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November 4, 2025

Village of Mamaroneck
Zoning Board of Appeals
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Re: ZON 25-0009, 338-352 Mt. Pleasant Avenue

I represent The Neighbors of Mount Pleasant Association, a loose-knit group of homeowners principally in the Maple Avenue area adjacent to the proposed facility. I submit this memorandum in opposition to the above-referenced application. Please understand that time, space and budget prohibit me from addressing all of the points raised by Search for Change; hopefully I have addressed the important ones.

## I
## *The Building Inspector Was Right*

The Building Inspector correctly interpreted the zoning ordinance to conclude (a) what Search for Change proposes is not "fair and affordable housing as provided in the Village Code, and (b) the "supportive housing" units are not "dwelling units" under the Village Code – and therefore cannot be "multifamily housing" under the Code.

The Building Inspector revisited this application in July 2025 and stated, in pertinent part:

> Applicant indicates that the proposed building will contain supportive housing units. Supportive services are to be provided on the premises. Applicant further proposes that they, and not the Village, will determine the eligibility requirements for supportive housing units, and that eligibility will be determined on bases other than income.

Further, citing Code Section 342-3[1] and 342-24, the Building Inspector concluded:

> Neither the C-2 nor the R-5 zoning districts are zoned for the use described in the application. While multifamily housing is permitted in the C-2 district, housing that constitutes 'a boardinghouse, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging or rooming house, or nursing or other similar home or structure shall not be deemed to constitute a 'dwelling unit.' Therefore, the proposed development does not constitute a 'multifamily dwelling.' As such, the use is not permitted in either the C-2 or R-5 zones absent a zone change or use variance.
>
> Further, even if the development qualifies as multifamily as defined in the Village Code, this use is not permitted in the R-5 zone absent a zone change or use variance.
>
> Additional story not allowed for, unpermitted use in R-5. With respect to the C-2
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> zone, given "dwelling unit" definition, part B is not applicable to proposed
>
> project.
>
> [more text not typed due to time limit here]
>
> The Building Inspector was correct in all respects.

Search for Change has proposed a project that is not permitted under Chapter 342 of the Village Zoning Code. Village Code Section 342-106A Eligibility Standards, provides for a very different form of "affordable housing" than what Search for Change proposes:

> Eligibility priorities. Eligible families applying for fair and affordable housing units and fair and deeply affordable housing units will be selected for occupancy on the basis of a lottery drawing conducted on an as-needed basis by the Village or its designated agent. The Village or its designated agent will establish the list of lottery winners based on bedroom count and provide the list to the owner or manager. The owner or manager will then notify the selected families.

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[1] Dwelling Unit is defined:
A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space, other than vestibules, entrance or other hallways or porches, or cooking or sanitary facilities in common with any other "dwelling unit." A boardinghouse, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging or rooming house or nursing or other similar home or structure shall not be deemed to constitute a "dwelling unit."

Code Section 342-107A reconfirms that it is the Village that controls the program, not the developer:

> The Village or its designated agent will be responsible for the administration of the purchase and rental of fair and affordable residences and for the promulgation of rules and regulations as may be necessary to implement these requirements. The owner or manager of the fair and affordable residence is responsible initially for determining and certifying eligibility and must provide certification and documentation of eligibility to the Village or its designated agent in accordance with its rules and regulations prior to the fair and affordable housing families or fair and deeply affordable housing families being placed on the list for the lottery drawing.

In their application, Search for Change makes clear that this is *not* what they propose. Instead, they intend to maintain at least 50% of the units as "supportive housing," and the remainder as "affordable housing." Clearly they propose to send their patients or clients – individuals with disabilities such as Serious Mental Illness – into the "supportive housing" units. But under the clear language of the Village Code, Search for Change has no right to dictate who will occupy the development. Yet under ESSHI, they have to maintain control.

***A. The ZBA should request documentary evidence***

Preliminarily, we ask that the ZBA request documentary evidence from the applicant. The most striking feature of the file before the ZBA is the complete lack of any documentary evidence showing what will be the actual use of the property. Instead, you have a lawyer and his client verbally repeating their optimistic intentions. Yes, the applicant has given you many pages of floor plans and site plans, but nothing about their proposed *use* of the property. From my brief research these past two weeks, I have concluded that there are a host of critical documents that the ZBA should review to understand the proposed use, among them,

> – documents from the State and authoritative sources describing precisely what is Supportive Housing, and the corollary, what are Supportive Services. This is a very slippery concept, which seems to change with every verbal telling of the story.[2] As an example, we are submitting some documentary evidence, such as

[2] For example, the records of the proposed Search for Change Supportive Housing project in the Town of Carmel, contain the following exchange between a Planning Board member and Ashley Brody, the Search for Change CEO. Apparently the existing Search for

the New York State Office of Mental Health (OMH), "Supportive Housing Guidelines" (2022) - Exhibit A hereto.

– documents describing the ESSHI (Empire State Supportive Housing Initiative) grant program, and the specific documents pertaining to the grant application filed by Search for Change with respect to this project, and its approval by OMH or other agencies. ESSHI imposes a host of rules and regulations – which help to define what will be the actual "use" of this property; the ZBA ought to have this information.

– documents describing the lottery(ies) into which they proposes to send the ESSHI patients. The lottery was a critical concern of the Building Inspector – and will likely be central to the ZBA interpretation of the Code. Yet the ZBA has nothing but the often-inconsistent and vague assurances of the applicant.

– what will the leases (and other agreements) with the "tenants" look like? We can pretty much guarantee they won't look like any lease you have seen with conventional housing.

***B. They're not going through a Village lottery***

At the September 4, 2025 public hearing, the applicant's counsel seemed to say the applicant is willing to submit this project's units into a Village-run (or Village-designated) lottery. But when the question was posed to counsel and client on September 4, there were several answers, not entirely consistent, concluding in "we'll get back to you."

