Village Law.

On the motion of Board member Heaney, seconded by Board member Shingler, the foregoing Resolution was adopted with Board members voting as follows:

Robin Kramer, Chair	YES
Gretta Heaney	YES
Brian Glattstein	YES
David Neufeld	YES
Angelique Shingler	YES

The motion was carried on a vote of 5-0


Robin Kramer, Chair, Zoning Board of Appeals

Dated: 05-31, 2023
Mamaroneck, New York