

April 14, 2010
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Thomas Giordano Chairperson
 Kevin McBride Member
 Philip Allison Member
 John Palladino Member

Also in Attendance:
 John Cavallaro Village Attorney
 Michael Seminara Code Enforcement Officer

Absent: Gloria Rosell Member
 John Santos Member
 Bill Williams Building Inspector

Chairman Giordano announced the agenda as follows:

- Item #1 Approval of Minutes of the February 17, 2010 meeting.**
- Item #2 146, 150, 160, 233 Midland Ave. Return**
- Item #3 395 Columbus Ave. Area Variance**
- Item #4 24 Fairview Ave. Area Variance**
- Item #5 48 Yonkers Ave. Area Variance**
- Item #6 138 Columbus Ave. Adjourned**

Item #1 Approval of Minutes of the February 17, 2010 meeting
Motion by Member McBride to approve the minutes of the February 17, 2010 meeting was seconded by Member Allison and approved by the Board with a vote of 4-0.

Item #2 146, 150, 160, 233 Midland Ave. Return

Member Palladino offered the following Resolution:

In the Matter of the Application of

Mirado Properties, Inc., Dorami Realty
of New York, Inc. and Midora Corp.,

Premises: 146, 150 and 160 Main Street
and 233 Midland Avenue,
Tuckahoe, New York,

FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND DECISION

Applicants.

Background and Findings of Fact

The Applicants are the record owners of the premises commonly known as 146, 150 and 160 Main Street and 233 Midland Avenue, Tuckahoe, New York, and known on the tax map of the Village of Tuckahoe (the “Village”) as Section 29, Block 4, Lots 1, 3-8, 13, 17, 33, 36, 39 and 40 and Section 29, Block 9, Lots 1 and 25 (the “Premises”). The Premises is located within the Business/Residential zoning district and consists of approximately 2.4 acres of land (103,863 square feet), which is located on the south side of Main Street nearby to one of the gateways to the Village.

On March 12, 2008, this Zoning Board of Appeals (the “Zoning Board”) granted a Special Use Permit and certain area variances so the Premises may be developed with four buildings that would improve the Premises with two live/work loft units at 146 Main Street; commercial space and 18 residential units at 150 Main Street; and 70 residential units at 160 Main Street and 233 Midland Avenue (hereinafter referred to as the “Project”). In connection with the Applicants’ proposal, it sought area variances, a Special Use Permit and approval to park off-site from the Zoning Board.

The Applicants requested area variances from the requirements of the Zoning Ordinance as follows (1) that parcels with land uses in the Business/Residential zoning district with greater than 50% residential use shall have a floor area ratio of no more than 1.2;¹ (2) that no building shall exceed 42 feet in height from the average grade of the street line at the front of the property;² (3) that no building shall exceed three stories;³ (4) that off-street parking spaces shall be provided and maintained on the same lot as the building or premises for which those spaces are provided, except with permission of the Zoning Board of Appeals to locate such parking on an adjacent lot having a similar owner;⁴ and (5) that a Special Use Permit be granted to allow the proposed buildings having residential uses to be located within a Business/Residential zoning district.⁵

The previous approvals granted for the Project by this Zoning Board (the “Prior Approvals”) were:

1. A Special Use Permit to allow residential units in the BR district; and
2. An area variance for an additional story; and
3. An area variance for an increase in the allowable FAR from 1.2 to 1.48; and
4. An area variance to exceed the height limitation from 42 feet to 43 feet, 9 inches; and

¹ See Village of Tuckahoe Zoning Ordinance § 4-5.3.4.

² See Village of Tuckahoe Zoning Ordinance § 4-5.3.3.

³ *Id.*

⁴ See Village of Tuckahoe Zoning Ordinance § 5-1.2(d).

⁵ See Village of Tuckahoe Zoning Ordinance § 6-2.4.

5. To permit parking on an adjacent lot having a similar owner.

The Nature of the Application

The Premises consists of three lots where several buildings will be constructed and/or converted from a prior use to achieve the goals of this application. On 146 Main Street, an existing two-story industrial building will be converted to a residential building with two dwelling units. Additionally, two underground garages having a total of four parking spaces are proposed. On 150 Main Street, approximately 18 residential units and 18,500 square feet of commercial space are proposed within a three-story mixed-use building to be constructed. The commercial space will be split among floors, with 5,600 square feet on the ground floor and 12,900 square feet above. This proposed building will provide approximately 53 on-site parking spaces, with 24 being at-grade level and 29 subsurface parking spaces located below the building.

