

Minutes of: June 11, 2008

Date Approved: July 9, 2008

Date Filed/Village Clerk: _____

TUCKAHOE ZONING BOARD AND BOARD OF APPEALS

TUCKAHOE VILLAGE HALL – 8:00pm

Present:	Gloria Rosell	Chairperson
	Susan Crane	Member
	Kevin McBride	Member
	Philip Allison	Member
	John Kang	Member

John Cavallaro Village Attorney
William Williams Building Inspector

Chairwoman Rosell announced the agenda as follows:

Item #1	Approval of Minutes of the May 14, 2008 meeting.	
Item #2	92, 94, 100 Main St.	Return
Item #3	53 Underhill St.	Return
Item #4	25 Warren St.	Return
Item #5	92 Oakland Ave.	Area Variance
Item #6	101 Bella Vista St.	Area Variance
Item #7	135 Oakland Ave.	Area Variance

Item #1 Motion by Chairwoman Rosell to approve minutes of the May 14, 2008 meeting was seconded by Member McBride and approved by the Board with a vote of 5-0.

Item #2 100 Main St.	Return
Mr. William Null, Attorney representing the applicant Mr. Burd, requested the Board's decision regarding the application.	

Member Crane offered the following Resolution:

ZONING BOARD OF APPEALS
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

TERRY BURD,

Premises: 100 Main Street
Tuckahoe, New York,

Applicant.

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND DECISION**

Background and Findings of Fact

The Applicant is the record owner of the premises commonly known as 100 Main Street, Tuckahoe, New York and known on the tax map of the Village of Tuckahoe as Section 28, Block 5, Lots 3, 5 and 7 (the "Premises"). The Premises is currently improved by three buildings located adjacent to one another, two of which front along Main Street and the other along Terrace Place.

The Premises are proposed to be developed and modified in conjunction with the Applicant's business strategy for the Premises. In connection with the Applicant's proposal, it seeks two area variances and a special use permit from this Zoning Board of Appeals for the Village of Tuckahoe (the "Zoning Board"). The Premises is located in the Business/Residential Zoning District of the Village. This zoning district prescribes the following requirements as affecting the development of the Premises and the area variances required by the Applicant: (1) no part of any building shall exceed a height of three stories;¹ (2) building height shall not exceed 42 feet above the curb level;² and (3) a floor area ratio of 1.2 cannot be exceeded by buildings in such zoning districts.³ In addition, the Applicant has requested that a special use permit be granted to permit the proposed building having a residential use to be located in a Business/Residential Zoning District

Many of the adjacent and neighboring buildings share similar characteristics and, as submitted by the Applicant, the nature and scope of the proposed building on the Premises would remain consistent with the goals of the Business/Residential zoning district. The Applicant proposes to add both retail and residential spaces within the same building space, while conforming as close as possible to the limitations and dimensional requirements set forth for this zoning district.

The Nature of the Application

¹ See Village of Tuckahoe Zoning Ordinance § 4-5.3.3.

² *Id.*

The Applicant's goal is to develop a mixed use building having both residential units and retail space, which will front along Main Street in the Village of Tuckahoe (the "Project"). In connection with its proposal, the Applicant seeks an area variance for an increase in floor area ratio that will result from added retail space created, and an area variance for the number of stories proposed in the building. A special use permit from the Zoning Board will also be required for a residential use of the proposed building within a Business/Residential zoning district.

A summary of the proposed deviations from the Zoning Ordinance are as follows:

	Required (max.)	Proposed
Floor Area Ratio:	1.2	1.96
Number of Stories:	3	4

In total, the Applicant seeks two area variances from this Board. The Applicant has represented to the Zoning Board that it would utilize all design and construction techniques possible to minimize the impact that the proposed building would have on other buildings in the zoning district and those nearby.

Conclusions of Law

To grant an area variance, the Zoning Board must consider the following five factors in drawing a conclusion from its analysis:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties?
2. Whether the benefit sought by application can be achieved by a feasible alternative to the variance?
3. Whether the requested variances are substantial?
4. Would the variances have an adverse impact on the physical or environmental conditions in the neighborhood?
5. Whether the alleged difficulty was self-created?

In considering the abovementioned five factors, the Zoning Board must determine whether the benefits to the Applicant outweigh the detriments to the health, safety and welfare to the community if the variances are granted. After applying the above five factor test to this application, the Zoning Board has resolved to grant this application because the Applicant's proposal satisfies the above analysis. In considering the nature and scope of the Applicant's proposal, the Zoning Board has concluded that the area variances sought are will not produce detrimental effects on the community, and that their scope will not have any appreciable negative impacts on adjacent lots or those in the greater community.