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Change facility in Carmel has experienced a plague of incidents requiring the Town police to be called. When asked about that project, Mr. Brody simply said *this* supportive housing is different from *that* supportive housing:

> Mr. Cote [Board member] stated you have made verbal representation that these units wouldn't create additional burdens. We have received information that one of the units that Search for Change had in Mahopac, there was a significant burden on the Police Department in particular with this unit. He asked what type of impact have the other units had on the Police Department?
>
> Mr. Brody stated we operate different types of supportive housing ...

Mr. Brody went on to say he didn't envision the *other* type of supportive housing, for *this* supportive housing project. Exhibit B - Carmel Transcript 2/11/21 at p. 6.

But they can't put the supportive housing units through a lottery, because they have to guarantee[3] the State Office of Mental Health that 50% of the units will be occupied by individuals with Serious Mental Illness or similar disability; they have no guarantee that, entering their patients in the Village lottery, those patients would win the lottery and be entitled to occupy all those units.

In the papers filed last week, they have a new version of an answer. They argue that they have the right to select the lottery participants:

> It is important to underscore that although, pursuant to Section 342-107A, the "Village or its designated agent will be responsible for the administration of the purchase and rental of fair and affordable residences and for the promulgation of rules and regulations as may be necessary to implement these requirements", Section 342-107A also requires that the **"owner or manager of the fair and affordable residence is responsible <u>initially for determining and certifying eligibility</u> and must provide certification and documentation of eligibility to the Village or its designated agent in accordance with its rules and regulations prior to the fair and affordable housing families or fair and deeply affordable housing families being placed on the list for the lottery drawing."** Further, it bears emphasis that the Lottery is only necessary in Year One at the inception of occupancy of the Fair and Affordable Residences. Thereafter, occupancy will occur pursuant to a Waitlist. Other than the initial rent-up of the Project, occupancy will occur in accordance with a pre-qualified (eligible) waiting list or pool of individuals or households who have expressed interest in, and meet the eligibility criteria that will roll off this waitlist into available units based on application date, income level, and household size in accordance with all other program guidelines. Search for Change Cover Letter 10/31/25 at p. 6. (emphasis and underscoring in original)

The October 31 submission devotes some two pages to "answering" a simple question posed to them on September 4, 'will the ESSHI units go through a Village run or Village-designated lottery, or not?' Normally, an answer to that question would be "yes," or "no." Here, the applicant repeatedly states they *will* comply with the Village Code, but then

[3] They get at least $750,000 a year extra, if 50% of the units are ESSHI patients.

provides extended commentary on what *they* think their obligations are, under that Code. All the more reason to request documentary evidence of how the regional lottery operates, and the special separate lottery for Search for Change patients. And, as we suggest below, the ZBA ought to retain an expert to advise the ZBA on this entire area of rules and regulations, which seem only to be accessible to those who operate in this niche area.

My clients' research suggests that Search for Change plans to (a) select their own ESSHI patients for the "lottery" and then (b) submit them to a separate lottery set up and operated for Search for Change.[4] In other words, they will be using a contrived mechanism to frustrate the expressed intent of the Village Code.

***C. "Supportive Housing" is Housing plus Services – a different use***

Search for Change has represented to ESSHI that 50% of the units in this project, will be occupied by individuals who suffer disability such as Serious Mental Illness, and who have agreed to receive ongoing social services from Search for Change. They are patients being treated by Search for Change, and this facility will be their outpatient residence.

According to the Supportive Housing Network of New York, which administers the program for the Office of Mental Hygiene, the Empire State Supportive Housing Initiative (which Search for Change is using or hopes to use), the target population is:

> The eligible target populations to be served under this program are families or individuals who are both homeless (see below for definition) and who are identified as having an unmet housing need as determined by the CoC or local planning entity or through other supplemental local, state and federal data, AND have one or more disabling conditions or other life challenges, including:

[4] I am told that Search for Change CEO Ashley Brody's spouse runs a separate special needs housing program in Westchester County, apparently for tenants requiring accommodations for special needs. The precise contours of this program are not known, but it's not a leap to think that Search for Change will submit their patients to a lottery or referrals under her auspices. Again, the ZBA should request documentary evidence.

Serious mental illness (SMI);
Substance use disorder (SUD);
Persons living with HIV or AIDS;
Victims/Survivors of domestic violence;
Military service with disabilities (including veterans with other than honorable discharge);
Chronic homelessness as defined by HUD (including families, and individuals experiencing street homelessness or long-term shelter stays);
Youth/Young adults who left foster care within the prior five years and who were in foster care at or over age 16;
Homeless young adults between 18 and 25 years old;
Adults, youth or young adults reentering the community from incarceration or juvenile justice placement, particularly those with disabling conditions;
Frail Elderly/Senior: Any person who is age 55 and older, who is enrolled in Medicaid, and requires assistance with one or more activities of daily living or instrumental activities of daily living. Eligible persons are referred from a Skilled Nursing Facility (SNF), or identified as homeless by a Health Home, hospital, Managed Care Organization (MCO), medical respite, Managed Long-Term Care (MLTC), Performing Provider System (PPS), or shelter; and
Individuals with intellectual or developmental disabilities (I/DD)

According to New York Office of Mental Health, "Supportive Housing Guidelines" (2022) (Exhibit A hereto) at p. 2, Supportive Housing is described as follows:

> All individuals served in OMH Supportive Housing must be at least 18 years of age, have a primary diagnosis of serious mental illness (SMI) as per the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), and experience substantial impairments in functioning in several areas of role performance due to their clinical condition, for an extended duration on either a continuous or episodic basis. ***Qualifying adults are dependent on treatment, rehabilitation, and support services to maintain functional capacity***. (Emphasis added)

It sounds like what a nursing home or an outpatient clinic does. It certainly doesn't sound like "housing." In Carmel, Search for Change conceded, this use did not constitute "multifamily housing." Their engineer-representative advised the Planning Board, "the town code right now does not have multi-family as a use that would accommodate this [Supportive Housing]. The only multi-family that gets close to this is your senior housing law." Exhibit B, Carmel Planning Board minutes 12/17/20 p. 17.