At 160 Main Street, the Applicants propose a four-story residential apartment building that will house 55 dwelling units. The proposed residential building to be constructed at 233 Midland Avenue will house 15 dwelling units, each having a balcony and patio. Parking demands for both buildings will be served by an automated parking facility to be constructed at a level lower than that of the proposed building at 233 Midland Avenue and behind the proposed building at 160 Main Street. The 45-foot natural grade near the proposed building for Midland Avenue and the cover provided by the two buildings will adequately screen the parking facility from view. A summary of the proposed deviations from the Zoning Ordinance were as follows:

	Required	Proposed
Floor Area Ratio:		
160 Main Street/233 Midland Avenue	1.2	1.48
Height⁶ (ft.):		
160 Main Street	42	43' 9"
Stories:		
160 Main Street	3	4
Parking (total residential and commercial):		
150 Main Street	129	53
160 Main Street	140	216

The Applicants have requested an extension of the Special Use Permit and area variances granted by this Board on March 12, 2008 to construct, use and maintain the mixed-use building at these Premises. The Applicants seek a two-year extension of the Prior Approvals. The Applicants assert there have been no materially changed

⁶ This variance request depends on the Planning Board's determination as to the front of the building.
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circumstances since the Prior Approvals were granted. The Applicants' goal remains the development of the Project, which has not changed.

Conclusions of Law

Based upon the record before the Zoning Board, there have been no materially changed circumstances that would provide a basis for reaching a different determination than that which would reasonably and rationally support the granting of the Prior Approvals.

In granting 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?

When considering the above factors, the Zoning Board must determine whether the benefit to the Applicants outweighs the detriments to the health, safety and welfare of the adjacent and greater neighborhood and/or community. After applying the above five factor test to this Application, the Zoning Board has resolved to grant this Application because the Applicants' proposal fully satisfies the above analysis. In considering the nature and scope of the Applicants' proposal, the Zoning Board has concluded that the area variances sought are minimal in nature, 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?

The proposed buildings on 160 Main Street/233 Midland Avenue require area variances for floor area ratio. The floor area ratio for the above-referenced buildings would be 1.48 each, which is fractionally larger than the maximum allowable floor area ratio of 1.2 for lots in the Business/Residential zoning district. *See* Zoning Ordinance Section 4-6.5. Although the floor area ratios would slightly exceed the limits imposed by the Zoning Ordinance, they would be adequately offset by nearby buildings and lots within the Business/Residential zoning district having similar characteristics and dimensions.

The proposed building at 160 Main Street requires an area variance for height because its four stories exceed the three-story maximum prescribed in the Zoning Ordinance. The proposed four-story building at 233 Midland Avenue, however, will not require a similar area variance. Both proposed buildings at 160 Main Street and 233
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Midland Avenue will have the same overall height of 43 feet, 9 inches. Only the proposed building at 160 Main Street will require an area variance for exceeding the height requirements in the Zoning Ordinance by a factor of 1 foot, 9 inches (21 inches), which is a negligible amount. Both proposed buildings remain very similar in their dimensions in light of the required area variances.

The proposed buildings will blend in with the mixed building characteristics and the overall streetscape currently fronting Main Street and Midland Avenue. Moreover, fostering mixed-use developments throughout the Village containing residential and commercial uses is consistent with the goals and objectives set forth in the Master Plan for the Village.

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

The Applicants' proposal seeks to increase both the residential and commercial viability of the Premises. The Premises is located in an area of the Village with parcels zoned for residential, commercial and mixed uses. The Applicants' goals for the proposed mixed-use buildings for residential and commercial purposes include, among other things, providing housing and commercial space in close proximity (i.e., walking distance) to the Tuckahoe railroad station, downtown shopping and restaurants.

Granting area variances for floor area ratio will allow for more expansive, higher-value units in the proposed buildings. Because the proposed buildings will have residential and commercial characteristics, increased floor and interior space can only be achieved by granting area variances for floor area ratio. Due to the increased size of the proposed interior units, the number of stories in each proposed building must be correspondingly increased. Maximizing interior space and tenant occupancy can only be achieved by increasing the number of stories in the proposed buildings.

