

Minutes of: July 13, 2011
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July 13, 2011

TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Ronald Gallo Chairperson
David Kubaska Member
John Palladino Member
Steve Alfasi Member

Absent: Nicholas DiSalvo Member

Also in Attendance:

Michael Seminara Code Enforcement Officer
Gary Gjertsen Deputy Village Attorney

Chairman Gallo announced the agenda as follows:

Item #1 Approval of Minutes of the May 11, 2011 meeting.
Item #2 1 Midland Ave. Return
Item #3 100 Main Street Return
Item #4 37 Lincoln Ave. Return
Item #5 25 Oakland Ave. Renewal Special Use Permit
Item #6 42 Yonkers Ave. Adjourned

Chairman Gallo announced that this was his first meeting as Chairperson and thanked the Board for their tremendous support for the Village. He also introduced Steve Alfasi as the Board's newest member. He thanked the prior Board for their service and assistance. He especially thanked former Chairman Kevin McBride for his guidance and former Mayor Fitzpatrick for inviting Chairman Gallo to join the Board. He thanked Mayor Ecklund for the confidence he has bestowed upon him.

Mayor Ecklund congratulated Chairman Gallo and Steve Alfasi and stated that he was pleased to make the appointments. He thanked the entire Board for their service and as excellent stewards of this post.

Chairman Gallo asked about the process of adding ad hoc members to the Board.

Mayor Ecklund stated that any resident may notify the clerk or apply online on the Village website to be considered to be an ad hoc member.

Chairman Gallo noted that any ad hoc member would be treated as a full member and their input would be very important to this Board.

Item #1 Approval of Minutes from the May 11, 2011 meeting

Motion by Member Kubaska to approve the minutes of the May 11, 2011 meeting was seconded by Member Palladino and carried by the Board with a vote of 3-0, with Member Alfasi abstaining.

Item #2 1 Midland Ave. Return

Mr. Martin Hero, representing the McGrath family indicated that the current plans call for a side yard setback and front yard setback. The applicant has appeared before the Zoning Board and Planning Board, simultaneously to get the current plans finalized.

Mr. Gjertsen, Deputy Village Attorney, asked to review the current plans with the applicant.

Chairman Gallo asked to recall this applicant.

Item #3 100 Main Street Return

Mr. Gruza, attorney representing the applicant, requested that the Board reapprove the Special Use Permit for the mixed-use building at 100 Main St. The application previously had obtained two variances. The construction cannot begin until Site Plan Approval is granted by the Planning Board. The Board closed the public hearing on May 11, 2011 after only 3 residents spoke. He stated that he submitted a new updated EAF on May 26, 2011.

Chairman Gallo asked if the applicant would speak with Deputy Village Attorney Gjertsen as John Cavallaro, Village Attorney was not present to advise. He will recall this applicant.

Item #4 37 Lincoln Ave. Return

Member Kubaska offered the following resolution : In the matter of the Application of James Marshall and Francesca Parmeggiani 37 Lincoln Ave, Tuckahoe, NY.

Background and Findings of Fact:

The Applicant is the owner of the premises commonly known as 37 Lincoln Avenue, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 43, Block 4 and Lot 12 (the

“Premises”). The Premises is currently improved by a 2 1/2-story dwelling, which is adjacent to other residential dwellings in the community.

The Applicant seeks relief from the Village of Tuckahoe Zoning Code (the “Zoning Code”) by means of area variances for the following: height (number of stories), Lot Area and Lot Width, Front Yard Setback, Side Yard Setbacks, Floor-Area Ratio (“FAR”) and increasing a non-conformity, all from the required restrictions set forth in the Zoning Code.

The Premises is located in a Residence A-5 Zoning District, which requires, in pertinent part, that: (i) 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; (ii) the lot area shall be not less than 5,000 square feet and the lot width not less than 50 feet; (iii) the front yard along each street line shall have a depth of at least 25 feet; (iv) there shall be a side yard along each lot line with a width of not less than nine feet; (v) that the FAR for the A-5 Zoning District shall be 0.5; and (vi) no such building shall be altered, enlarged or rebuilt so as to increase the degree of nonconformity thereof.

