

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
Village Hall – 1 Depot Plaza
July 11, 2022 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Abraham, Kaplan, Counsel Addona;
Village Engineer Pennella; Secretary Meszaros

ABSENT: Members Weisel, Rachlin, Alternate Members Jolly and Kudla.

APPROVAL OF MINUTES – June 13, 2022

Ms. Lawrence noted that there is no quorum of the Board Members who were present at June 13, 2022 meeting; they will be considered when those Board Members are present.

BOARD MEMBER APPOINTMENTS (effective June 21, 2022)

Ms. Lawrence announced the following Board appointments:

1. Second Alternate Member Jeanne Kaplan to fill the unexpired term of Rob Song.
2. Barbara Kudla to fill the unexpired term of Second Alternate Member Jeanne Kaplan.

ADJOURNMENTS:

Ms. Lawrence announced the following adjournments at the applicant's request, which will be adjourned until the next meeting:

Michael and Janaki Degen
86 Crest Drive

Variances to construct a second story over the existing garage and principal dwelling and a one-story rear addition.

Mercy College
828-832 South Broadway

Applicant is seeking an interpretation/appeal pursuant to New York State Village Law and the Village of Tarrytown Zoning Code appealing the Building Inspector's determination requiring the applicant to seek certain setback variances from the Zoning Board and a Compatible Use Permit from the Board of Trustees in order to expand the parking lot areas with accessibility and infrastructure improvements. The applicant seeks approval of the variances under appeal, should the Board determine they are required, in addition to the variance noticed.

NEW PUBLIC HEARING – MMC Corp./Montefiore Medical Center – 555 S. Broadway

Jack A. Addesso, Attorney, representing the applicant appeared before the Board with representatives from Montefiore Corporation and presented various renderings of the site along with the site plan. He acknowledged that only three Board Members are present this evening and that Mr. Abraham was not at the meeting last month. He briefly summarized their position with respect to the interpretation application before the Board, for the benefit of Mr. Abraham and the public.

Mr. Addesso explained that the laboratory that was occupied by the former owner was permitted under the code. His client, Montefiore, submitted an application back in March to renovate Building D into a research laboratory, which is permitted use, as of right, under §305-34 of the village zoning code. The application materials included drawings showing the proposed work and photographs showing what a similar type laboratory would look like, once completed. They also provided the definition of a research laboratory defined in the village code as, “any laboratory devoted exclusively to the pursuit of scientific or technological research, experimentation and development of natural, manufactured, processed or compounded material or products, including but not limited to biological food and other consumer products, electronic and electrochemical processes, products and equipment, pharmaceutical products, etc.” Mr. Addesso contends that the definition in the code describes exactly what Montefiore is proposing. The Laboratory will be utilized by Montefiore Hospital for purpose of producing pharmaceutical products to be administered to patients within their system. He advised that, Steven Tuckman, the Director of Pharmacy at Montefiore, appeared before the Board at the meeting last month, held on June 13, 2022, and explained the operation of the laboratory. At that hearing, they were asked to provide a written response to the Board before the next meeting, highlighting the major points discussed and to also provide answers to the questions raised at that meeting. He submitted that letter on behalf of Montefiore on June 28, 2022, which was distributed to the Board prior to this hearing this evening. Mr. Addesso read through some of the points in his letter. With regard to point 2, he noted that the prior application before this Board was denied indicating that the use was a distribution center. He advised that the prior application was presented by another attorney. He is presenting this application as a use that is permitted in this zone. The difference between this new application and the prior application is that this project was presented as a 17,000 s.f. distribution center, which was not correct. Montefiore has no intention of building a distribution center. The application submitted is for the interior renovation of an existing research laboratory to be updated to Montefiore Medical Center specifications. He emphasized that all products will be distributed from their Moses campus located at 111 East 210 Street, in the Bronx, New York. In other words, the product that is created in the laboratory is not distributed to the various Montefiore outlets, hospitals or health centers, but goes to a distribution center, which has been in existence for a long time. The medications are then distributed to the various hospital locations from the Moses Campus. There will be a total of five small trucks entering and exiting the property daily, consisting of four Montefiore related vehicles per day and one FedEx box truck. At 10 am, there will be three Montefiore personnel driven trucks carrying wholesale raw materials needed for