1. ***Whether An Undesirable Change Would Be Produced In The Character Of The Neighborhood Or A Detriment To Nearby Properties?***

³ See Village of Tuckahoe Zoning Ordinance § 4-5.3.4.
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The Zoning Board has determined that no undesirable change in the character of the neighborhood would result from granting area variances for floor area ratio and the number of stories in the proposed building. With respect to the area variance concerning floor area ratio, the proposed building calls for a floor area ratio of 1.96. The floor area ratio for the Business/Residential zoning district is 1.2 where the use of a lot is 50% or more residential as measured by gross floor area. See Zoning Ordinance Section 4-5.3.4. Although the floor area ratio will exceed the limits imposed by the Zoning Ordinance, this slight deviation will be adequately offset by similar buildings within the Business/Residential and nearby Business zonings district along Main Street. The slight increase in floor area ratio is mitigated by the additional fourth story to the proposed building, which brings the building's overall height to 42 feet. This height is the same or nearly identical to that of adjacent and nearby buildings.

With respect to the variance for number of stories, the proposed building will incorporate dormers into the slope of its roof on the fourth and uppermost story of the building. Incorporating dormers into the slope of a mansard roof having several pitch angles and rooflines will mitigate any negative aesthetic impacts from a fourth story on that of nearby and adjacent three story buildings. This type of aesthetic will reduce any imposing or perceived effects of a fourth story. Moreover, and significantly, the Application complies with the building height limitations for this zoning district, i.e. the building height is only 42 feet.

Public comments have been submitted decrying the proposed building and its uses because of an alleged fear that it will lower the values of adjacent and/or nearby buildings. The proposed building will contribute a pleasant aesthetic and will blend in with the mixed building characteristics currently affronting Main Street. Enhancing aesthetics, quality of life for all of its citizens and improving the physical attractiveness of the Village are goals of the Master Plan that this Project will help foster. See Master Plan, Section 2.

2. *Whether The Benefits Sought By the Applicant Can Be Achieved By A Feasible Alternative to the Variances?*

The Applicant's proposal seeks to increase both the residential and commercial viability of the Premises by rendering it a mixed use building. The Premises is located in a zoning district that contains lots zoned for both residential and commercial uses. To accomplish the Applicant's goals, an increase in the number of stories with a consequent increase in floor space is required. To facilitate the proposed number of residential units on the second to fourth stories and further provide first floor retail space, the Applicant requires an area variance permitting a fourth story in this zoning district. While staying compliant with the 42-foot building height requirement in the Zoning Ordinance, the Applicant's fourth story will cast no negative effects on other buildings with respect to height.

The above area variances will also result in a higher percentage of usable floor space in the proposed building on the Premises. Thus, another area variance permitting a higher floor area ratio is the only means by which a larger structure with greater interior floor space could be built on the existing lot. Moreover, because the Premises is located in a Business/Residential zoning district, other feasible alternatives to granting the above referenced area variances are unavailable. Thus, based on the unique location of the lot and the minimum space required by this Project, no feasible alternative exists absent granting the instant variances.

3. *Whether The Requested Variances Are Substantial?*

Here, the Zoning Board has determined that the two area variances discussed herein are not substantial when comparing the Project with that of adjacent and nearby properties. The Applicant has requested an area variance for the number of stories permitted in the Business/Residential zoning district. While adding another story may be substantial in nature, the overall height of 42 feet for the proposed building conforms to building height requirements in the Zoning Ordinance. Adding a fourth story while conforming to overall building height limitations is nothing more than a reconfiguration of usable space divided between two floors.

The Applicant also requests an area variance for a nonconforming floor area ratio of 1.96, which exceeds that limit of 1.2 for the Business/Residential zoning district. Despite the increase in floor area ratio that would result from granting this Application, the effects of such increase will be mitigated by the addition of a less obtrusive, unimposing four story design for the proposed building that will provide for retail space on the first story. Granting an area variance for floor area ratio will not produce any appreciable negative impacts. Thus, the net effects from granting the above area variances cannot be deemed “substantial” in nature.

4. *Would The Variances Have An Adverse Impact On The Physical Or Environmental Conditions in the Neighborhood?*

The Zoning Board has determined that the requested area variances will generate no adverse impacts on the physical or environmental conditions in the surrounding neighborhood. This Project will not generate any negative significant environmental impacts such as poor aesthetics, increased traffic congestion, hazardous traffic rerouting, noise pollution, exhaust fumes or noxious odors, increased surface runoff, an increase in impervious surface coverage, poor drainage, sewerage problems, solid waste production and/or storage, steep slope erosion, subsidence, air pollution or negative impacts on ambient air quality in the area or any other negative environmental consequences.

