

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting (Via Zoom Video Conference)
February 8, 2021 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Weisel, Rachlin, Alternate Member Jolly, Counsel Zalantis; Village Engineer Pennella; Secretary Meszaros

ABSENT: Member Song, Member Braun

*** 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 7:35 p.m.

APPROVAL OF MINUTES – January 11, 2021

Ms. Weisel moved, seconded by Ms. Rachlin, with Ms. Lawrence abstaining, to approve the minutes of the January 11, 2021 regular 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

NEW PUBLIC HEARING – PB Tarrytown, Inc. – 3 Main Street Unit A

The following public notice was mailed to the abutting property owners:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing by **ZOOM video conference**, at **7:30 p.m., on Monday, February 8, 2021**, to hear and consider an application by:

P.B. Tarrytown, Inc. (tenant)
53 Kirchner Drive
Tappan, NY 10983

For a parking variance from Chapter 305 of the Village of Tarrytown ("Zoning Code") for a change of use from vacant retail to a restaurant.

The property is located at 3 Main Street (Unit A) Tarrytown, NY and is shown on the tax maps as Sheet 1.40, Block 18, Lot 1 and is in the RR Zoning District.

The variance sought is as follows:

Code Section	Required	Existing	Proposed	Variance Required
305-63 D. (1) Off-street parking: Restaurant 1 / employee + 1 /100 gross sf 2 employees + 717/100sf =7.17 spaces	10 Spaces	*5	0	5 spaces

* Indicates parking credit for prior retail use: 717 SF/300 = 2.4 + 2 Employees

The Public Hearing will take place via Zoom Video Conferencing in accordance with the NYS Governor’s Executive Orders 202.1 and 202.79, which have been extended.

***Please visit <https://www.tarrytowngov.com/home/events/33241> for instructions on how to join the meeting and for updates, if any, if the meeting location information has changed.**

Public comments may be emailed to imeszaros@tarrytowngov.com or mailed to Village of Tarrytown, Zoning Board of Appeals, 1 Depot Plaza, Tarrytown, NY 10591, by 12 pm on February 5, 2021. Documents relating to this application will be provided by emailing the Zoning Department at imeszaros@tarrytowngov.com or by calling 914-631-1487.

Additional approval will be required by the Planning Board.

All interested parties are invited to join the meeting and be heard.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: January 29, 2021

The mailing receipts were received and the property sign was posted. The site visit was suspended due to the weather.

Theresa Mulqueen, the applicant, appeared and gave a brief presentation of the “Playa Bowl” franchise proposed at the vacant retail store at 3 Main Street (the former Jewelry store). Ms. Mulqueen described the store as a quick serve restaurant, which is a franchise that has existed for about 4 years and has about 110 stores operating. Playa Bowls serve all different types of smoothies, juices, oatmeal, water, fruits, and granola snacks.

They are an environmentally friendly store; their serving ware is made from a plant-based plastic to help reduce the environmental footprint. The materials that are used to build the interior are at least 50% reclaimed or refurbished materials and they will be installing 100% LED lighting technology in this store. In addition, they will be hiring only local employees and have had a number of students reach out to inquire about a job. Playa Bowls also believes in sponsoring the local sports communities with their fundraising and being part of the community. She and her husband will be running the business. She briefly went over the interior of the store and showed the layout, including the counter, seating, bathroom and basement area. The space is not large, and, as a quick serve restaurant, about 70-75% of the people come in, pick it up, and then leave. They will adapt to the COVID guidelines and will install shield guards along the counter area. With regard to handicapped accessibility, a ramp is not permitted in this area of Main Street; a doorbell will be used to allow the food to be brought out to their customers. They also plan on using the same private carter for garbage collection as Coffee Labs and Lefteris Restaurant, to help mitigate the traffic in the area.

Mr. Pennella referred to the building department denial letter which requires the applicant to seek a parking variance for 5 spaces. The restaurant use requires that they provide 10 spaces. They have been given 5 spaces for the prior use. Should the Board grant this variance, the applicant will be required to pay into the parking fund for the 5 spaces that they are not able to provide off-site. He reminded the Board that this type of variance has been granted in prior applications, most recently, My Tokyo and the Cube Inn, both businesses are located on Main Street.

Ms. Lawrence asked if any Board Members had questions.

Ms. Weisel confirmed that the bathroom was handicapped accessible. Ms. Lawrence felt that the new store would be a nice addition to the village.

Mr. Jolly asked if they served meal portions. Ms. Mulqueen said for some, it is a meal, for others it may not be enough. They offer healthy and non-healthy types of food. Mr. Jolly asked how many employees will be working at one time. Ms. Mulqueen said the store is small and there will only be 2 employees at a time.