these medications. Following that, there will be a Fed Ex drop-off of anything needed during the day. At 4pm, the last Montefiore driver will come back and load to return any materials that are meant for the Montefiore Moses Campus in the Bronx. There will be a total of five trips per day at this facility: four trips for Montefiore vehicles and one trip for FedEx. He hopes this information will clarify the nature of the operation. They are not proposing a distribution center, which he believes was the thrust of the objection to this application. The project is clearly a research laboratory. The distribution of the material is specific to patients in the Montefiore system which are delivered to a separate location in the Bronx and distributed to the various Hospitals and Healthcare Montefiore facilities. He advised that a research laboratory is a permitted primary use in the OB zone. The renovation that they are undertaking is a renovation of the existing lab building to make it suitable for Montefiore's purpose. The products that are created are based on the needs of patients with specific requests from licensed doctors and medical people. The laboratory will be operated by licensed physicians or laboratory technicians and it will be under the supervision of state and local government governing boards that vary with respect to inspections and things of that nature. He introduced Steven Tuckman, the laboratory director, to clarify and answer and questions the Board may have.

Mr. Tuckman advised that they are proposing a research lab for the Montefiore Health system. It is not a Walgreen's pharmacy. They will be preparing medications for patients based on research protocols defined by the doctor who will collaborate with clinicians. The people working with him will assess the patient, either verbally or through the medical charts, to determine if their desired response to the medication has been achieved. An example of this research would be the study of their current use of monoclonal antibodies for the treatment of rheumatoid arthritis and determining the right dose to get the desired effect. They also are doing research on colon cancer patients and research to help prevent admissions to the emergency room, which is supported by insurers, manufacturers, foundations, and the Medical Center, who are always looking to find ways to cut down on costly emergency room visits.

Stefano Cardarelli, the project architect, appeared and showed the 17,000 s.f. layout of the proposed laboratory at Building D. He showed the 3 existing bays where deliveries and pickups will take place. He showed the isolation room, where chemotherapy medicines are prepared. He showed the conveyance system, which is exactly identical to another facility with the same manufacturer. He noted that each station has a conveyance system. Licensed pharmacists and technicians are manned at the stations where the medication prescription for the patients are prepared. The medications need to be barcoded and recorded in accordance with DOH regulations, before going to the Bronx facility. He showed the administration office space, the storage area, a lounge and locker rooms, bathrooms and showers, an eye wash station, a conference training/meeting room for the technicians, pharmacists and outside vendors to meet, and finally the call center space.

Ms. Kaplan noted that this presentation seems reasonable, but what bothers her is the first application that was presented to this Board was presented as a "distribution

center” and the distribution component was discussed in detail. She asked how the first application got it so wrong.

Mr. Addesso said it was the architect that prepared the application. Mr. Addesso advised that he was not involved with the prior application. What they are proposing now are products that will be produced and sent to the distribution center in the Bronx. This is clearly not a distribution center, as presented.

Ms. Kaplan noted that again that they clearly heard that the trucks would come in and distribute the medications to the different Montefiore facilities. Mr. Addesso said that application was rejected, and they are presenting this new application, which does not change the fact that a laboratory use is a permitted use in this zone. He noted that the first application was reviewed in the wrong zone. Counsel Addona corrected Mr. Addesso and said the application was reviewed under the same use. Mr. Addesso interrupted Counsel and said they have an application here that speaks for itself.