The height of the proposed buildings will only exceed the height requirements in the Zoning Ordinance by 21 inches, which is de minimis when considering the scope of this Project and the nearby buildings constituting the downtown area of the Village. Thus, based on the configuration of the lots at issue and the interior space requirements for this Project, no other feasible alternative exists absent granting the above variances.

3. *Whether The Requested Variances Are Substantial?*

The Applicants' requests for the previously granted area variances for floor area ratio are not substantial because only two of the four proposed buildings will exceed the prescribed limits of 1.2 in the Zoning Ordinance. The proposed buildings on 160 Main Street/233 Midland Avenue will be sited and built into the steep topography on the lots, which will situate the proposed buildings significantly lower than a building sited at the sidewalk-grade

level. Moreover, the overall size and dimensions of these two buildings are consistent with that of neighboring buildings. These proposed buildings will also require area variances from the three-story maximum prescribed for the Business/Residential zoning district. Only the proposed building at 160 Main Street will require an area variance for a fourth story because it fronts along Main Street, rather than fronting along Midland Avenue.⁷

The proposed building fronting along 160 Main Street is projected to be a height of 43 feet, 9 inches tall, which exceeds the requirements of the Zoning Ordinance by only 21 inches. Despite the proposed building on 160 Main Street having four stories, its height slightly exceeding 42 feet is only several inches taller than that of other buildings on the Premises and nearby in the zoning district. The effects of such small variations will be insignificant. The above area variances will allow for more expansive hallways and interior space in units within the proposed buildings while minimizing the scale of the proposed buildings to the greatest extent possible.

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

This Project has been extensively studied and reviewed by engineers and/or planners. These consultants have proposed adequate structural and environmental safeguards to safely achieve the Applicants' goals for the Premises, without contradicting or negatively affecting any of the environmental considerations set forth in the Master Plan.

The area variances for floor area ratio will allow larger, more expansive units to be built in the two buildings on 160 Main Street and 233 Midland Avenue. This, in turn, will allow increased occupancy on those two lots. Despite increasing occupancy on the lots, a traffic impact study estimated that an additional 90 vehicle trips during AM peak hours and 114 vehicle trips would be added during PM peak hours. This increase will be adequately offset by the increase in off-street parking made available on the Premises. The traffic impact study conducted also found that no appreciable increase in pedestrian traffic would require modifying the area sidewalks.

The required area variances for building height would not create any adverse impacts on the physical or environmental conditions in the neighborhood because the proposed building at 160 Main Street would exceed the maximum height by a factor of 1 foot, 9 inches (21 inches). This building will be exactly the same height as the proposed building on 233 Midland Avenue, both of which are consistent with the character of other buildings nearby. Because the two proposed buildings will be the same height, the effect of adding a fourth story to one will be

⁷ This variance request depends on the Planning Board's determination as to the front of the building.

completely offset. Thus, no net physical or environmental effects will result from granting an area variance for the number of stories.

The proposed buildings will provide marked improvements in comparison to the existing buildings on the Premises, which include a recreational vehicle dealership, a vacant lot and an automobile repair facility. In addition, the largely residential uses for the proposed buildings will be less intense than that of the existing buildings on the Premises, which will likely improve physical and environmental conditions in the neighborhood.

The Zoning Board had determined that the requested area variances will produce no adverse impacts on the physical or environmental conditions in the surrounding neighborhood 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, steep slope erosion, subsidence, or any other negative environmental consequences. Thus, the physical and environmental conditions of the Premises will not negatively affect surrounding properties or the greater community whatsoever.

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

On the facts and the record, the Applicants' alleged difficulty was not self-created. While it is possible to construct a smaller building at 160 Main Street, this would not run afoul of the development goals for the Premises, which will contribute to a more uniform pattern of development along a mixed-use corridor into the downtown area. Moreover, any self-created difficulties arising from or accompanying this Project are not fatal to the application.

The Applicants have proposed a nonconforming floor area ratio in one proposed building (160 Main Street). However, the overall dimensions of the proposed building are similar to that proposed building for 233 Midland Avenue. Because the frontward orientation of the proposed buildings for 160 Main Street and 233 Midland Avenue are treated differently under the Zoning Ordinance, in this respect, the Applicants' hardship is not self-created.