With "supportive housing," the "housing" component is inseparable from the "services" component. It's as if a developer wanted to construct a long-term care facility for elderly patients not able to live on their own. The developer couldn't simply call this "senior housing." It's housing plus services. That's a different use.

***D. The assessors agree – this is different from other housing***

A review of how other municipal officials – assessors – classify Supportive Housing reveals that they, too treat it as a separate use. Building Inspectors are not the only municipal officials charged with trying to figure out what type of "use" Search for Change constitutes. Although it's almost impossible to find other Supportive Housing Projects, we found three.

How do local assessors categorize these as uses under the assessment codes? For those who aren't familiar with New York's property tax assessment procedures, local assessors attribute a code to each type of use in the parcels assessed for real property tax purposes. See Exhibit C, assessment codes, deeds and rolls. So how are Supportive Housing properties classified?

First, we can tell you what they *aren't*:

1. They aren't single family, assessment code 210.
2. They aren't two family residential, assessment code 220.
3. They aren't multifamily residential, assessment code 281.
4. They aren't apartments, assessment code 411.

The Search for Change Supportive Housing at 1 Mayhew and at 108 Delancey, are classified as 410 "Living Accommodations." The Search for Change Supportive Housing at 1241 Post Road, Scarsdale is classified as "Special Schools and Instruction."

Scott Ransom isn't the only municipal official to regard this as something other than conventional housing.

***E. Supportive housing units are not "dwelling units"***

Village Code 342-3 defines "dwelling unit" as:

> A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space, other than vestibules, entrance or other hallways or porches, or cooking or sanitary facilities in common with any other "dwelling unit." A boardinghouse, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging or rooming house or nursing or other similar home or structure shall not be deemed to constitute a "dwelling unit."

It appears that the Building Inspector concluded that the "use" proposed here, is something in the nature of one or more of the uses listed in sentence two – which are *excluded* from the definition. So we must examine those exclusions.

The Building Inspector correctly concluded that the Search for Change proposal was in fact within the exclusions, and therefore would not constitute "dwelling units" under the Code. This then means that it cannot "multifamily housing" under 342-3.

Thus, the Building Inspector is treating "supportive housing" as either:

a boardinghouse
a convalescent home
a dormitory
a fraternity or sorority house
a hotel
an inn
a lodging or rooming house
a nursing home or
another similar home or structure

From the list of exclusions, the Building Inspector obviously concluded that the proposed facility is "similar to" a convalescent home or a nursing home. The developer here is

selecting its own patients, to place them in outpatient housing, where they will receive an array of ongoing supportive services.

By the way, although Search for Change repeatedly states they will not be providing any "medical" services, (a) that's not quite true, and (b) there is no doubt that the patients will be receiving medical services from third parties – a fact apparently ignored in all the Village boards' records of this application. Search for Change says "we're not providing medical," but that doesn't mean the patients won't be receiving medical from other providers.[5]

The ESSHI FAQs makes clear that "direct medical care and staffing" is not provided, but that medical care – such as nurse nutritionist and behavioral health professionals – can and will be provided by program participants such as Search for Change:

> FAQ #7 – Pg. 14 states that "services provided by ESSHI funds must be non-medical services." May an applicant include the services of a health educator or nurse that offers preventative health education, sex education, and nutrition services?
> ANSWER – Yes, services may include linkage and/or direct services which are not funded through other mechanisms, such as Medicaid, including health education. An applicant can choose what organization or individual provides that education. Eligible services are designed to assist eligible families, individuals and young adults to live independently and remain stably housed.
>
> FAQ #8 – Are supportive services that focus on nutrition and healthy eating allowable, or is this supportive service considered medical and therefore unallowable?
> ANSWER – Health/nutrition services that are not funded through other mechanisms (including Medicaid) are an allowable cost.
>
> FAQ #32 – Does the RFP allow expenses for nurses or home health aides and psychologist?
> ANSWER – Behavioral health and health education services are allowable costs so long as the identified services are not funded through other mechanisms, such as Medicaid. Direct medical care staffing and services are an ineligible expense.

[5] We assume there are agreement that will be in place with such providers; without any documentary evidence, however, it's impossible to know.

Exhibit D hereto – ESSHI FAQs.

ESSHI lists types of services to be provided:

• advocacy and connection to health care services;
• behavioral health services;
• housing case management, including eviction prevention services and skills building around tenant responsibilities;
• counseling and crisis intervention;
• risk assessment/reduction and safety planning;
• legal system and court assistance;
• coordinating access to civil legal services including immigration, family, matrimonial, consumer and housing;
• trauma-informed assessment and services;
• public benefits management and advocacy with multiple systems engagement (CPS/ACS, DSS/HRA/DHS, OVS, etc.);
• employment and vocational training and/or assistance;
• educational assistance, including GED support;
• parenting skills development and support;
• childcare assistance;
• direct provision of child care services;
• children's services, including educational advocacy, support and counseling;
• pregnancy prevention, including counseling;
• family reunification and stabilization;
• life skills training and support;
• health education;
• transportation assistance for needed services/entitlements;
• building security services;
• information on other available services to meet clients' needs and referral as appropriate;
• social/recreational services;
• Homeless Management Information System (HMIS) expenses;
• other like services defined by the applicant and approved by the SCA;
• Services or staff to assist eligible families, individuals and young adults in navigating the range of available housing and social service resources, identifying available housing opportunities, and completing housing applications and documentation requirements; and/or
• Program staff that support the direct service to ESSHI participants.

Exhibit E – ESSHI RFP at p.14 (June 2025)

The services will likely be administered by weekly visits[6] – not tri-monthly visits

[6] In the Town of Carmel record, Mr. Brody suggested that visits could be as frequent as

as counsel tells you in the October 31 submission.[7] So if each of the 30 ESSHI "tenants" is receiving several support services, that amounts to hundreds of visits per week. Nurses, behavioral therapists, nutritionists, advocates for a variety of other services, and the like.