This Project has been extensively studied and reviewed by planners, who have proposed adequate structural and environmental safeguards necessary to safely reach the Applicant's goals for the Premises without contradicting or negatively affecting any of the environmental considerations set forth in the Master Plan. *See Master Plan, Section VII.* Aesthetically, the proposed building will compliment the assorted retail and residential buildings that comprise and affront Main Street and produce no negative effects on its surrounding environment.

Despite the fact that the proposed building will have four stories, the overall height of the building will not exceed 42 feet, and thus otherwise conforming. Physically, the Project's height is similar to that of other surrounding and nearby buildings, and its overall profile remains consistent with the building context throughout the neighborhood. This Project is not physically imposing in the context of the surrounding buildings and the neighborhood.

Furthermore, the sloped roof will have little, if any, impact on the views afforded to neighbors of adjacent buildings. Despite a nonconforming fourth story, the 42 foot high mansard roof will provide better visibility for neighbors in adjacent buildings than a 42 foot high three story building with flat surfaces and a flat roof, which would occupy more volume and air space. Thus, the record before this Board does not support the complaints that occupants of adjacent buildings will suffer decreased visibility as a result of granting the above variances.

The Applicant has also incorporated a side setback measuring approximately six feet wide and spanning over half the length of the boundary between the adjacent four-story building and the proposed building. This, in turn, will allow for better access to the proposed building and will generate a corridor of light, air and circulation between the Project and the adjacent building. This setback will minimize the impact of the Project on the light and air quality supplied to the existing courtyard on the adjacent property to the west of the Premises. Thus, the size and proximity of the proposed building compared to that of the adjacent property will be further mitigated by this additional planning and design consideration.

With respect to the variance concerning floor area ratio, the proposed building will add a pleasant, modern building aesthetic that blends in consistently with the nearby streetscape while incorporating both retail and residential spaces into one of the Village's Business/Residential zoning district. Thus, the physical and environmental conditions of the Premises will have no negative effects on the surrounding properties or the greater community.

5. *Whether The Alleged Difficulty Was Self-Created?*

On the facts and the record, the Applicant's alleged difficulty was self-created because a smaller building could have been constructed on the Premises. However, this self-created difficulty is not fatal to the application. According to the plans submitted to the Zoning Board and arguments by architect Michael Goldblum, every effort has been taken to ensure that the proposed building will be minimally imposing and will blend in with the aesthetic, structure and scale of other buildings fronting Main Street. Indeed, these are express goals of the Project, which are consistent with the Village's Zoning Ordinance and the Master Plan.

In contrast, the difficulty here is not self-created to the extent that, if a smaller building was proposed, it would not blend in scale and otherwise remain consistent with the overall development plan for this zoning district. Further, the Applicant's difficulty is not self-created in that it fosters high density residential use in an area around the central business district, and in upgrading commercial area aesthetics to create a "more inviting and exciting image of the Village for its merchants". See Master Plan.

Considering the above factors, granting the proposed area variances would be consistent with the development goals of the Master Plan. Granting the above area variances would have no appreciable impacts on the community and would establish consistent precedent for future developers in the area. Thus, the Zoning Board has resolved to grant the above referenced area variances for this Project.

Special Use Permit

Pursuant to Section 6-1 of the Zoning Ordinance, the Zoning Board is granted the authority to issue special use permits as set forth in the Zoning Ordinance. "Any use designated in a given district as requiring a special use permit shall be deemed to be a permitted use in such district subject to satisfaction of the conditions and standards set forth in this article in addition to all other requirements of this Zoning Ordinance." Zoning Ordinance Section 6-1.1. More specifically, the standards prescribed in Section 6-1.6 for all special permit uses must be satisfied along with more specific requirements set forth in Section 6 of the Zoning Ordinance, which pertain to Business/Residential zoning districts.

Pursuant to Section 6-2.4 of the Zoning Ordinance, any new buildings or premises contemplating residential uses within a business/residential zoning district must comply with the requirements set forth more fully below.

A. Residential Uses in Business/Residential Zone

1. Separate Entrances

The proposed building on the Premises will incorporate both business (retail) and residential uses. However, the first story of the proposed building will house only retail space and the remainder of the building (the second

through fourth floors) will be entirely dedicated to residential use. Consistent with Section 6-2.4 of the Zoning Ordinance, parts dedicated to residential use will be accessible through a common lobby or plaza located on the first (retail) floor of the proposed building. Additionally, residential sections of the proposed building will enjoy separate, private access via entrances located on the rear of the proposed building.