Moreover, the proposed building for 160 Main Street requires an additional 21 inches in height, which is a minimal nonconformity considering its overall similarity to the proposed building at 233 Midland Avenue. An area variance for the number of stories at the proposed building for 160 Main Street is a self-created hardship but the overall building height remains largely conforming despite adding another story.

According to the plans submitted to the Zoning Board of Appeals, every effort has been taken to ensure that the proposed residential apartment building at 160 Main Street will be minimally imposing and will blend in with the aesthetic, structure and scale of other buildings fronting along Main Street and in the Business/Residential zoning district. The Applicants' difficulty is not self-created in that it fosters residential uses in an area near the central

business district of the Village, and in upgrading commercial area aesthetics to create a “more inviting and exciting image of the Village for its merchants.”

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 extension of 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 Use 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. Planning Board

Before this application was brought before the Zoning Board, it was first presented to the Planning Board for the Village of Tuckahoe for preliminary review. The Planning Board offered comments to the Project, but did not make any specific recommendations or referrals in connection with the variances requested herein. The Planning Board specifically reserved its rights to conduct a complete site plan review after the granting of the Zoning Board relief sought herein. Thus, this application has been given adequate consideration by the Planning Board.

2. Separate Entrances

The proposed buildings on the Premises will be dedicated to either commercial or residential uses. Consistent with Section 6-2.4 of the Zoning Ordinance, the residential units for 146 Main Street will be accessible via separate entrances. The proposed residential units for 150 Main Street will share a common entrance with the proposed commercial space in the building, but both will have separate lobby areas with separate entrances. Commercial uses on the first floor of 150 Main Street will also have separate access from Main Street. The residential units in the proposed building for 160 Main Street and 233 Midland Avenue will also have separate,

dedicated access. Thus, the Project will provide adequate and separate entrances and/or access points to the proposed buildings on the Premises.

3. *Compatibility of Use*

The residential uses contemplated by this Project are compatible with the Zoning Ordinance's strictures. In determining whether proposed commercial uses are compatible with the residential use of the Premises, the Zoning Board considered environmental factors, surrounding uses and expected traffic volume.

The contemplated use on the Premises will be less intense than the existing uses for the Premises, which include an automotive repair shop and a recreational vehicles dealership, both of which contribute noise and fumes as well as handle solid and/or hazardous wastes on-site. The proposed use for the Premises will be primarily residential, which is consistent with uses along the residential corridor extending from the downtown to outer areas of the Village. Factors such as noise, pollution and traffic volumes will not be appreciably affected by the minor anticipated increase in vehicle traffic to the Premises and the surrounding area as a result of granting approval for this Project.

4. *Building Context*

In granting this application, the Zoning Board has considered the effects of the proposed buildings on adjacent and nearby buildings in the community. Three of the four proposed buildings will remain compliant with the height limitations of 42 feet for buildings in the Business/Residential zoning district. Additionally, the design will incorporate an aesthetic that is similar in character and blends in with the surrounding streetscape in the zoning district, with the goal of creating an inviting streetscape and aesthetic.

The overall dimensions of the proposed buildings will be no larger than that of other buildings that front along Main Street and the surrounding neighborhood. The Applicants have made extensive efforts to blend and incorporate the proposed buildings into the existing topography. Although the proposed building at 233 Midland Avenue will have four stories and will exceed the height limits in the Zoning Ordinance by approximately 21 inches, it will be adequately set back and built into the topography of the Premises at 233 Midland Avenue to be as unimposing as possible. Thus, the proposed buildings 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 Business/Residential zoning districts. This Project will help foster orderly, consistent development within the Business/Residential zoning district fronting Main Street. The dimensions and aesthetic of the proposed buildings will compliment adjacent and nearby buildings in the zoning district will further the goals of the Business/Residential zoning district. Despite the fact that some of the proposed buildings will house dwelling units, the occupants will be in close proximity to the downtown business district and commercial zones in the Village. The proposed buildings will furnish residential, commercial and other business services to residents and nonresidents of the Village of Tuckahoe, which is an expressly permitted use within a Business/Residential zoning district. *See* Zoning Ordinance Section 4-6.1(a)(1).

