

ZONING BOARD OF APPEALS
VILLAGE OF NYACK

SPECIAL PERMIT NARRATIVE

32 SOUTH FRANKLIN STREET
Tax lot 66.37-2-47

This is a supplement to the narrative summary dated June 2, 2026, previously submitted in this matter. We refer the Board to that narrative summary for a description of the project.

At the June 29, 2026, meeting of the Board we were advised by Building Inspector Carmona that a special permit was needed pursuant to VON Code § 360-1.9(D)(2), which provides:

D. Nonconforming uses. Any nonconforming use may be continued indefinitely, but:

(2) Shall not be changed to another nonconforming use without a special permit from the Zoning Board of Appeals and then only to a use that, in the opinion of said Board, is of the same or a more restricted nature.

The proposed project is in the DMU-1 zoning district. Among other things, that district (a) requires that multi-family dwellings consist of four or more units (Zoning Code, Table 3-1, Table of Permitted Uses) and (b) residential uses are generally prohibited on the ground floor (VON Code § 360-2.4.B(2)(a)).

The existing building contains only three units and has no ground floor commercial space. It has been determined to be a prior non-conforming use and is “grandfathered” under VON Code § 360-1.9.D if left untouched.

The proposed project will increase the number of units to six, therefore bringing the structure into compliance with the required number of units. However, it will still not have ground floor commercial use. The Building Inspector determined that this latter condition requires the special permit described above. He explained that, since the building was being enlarged, and there was no ground floor commercial space in the enlarged ground floor, the non-conformity was being enlarged.

The applicant believes that the proposed “expanded” lack of ground floor commercial space is of the “same nature” as the existing. The expansion is toward the rear of the

site. It does not expand or enlarge the street frontage of the building. Any commercial space in the enlarged portion of the building would have no visibility from the street and would likely be unrentable. Further, ground floor commercial space in the front of the building would be out of character of the block.

A special permit, or special use permit, is defined as,

an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.¹

Uses that are allowed under a special permit

have been determined to be compatible with the allowed uses in the district, but to ensure that the character of the community and other public health, safety and welfare concerns are protected, permits relating to those uses are not automatic, but are rather subject to review by a designated municipal board [citations omitted].²

Unlike a use variance, a special permit use is “tantamount to a legislative finding that the permitted use is in harmony with the zoning and will not adversely affect the neighborhood.”³ As such, “it must be granted where the articulated conditions have been met unless there exists a reasonable ground for denial supported by substantial evidence.”⁴

The need for area variances does not constitute non-compliance with the “articulated conditions”:

Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.⁵

Special permits run with the land and are not limited to the individual applicant or property owner.⁶

There are no parameters in VON Code § 360-1.9 relating to the required special permit. Therefore, the general criteria of VON Code § 360-5.9.C apply:

¹ Town L. § 274-b.1.

² 2 Salkin, *New York Zoning Law and Practice* (4th ed.), § 30:1.

³ *Id.* at § 30:2.

⁴ *Id.*

⁵ Town L. § 274-b.3.

⁶ *St. Onge v. Donovan*, 71 N.Y.2d 507, 527 N.Y.S.2d 721 (1988).

C. Criteria. In authorizing the issuance of a special permit, the Zoning Board of Appeals or Planning Board shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to ensure the accomplishment of the following objectives:

(1) That all proposed structures, equipment and material shall be readily accessible for fire and police protection.

The structure, equipment and material will be accessible. The project will actually increase accessibility as it will create a secondary means of access to the rear of the lot (a pedestrian easement across the police substation parking lot) that does not currently exist.

(2) That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

New York courts have discussed this type of condition:

As a starting point, it is well settled that the inclusion of a permitted use in a [*13] zoning law "is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the local community" (*Matter of WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd*, 79 NY2d 373, 383 [1992]; see *RPM Motors v Gulotta*, 88 AD2d 658, 658 [1982]). The same is true of a permitted use that is subject to a special use permit (see *Matter of Retail Prop. Trust v Board of Zoning Appeals of Town of Hempstead*, 98 NY2d 190, 195 [2002], *Matter of Blanchfield v Town of Hoosick*, 149 AD3d 1380, 1383 [2017]. Indeed, in terms of the project's harmony with the general zoning plan, a use subject to a special use permit is a permitted use, except that the applicant must "demonstrate compliance with the conditions legislatively imposed upon the permitted use" (*Matter of Troy Sand & Gravel Co., Inc. v Fleming*, 156 AD3d 1295, 1299 [2017] [internal quotation marks and citation omitted; emphasis added], lv denied 31 NY3d 913 [2018]). Thus, although the project requires a special use permit, [fn omitted] the proposed use is still one that is permitted and this, indeed, is "tantamount" to a finding of compatibility with Local Law No. 4 (see *Matter of Blanchfield v Town of Hoosick*, 149 AD3d at 1383).⁷

The DMU-1 district stretches along the West side of South Franklin Street from Main Street southward to just past Depew Avenue. Immediately south of the subject, and on the same block, there are two residential buildings without ground floor commercial space (34 and 38 South Franklin Street) and a parking lot (36 South Franklin Street). The proposed expansion will continue this existing condition.

⁷ *Matter of Hart v. Town of Guilderland*, 2021 N.Y. App. Div. LEXIS 4367, *12; 2021 NY Slip Op 04273

(3) That, in the case of any use located in or directly adjacent to a residential district:

The site is across South Franklin Street from an MFR-2 district.

(a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said residential district or conflict with the normal traffic of the neighborhood.

The proposed use will continue to be residential. The front of the building will retain its current residential architecture and location. No parking or vehicular access to the site is proposed. The building will be expanded toward the rear, where it abuts the DMU-1 and DMU-2 zones. Ironically, had ground floor commercial uses been included, they would arguably have greater adverse impacts on the MFR-2 district even though no special permit would be needed. To the contrary, the lack of ground floor commercial use in this location provides a useful transition between typical DMU-1 developments and nearby residential development.

(b) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

The proposed building extension will be of similar height to the existing building, which is below that allowed in the DMU-1 or MFR-2 districts. The building sides will be extensions of the existing building sides. There will be no adverse impact on the development of nearby properties.

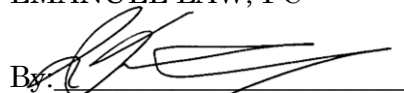
(4) That the application is consistent with any additional use-specific standards required by Article III of this chapter.

There are no additional use-specific standards for this use in Article III.

Based on the foregoing, the applicant believes that it is entitled to the requested special permit.

Dated: July 2, 2026
New City, New York

EMANUEL LAW, PC

By: 
Ira M. Emanuel