2. *Compatibility of Use*

The residential and commercial uses contemplated by this application are compatible with the Zoning Ordinance. Any residential uses within the proposed building will be situated on floors above that of those used for business or commercial uses in accordance with the Zoning Ordinance. Because the first story of the proposed building shall be used for retail purposes, it is deemed a compatible use under Section 6-2.4(3) of the Zoning Ordinance.

In determining that retail use is compatible with residential use, the Zoning Board considered factors such as noise, odor, pollution, anticipated parking operations and expected traffic volume. At a November 14, 2007 meeting of the Zoning Board, prior traffic impact studies performed on Thursday, October 24, 2007 from 6:00am to 10:00pm and the following Saturday during similar hours were presented and concluded that nine additional cars would result from granting this application. Factors such as noise, pollution and traffic volumes will not be significantly affected by a traffic increase of nine vehicles. Further, the retail character of the proposed business on the Premises will ensure that noise and other disturbances from business operations will be minimal and that regular business hours can be reasonably anticipated.

3. *Building Context*

In granting this application, the Zoning Board has considered the effects of this proposed building on that of adjacent and nearby buildings in the community. The proposed building will remain compliant with the height limitations of 42 feet for buildings in the Business/Residential zoning district. Additionally, the design will incorporate features and scales that are similar in character and compatible with the surrounding streetscape in the Zoning District, with the goal of creating an inviting “Main Street.” *See Master Plan.*

The overall dimensions of the building will be no larger than that of other buildings that front along Main Street. Despite the addition of a fourth story to the proposed building, the proposed mansard roof design utilizing multiple slope angles and rooflines in and above the fourth story will soften the aesthetic impact of a fourth story and allow the building to blend in with adjacent and nearby buildings. Thus, the proposed building will remain consistent with the surrounding context of adjacent and nearby buildings that make up the Business/Residential zoning district.

B. Standards For All Special Permit Uses

1. *Compatibility with district*

The Zoning Board has resolved that the proposed use of the Premises is both harmonious and consistent with the uses prescribed for a Business/Residential Zoning District. This Project will help foster orderly, consistent development within the Business/Residential zoning district affronting Main Street. The dimensions and aesthetics of the proposed building will blend in with adjacent and nearby buildings in the zoning district and will add to the present continuity. Despite the fact that the proposed building will house residential apartments its occupants will be in close proximity to the retail space. It is probable that future occupants could patronize these retail facilities and others nearby, thus fueling the Village's local economy. The proposed building is intended to be partially dedicated to furnishing retail services to residents and nonresidents of the Village of Tuckahoe, which is an expressly permitted use within the Business/Residential zoning district. *See* Zoning Ordinance Section 4-6.1(a)(1).

2. *Compatibility With Master Plan*

The Project is compatible with the Master Plan because one of its goals is to foster commercial and residential development in properties on Main Street. The Master Plan seeks to enhance economic development by improving aesthetics and by creating an inviting commercial environment to merchants. *See* Master Plan. Drawing on the goals of the Master Plan, granting approval for this Project will increase revenue for local business owners, increase commercial thoroughfare to the area, increase property values throughout the Village and will promote interest in revitalization of other commercially viable zoning districts in the Village. Thus, this Project is clearly harmonious with the above express and implicit goals.

3. *Services*

The proposed building will be readily accessible for fire and police protection. The building is located on a public street that is navigable by fire and police protection services. Nothing in this record or in any presentations before the Zoning Board suggests that police or fire protection services or their access to the Premises will be diminished or in any way hindered by this Project.

4. *Adjacent Properties*

The location, nature and height of the proposed building will not hinder or discourage development and use of adjacent buildings. The Premises is situated in a part of the Village that is zoned for mixed or combined residential and business uses. From any perspective in the Village, the height and dimensions of the proposed

building will not exceed that of any surrounding buildings. Thus, the building height is compatible with Business/Residential uses in this zoning district. Moreover, reducing the impact of a fourth story by utilizing dormers built into the building's mansard roof will not create an imposing or incongruous building among those adjacent or nearby.