2. *Compatibility With Master Plan*

The Project would be compatible with the Master Plan because one of its goals is to foster commercial and residential development on property fronting along Main Street. The Master Plan seeks to foster economic development by improving overall building aesthetics and by creating an inviting commercial environment to merchants.

The Village Master Plan was recently amended and specifically identified the Premises as being within a mixed-use zoning district. The Premises was also rezoned from Industrial to Business/Residential in April 2007, consistent with the amendments to the Master Plan. Thus, the nature and scope of this Project are consistent with the Village's Master Plan. The Village has, in turn, brought its Master Plan and Zoning Ordinance up to date with changing goals for mixed-use zoning districts and the development of the downtown area.

Drawing on the goals of the Master Plan, extension of the Prior Approvals for this project will increase revenue for local business owners, increase commercial thoroughfare, increase property values in the Village and further promote developing interest in economic revitalization of commercially viable zoning districts in the Village are goals that may be logically drawn from the Master Plan. Thus, this Project is clearly harmonious with the above express and implicit goals.

3. *Services*

The proposed buildings 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 will be diminished or in any way hindered by this Project.

4. *Adjacent Properties*

The location, nature and height of the proposed buildings 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 buildings will not exceed that of any surrounding buildings. Thus, the building height is compatible with Business/Residential uses in this zoning district.

This Project will likely increase property values of adjacent properties and could generate similar interest in developing other areas or corridors of the Village. This Project will add consistency and continuity to the existing corridor connection to the downtown area. 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 will be such that no noise, fumes, vibration, flashing of lights or other similar nuisance conditions to the surrounding neighborhood will occur. Additionally, no offensive, dangerous, destructive or hazardous conditions affecting 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 the record before the Zoning Board, there is no evidence that the property values of adjacent and nearby lots in the community will be diminished by extending the prior approvals for this Project. This Project will bring with it more residential tenants to an area in close proximity to Main Street and an increase in commercial activity to the area. This will add to the Village's overall economy, tax base, school district support, diversity, housing availability, off-street parking and will extend the residential corridor into the downtown area.

As a result of the influx of capital, economic support to the area and overall appeal of this Project, property values for lots adjacent to and nearby the Premises could likely increase. This Project will also enhance pedestrian access to the downtown area and to the Tuckahoe railroad station. These potential changes in neighborhood character and property values would generate indisputably positive socioeconomic results for the Village.

7. Traffic

The Zoning Board recognizes that the proposed buildings could produce a traffic increase on public roadways leading to the Premises. All efforts have been undertaken to design and plan this Project so as to generate as little traffic and congestion as possible on local thoroughfare(s). The results of the traffic impact study indicated that an increase of approximately 90 new vehicle trips during AM peak hours and 114 additional trips during PM peak hours could result from this Project.

The traffic impact study concluded that, despite the above increases, the impact on traffic flow on Main Street would be mitigated by the availability of on-site (off-street) parking and the multitude of new entrances and exits to the Premises on nearby roads other than Main Street. Additionally, the traffic impact study concluded that no net effects would impact pedestrian traffic and the existing capacity of nearby sidewalks along Main Street and Midland Avenue.

Any increase in traffic to the area, however, will be mitigated by the off-street parking facilities proposed to service the Premises. Thus, the Zoning Board has determined that the effects on traffic from this Project would be reasonable in nature.

8. Parking

Pursuant to Section 5-1 of the Zoning Ordinance, a minimum number of off-street parking spaces are required to accommodate the number of residential occupants and commercial patrons in the proposed buildings on the Premises. The proposed buildings on 146 Main Street and 233 Midland Avenue will conform to the Zoning Ordinance. *Id.* Approval is required for the off-street parking on 150 and 160 Main Street because the 76 planned parking spaces cannot feasibly be located on 150 Main Street. Thus, parking has been reallocated and added to that of 160 Main Street. The net effect of the above reallocation of off-street parking spaces will make available the required number of off-street parking spaces for the proposed buildings on 150 and 160 Main Street.