Not surprising that the Building Inspector concluded that this project looks more like a facility, than your garden-variety apartment building.

For the Board's information, the Code does define a "nursing home," as references in the definition of "dwelling unit" above. And that definition contains the key language that care is provided on an ongoing basis "to individuals who are unable to fully care for themselves." Sounds a lot like Search for Change.

> ***Nursing Home***
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> Village Code 342-3 defines "nursing home" as:
>
> > A skilled nursing facility licensed by the State of New York to provide full-time convalescent or chronic health care under medical supervision to individuals who are unable to fully care for themselves, but not including facilities for surgical care or institutions dedicated to the care and treatment of mental illness, alcoholism, or narcotics addiction. No nursing home shall contain any uses other than those permitted pursuant to applicable regulations of the State of New York and the nursing home's operating certificate issued pursuant thereto.
>
> The applicant has argued that no medical services will be provided to their patients; and thus, technically it's not a "nursing home." But as we saw just above, they and

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weekly:

> "Mr. Brody stated they [supportive housing occupants] ... receive a visit or a phone call from one of our care managers on a weekly basis." Exhibit B – Carmel Minutes 2/11/21 at p. 6.

[7] See October 31 letter at p.4:
"At a minimum, Supportive Housing requirements include ... a monthly face-to face contact, a home visit as needed based on the support plan or emergent needs but at least once every three months...."

third parties *will* be providing medical services to the Search for Change patients, both on-site and off-site. And remember, the Code exclusions from the "dwelling unit" definition also exclude "similar structures." So even if Search for Change doesn't meet all the criteria to be considered a "nursing home," it clearly is "similar" to one.

"Nursing home" is permitted as a Special Permit Use in any residential zone under 342-52.1, but on a smaller scale than Search for Change apparently wants.[8] Some "exclusionary zoning"!

Search for Change certainly *sounds* like a "nursing home" since it is specifically for "individuals who are unable to fully care for themselves, but not including facilities for surgical care." Like a nursing home, this facility will have an extensive network of professionals providing ongoing support services – perhaps hundreds of visits a week – to individuals 'unable to fully care for themselves.' Indeed, that's almost the definition of Supportive Housing – housing for individuals who can't care for themselves without supportive services.

Probably, the 342-3 definition of "nursing home" excludes "institutions dedicated to the care and treatment of mental illness, alcoholism, or narcotics addiction" because those are generally out-patient, walk-in type operations.

***Other similar home or structure***

Also excluded from the definition of "dwelling unit" is anything "similar" to that list. The Search for Change use is very nearly a "nursing home" – as discussed above – and is therefore not a "dwelling unit," as the Building Inspector concluded.

***E. Search for Change is not eligible to apply for the bonus permitting six stories***

Under Section 342-50 – the section that allows residential housing in the C-2 zone

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[8] See Code Section 342-52.1, "Within any residential district, the Planning Board may grant a special permit for construction and operation of a nursing home ...."

– it specifies that at least 10% of the units shall be "fair and affordable housing." Section 342-50B(6). The maximum Floor Area Ratio is 2.0, maximum height is 40 feet and off street parking must be provided per the Code. Section 342-50F. There is a separate "bonus" section, that allows up to 2.5 Floor Area Ratio and 60 feet height.

Search for Change is clearly not permitted to apply for the 'density bonus' contained in Section 342-103B, since (a) as discussed above, this is not "fair and affordable housing," and (b) Search for Change is not "a not-for-profit corporation whose purpose is the creation of fair and affordable housing." Section 342-103B states:

> If 100% of the dwelling units in a development in the C-2 Districts for which a special permit is granted under § 342-50B are fair and affordable residences in accordance with this article and the development is undertaken in cooperation with a state or local affordable housing program or in conjunction with a not-for-profit corporation whose purpose is the creation of fair and affordable housing, the Planning Board may allow the development to be up to six stories and 60 feet, but not more than five stories and 50 feet on Mamaroneck Avenue, and may allow the floor area ratio (FAR) to be up to 2.5.

This section is relied upon by Search for Change, to justify the six-story proposed building, and various other expansions of use. Yet Search for Change is, in reality, not a housing corporation. Rather, it provides a variety of services to individuals suffering mental illness, drug abuse, joblessness, prison releasees and a host of other obstacles. According to Search for Change, their mission is stated as:

> Our Mission: Search for Change is dedicated to improving the quality of life and increasing the self-sufficiency of individuals with emotional, social and economic barriers. We teach the skills needed to choose, obtain and maintain desirable housing, meaningful employment, higher education and productive relationships with family and friends. Our programs and services are focused on individual choices, needs, interests and abilities.
> Our Partners: Search for Change, Inc. is proud to maintain a Class A membership in Coordinated Behavioral Health Services, Inc. (CBHS), a leading Independent Practice Association (IPA) comprised of agencies that deliver a diverse array of health, behavioral health, and social welfare services throughout the Hudson

> Valley. CBHS leverages the collective expertise of its member agencies in furtherance of the "Triple Aim" of healthcare reform. Simply put, we endeavor to improve service recipients' experience of the care process, to promote desired outcomes, and to reduce overall costs.

Exhibit F – Search for Change Mission Statements

Yes, in addition to providing behavioral therapy, crisis intervention, counseling, therapy and vocational rehabilitation, they *do* sometimes assist clients to obtain housing as one of their services. But this is not their "purpose," it is one of many tools they use to carry out their stated purpose. Exhibit F contains excerpts from Search for Change website – making clear they are principally a social services agency.

And, as discussed above, Search for Change is not proposing "fair and affordable housing," as that term is used in the Village Code.

## *II*
## *Search for Change is Wrong*

We now address the arguments made by Search for Change. For the most part, we address the arguments initially made in the 25-page Cover Letter dated August 14, 2025.

### *A. Estoppel*

Centrally, the applicant requests relief based on Municipal Estoppel. This is a tiny exception to the vast body of New York law – which makes clear that the doctrine of estoppel does not apply to municipal officials acting in a governmental capacity.

