

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting via Zoom Video Conference
March 8, 2021 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Weisel, Rachlin, Braun, Song, Alternate Member #1 Jolly, Counsel Addona; Village Engineer Pennella; Secretary Meszaros

ABSENT: All Present

This meeting is being conducted via Zoom video conferencing, which has been authorized by the Governor's Executive Order issued in response to the Covid-19 Pandemic. The orders have been renewed and are in effect*

Ms. Lawrence opened the Zoom meeting at 7:32 pm.

APPROVAL OF MINUTES – February 8, 2021

Ms. Weisel moved, seconded by Ms. Rachlin, with Members Braun and Song abstaining, to approve the minutes of the February 8, 2021 meeting.

The secretary recorded the vote:

Member Weisel: Yes
Member Rachlin: Yes
Alt. Member Jolly: Yes
Chair Lawrence: Yes

All in favor. Motion carried. 4-0

CONTINUATION OF PUBLIC HEARING – DaVita Kidney Care, 200 White Plains Road

Charles Gottlieb, Attorney with the Law Firm of Whiteman, Osterman and Hanna, appeared on behalf of DaVita Kidney Care. He introduced Mike Maher, representing DaVita Kidney Care, and Paul Tirrell, the project architect.

Mr. Gottlieb noted that at the February meeting they tried to demonstrate that the proposed training dialysis center use should be permitted in the MU zone as a General Office use. They based their argument on the fact that other medical offices, including a more intensive DaVita Dialysis center (on the other side of Route 119) have been permitted in the OB Zoning District, as a General Office use. They also reviewed the general principles of zoning interpretations which say that Boards should follow prior precedents. He reviewed the ordinary definition of General Office since this was not provided in the code. The term General Office should be inclusive of all offices, and should not be limited to specialty. He also noted that this property is the only property in the MU zoning district. He noted that the village zoning code does not allow for medical

offices in any of its zoning districts, yet medical offices and medical related offices certainly exist. He advised that he will show a brief video of the layout of a typical training facility located in the Bronx after his presentation and they have provided a pamphlet in the latest submission which describes the training facility, which is different from a traditional dialysis center. Patients come in and they are trained for in home dialysis use, which is why they are submitting that this is more of an office rather than truly medical. No diagnostic, surgical or emergency procedures are done at this facility. There will no ambulance drop offs and it is not an urgent care. They have also reviewed the code as requested by the Board to see if there are any other uses in the MU district that this type of facility might fall under. They specifically looked at Research Laboratories, which is a permitted use in the MU zone. It was their opinion that their use did not fall under Research Laboratories because of the very strict definition related to needing a prototype and new development of a product. They still believe wholly that their use is the best situated as a general office, which the village has done in the past for a similar facility. Also, as requested, they reviewed the history of the MU zone to make sure that when this property was zoned MU, it wasn't done in an attempt to get away from the other medical uses that are currently in the OB district. It appears that the MU district was created during the current 1987 version of the zoning code. A review of the 2007 Comprehensive Plan did not find any distinction between medical office or general office. He reviewed the meeting minutes from 1987 to see if he could shed any light on this distinction. He found that, in 1992, Robert Martin, sought to develop a hotel on the site and the village Board of Trustees flat out rejected the proposal because they wanted residential and office at this location. Fast forward to 2015, the Board of Trustees initiated a review of the OB zoning district, and drafted a proposed law that included medical offices in the OB/MU zoning district. The Board tabled the law pending the adoption of the new Comprehensive Plan. In 2018, the new Comprehensive Plan was enacted which shed some light on the general office use question. He quoted from the Comp Plan, on page 40, "While the downtown area and Route 119 corridor have experienced shifts in their retail and office tenants, respectively, the village continues to grow and maintain a diversity of businesses. These comprise a range of industries and services, from retail to food, beverage, to culture and hospitality, to medical and professional offices." This quote recognizes that the village has previously permitted medical related offices in this Route 119 corridor, which includes the project site. If you go a little further into the Comp Plan, it says, in the OB/MU districts "it is a priority to adapt to each successive era at the present, the decline of Corporation Headquarters and the growth of healthcare and technology sectors". Mr. Gottlieb therefore concludes that the Comprehensive Plan is telling us that the village is encouraging medical related offices in that Route 119 corridor. He hopes that this information eliminates this Board's concern that the MU district was not created to move away from medical offices in the OB district. In fact, the Comprehensive Plan is now encouraging medical related offices in the Route 119 corridor. They have also contacted the landlord and noted that the 200 building has a 70% vacancy, and the sister building at 220 is 90% vacant, which are substantial numbers for such large buildings. It is their hope that the Board will allow them to occupy 3,500 square feet of medical related office space in the building.

Mr. Maher showed a brief video of a similar training facility that is located in the Bronx as the Board as requested at the February meeting. As you enter there is a reception area with bathrooms and seating. He showed the individual home training suites where the patient's train for the dialysis and a nurse's station in the middle. In the back of the office area, there is a utility room, a small office for the P.A., a small lunch room and locker area with teammate bathrooms, and a conference room for meetings with clients and employees. It is a typical DaVita home training suite which is more like an office environment than anything else.