Although the proposed parking for 150 and 160 Main Street would be nonconforming, the additional 76 off-street parking spaces added to 160 Main Street, which is another lot owned and controlled by the Applicants, is permissible under the Zoning Ordinance. *See* Zoning Ordinance, Section 5-1-2. Because these additional 76 off-street parking spaces on 160 Main Street will be located within reasonable distance of the proposed building on 150 Main Street, granting the above approval for off-street parking is justified. *Id.* Thus, the Zoning Board has resolved that the above approval is harmonious with the Zoning Ordinance and with its goals for a Business/Residential zoning district, thus the same is hereby granted.

9. Conformance with Regulations

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

SEORA

Based on the foregoing, the Zoning Board of Appeals of the Village of Tuckahoe finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEORA.
2. This Zoning Board of Appeals is in possession of all information reasonably necessary to make the determination as to environmental significance of the application for area variances and the proposed Special Use Permit.
3. The action taken herein shall not have any significant impacts upon the environment and declare that a Negative Declaration be adopted with respect to this action.

Conclusion

Based on the foregoing, it is resolved that the area variances referenced herein and the Special Use Permit that were previously granted pursuant to the Prior Approvals have been granted to the Applicants and hereby are ratified and reaffirmed as granted to the Applicants, so that there has been no lapse in continuity thereof. Pursuant to Sections 6-1.1, 6-1.6 and 6-1.7 of the Zoning Ordinance and § 7-725(b) of the Village Law, the Zoning Board of Appeals has the power to grant Special Permits and to impose reasonable conditions as may be necessary to assure continual conformance to all applicable standards and requirements. Further, pursuant to Article IX, Section 9-3 of the Zoning Ordinance, this Board has jurisdiction to impose such conditions as may be necessary to assure continual conformance to all applicable standards and requirements. The Zoning Ordinance sets forth periods for the commencement of construction and timing for the lapsing of the Special Permit at Article VI, Section 6-1.5 of the Zoning Ordinance, as follows:

- (a) "construction has not been commenced within one year and has not been completed within two years of the date of final special permit approval;" or
- (b) "[T]he special use or uses shall cease for more than 12 months for any reason."

Moreover, pursuant to Article IX, Section 9-3 of the Zoning Ordinance that states that the previously granted area variances require that:

"...work under such variance be commenced and diligently prosecuted within one year of the granting thereof, failing which such variance shall become null and void."

For the purposes of this decision, recognizing that the Planning Board granted a two-year extension to its Site Plan Approval for this development due to the current financial challenges facing the commencement of construction and the absence of any materially changed circumstances that would warrant any different decision than that granted by the Prior Approvals herein, this Board notes that demolition of a portion of the buildings on these Premises has been completed and that other construction work was undertaken by the Applicants. Therefore, this Board has determined to extend the time periods noted above with regard to all components of the Prior Approvals, including but not limited to the Special Use Permit, area variances and approval to park off-site so that commencement of the Project shall occur within two years and completion thereof within three years of the date of final approval upon the filing of a signed version hereof in the Office of the Clerk of the Village of Tuckahoe. Of course, nothing herein shall preclude the Applicants from requesting a further extension of the Prior Approvals (as extended hereby) nor shall this Board be limited in the exercise of its reasonable discretion to determine whether or not such an extension is warranted, as any such request, if and when made shall be evaluated by this Board based upon the then applicable facts and then current legal standards in effect. The Applicants and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance with the New York Civil Practice Law and Rules.

Dated: Tuckahoe, New York
April 14, 2010

Thomas Giordano,
Zoning Board Chairperson
Village of Tuckahoe Zoning
Board of Appeals

Member McBride motioned to approve the Resolution, seconded by Member Allison and upon roll call was carried with a vote of 4 – 0.

William Null, attorney for the applicant, thanked the Board for their time and consideration in this matter.

Item #3 395 Columbus Ave. Area Variance

Leonard Brandes, architect for the applicant, noted that this was a non-conforming lot with no rear yard. There is an unsafe garage, which is falling apart. The garage is at the end of the driveway which slopes down considerably. The area between the house and the garage is very small. The existing garage is parallel to the house, the applicant would like to build a garage

perpendicular to the house. This proposed plan would offer ample space for a deck and plantings. The fence will be replaced with a new fence, 6ft. high in the rear and 3ft. high in the front.

Member Allison motioned to open the public meeting, seconded by Member McBride and carried by the Board with a vote of 4 -0.