Rather, the proposed building will have pleasing aesthetics and will be a modest compliment to the other buildings nearby that front along Main Street. The intensity of the uses on the Premises and the overall footprint of the proposed building are consistent with other uses in this zoning district. The evidence proffered to the Zoning Board indicates that the following factors will not appreciably contribute to an increase in the intensity of use on the Premises: energy demand, ecological impacts, hazards to human health and the environment, air quality, surface and groundwater quality, traffic and noise levels, solid waste production, erosion, flooding, leaching, drainage and other factors concerning the intensity of use on the Premises. Thus, the properties adjacent to that of the proposed building will suffer no injury or deleterious effects from this Project.

5. *Nuisance*

The nature and scope of the residential and commercial uses of the Premises are such that they will not produce noise, fumes, vibration, noxious odors, flashing of lights or other similar nuisance conditions to the surrounding neighborhood. The largely residential character of this Project and the uses thereon will remain consistent with that of neighboring buildings. The business and residential profiles of the uses for the Premises are no more intense than those of nearby buildings and the zoning district as a whole. Additionally, no offensive, dangerous, destructive, or hazardous conditions to the health of the surrounding community will be produced as a result of this Project and its proposed uses.

6. *Neighborhood Character and Property Values*

On this record, there is no evidence that the property values of adjacent and nearby lots in the community will be diminished whatsoever by granting approval for this Project. The proposed building will contribute a more pleasing aesthetic in the neighborhood and may actually enhance the greater community. Presently, the lots that make up the Premises are improved by three buildings, which are older, in poorer condition and lower in value than the proposed buildings for this Project. Moreover, this Project will bring with it more residential tenants to the Main Street neighborhood and a consequent increase in commercial activity. As a result of the influx of capital and economic support to the area, property values for lots adjacent to and nearby the Premises are likely to increase.

7. *Traffic*

The Zoning Board recognizes that the proposed building could produce a slight traffic increase on public roadways leading to the Premises. However, expert studies conducted suggest that any traffic increase in the immediate area of the Premises will only be by a factor of nine vehicles. Indeed, this is a minimal increase in traffic and should not have any significant, negative effects on adjacent and nearby lots. The traffic impact study concluded that an increase of approximately nine vehicles during peak hours would result from granting approval for this Project, which is minimal in nature. Any increases in traffic will be adequately offset by the availability of off-street parking provided for the Project and more fully set forth below.

The traffic study conducted suggests that no appreciable increases in congestion will result from this Project, thus keeping the traffic volume and profile very similar to the status quo. Because the Premises will be used primarily for residential uses, the highest percentage of traffic to and from the Premises will be during peak traffic hours. Thus the impact of vehicles ingress and egress from the Premises on the surrounding community will be for a very limited time period during the work week.

Additionally, the proposed building has been set back an additional 2 feet 6 inches on its east side, which will permit the Village to widen Terrace Place in the event that the traffic volume to the area increases. Thus, after consideration and study, the Zoning Board finds that the effects on traffic from this Project would be reasonable in nature.

8. *Parking*

Pursuant to the Zoning Ordinance, a minimum number of off-street parking spaces are required to accommodate for the number of potential residential occupants and commercial patrons having access to the Premises as proposed. The Applicant has proposed that 42 off-street parking spaces be created to accommodate for the 21 residential units comprising the proposed building. These parking spots will be housed by a fully-enclosed parking facility enclosed within the proposed building. Further, there will be 19 additional off-street parking spaces provided to serve the newly added retail space. This increase will result in a ratio of parking spaces to floor area of 1:200 square feet. Granting approval for this Project will not affect the availability of parking along Main Street whatsoever. All of the above provisions for off-street parking conform to the Zoning Ordinance and require no further action by the Zoning Board.

9. Conformance with Regulations

Except for requirements concerning floor area ratio and the number of stories permissible for the subject building, the Applicant has complied with the requirements for lot area, lot width, frontage, side yard setback, building coverage and height. Based on the foregoing, this Board finds that the Applicant has reasonably satisfied the conditions applicable to the issuance of special use permits as set forth in the Zoning Ordinance for the Village.

Conclusion

Based on the foregoing, it is resolved that the area variances referenced herein and the special use permit referenced herein be and are hereby granted to the Applicant. The applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance the New York Civil Practice Law and Rules.

Dated: Tuckahoe, New York
June 11, 2008

Gloria Rosell
Zoning Board Chairperson

Chairwoman Rosell motioned to approve this resolution, was seconded by Member McBride and upon roll call was carried with a vote of 4 – 1 with Member Kang voting ‘Nay.’

Item #3 53 Underhill St.

Return

Mr. Pelligrini requested the Board’s decision regarding the permission to convert his home of 13 years back to a two-family home.

Member Kang offered the following Resolution:

ZONING BOARD OF APPEALS
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

Michael Pellegrini,

Premises: 53 Underhill Street
Tuckahoe, New York,

Applicant.