After viewing the video, Ms. Lawrence thinks it actually looks exactly like a medical suite. She asked if there was any way they could soften it a bit to look like an office. It looks like any typical medical, outpatient clinic. She thought there could be a way to make it look a little more welcoming and a little more like an office environment, if it's going to be designated as such.

Mr. Tirrell, the project architect, shared a floor plan with the separate entrance. He briefly went through the process of a typical client visit to the office from check in to check out. Dialysis clients have open ports so things have to be kept clinical and they must therefore use solid surface material in their designs so that it wipes clean. Although this is a similar site, they have changed up the finishes. They are using high end, luxury, vinyl tile and all their finishes are high quality. They also have paintings on the walls and throughout the office and in each training room. There has been a lot of attention paid to that kind of comfort. This is their 5th facility and they have been working hard every year to take the clinical look out of these facilities realizing their limits to the hard surfaces. He thinks that a site visit would offer a different patient's perspective to the Board.

Mr. Pennella noted that in a typical office when you walk into the vestibule, you see glass to open up the area. He suggested installing glass in the conference area as you walk in on the left side of the vestibule. Glass is used to make it look less institutional and blinds are installed for privacy. This could make it more open and inviting. Mr. Tirrell welcomed the idea of glass, but also noted that they have HIPA requirements that they have to be careful of to protect their patients. He suggested a window by the airlock to bring in more daylight. Mr. Tirrell said they are happy to make some changes but their concern is always is for the patient's privacy. The conference room/multipurpose room can be used for a family gathering, the meet with the dietician, social worker, and they tend to want to meet in private which is why they don't typically use the glass.

Mr. Song asked if there were any specific infrastructure requirements in terms of making this ready for patients to go on dialysis that would not be installed in a typical office or medical office. He noted the oxygen concentrator in the center of the plan. Mr. Tirrell said the training rooms are set up just as if you are at home. The oxygen concentrators are for use by a patient should they need it in case they run low during their visit. There is no special equipment installed, compared to the full treatment facilities which have 12 to 18, chairs with a reverse osmosis (RO) room for processing. The training at this

facility is done on self-contained portable units. The patients are taught how to connect them to the kitchen or bathroom sink.

Mr. Braun wanted to know the function of the nurse station. Are they actually monitoring any of the activity that's going in the training rooms or are they landing places for the nurses in between training? Mr. Tirrell said it is used as charting area. There are files and records in the area. For the most part, the nurses are sitting inside with the patient but they may put on a film and may leave briefly to go to the station to do some charting or paperwork.

Ms. Lawrence asked who will be using the service entrance. Mr. Tirrell said vendors delivering supplies would use that entrance. He showed the storage closet and biohazard closet. This is a second means of egress, in case of an event and keeps the delivery out of the office area.

Mr. Song asked if they have any sense of a percentage of patients that will use an ambulance to arrive or depart. Mr. Tirrell said their clients are fairly healthy and in the early stage of kidney failure; some may be waiting for a kidney. They live on their own and can take care of themselves. This is different from a care center where the populations are a bit older and people do transport by ambulette. For the most part, their clients live at home and in order to be part of the program they have to be able to care for themselves.

Ms. Lawrence asked if the vacancy numbers at the sites are pre-COVID numbers. Mr. Tirrell said that he has been in this building for the better part of two years and has not seen any real activity in both buildings. The 200 building has been renovated and has a nice lobby and is well landscaped. Mr. Pennella noted that several years back the building was sold and there was a site plan application to convert this building to residential, but that application was withdrawn. He thinks that the owner was not renewing the leases since he thought it was going to go to residential.

Ms. Lawrence said it is a huge vacancy rate and she knows that office use was down, but in the last few years she thought it was coming back.

Mr. Pennella is concerned that the space has its own independent entrance into a parking lot area, which makes it highly visible and it looks like a medical use building. Ms. Lawrence is concerned about this but she thinks it is a great use and important to have a facility like this.

Mr. Gottlieb said he is happy to address those concerns but the question before the Board is really an interpretation on the use. These screening, access and landscape issues can be addressed at Planning if the use is permitted by this Board.

Ms. Lawrence agreed and asked if any other Board Members have any questions.

Ms. Weisel asked if they have made changes due to COVID in terms of separating their clients.

Mr. Tirrell said they are able to space out their appointments and the rooms are ready for each patient when they arrive. They already have air changes installed with 6 changes per hour in their offices, which were put in place and part of their requirements before COVID.

Mr. Jolly mentioned that he knew someone who thought that in-home dialysis was too stringent because it required more time on the machine. Mr. Tirrell said that this process is more in line or natural with the body. It is a slower process and it takes anywhere from six to eight hours versus in-care which is three to four hours. It is more time, but it is more gentle or natural to your body. The current average for dialysis patient in a home environment is around 10 to 12%. About two years ago, the Trump Administration passed a bill to increase in home training up to 25% by the year 2025. They are trying to get more people on home so that they can be with their families instead of spending time in an in-care center. He is currently working on 8 different sites throughout New York and New Jersey and they are committed to meeting the goal of 25% by 2025. He believes there is a need and that it is noble for the government and industry to step up to make it happen.