No Public Comments

Member McBride motioned to close the public meeting, seconded by Member Allison and carried by the Board with a vote of 4 -0.

Member Allison offered the following Resolution:

Member Allison offered a Resolution for the application of an area variance requested by Tina and Dennis Kearns of 395 Columbus Ave. for relief of the following sections of the Zoning Code; Section 4-3.4.1 front yard, 4-3.4.3 rear yard, 4-3.4.6 buffer and 5-1.6.3 conformity.

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: due to the location of the property, which abuts the railroad in the rear and has a 46 ft. side lot, the proposal has no detriment to the other property and will definitely improve 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. Due to the fact that the existing lot and garage is non-conforming with the new zoning ordinance.
3. The requested variance is substantial. Even though it is substantial, the Board feels it is not fatal to the application, taking all the factors into consideration.
4. The proposed variances will not have an adverse effect on the physical or environmental condition in the neighborhood in that; based on the previous conclusions, the Board feels there will be no adverse affect on the neighborhood.
5. The alleged difficulty was self-created. Being that the lot is non-conforming, the Board determines that the application, in order to make the best use of the site, should be granted.

Member Allison made a recommendation to approve the requested area variance, to be completed within one year after the approval of all permits. The board adopts a negative declaration pursuant to SEQR.

Member McBride motioned to approve the Resolution, seconded by Member Palladino and upon roll call was carried with a vote of 4 – 0.

Item #4 24 Fairview Ave.

Area Variance

Emmanuel Caras, architect, indicated the applicants desire to obtain a Certificate of Occupancy for their home. This house was built in 1895. The footprint has not been changed. The variance requested is to legalize the non-conforming building. The third floor has always existed. The applicant would like to finish the floor to use other than for storage space. This house has been unchanged since built. Mr. Caras noted that he tried to locate a set of drawings, but could only obtain a survey which documents from the first floor to the attic. There was a permit to change the kitchen and the bathroom. There are no changes anticipated for the future.

Member McBride noted that he visited the premises. He said the basement was uninhabitable. He asked if the applicant plans to enlarge or update the bathroom located on the third floor.

Mr. Caras noted that the third floor bathroom will stay as a powder room. There is no intention of updating the bathroom. The second and third floor is one unit, while the first floor is a separate unit. It is a legal two-family house. There is a full bath on the second floor for the occupants of the top unit.

Member Allison noted that by legalizing the third floor, there will be no increase in the height of the building.

Member Allison motioned to open the public meeting, seconded by Member McBride and carried by the Board with a vote of 4 -0.

No Public Comments

Member McBride motioned to close the public meeting, seconded by Member Allison and carried by the Board with a vote of 4 -0.

Chairman Giordano offered the following Resolution:

24 FAIRVIEW AVENUE

The application for an area variance requested by Mr. Nick Leone for relief from the following sections of the Zoning Code:

Section - 4-3.2 – which provides in relevant part that “no building shall be erected to a height in excess of 35 feet, nor shall the number of stories at any point along the periphery of any building exceed 2 ½ stories.” The requested variance is for the use of the entire third story of the residence.

Section - 4-3.4.2 – which provides in relevant part, that “[t]here shall be a side yard along each lot line with a width of not less than 9 feet; provided, however, that for any lot that is created after July 1, 1999, there shall be a side yard along each lot line with a width of not less than 15 feet.” The requested variance is for a side yard of 4.5 feet.

Section - 4-3.4.6 – which provides in relevant part, that “[t]here shall be a five-foot-wide landscaped buffer located within the required side and rear yards where these yards abut a property line.” The requested variance does not provide for this buffer.

Section - 4-3.6 – which provides in relevant part that “[t]he [Floor Area Ratio] for the Residence B District is 0.5.” The requested variance is 0.63.

Section - 5-1.6.3 – which provides in relevant part that “[a]ny building . . . which building does not conform to one or more of the requirements hereof other than the use requirements, may be altered, enlarged or rebuilt, provided that such building shall not be altered, enlarged or rebuilt so as to increase the degree of nonconformity thereof.” The requested variance does.

Recommendation is for the requested variances to be granted as the variance is essentially for the legalization of existing conditions, and the detriment to the health, safety and welfare of the neighborhood is outweighed by the benefit to the applicant. The application is to allow for the finished third floor of the existing two family structure.