Mr. Abraham thanked Mr. Addesso for the recap since he was not at the last meeting. He asked Counsel Addona to continue with what she was saying. Counsel Addona said there was a different provision of the code cited in the prior application, but the uses were the same. When the building permit application was made last year, it was presented as a distribution center. When the applicant was told that it was not a permitted use, they presented the application as an accessory use. The Board did not agree that it was an accessory use, and ultimately determined that it was a distribution center, based upon that presentation.

Mr. Pennella added that the section of the code that was cited was 305-35A, when it should have been 305-34A. It was still reviewed under the OB Zone code uses. It was simply a typo/numerical error. He would also like to clarify that the applicant has referred to the prior use as an “as-of-right” use. The research laboratory in the code refers to pilot program, and it was his determination that the proposed use does not fit the criteria. The prior use was for making products, testing them, and sending them off somewhere to be manufactured on a mass scale.

Ms. Lawrence asked Mr. Addesso to explain how their program fits into the code. Mr. Addesso said there was no reference made to a pilot program in Mr. Pennella’s denial letter. Ms. Lawrence advised that if the applicant is presenting a research laboratory, then they have to comply with what the code requires to be a research laboratory. If 10% of the total lot area is research, then you comply. If not, then you do not comply with the research aspect. It is up to the applicant to tell the Board whether you comply. Mr. Addesso said, as the code is written, they comply.

Mr. Abraham confirmed that both the applicant and Mr. Pennella are reading the same section of code, which is “305-34”. Mr. Pennella said yes, and under this section, he does not feel that the activity falls under a “permitted use” or “accessory use” category.

Mr. Addesso believes the reason the application was denied was because it was a distribution center. He believes Mr. Pennella is presenting something totally different from the reason why this application was rejected.

Mr. Pennella referred to the Denial Letter and asked Mr. Addesso if he read it. Mr. Addesso said he has read the letter. Mr. Pennella said the denial letter clearly states the sections and reason for the denial. The current application, as presented, does not say anything about the distribution center, but the plans have not changed. They are identical to the original plans submitted for the distribution center. The only change is to the title page on the plans which describes the project as, Pharmaceutical Laboratory and Offices. So, the current denial letter is based on the current submission. The only error that was made was a numerical error in the section of code cited. Mr. Pennella maintains that the use as described in this section of code for the OB Zone does not fit the criteria for a “permitted principal use” or “accessory use”.

Counsel Addona added that the Denial Letter states that the laboratory is not a permitted principal use. It does not reference a distribution center. Therefore, Mr. Pennella's determination stands as written and he is not coming up with any different reason to deny the application, which Mr. Addesso stated.

Mr. Addesso confirmed with Counsel that Mr. Pennella's interpretation for this application is that the use, as they have described it, is not a research laboratory, and it is not a permitted use or accessory permitted use in the OB Zone.

Mr. Abraham asked Mr. Pennella to give more details about the Pilot Program criteria.

Mr. Pennella said that the code states that you are allowed to have 10% of the lot area as a research laboratory for a pilot program which it does not appear to be based on his review. Counsel Addona referenced that section of Code which is §305-34 B(2)(c)[3], and also noted the definition of a research laboratory in §305-3, which starts off by saying, a laboratory devoted exclusively to the pursuit of science, scientific or technological research. She noted that it seems like there are certainly other aspects to this use, in that they are getting direction from the medical and health care providers to create these products for the intention of then distributing them to patients. She would like to hear more about how this is exclusively a laboratory.

Ms. Lawrence said, as he understands it, the doctors ask the clinicians to manufacture/mix the compounds/ingredients together into a medicine for specific patients with specific illnesses. A compound is prepared at the physician's direction. Mr. Tuckman explained that the research is based on a protocol that the doctor's use.

Mr. Abraham said this seems reasonable, but he is still confused about whether or not there is disagreement with the pilot program aspect regarding the 10% usage. Mr. Tuckman is not clear and does not understand this section.