Estoppel is not applied in even very egregious cases of "injustice."

In Parkview Assocs. v. City of New York, 71 N.Y.2d 274, 282, 525 N.Y.S.2d 176 (1988), New York's highest court refused to apply municipal estoppel where the City of New York has issued a building permit – mistakenly – and the applicant had started construction of a

31-story building, incurring millions of dollars in reliance expenses. The Court stated:

> Turning to the next stage of our analysis, we have only recently once again said that "[g]enerally, estoppel may not be invoked against a municipal agency to prevent it from discharging its statutory duties" *** Moreover, "[e]stoppel is not available against a local government unit for the purpose of ratifying an administrative error" *** In particular, "[a] municipality, it is settled, is not estopped from enforcing its zoning laws either by the issuance of a building permit or by laches" *** and "[t]he prior issue to petitioner of a building permit could not 'confer rights in contravention of the zoning laws' " *** Insofar as estoppel is not available to preclude a municipality from enforcing the provisions of its zoning laws and the mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results *** the City should not be estopped here from revoking that portion of the building permit which violated the long-standing zoning limits imposed by the applicable P.I.D. resolution. (citations omitted)

In E & S Realty, LLC v. Bd. of Appeals of Vill. of Sands Point, 208 A.D.3d 1236, 1238, 175 N.Y.S.3d 269, 271–72 (2d Dept. 2022), the Court reiterated:

> The doctrine of equitable estoppel is to be invoked sparingly and only under exceptional circumstances' " *** " '[T]he mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results' " *** and the prior issuance of a building permit does not estop a municipality from enforcing its zoning laws. (citations omitted)

That's the legal backdrop against which the applicant seeks relief from the ZBA.

### B ***The May 1, 2024 Land Use Determination was final, binding and non-appealable***

Search for Change argues the 2024 determination could never be changed, unless by an appeal. 8/14/25 Cover Letter p. 1. The Village, and anyone else, was afforded 60 days to appeal the May 1, 2024 Determination. 8/14/25 Cover Letter p. 2. They argue:

> The Village and the public's failure to appeal the May 1, 2024 Building Inspector Zoning Determination to the ZBA within 60 days as required by New York State Village Law Section 7-712-a(4) and (5)(b) acts as an absolute legal bar to E. Scott Ransom's July 1, 2025 Land Use Determination subsequently.

They re-cast this argument as lacking jurisdiction and void:

> E. Scott Ransom's Illegal July 2025 Land Use Determination is void *ab initio*, was issued without power or jurisdiction, contravened statutorily required administrative review procedures; and, therefore was an ultra vires act. (8/14/25 Cover Letter p. 3)

Applicant relies primarily on Rattner v. Plan. Comm'n of Vill. of Pleasantville, 156 A.D.2d 521, 527, 548 N.Y.S.2d 943, 948 (2d Dept. 1989). See Cover Letter p. 3. Supposedly, this is precedent to support their argument that the Building Inspector cannot reexamine the Building Inspector's own prior decisions. In fact, the case is very different; there, various Village entities (such as the Planning Commission) were attempting to challenge the Building Inspector's interpretation. As the applicant here admits, in Rattner, "the village itself and the village planning commission disputed their own building inspector's determination, as well as the prior building inspector's determination from 1982." 8/14/25 Cover Letter p. 3. The Court made clear that the parties aggrieved were various entities within the Village government – not the Building Inspector:

> Regardless of the form in which the Village parties have chosen to couch their action, they primarily seek review of the propriety of the former Building Inspector's determination that the parking of commercial limousines on the subject property was a permitted use. As such, the Village parties' cause of action for judicial review of an adverse administrative determination was maintainable in a proceeding pursuant to CPLR article 78 *** Judicial intervention is barred by the Village parties' failure to pursue their administrative remedies by timely bringing an administrative appeal of the Building Inspector's determination with the Zoning Board of Appeals .....

Here, by contrast, the Building Inspector was simply reconsidering his own office's prior interpretation. There is no legal support for the Search for Change position. If it were so simple, the *Parkview* case would have come out the other way. There, the Building Department realized a mistake was made in issuance of a building permit, over a year after issuance of the permit, and after the building was largely built.

Other cases cited by applicant all involve persons other than the Building Inspector himself, seeking to challenge his determinations without first appealing to the ZBA; rightly, such challenges are dismissed. See for example Jonas v. Town of Colonie, 110 A.D.2d 945, 488 N.Y.S.2d 263, 264 (3d Dept. 1985), where the challenge was made by "residents living in the area surrounding the proposed site of a housing project to be constructed." They had not appealed the determination they now sought to challenge in Court, and their action was therefore dismissed.

None of the cases has anything to do with the point they are making. All the cases involve persons or entities other than the Building Inspector, seeking to challenge the Building Inspector's determination, but without timely appealing same to the ZBA.

C. ***The applicant relied on the May 1, 2024 Determination by spending money and time processing its application***

Their central argument is that they relied on the May 1, 2024 Land Use Determination, buying this expensive property to construct their "supportive housing" project. In fact, by deed dated February 12, 2024, Search for Change, acting through an entity "Harbor Side Apartments Housing Development Fund Corporation," acquired land at 338 - 352 Mt. Pleasant Avenue, Mamaroneck for $3 million.

This was months *before* the May 1, 2024 Determination, on which they claim to have relied. Copy of the deed dated February 12, 2024 is Exhibit G. And we know that acquisition process had to have begun many months – perhaps years – before the actual deed dated February 12, 2024.

Moreover, they argue, "the Applicant spent 15 months between May 2024 and July 2025 before the Planning Board in good faith processing, revising and honing the Project based upon comments received from the Village Planning Board, its Consultants, and/or the

public to reduce the number of units to 62 and increase the number of parking spaces back to 28 through various modifications, including relocating the community room and utility room to the second floor." (8/14/25 Cover Letter p. 2)

Two points. First, in *Parkview Associates*, the applicant had built a 31-story building, and had to tear off about 10 stories of the building; New York's highest court said *that* was not sufficient prejudice to warrant applying the Estoppel doctrine. The legal and engineering fees – excessive as they may be – would not constitute the kind of "prejudice" that warrants estoppel.