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND DECISION**

Background and Findings of Fact

The Applicant is the record owner of the premises commonly known as 53 Underhill Street, Tuckahoe, New York and known on the tax map of the Village of Tuckahoe as Section 34, Block 11, Lot 22 (the "Premises"). The Premises is currently improved by a dwelling that fronts along Underhill Street. The Premises is located in the Residence B Zoning District of the Village. Two-family dwellings are permissible uses in this zoning district.

The Applicant purchased the Premises modified by the existing dwelling, which was originally used for two-family use. The Applicant has utilized the dwelling only for single-family use since acquiring the Premises. The existing dwelling on the Premises contains a studio apartment in its basement that is accessible through a separate entrance. This studio requires no electrical, plumbing or structural work to render it habitable according to the Village Code. Additionally, the studio contains an existing kitchen and bathroom making it suitable for occupancy. The driveway and parking available on the Premises servicing the Premises are sufficient in their size and configuration to accommodate two-family use of the Premises.

The existing dwelling has not been structurally altered in any respect and its layout remains unchanged since the Applicant became the record owner. For the past 13 years, the Applicant has been utilizing the dwelling on the Premises for single-family use, despite the fact that the building on the Premises is zoned as a two-family dwelling.

The Nature of the Application

The Applicant seeks to utilize the building on the Premises for two-family use, which is consistent with the layout and structure of the building and that of other nearby buildings. The Applicant proposes no structural or aesthetic changes to the in utilizing it as a two-family dwelling. The existing studio apartment in the basement of the existing building requires no updates or changes to convert it to habitable, residential space. Thus, the Applicant proposes no net dimensional or structural changes to the Premises to accommodate the proposed two-family use of the dwelling.

A summary of the proposed deviations from the Zoning Ordinance for the Village of Tuckahoe (the “Zoning Ordinance”) are as follows:

	<u>Required</u> ⁴	<u>Proposed</u>	<u>Deviation</u>
Front Yard Setback:	25	16.72	33%
Side Yard Setback:	9	2.8	68%
Rear Yard Setback:	25	9	64%
Lot Width:	80	50	33%
Lot Area (minimum):	7,500	7,109	5%

In addition to the above, the Premises must have a five-foot wide landscaped buffer located within the required front, side and rear yard setbacks, which must also be maintained as open space for materials such as grass, plants and/or shrubbery. Currently, the Premises do not satisfy this landscaped buffer requirement.

Conclusions of Law

To grant an area variance, the Zoning Board must consider the following five factors in drawing a conclusion from its analysis:

6. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties?
7. Whether the benefit sought by application can be achieved by a feasible alternative to the variance?
8. Whether the requested variances are substantial?
9. Would the variances have an adverse impact on the physical or environmental conditions in the neighborhood?
10. Whether the alleged difficulty was self-created?

Granting the above relief requested herein will not result in any changes to the physical or structural character of the existing dwelling or to the configuration of the Premises. Neither the value nor the use of the Premises will appreciably change. Because there will be no changes to the Premises or the existing two-family dwelling in the above respects, the character of the neighborhood and nearby properties will remain completely unaffected.

The Applicant only seeks to utilize the dwelling on the Premises for two-family use rather than as a single-family dwelling. Allowing the Applicant to utilize the Premise in this manner is both permissible in the Residence B Zoning District and requires no modifications or changes in any respect to the existing dwelling on the Premises. Section 4-3.1.2 of the Zoning Ordinance expressly permits a dwelling housing two families, not to exceed one dwelling per lot. The Applicant’s proposed two-family use and the existing dwelling fully comply with this mandate.

⁴ All dimensional references herein shall be in terms of feet except for lot area, which is measurable in square footage.
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The Applicant requests area variances that are minimal deviations from the Zoning Ordinance. More particularly, the front yard setback, lot width and lot area requirements deviate from the Zoning Ordinance in a range of approximately 5% to 33%. The larger deviations for side yard setback (68%) and rear yard setback (64%) are insubstantial because they are not substantial departures from the character of the surrounding lots and buildings comprising the neighborhood. Additionally, the configuration of the Premises and the existing dwelling have not appreciably changed since the Applicant acquired the property, at which time it was being utilized as a two-family dwelling. Thus, the above deviations from the Zoning Ordinance are not substantial considering the use history of the Premises and the character of the surrounding neighborhood.

The character of the existing dwelling, its physical and/or structural characteristics and the intensity of the uses on the Premises will not change as a result of granting the above area variances. The Applicant will continue to utilize the Premises in exactly the same configuration and manner as when he came into ownership of it.