Mr. Pennella asked if the medicines produced in the lab will be mass produced. Mr. Tuckman gave an example of a Pfizer drug dispensed at a Walgreen's. They will take

that drug and prepare it for patients as directed and monitor its effectiveness. He is not sure if that qualifies as a pilot program.

Ms. Kaplan asked if it is off label. Mr. Tuckman said it is the same drug that is meant for the treatment of a specific disease. They are not doing double blind studies or using placebos. They are doing this research to benefit their patients.

Mr. Pennella asked Mr. Tuckman if these medicines prove to be effective during the course of treatment, do they save the recipe and dispense it to other patients, or are they unlikely to use it again? Mr. Tuckman said yes, if they prove effective, that is part of the protocol. Good research techniques require them to develop a hypothesis, record results, draw conclusions, and move forward one way or the other, based on the conclusions. He said it is entirely possible that 20 patients with rheumatoid arthritis will receive the exact same medicine based on the research, but it is not mass production, it is for the patients in the Montefiore Network, based on need.

Mr. Abraham still needs some clarification. He believes one issue is about the exclusive use. Another issue is whether or not it fits under the definition of a pilot program, and if so, how broad that definition is. Then, there is also a separate issue of whether or not it is still a distribution use.

Mr. Cardarelli came back to the podium and said in his mind a pilot program is temporary. Ms. Lawrence advised Mr. Cardarelli that they need to look at the code section and make sure that what they are presenting complies with the code. She is not convinced that the applicant's definition of research and pilot program fits under the code, but she noted that the definition of a pilot program is clear in the code. If it fits, great, but the Board still has questions, because it has not been spelled out.

Mr. Cardarelli said, in his profession, a pilot program is considered a temporary/trial program. This is a permanent laboratory to serve their network. He referred to the renderings presented. He explained that a year ago, he called the project a lab renovation and, he may have made an error in mislabeling the title, but the plans did not change. Had he had an opportunity to meet with the Building Department, maybe this all could have been avoided. When they were last before this Board, he explained to the prior attorney then, that this is a research laboratory, and the plans will not change. They now have a new attorney and it is still a laboratory, and the plans have not changed. In response to Mr. Pennella's question about a pilot program, he believes that trial and error is part of the research laboratory component. He does not know what else he can offer. This has been a frustrating process, but the plans have not changed.

Mr. Abraham is concerned about the specific objections. He believes that based upon Mr. Tuckman's presentation, this could be a research laboratory, but when they specifically talked about pilot program, he would like to discuss this further to determine if there is a broader definition.

Ms. Lawrence asked if the medications they are making and sending to the distribution center will be sold to the patients.

Mr. Tuckman said that every protocol is a pilot program by definition. It is a study of what formulas and concentrations will work. If they do not prove to be effective, they move onto to something else.

Ms. Lawrence believes that 4 trucks leaving the facility each day is a lot of medication. Mr. Addesso said that is if you presume that the trucks are loaded to capacity. Each day is different. There could be 20 boxes on one day and 200 boxes the next day.

Mr. Addesso believes there are two issues here. The Pilot Program and the Distribution issue. Mr. Pennella again referred to the denial letter which states that this type of use is not a permitted use. Mr. Addesso said that is Mr. Pennella's opinion. Mr. Addesso believes that they have presented the facts and have described to this Board what the intended use is, how the program works, and that their research can be considered a pilot program.

Ms. Lawrence asked if anyone in the audience would like to comment on this application. No one appeared.

There were no further questions from the Board. Ms. Lawrence thanked the applicant and advised that they will not be making a decision this evening. She would like to have more Board Members present to vote on this application and also give the Board more time to review the use further as it specifically relates to the code.

Ms. Lawrence moved, seconded by Ms. Kaplan, to adjourn to the August 8, 2022 meeting. The public hearing will remain open.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 3-0

NEW PUBLIC HEARING – Jorge B. Hernandez, RA – 37 South Washington Avenue

The following public hearing notice was made available to the public at the meeting:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Monday, July 11, 2022**, in the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

Jorge B. Hernandez, RA
 100 Executive Boulevard
 Ossining, New York 10562

For variances from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the conversion of an existing two-story, two-family dwelling, into a three-family dwelling. The property is located at 37 S. Washington Street and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70, Block 33, Lot 7, located in the M 1.5 Zoning district.