Ms. Lawrence asked if anyone in the public would like to speak. Mr. Levoi, the moderator, advised that no one is raising their hand. There was no public comment.

Ms. Lawrence has concerns and wants to ensure that the uses in each zone conform with the code. She feels a little bit uncomfortable in the sense that it really looks like a medical clinical use and is not sure how they can designate it as office use.

Mr. Tirrell commented that this office space is really a training center. Ms. Lawrence agreed that most offices do typically have conference offices and areas set aside for training and other uses. Ms. Weisel noted that there is a patient blood test and lab area, and also an area for medical waste which ties in more with being a medical situation which is something she feels the Board has to wrangle with.

Mr. Gottlieb does not feel that the Board should think that this is the same use as a law office because it is not, it is a medically related office. They have demonstrated that the Comprehensive Plan recognizes this as being permitted in this corridor, and it also encourages its use in this corridor. In his initial submission, he tried to arm the Board with the ammunition to allow them to make this determination. He referred to the previously approved medical offices in the OB district that have been approved under this same theory, one of them is a DaVita Dialysis center at 155 White Plains Road. street. He thinks that this is a way the Board could wrangle with this interpretation. He realizes that this Board is struggling with a little bit and rightfully so. Cases for interpretations tell us that a municipality should make determinations consistent with previous determination so certainly the Board has the ability to do that here. The way to distinguish this from other medical offices, so that the next application behind this isn't an urgent care, for example, is the training component that they have detailed. This is a training facility or a medical office used for training purposes. This training use would

distinguish it very much from the other medical offices that were permitted in the OB district. Ms. Lawrence said that this site is in the MU zone, not in the OB.

Counsel Addona thinks the applicant's point is that it is the same category of use general office use in the OB and MU. This is why the applicant is making that comparison, also the proximity of each other, being on the route 119 corridor. Generally, with interpretations, it has been the practice of this Board to try to make it as narrow as possible to make it very specific to the site to the proposal to what is in front of the Board, because you don't want to open it up to what can't really be contemplated for future applications. To the extent that the Board is concerned about that, she can certainly address this in a draft resolution for the Board's consideration in advance of the next meeting. But before we get to that point, she would like to get a consensus from the Board about which direction they want to go.

Ms. Lawrence would like to make it as specific as possible and look at the resolution, she would be amendable to that. She just doesn't want to be in that position that the medical office use is part of the general office use may be a problem.

Counsel Addona said this may be ultimately bigger than this Board to decide in the future on a broader scale, but considering the relatively narrow scope of the application that's before you, it may be more manageable.

Ms. Lawrence agreed and asked the other Board members to comment.

Ms. Weisel commented that this is clearly not a research situation as described in the MU zone. The OB zone has a very narrow definition of professional offices where doctors are supposed to be living within the building, which is not the case here, so it is sort of a hybrid on its own. She is willing to look at it as that hybrid because it does say that medical and professional services are being considered in the Comp Plan referring to an era of change and the fact that these professional buildings seem to be moving into a different direction. She does not know how this can be zoned without having it go into a more complicated direction, perhaps more complicated than what we can necessarily define.

Ms. Rachlin thinks that they could narrow it down specifically to more of a training facility. She doesn't remember if lab work is done on site but there is definitely the medical aspect. She believes that it is more of training facility for these patients and would be a great addition. Mr. Maher noted that there is no lab work on site, it is collected and sent out for analysis.

Mr. Song feels that they can take more of a narrow look, particularly in the light of the fact that there is a similar DaVita Facility in the vicinity. He would be in favor of this but noted his concern of a slippery slope argument of setting a precedent, which could pin the village into a corner going forward. If we look at the Comp Plan language and Mr. Gottlieb's argument, it seems consistent.

Mr. Braun excused himself from the meeting.

Mr. Jolly said it is a tough decision; even the Board of Trustees couldn't decide in 2015. He feels if they follow the discussion this evening and the fact that the use does not require medical treatment at that facility, it could be narrowed down.

Counsel Addona said the Board's comments this evening and the aspects of the project will be very useful in drafting a narrow resolution. She asked the Board to recommend that she prepare a draft resolution and circulate it to the Board in advance of the April 12, 2021 meeting. The public hearing will be open so the applicant can comment and any other members from the public at that time.

Ms. Lawrence moved to adjourn the public hearing to April and authorize Counsel Addona to prepare a resolution for consideration.

The secretary recorded the vote:

Member Weisel:	Yes
Member Rachlin:	Yes
Member Song:	Yes
Alt. Member Jolly:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried: 5-0

ADJOURNMENT:

Ms. Lawrence moved, seconded by Mr. Jolly, to adjourn the meeting at 8:26 p.m.

The secretary recorded the vote:

Member Weisel:	Yes
Member Rachlin:	Yes
Member Song:	Yes
Alt. Member Jolly:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried: 5-0

Liz Meszaros - Secretary