Secondly, there's no factual evidence (legal and engineering bills) in the record before the ZBA to support the argument that the applicant invested "millions" in reliance. The applicant is responsible to provide a proper record in an appeal to the ZBA. Absent tangible evidence, the Board should reject this argument.

D. ***Municipalities cannot simply change their mind***:

> Municipalities cannot simply change their mind at any time when a new administration and municipal officials take contrary positions to that of prior municipal officials. (8/14/25 Cover Letter pp. 2-3.)

This is the same argument. The applicant cites no authority to suggest that a Building Department has some sort of statute of limitations to review its own prior determinations. Again, in *Parkview*, the re-assessment occurred more than a year later.

E. ***Municipal estoppel***:

In their initial submission, the applicant argues (again) municipal estoppel based on "manifest injustice":

> And, to the extent that one would assert municipal estoppel, it is clear that any such application here would result in manifest injustice. (8/14/25 Cover Letter p. 5).

***1. "Manifest injustice" argument would not apply to a challenge to a governmental act***

Municipal estoppel based on "manifest injustice" is completely inapplicable here, because the challenged action was a governmental act, not an action taken in a proprietary or contractual capacity. Moreover, this tiny exception to the overwhelming body of law requires showing two elements, neither of which have been shown by Search for Change. To apply municipal estoppel, an aggrieved applicant needs to show the "exceptional circumstances" of (a) wrongful conduct on the part of the municipal official, and (b) reasonable and detrimental reliance on the initial determination.

Indeed, New York's highest Court has stated estoppel is not available. In Daleview Nursing Home v. Axelrod, 62 N.Y.2d 30, 33, 475 N.Y.S.2d 826 (1984), the New York Court of Appeals stated:

> We have held many times that estoppel is not available against a governmental agency in the exercise of its governmental functions. *** And,.... exception as has been made to that rule is of "very limited application" and has been "addressed to an unusual factual situation."

In accord Hamptons Hosp. & Med. Ctr., Inc. v. Moore, 52 N.Y.2d 88, 93, 436 N.Y.S.2d 239 (1981) ("The doctrine of estoppel is not applicable to the State acting in a governmental capacity").

The Courts generally distinguish between government actions taken in "governmental" capacity versus taken in "proprietary or contractual" capacity. Estoppel is almost never applied to a "governmental" action (as here the Building Inspector acted in a governmental capacity); estoppel is sometimes applied – in unusual circumstances – to "proprietary or contractual" actions. Thus, in Branca v. Bd. of Educ., Sachem Cent. Sch. Dist. at Holbrook, 239 A.D.2d 494, 495–96, 657 N.Y.S.2d 445, 446 (2d Dept. 1997), the Court stated, "We recognize that a governmental agency may be subject to estoppel if it is shown that a

manifest injustice resulted from actions taken by the agency in its proprietary or contractual capacity."

Thus, counsel's argument based on "manifest injustice" is an argument not properly asserted where, as here, a governmental action is involved. In Baxter v. Cnty. of Suffolk, 201 A.D.2d 603, 604, 607 N.Y.S.2d 972, 973 (2d Dept. 1994), the Court recognized the distinction:

> A municipality may be subject to estoppel when a manifest injustice has resulted from actions taken in its proprietary or contractual capacity.... Here, because the resolutions were not contractual in nature, the passage of the resolutions constituted a governmental act, and, therefore, the County of Suffolk was not bound by estoppel.

In Muller v. New York City Dep't of Educ., 142 A.D.3d 618, 621–22, 37 N.Y.S.3d 138, 142 (2d Dept. 2016), the Court summarized this area of law, rejecting the petitioner's attempt to use estoppel in the context of a contractual dispute:

> [Petitioner] failed to establish that the respondents should be equitably estopped from asserting that she did not exhaust her remedies under the CBA. Estoppel is generally not available against a municipal defendant with regard to the exercise of its governmental functions or its correction of an administrative error ***. However, an exception to the general rule applies in "exceptional circumstances" involving the " wrongful or negligent conduct" of a governmental subdivision, or its " misleading nonfeasance," which "induces a party relying thereon to change his [or her] position to his [or her] detriment" resulting in "manifest injustice" *** The petitioner failed to establish that the respondents engaged in wrongful or negligent conduct or misleading nonfeasance that resulted in manifest injustice such that equitable estoppel should be invoked against them. (citations omitted)

In Landmark Colony at Oyster Bay v. Bd. of Sup'rs, 113 A.D.2d 741, 744, 493 N.Y.S.2d 340, 343 (2d Dept. 1985), cited by the applicant, the Court stated:

> The doctrine of equitable estoppel should apply to preclude imposition of the penalty in this case. It is settled that a municipality or other governmental subdivision may be estopped where its ***wrongful or negligent conduct*** induces a party relying thereon to change his position to his detriment (Bender v. New York City Health & Hosps. Corp., 38 N.Y.2d 662, 668, 382 N.Y.S.2d 18, 345 N.E.2d

> 561; see also, LaPorto v. Village of Philmont, 39 N.Y.2d 7, 12, 382 N.Y.S.2d 703, 346 N.E.2d 503). Although estoppel should not be invoked against governmental entities in the absence of ***exceptional circumstances*** (Luka v. New York City Tr. Auth., 100 A.D.2d 323, 325, 474 N.Y.S.2d 32, affd. 63 N.Y.2d 667, 479 N.Y.S.2d 524, 468 N.E.2d 706), we have not hesitated to do so where a municipality's misleading nonfeasance would otherwise result in a manifest injustice (Matter of 1555 Boston Rd. Corp. v. Finance Administrator of City of N.Y., 61 A.D.2d 187, 192, 401 N.Y.S.2d 536) (emphasis added)

The cases citing the *Landmark Colony* case, generally decline to apply estoppel. Vassenelli v. City of Syracuse, 174 A.D.3d 1439, 1441, 108 N.Y.S.3d 235, 239 (4th Dept. 2019) ("This is not one of those unusual circumstances where estoppel against a municipality is warranted because doing otherwise would "result in a manifest injustice" in large part because reliance was "unreasonable").