The variances sought are as follows:

Code Section:	Required	Proposed	Existing	Variance Required
§305-32 Multifamily Residential M-1.5 Zone 305 Attachment 6:2 Column 12 Min. Side Yard Setback – Window Well (S)	15 feet	1.8 feet	-	13.2 feet
§305-63 C. (3) Parking in a side yard setback Attachment 6:2 Column 12 - South	15 feet	1 foot	-	14 feet
§305-63 C. (3) Parking in a side yard setback line Attachment 6:2 Column 12 – North	15 feet	2.7 feet	-	12.3 feet
§305-63 C. (3) Parking in a rear yard setback lot line Attachment 6:2 Column 15	45 feet	2.5 feet	-	42.5 feet
§305-63 D. (1) Min. off-street parking; 2 ½ spaces/dwelling	8	7	4	1
§305-63 C.(5)(c)[3] – Landscape strip	5 feet	0	n/a	5 feet

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

Additional approval is required from the Planning Board.

By Order of the Zoning Board of Appeals
 Lizabeth Meszaros - Secretary to the Zoning Board
 Dated: July 1, 2022

The mailing receipts were received and the sign was posted. Board Members visited the property.

Jorge B. Hernandez, the project architect, appeared before the Board and explained that they are seeking variances to allow a 3rd unit apartment in the basement of an existing non-conforming three-story building located in the M 1.5 district. He advised that three families are allowed in this zone. The basement will require a window well variance for egress. The additional unit will also require a variance of 1 parking space on site. He showed the 2 cars parked in tandem in front of the garage, which is not allowed, and therefore a variance for one space is needed. The other setback variances are necessary to accommodate the parking configuration. The upper level of the garage will be used for storage and an office. In addition, they will be installing a curb with stormwater improvements.

Mr. Pennella asked how many variances could be eliminated if they did not convert the 2 family into a 3 family. Mr. Hernandez believes that the window well and 1 parking space would not be needed.

Mr. Pennella asked Mr. Hernandez if he considered entering the garage from the south and putting 3 cars in the garage to make the area look more residential. The applicant agreed to reconfigure the plan to eliminate the tandem parking and the need for the one space variance.

There was no one in the public present to comment.

Mr. Abraham moved, seconded by Ms. Lawrence, to close the public hearing.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 3-0

Ms. Lawrence read through and responded to the criteria for an area variance.

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence stated that the proposed project is in line with other similar neighboring properties that have three families in this zone, so there will be no undesirable change. The parking and site conditions will be improved.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence*

stated that the benefit sought by the applicant cannot be achieved by some other method other than the area variances due to the pre-existing-non-conformity and the configuration of the lot.

3. That the requested area variance is not substantial. *Ms. Lawrence stated that the requested variances are substantial but are due to the existing non-conformity of the lot.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed unit will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*
5. That the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that it is self-created because they are adding an additional unit, but that does not preclude this Board from granting the variances.*

Ms. Kaplan moved, seconded by Mr. Abraham, to approve the requested variances, except the variance for one parking space. The applicant has agreed to eliminate the need for this variance by reconfiguring the parking plan. The Board authorizes Counsel Addona to prepare a Resolution to include this condition and the standard conditions based upon the general discussion during the public hearing.

The secretary recorded the vote:

Member Kaplan: Yes
Member Abraham: Yes
Chair Lawrence: Yes

All in favor. Motion carried. 3-0

ADJOURNMENT:

Ms. Lawrence moved, seconded by Ms. Kaplan, to adjourn the meeting at 8:45 p.m.
All in favor. Motion carried. 3-0

Liz Meszaros- Secretary