There will be no appreciable environmental or physical changes that result with respect to poor aesthetics, increased traffic congestion, noise pollution, exhaust fumes or noxious odors, increased surface runoff, an increase in impervious surface coverage, poor drainage, sewerage problems, solid waste production and/or storage, steep slope erosion, subsidence, air pollution or negative impacts on ambient air quality as a result of granting the above area variances. Thus, the area variances discussed herein will have no impact whatsoever on the physical and environmental conditions of the neighborhood.

The difficulty here is not self-created because the Applicant purchased the Premises knowing that the existing dwelling was being utilized as a two-family residence. Despite the Applicant's period of single-family use for the existing dwelling, he seeks permission for a use that was and remains permissible for the current configuration of the Premises. Clearly, the Applicant's difficulty is not self-created because he seeks to continue utilizing the Premises for a use that permissible when the Applicant purchased the lot.

Considering the above factors, granting the area variances herein would have no appreciable impacts on the nearby property owners in the neighborhood or the greater community. Thus, the Zoning Board has resolved to grant the above referenced area variances for this project.

Conclusion

Based on the foregoing, it is resolved that the area variances referenced herein be and are hereby granted to the Applicant. The applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance the New York Civil Practice Law and Rules.

Dated: Tuckahoe, New York
June 11, 2008

Gloria Rosell
Zoning Board Chairperson

Member Crane motioned to approve this resolution, seconded by Member McBride and upon roll call was carried with a vote of 5 – 0.

Item #4 25 Warren St. Return

Kari Elliot and Anthony Milanese, owners of the property, filed for the approval of their curb cut. Approval was granted by the DPW and Village Board.

No Public Comments

Member McBride motioned to close the public hearing, seconded by Member Crane and was carried unanimously.

Member Allison offered a Resolution for the application of an area variance requested by Kari Elliott for relief of the following sections of the Zoning Code 5-1.2(b).

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance as a second place is needed.
3. The requested variance is not substantial.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that the new space is similar to those in the area.
5. The alleged difficulty was not self-created as it was there when the property was purchased.

Member Allison made a recommendation to approve the requested area variances with the stipulation that construction begin within one year of granting this variance and for the construction to adhere to and be in compliance with the existing building code. The Board adopts a negative declaration pursuant to SEQR.

Member McBride motioned to approve this resolution, seconded by Member Crane and upon roll call was carried with a vote of 5 – 0.

Item #5 92 Oakland Ave. Area Variance

Mrs. Andrea Hanson, owner of the property, indicated that she has lived in the home for 6 years. The home was built in the 1920s and has an 18 ft. set back which is not in compliance with current zoning code. She requested a variance to install a 30in. wide overhang over the front steps to protect her family from the elements. This overhang will be held by brackets, no poles.

Chairwoman Rosell noted that the members of the Board visited the home and noted that this was a very common request. She indicated she received a letter from a neighbor in favor of this application.

Member Kang motioned to open the public hearing, seconded by Member McBride and unanimously carried by the Board.

No Public Comments

Member Kang motioned to close the public hearing, seconded by Member McBride and unanimously carried by the Board.

Member Crane offered a Resolution for the application of an area variance requested by Mr. and Mrs. Hansen 92 Oakland Ave. for the relief of the following sections of the building code:

Section 4-2.4.1 – There shall not be a front yard with a depth of less than 25 ft. provided, however, if the lot was created after July 1, 1999, the front yard depth shall not be less than 35 ft.

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood. The requested variance is to permit the construction of a new front door overhang in order to shield the entry from the elements.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: The overhang will extend out from the front door by 24 to 30 inches. It will not extend past the top front step or exceed the footprint of the steps on the side.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. The house was built in the 1920s with a front yard depth of 18ft. and does not meet the zoning requirements of today's code.
3. The requested variance is not substantial.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that it will enhance the curb appeal and keep with appearance of the surrounding homes.
6. The alleged difficulty was not self-created.

Member Crane made a recommendation to approve the requested area variance with the stipulation that construction begin within one year of granting this variance and for the construction to adhere to and be in compliance with the existing building code.

The Board adopts a negative declaration pursuant to SEQR.

Member McBride motioned to approve this resolution, seconded by Member Kang and upon roll call was carried with a vote of 5 – 0.