***2. Applicant has not shown any "wrongful act" or sufficient "reliance"***

Even assuming the "manifest injustice" argument could be applied here, Search for Change has failed to establish either of the elements.

First, there is no basis to suggest any "wrongful act" on the part of the Building Inspector. Certainly Search for Change thinks he's wrong, but that doesn't make his conduct "wrongful" in the legal sense.

Second, Search for Change has failed to show "reliance" sufficient to estop the Building Department from reviewing its prior determination. A few points merit mention. The reliance in Parkview was vastly greater than any reliance here, yet the Court said it was insufficient there. The reliance here is entirely based on counsel's talk; he says they spent millions, but there's nothing to support that. We know that Search for Change bought the property long before the first determination in 2024, so they can't point to buying the property as reliance. Finally, can anyone really say any reliance was "reasonable"? Even a first year law

student could read the Affordable Housing law sections quoted above, and see that this project was not within that law. Significantly, counsel does not suggest that anybody ever told Search for Change that they could evade the Village affordable housing lottery ... only that the matter was 'in discussion,' as counsel advised the ZBA on September 4.

In summary, estoppel based on "manifest injustice" would not apply because (a) (a) that argument does not apply to challenge a governmental act, (b) the applicant has shown no "wrongful conduct," (c) the applicant has not documented any reliance at all, and its argued reliance is far below what the case law would require, and (d) the reliance would not be "reasonable" given the clarity of the Code.

F. ***Discrimination and Exclusionary Zoning***

This only requires brief mention. Counsel made two related points. First, that zoning deals only with the uses of property, not the users. Second, that if this project is not permitted, then the Village is engaged in exclusionary zoning.

Counsel insinuated that the Village of Mamaroneck and/or its Zoning Board of Appeals, is prejudiced against the patients/clients of Search for Change, i.e. handicapped people with severe disabilities including physical and mental disabilities, people with drug issues, criminals on parole and the like. Search for Change also argues that if the ZBA sides with the Building Inspector, it is engaged in exclusionary zoning. Although the argument has no basis in fact, the applicant submitted several legal authorities ostensibly supporting the argument. We address them here.

***1. Zoning regulates the uses, not the users***

Yes, it is an elementary principle of zoning law that zoning regulates the uses of land, not the people or entities that engage in such uses. For example, the Court struck down a locality's effort to control users in Dexter v. Town Bd. of Town of Gates, 36 N.Y.2d 102, 105, 365 N.Y.S.2d 506 (1975), stating:

> [I]t is a fundamental principle of zoning that a zoning board is charged with the regulation of land use and not with the person who owns or occupies it.

There, however, a local board had attempted to re-zone land for a specific company (Wegman's Supermarkets). Neighbors sued, latching upon the Wegmans restriction as being improper,[9] and the Court overruled the rezoning, stating:

> We believe that the resolution of the town board which provides that the rezoning of the land in question 'shall inure to the benefit of Wegman Enterprises, Inc., only', is plainly personal to Wegmans itself and does not relate to the use of the property and the zoning thereof.

Similarly, in Sunrise Check Cashing v. Town of Hempstead, 20 N.Y.3d 481, 484, 964 N.Y.S.2d 64 (2013), the Court struck down a zoning ordinance that prohibited check-cashing establishments. They were banned not because of anything about their use of the land, but because the town felt they were "predatory and exploitative finance enterprises."

Here, by contrast, it is the use of the property – for "supportive housing" – and not the population of patients/clients, that is in issue. Supportive Housing is not housing alone, but a combination of housing and supportive services. The two cannot be separated. As a zoning matter, this involves a very different use. Can we seriously say, if a hospital bought a property and wanted to construct long-term outpatient housing and provide outpatient care services, that this would be treated the same as "multifamily housing"? Even more laughable, treating it as "fair and affordable housing" as defined under the Village Code?

Nobody is excluding fair and affordable housing -- one just needs to comply with the Code.

Nobody is excluding recovering drug abusers, mentally-ill individuals and the like. Search for Change can do what they always have done – purchase individual residences

[9] They didn't want any re-zoning to commercial, but found this 'technicality' and used it well.

and use them for placement of their clients / patients. Putting 60 units of such patients / clients in one facility, requires consideration of the facility as something completely unlike "fair and affordable housing."

***2. The zoning ordinance doesn't exclude housing for the handicapped***

Of course, a handicapped person can live anywhere they want to live in the Village. Any single family home may be purchased and occupied by a handicapped person. That alone should rebut the argument that, without Search for Change, there could be no handicapped housing in the Village.

But there's also a zone set up specifically to accommodate handicapped housing. Under Section 342-25 Multiple Residence / Senior Citizen District, the district is designed for a handicapped housing project. Although a quick read of the title says it's for seniors, it actually permits non-seniors (and seniors) who are "handicapped."

> Permitted uses. In the RM/SC Multiple Residence/Senior Citizen District, no building, structure or premises shall be used or occupied and no building or part thereof or other structure shall be erected or altered, unless otherwise provided in this chapter, except for the following:
> A. Senior citizen housing shall be limited to projects developed through local nonprofit sponsors with state or federal assistance.
> B. Occupancy shall be limited to:
> (1) A single person who is 62 years of age or over ***or a nonelderly handicapped person between the ages of 18 and 62.***
> (2) A husband or wife under the age of 62 years who is residing with his or her spouse who is 62 years of age or over ***or handicapped***.
> (3) Children and grandchildren residing with their parents or grandparents where one of said parents or grandparents with whom the child or grandchild is residing is 62 years of age or older ***or handicapped***, provided that said children or grandchildren are 18 years of age or over.
> (4) The surviving member or members of a family living within the RM/SC District with an eligible older ***or handicapped person*** at the time of his or her death.
> (5) Two or more elderly ***or handicapped*** persons living together.
> (6) Adults under 62 years of age and may be admitted as permanent residents if it is established that the presence of such persons is essential for the physical care or

economic support of eligible older or handicapped persons. (emphasis added)

The Village Code does not define "handicapped" – the Code only uses the word "handicapped" when referring to parking stickers – but we can easily look to statutory definitions to glean its meaning.