Ms. Lawrence asked if there is anyone in the public who would like to comment. Mr. Levoi, the moderator, advised that there was no public comment.

Counsel Addona advised that this is a Type II action, with no further environmental review required under SEQRA.

Counsel advised the applicant that there are only 4 Board Members present this evening and if she would like the benefit of a full board to vote on the application, she could request an adjournment to the next meeting. Ms. Mulqueen advised the Board that she would like to move forward with their vote.

Mr. Jolly moved, seconded by Ms. Rachlin, to close the public hearing.

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

Ms. Lawrence read through 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 there does not seem to be any undesirable change that will be produced in the neighborhood since they are moving in to a vacant retail store.*
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 said they have reviewed the location and there is no off-street parking in the area.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that based on the location of the store, the variance request is not substantial as there is no off-street parking for this location on Main Street.*
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 variances 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 there is no off-street parking for store owners on Main Street so it is not self-created.*

Ms. Weisel, moved, seconded by Ms. Rachlin, to approve the variance and authorize Counsel Addona to prepare a resolution with the standard general conditions based upon the general discussion this evening to include payment into the parking fund for 5 parking spaces.

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

ADJOURNMENT: 3 and 5 Carriage Trail

Counsel Addona advised the public that the applicant for the 3-5 Carriage Trail application has requested an adjournment to the March 2021 meeting.

NEW PUBLIC HEARING – PB Tarrytown, Inc. – DaVita, Inc. – 200 White Plains Road

The following public notice was mailed to the abutting property owners:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing by **ZOOM video conference**, at **7:30 p.m., on Monday, February 8, 2021**, to hear and consider an application by:

DaVita, Inc. (DaVita Kidney Care)
2000 16th Street
Denver, CO 80202

To seek an appeal of the building permit denial of the Village of Tarrytown Building Inspector, which determined that the Applicant’s proposed dialysis facility is not a permitted use in the MU Zoning district pursuant to Village Zoning Code §305-35(A)(3). Pursuant to the authority in Village Zoning Code Section §305-118(A), the applicant appeals this denial and seeks and interpretation from the Zoning Board of Appeals that the proposed dialysis facility is permitted as a “general office” in the MU zoning district pursuant to Village Zoning Code §305-35 (A) (3).

The property is located at 200 White Plains Road, Tarrytown, NY and is shown on the tax maps as Sheet 1.201, Block 122, Lot 4, located in the MU Zoning District.

The Public Hearing will take place via Zoom Video Conferencing in accordance with the NYS Governor’s Executive Orders 202.1 and 202.79, which have been extended.

***Please visit <https://www.tarrytowngov.com/home/events/33241> for instructions on how to join the meeting and for updates, if any, if the meeting location information has changed.**

Public comments may be emailed to imeszaros@tarrytowngov.com or mailed to Village of Tarrytown, Zoning Board of Appeals, 1 Depot Plaza, Tarrytown, NY 10591, by 12 pm on February 5, 2021. Documents relating to this application will be provided by emailing the Zoning Department at imeszaros@tarrytowngov.com or by calling 914-631-1487.

All interested parties are invited to join the meeting and be heard.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: January 29, 2021

The mailing receipts were received and the sign was posted.

Charles Gottlieb, Attorney with the law firm of Whiteman, Osterman and Hanna, appeared on behalf of DaVita Kidney Care. He introduced his colleague, Amy O'Brien, with his Law Firm, as well as Mike Maher, of DaVita Kidney Care and Paul Tirrell, the project architect. The applicant is seeking to use about 3,300 square feet in an existing building at 200 White Plains Road for peritoneal dialysis, also known as PD. Peritoneal Stations are different from regular dialysis in that they involve training those patients to do in home dialysis. For about two weeks, the patients come in and are trained to do their own dialysis. Once they are trained, they visit about twice a month. DaVita has existing locations in the area. They have a facility just across the street at 150 White Plains Road, which provides traditional dialysis, which are the typical dialysis services provided and require more frequent visits. They have also recently gotten approval for a location in the Town of Greenburgh.

When they considered the site at 200 White Plains Road, they reviewed how the village treats medical uses in the code and contacted the building inspector to see how this use might be classified, which is the purpose of this application. They submitted a building permit application which was denied on January 20, 2021 and are here this evening to seek an appeal to permit the proposed dialysis center at the property as a general office use.

Based on his interpretation of the zoning code, this proposed use is a general office. The village has previously permitted similar medical uses in the OB zoning district which has identical permitted use language in it. If permitted, those medical uses, which appear to be general office, include the current DaVita location at 155 White Plains Road.