Addressing the five factors to be considered in making such a determination:

1. Will there be an undesirable change in the character of the neighborhood and will there be a detriment to nearby properties? The residence is located in a Residence B district. In order to further the goal of preserving neighborhood quality, no more than two families may live in a dwelling in such a designated district. The floor plan provided for the existing third floor does not appear to allow for that floor to be used for the housing of an additional family in the dwelling. There is no space nor plumbing fit out for a kitchen, and the bathroom has no bath or shower. The variances requested are essentially for prior non-conforming conditions. We find that granting the requested variances, would not create an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. Can the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue other than the variances requested? As to Sections 4-3.4.2 (side yard) and 4-3.4.6 (rear/side yard buffer set back), only the rebuilding of the entire building could eliminate these violations. This is clearly not feasible. With respect to Sections 4-3.2 (3 story dwelling), 4-3-6 (FAR limitations) and 5-1.6.3 (increasing non-conformity), only by eliminating from the third floor all finishings for livable space would these violations be removed. The Board finds that to require that these pre-existing conditions be removed - essentially diminishing the existing livable space in the premises by approximately 600 square feet – is not feasible.
3. Is the requested variance substantial? While the requested increase of floor area ratio is more than 20% above the 0.5 FAR permitted under the Code, given the totality of the factors, the Board finds that this in and of itself should not merit the denial of the variances requested.
4. Will the proposed variance have an adverse impact on the physical or environmental condition in the neighborhood? We find that the variances requested are for pre-existing conditions with the building, and to grant them would not adversely impact the physical or environmental conditions in the neighborhood and more than prior to the issuance of the variances. The fact that the third floor could not be used to house a third family reinforces this finding.
5. Was the alleged difficulty was self-created? We find that it the alleged difficulty was not self-created, but pre-existing.

Accordingly, it is recommended that the requested area variances be granted.

Member McBride motioned to approve the Resolution, seconded by Member Palladino and upon roll call was carried with a vote of 4 – 0.

Member McBride motioned that this Board adopts a negative declaration pursuant to SEQR for this application, seconded by Member Palladino and carried with a vote of 4 – 0.

Item #5 48 Yonkers Ave.

Area Variance

Leonard Brandes, architect for the applicant, indicated that there is an extremely small non-conforming garage on the property, which the applicant would like to tear down, build a new garage and a small cabana on the side of the garage. The properties in the surrounding area all have two-car garages which replaced single car garages.

Member McBride noted that this garage is right on the property line. Under the new code, a 9ft. rear and side yard buffer is required. As a compromise, the Board would like to see approximately 4.5ft. Tearing down this garage and building a new one requires 9ft. for the side yard and rear yard. The applicant could think about moving the garage forward.

Mr. Brandes stated that there is 10ft. between the house and the garage. To push the garage forward 4.5ft. would leave a very small and narrow area between the house and the garage. There would not be enough room for a vehicle to turn. A discussion evolved regarding the two car garages in the surrounding area.

Member McBride asked Michael Seminara, Code Enforcement Officer, to research the Building Dept. files to check if any surrounding homes requested a variance for relief of the 9ft. set back requirement.

Member Allison advised the applicant to bring in letters of support for the application from the neighbors which would be affected by the garage.

Mr. Brandes asked if the applicant were to reuse the foundation of the present garage and maintain the location and foundation, same height and 17ft. wide and an additional 6ft. for the length, would the garage be considered refurbished rather than rebuilt. By storing the filter system for the pool, inside the garage, the decrease in the noise level would be an improvement to the neighborhood.

Member McBride noted that the Board will do its due diligence and review this application.

John Cavallaro, Village Attorney, added that even though the applicant may not expand the garage, the degree of non-conformity may be increased and could require a variance. A non-conforming structure, altered could increase the degree of non-conformity.

Mr. Brandes added that the proposed cabana is one foot higher than the rear yard fence.

Member McBride motioned to open the public hearing, seconded by Member Allison and was carried with a vote of 4 – 0.

Public Comments

Salvatore Fonte, 38 Yonkers Ave, stated his support for this application.

Member Allison motioned to keep the public hearing open, seconded by Member McBride and was carried with a vote of 4 – 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.