Of course, we first examine the Americans with Disabilities Act, 42 U.S.C. 12102, which defines a disability as "a physical or mental impairment that substantially limits one or more major life activities of such individual." Major life activities "include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."

The RM/SC zone specifically allows for handicapped housing. As long as there's one "handicapped" person – a person who is substantially limited in being able to care for themselves – this zone is for them, and their whole family.

Search for Change will say, there's not much RM/SC in the Village. The fact is, the use is not "excluded," as counsel argued to the ZBA. Once such a zone is shown to exist within a municipality, the courts will not 'second guess' and require establishment of such zone in other areas. As the Court of Appeals stated in the *Berenson* case, in the context of multi-family housing:

> "If a district is set aside for multiple-dwelling development, there is no requirement that other portions of a town contain such developments

Berenson v. Town of New Castle, 38 N.Y.2d 102, 109–10, 378 N.Y.S.2d 672 (1975).

And, should the applicant desire to create multi-unit "supportive housing," similar to a "nursing home" but not providing medical care, they apparently can build anywhere a nursing home is permitted. But again, the limitations on the size of a nursing home likely wouldn't generate as much money for Search for Change.

G. ***Zoning Ordinance Strictly Construed Against Municipality and in Favor of Property Owner***

There is no doubt about that. But where the ordinance is clear -- as it is here – that rule doesn't matter. The fact that Search for Change ignores the language in the Code, doesn't make that language go away ... or become ambiguous.

H. ***Numerous rules of Statutory Interpretation***

Counsel also makes a host or arguments concerning statutory interpretation. Space, time and our budget do not permit a response to these makeweight arguments.

I. ***Unequal application of dwelling unit definition***

Citing several other projects that were approved 'despite' the current Building Inspector's interpretation of the code, it appears the applicant creates a straw man "the Building Inspector said this isn't dwelling units because we have a common area" and then rebutting their straw man. Nor did the Building Inspector say this is like an SRO, or a sorority, etc.

In fact, the Building Inspector said no such thing, and it's undeniable that most if not all multifamily housing buildings have some form of common areas, whether lobbies, fitness areas, or meeting rooms. Somehow we doubt the common areas found in other buildings will have a use remotely similar to the use of this common area – a revolving door for psychiatrists, behavioral interventionists, nurses, crisis management personnel and the like.[10]

Note the ZBA members were concerned about "monitoring" the Search for Change project. How do we know the patients / clients won't require perhaps extensive on site services, such as psychiatric and medical? Certainly individuals with these serious disabilities will require ongoing "medical" services and much more than a typical "affordable housing" unit.

[10] In law generally, if the government faces "entanglement" – a continuing monitoring of an applicant to verify it is operating in accordance with legal requirements – this militates against the grant of an approval.

Who is providing these services? What are the nature of the services needed?

Again, we recommend the ZBA retain expert assistance to advise the Board as to what the proposed use entails, in the way of medical services. Whether those medical services are being provided by Search for Change, or by third parties, it's clear there will need to be psychiatric and similar services. That's inherent in the proposed use, and the ZBA needs to understand it to be able to render a determination.

***Conclusion***

The applicant's initial submission ignored the central point – the Village Code requires a Village-controlled lottery, while Search for Change (to get state money) needs to have control over the selection process. They knew that, the day they started this process.

The central point – completely ignored in the lengthy arguments made by the applicant – is that their "supportive housing" is not within the code definition of "fair and affordable housing," because (a) they want to maintain control over the selection of residents, and (b) they are essentially using this as a convalescent home or nursing home, providing outpatient services to their clients / patients.

In their October 31 submission, they've apparently settled on a position. We're not sure what that position is, but it certainly is not an unequivocal, "yes" to the question whether they agree to put their units into a Village-run or Village-selected lottery.

The proposed apartments are not "dwelling units" under the Code because they are not "housing." They are "housing" plus ongoing and extensive social and medical-related services." The project looks like an outpatient clinic for patients who are unable to live on their own. Under this Code, that's clearly not a 'dwelling unit."

The applicant's main argument, legally, is a form of estoppel. The argument is baseless legally, and unsupported in the record. The argument that it would be discriminatory and/or exclusionary is ridiculous on its face. The Building Inspector's interpretation of "fair and

affordable housing" (a) to require a Village-run lottery – not a Search for Change controlled selection process – does not exclude handicapped individuals and does not prevent Search for Change from operating "supportive housing" in the Village as scatter-site housing or as an outpatient project under Code restrictions, or (b) simply submitting their patients/clients as part of a Village-run or Village-designated affordable housing lottery. And, should they wish to

construct a large facility, there is a zone they could have explored.[11]

I reiterate that the Board should (a) request from the applicant documentary evidence as described herein, and (b) retain an expert to advise the Board on the complex thicket of OMH and ESSHI rules and regulations, Supportive Housing, Affordable Housing lotteries and the full characteristics of the use proposed by the applicant.

Respectfully submitted,

David O. Wright

Exhibits
A. New York State Office of Mental Health (OMH), "Supportive Housing Guidelines" (2022)
B. Town of Carmel Planning Board minutes
C. Assessment codes and rolls
D. ESSHI FAQs
E. ESSHI RFP (June 2025)
F. Search for Change web screenshots
G. Search for Change deed, February 2024

[11] We hope the Board understands that, due to time, space and budget limitations, we have not responded to every single point. We ask that the Board allow me to speak at the November 6 meeting.