With regard to whether or not this is a general office use, there is no definition of general office in the zoning code, nor is office or professional office defined. In addition, medical use is also not defined in the code. Medical use is also not included as a permitted use in any other zoning district. When something is not defined, the law tells us to look to the ordinary dictionary definition of what the terms and definitions mean. And, when there is not a definition, or a term, or there's some sort of ambiguity in the zoning code, it is incumbent on the village to make a determination in favor of the property owner and/or the applicant.

Lastly, when a village is interpreting a code, it has to read the code as a whole. Similar provisions, and in this case, identical provisions need to be interpreted consistently. The MU zoning district permits, among other things, general office. He cited two examples of other medical uses that are located in the OB zoning district, but have the same and identical permitted use language as it relates to general office. He hopes that this information will guide the Board's consideration tonight. The ordinary dictionary definition, according to Webster's of "General", means, "applicable to every member of a class kind or group". It is not confined by specialization, or careful limitation. The definition of office is a "place where a particular kind of service is supplied. When we combine these two definitions, general office would mean, "a place where a service is provided that can't be confined by a specific specialization". Mr. Gottlieb is submitting that they have a dialysis proposed use, that has been permitted elsewhere, as a general

office. It is providing a service, and because of that general term before office, that service can't be confined by a particular specialization. Basically, you can't say this type of doctor's office is a general office, but dialysis is not. They submit that the proposed use should be permitted as a general office. However, realizing that there are other doctor's offices in this area of the village, they submitted foil requests to determine how these medical uses are being permitted. They have included evidence in their appeal which indicates that these uses have been permitted as general office because there is really no other explanation as to how they would have been permitted. They submit, as their second point, that the proposed use is consistent with the other medical uses, which have been permitted in the OB District, which has identical language as the MU District, that general offices are permitted. This is important for two main reasons. First, there is a strong line of cases that say, a municipality must abide by its prior precedent with similar facts. He submits that they have a prior precedent of a dialysis center being permitted, and they are proposing a dialysis center to be permitted in the same way. And second, the zoning code must be construed as a whole to avoid interpretations that would otherwise make provisions meaningless. So, if the DaVita proposed use can't be permitted as a general office, that totally ignores the entire litany of prior determinations that the village has made previously, which they have illustrated in their appeal. Very quickly, those prior determinations that were made involved the DaVita existing location at 155 White Plains Road, New York Plastic Surgery, New York Orthopedic Hospital, Pediatric Urology office, all at 155 and 150 White Plains Road and Dr. Sturza's office and Sleepy Hollow Pediatrics at 150 White Plains Road.

The last exhibit to their appeal is an express determination from the then village engineer and building inspector that basically said that he understands they will be providing medical services, which he felt was consistent with the code. Based on all of this information, they seek a determination from the ZBA, that this use is permitted as general office, which would overturn the Building Inspector's denial. They are proposing a kidney dialysis center that is roughly 3,300 square feet in an area of the village that has office medical office buildings. They are not proposing any use that is seen as having an adverse impact on the environment or the neighborhood. He introduced Mike Maher from DaVita who would be happy to answer any operational questions.

Mr. Maher confirmed with Ms. Lawrence that this office would be open from 8 am to 5 pm daily and will occupy the first floor only. Mr. Maher explained that this space will be used more like a home training clinic with about 4 stations. About 7 to 8 patients are trained each day. Each treatment takes about 3 to 4 hours. The facility that they have across at 155 White Plains Road is a more traditional centered care facility that does not perform the training. This training is done so that patients can treat themselves at home for a better quality of life.

Mr. Pennella commended Mr. Gottlieb for his presentation. He wanted to clarify there are two different zones here. He asked the applicant to elaborate more on what peritoneal dialysis is compared to regular dialysis, which is conducted across the street in the OB zone, to determine if what type of office it is, for example are clients coming in and getting training?

Mr. Gottlieb said the PD stations are a much less intense to use. In PD stations, dialysis is performed during those training weeks to allow the patients to be trained on how to give their own procedures. There are monthly follow ups with a technician or nurse to monitor the client to ensure that they are performing the dialysis correctly. Mr. Maher said it is definitely more of an office environment than a full clinic. The 155 facility is all diabetic dialysis. The staff performs the dialysis and it is more of a procedure.