Item #6 101 Bella Vista St. Area Variance

Ralph and Denise DeSarno indicated that their house does not sit on a level piece of property. There is 21 ft. of useable property in the rear yard. The owners noted that they used pavers and a retaining wall to provide a level yard. The variance requested is to use pavers up to the property line to utilize the rear yard. Mr. DeSarno submitted photos of the rear yard. He indicated that his property goes beyond the retaining wall.

Bill Williams, Building Inspector, noted that the applicants did request and obtain the necessary permits to install the pavers presently on the property.

John Cavallaro, Village Attorney, read the legal notice the applicants sent out and advised the Board that it was ample notice to surrounding neighbors that the requested variance was for approval of the use of both sides of the rear yard.

Board members agreed that the submitted plans would need to be revised to show the property lines on both sides of the rear yard.

Member Crane motioned to open the public hearing, seconded by Member McBride and unanimously carried by the Board.

No Public Comments

Member Crane motioned to close the public hearing, seconded by Member McBride and unanimously carried by the Board.

Member McBride offered a Resolution for the application of an area variance requested by Mr. Ralph DeSarno 101 Bella Vista St. for the relief of the following sections of the building code: Section 4-2.4.4 Exception to yard requirements.

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: determination made by the Board after physically inspecting the property.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. Because of the nature of the property and the slope of the yard, also to provide a play area for his children.
3. The requested variance is not substantial. The requested variance is 4ft. on the right side of the property line and on the left, only goes to the fence, staying within the property line.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that the patio is on grade and will not affect the neighbors.
5. The alleged difficulty was not self-created.

Member McBride made a recommendation to approve the requested area variance with the stipulation that construction begin within one year of granting this variance and for the construction to adhere to and be in compliance with the existing building code.

The Board adopts a negative declaration pursuant to SEQR.

Condition – 1. The Board requests that the applicant continue to use the driveway to free spaces in front of the house.

2. The applicant must submit revised plans to the Building Inspector.

Member Crane motioned to approve the resolution, seconded by Member Allison and upon roll call was carried with a vote of 5 – 0.

Item #7 135 Oakland Ave. Area Variance

Applicant requested two variances. One for the stairway for access to the rear yard, zoning code requires 9ft., with the platform there will be 4ft. 1in. Second, for widening the driveway for ample space to park their vehicles. The driveway is very steep and lengthening it is not an option. It would be too difficult, according to the owner, to back up the vehicle on a steep driveway. He noted that the neighbor has a steep driveway and as a result, parks on the street.

Chairwoman Rosell noted that the first variance is for the platform at the bottom of the stairs, not the stairs. The driveway needs to be within the present code.

Member McBride asked the applicant to reconsider lengthening the driveway, as it seems to be a solution. The applicant would be able to fit two vehicles on the lengthened driveway. The driveway is 23.4 ft. wide and may extend back 20 ft.

Applicant would agree to lengthen the driveway with the approval from the Board to widen the front yard.

A discussion evolved between the members of the Board considering options. The Board did not want to allow the applicant to widen the front yard, which would create enough room for a vehicle to park. The variance is attached to the house, thus the next owner may park in the front yard.

Member McBride offered a suggestion for the applicant to widen the driveway 4 – 5ft. beyond the wall.

The applicant decided to withdraw the application for the driveway and only apply for the variance for the platform at the bottom of the stairs. He will submit revised plans of the platform with the driveway plans omitted.

Member Kang motioned to open the public hearing, seconded by Member Crane and unanimously carried by the Board.

No Public Comments

Member Crane motioned to close the public hearing, seconded by Member Kang and unanimously carried by the Board.

Member Kang offered a Resolution for the application of an area variance requested by Tong Zhang 135 Oakland Ave. for an area variance for the platform only to be granted, as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties, because the platform is only a minor addition as part of an effort to enable easier access to the back yard.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. Once the stairway is built, then a platform is the only feasible way to ensure safety.
3. The requested variance is not substantial, because as already mentioned; addition of the platform at bottom of the proposed stairway is very minor.
4. The proposed variance caused by the variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that the construction of the stairway is creating the need of the platform.
5. The alleged difficulty was self-created, but not fatal to this application.

Member Kang made a recommendation to approve the requested area variance with the stipulation that construction begin within one year of granting this variance and for the construction to adhere to and be in compliance with the existing building code.

The Board adopts a negative declaration pursuant to SEQR.

Condition – 1. The applicant must submit revised plans subject to the platform only, to the Building Inspector.

Member Crane motioned to approve the resolution, seconded by Member McBride and upon roll call was carried with a vote of 5 – 0.

There being no further comments from the public or business before the Board, upon motion duly made, seconded and unanimously carried, the meeting was adjourned at 9:40p.m.