Paul Tirrell, the project architect, said in the traditional sense of dialysis, a patient is there for three, four hours, three days a week, Monday, Wednesday, Friday, or Tuesday, Thursday, Saturday. This service that they will provide will allow them to do the dialysis at home. There are two types, the first is peritoneal dialysis, and the other is hemodialysis, two different techniques, depending on the doctor, peritoneal uses the body cavity, where the hemodialysis uses a mini dialysis machine. Those are the two differences. It really is a training center. Depending on which of the two techniques the doctor chooses for that patient, peritoneal takes a typical patient up to two weeks to train on it to do it properly. Hemodialysis may take up to five weeks of training. Later on, they go back for bloodwork and to make sure that they're doing it properly and to show that they are self-sufficient. It is quite a bit of difference between home dialysis and the centers that people will walk in for in-care service. This is a big push in the government to push home training more for a better quality of life.

Mr. Pennella asked where they have other locations. Mr. Tirrell said they have locations all throughout New York State. A group of them are inside in care centers. You're seeing more and more these standalone buildings come together now standing by themselves, as separately licensed. There are several of them on Long Island and Yonkers and this proposed site. They are trying to push the envelope a little bit to get more of them out there so that there is more availability of the smaller units. This is a small unit, only 3,300 square feet, compared to 7,500 or 10,000 square feet of an in-care center.

Mr. Pennella asked if it was possible to get a video of a typical layout of this type of facility and how they operate, maybe just a five-minute zoom so the Board can familiarize themselves with the process.

Mr. Tirrell said that they could provide a video of a walk through, coming into the waiting room, being greeted at the business office, and then being brought into a training room itself. He noted that there is not a lot to these facilities. There is a reverse osmosis water system, and other components, that are used on the treatment floor. The patients are there to clean their blood, taking the place of the kidney.

Ms. Lawrence would like to see a video of a comparable facility at the next meeting.

Ms. Rachlin asked if there is a laboratory on site. Mr. Tirrell said there is no laboratory. The patients come in, the blood is drawn and separated, packaged and sent to a laboratory.

Mr. Gottlieb did note that some municipalities do classify this use under a laboratory use, and oddly, the section of the village code we're trying to be permitted under does permit research laboratories. They have a very odd and unique use that is somewhere in between the two.

Mr. Pennella asked how long a typical patient is in the facility for treatment. Mr. Tirrell said anywhere between four and five hours. Ms. Lawrence asked how long it takes a patient to learn so that they can do their treatment at home. Mr. Tirrell said that PD takes about anywhere from 10 days to two weeks and HD, which are the mini machines, takes anywhere from two weeks to five weeks, depending on the confidence of the individual and the training staff.

Mr. Jolly asked what other types of offices are in 200 White Plains Road. Mr. Pennella advised that there are no medical uses currently at 200 or 220 White Plains Road. This location used to be in the OB zone and in the late 80's, it was rezoned to MU. He is researching why it was rezoned. This area also includes the Talleyrand Crescent apartment complex, which is also in the MU zone. There was a DEC office and Engineering Offices at this location at one point. The only thing that actually stands out is the 240 Building, with is the restaurant use, the old TGI Fridays. Building 220 is pretty well occupied; building 200, which is where the facility is proposed, is probably only about 25% occupied.

Ms. Lawrence believes that the building is pretty dated and needs renovation.

Mr. Pennella noted that there was a proposal for residential units at this location a few years back, but it did not materialize. They foreclosed on the buildings and now it is under new ownership. It looks like they are trying to turn it around and make it work.

Ms. Weisel would like more time to review the code to look at the differences between MU and OB. She referred to the part about research which was in regard to products. She is not sure if there is room for a re-interpretation, because they do look relatively different.

Ms. Lawrence said that the other medical uses are in the OB zone, and this is not in the OB zone, it is in the MU zone. She thinks it is incumbent upon the Board to do some research. It is certainly a commendable use that improves the quality of life for people by being able to do these treatments at home. She is just not sure if the use belongs in the MU zone. She would like to adjourn to next month to give the Board time to consider all the ramifications and do additional research.

Ms. Lawrence asked if anyone in the public would like to comment.

Mr. Levoi advised that there is no public comment.

Mr. Gottlieb advised that they will be providing the video for next month.

Mr. Pennella asked if it was possible to have the applicant look into the possibility of this service as a permitted accessory use as it relates to the laboratory. Based on what was discussed tonight, maybe this could use could be classified in a different category. Mr. Gottlieb agreed to take a look at this. He always tries to take the path of least resistance. He thanked everyone, especially the staff, for making this process incredibly organized.

Ms. Lawrence moved, seconded by Ms. Rachlin, to adjourn this application to the March 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

Ms. Rachlin moved, seconded by Mr. Jolly, to adjourn the 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

The meeting was adjourned at 8:20 p.m.

Lizabeth Meszaros- Secretary