The subject dwelling is a one-family dwelling with a height of 2½-stories, lot size of 2,470.05 square feet; lot width of 24.70 feet; a front yard of 24 feet; side yards of 2 feet and 0.9 feet; and a proposed FAR of 0.88. Therefore, as it currently exists, the subject dwelling is already non-conforming with regard to height, lot area and width, front yard, side yards and FAR. As such, the Applicant is seeking area variances for all non-conformities presently existing and proposed.

The Applicant is proposing renovations to the subject dwelling to establish a small office space and reading area in the attic level of the dwelling. The renovations being proposed would entail altering the stairs and finishing the attic. In regard to finishing the attic, windows will be replaced and the flat roof on the small rear addition will be altered to a pitched roof. There will be a full house sprinkler installed as well as smoke alarms throughout the house.

The Applicant’s proposal would increase the number of stories from 2½ to 3. The lot area and lot width would remain the same at 2,470.05 square feet and 24.70 feet. Further, the front yard would remain the same at 24 feet while the side yards would remain constant at 2 feet and 0.9 feet. Finally, the FAR would increase to 0.88 where 0.5 is permitted. Certainly, the degree of non-conformity is being increased as this dwelling is concerned.

Conclusions of Law:

In order to grant the requested area variances, this Zoning Board must consider five factors in reaching its determination as follows:

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

In analyzing the above factors, this Zoning Board is left to consider whether the benefit to the Applicant outweighs the proposed detriments to the health, safety and welfare of the neighborhood or community. In applying the five-factor test and in evaluating the respective benefits and detriments of this application, this Zoning Board resolves to grant the application because the Applicant, on balance, has satisfied the five-factor test.

1) Whether an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties?

No undesirable changes in the character of the neighborhood would result from the granting of the above requested variances. The alteration being proposed by the Applicant would not produce undesirable changes in the character of the neighborhood or a detriment to nearby properties inasmuch as that with the exception of number of stories and FAR, the other variances sought are for conditions that are pre-existing, non-conforming.

Additionally, most of the renovations are contained within the dwelling, thus not impacting the neighborhood or surrounding community. Further, the change in the roof on the rear addition from a flat roof to a pitched roof will not result in undesirable changes.

2) Whether the benefits sought by the Applicant can be achieved by a feasible alternative to the variance?

Based upon this record, there appears to be no other area on the subject dwelling which could be physically altered to accommodate an increase in living space other than utilizing the attic space for a small office and reading room. Thus, no feasible alternative exists to create this alteration.

3) Whether the requested variance is substantial?

Here, this Zoning Board finds that the requested area variances are substantial. Although the Premises is presently non-conforming, the proposal creates additional non-conformity due to the building height, lot area and width, front yard setback, side yard setbacks and FAR.

The Applicant seeks a height variance to 3 stories. Additionally, the Applicant seeks a variance for lot area and width whereby the proposed lot area is only 2470.05 square feet and the lot width is 24.70 feet. Further, the Applicant seeks a front yard setback variance of one foot where 25-feet is required and 24-feet is proposed. The Applicant also seeks side yard setback variances where nine feet is required and 2 feet and 0.9 feet, respectively, are proposed. Finally, the A-5 Zoning District imposes an FAR limitation of 0.5, while the Applicant proposes an FAR of 0.88.

This Zoning Board finds that although the area variances sought are substantial, in light of the existing non-conformities as articulated above, and balanced against the other four statutory factors, this alone is not fatal to this application.

4) Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?

The proposed area variances will not produce adverse impacts on the physical or environmental conditions in the surrounding neighborhood. As stated, there will only be changes made to the roof and interior of the Premises and the occupancy of the dwelling will remain the same. The variances will not generate additional environmental impacts such as poor aesthetics, increased traffic, greater parking demands, noise pollution or other negative environmental conditions. Further, any variances being sought by the Applicant other than the height variance and FAR, are already non-conforming.

5) Whether the alleged difficulty was self-created?

This Board finds that the alleged difficulty was self-created. The Applicant purchased the Premises in the manner in which it is currently non-conforming. Although the difficulty was self-created, this factor alone is not fatal to the application under the well-established balancing test.

Conclusion:

Based on the foregoing, it is resolved that the area variances referenced herein be and are hereby granted to the Applicant in accordance with this decision. The Applicant 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.

Member Kubaska motioned to approve the resolution was seconded by Member Alfasi and carried unanimously with a vote of 4 – 0.

Item #2 1 Midland Ave.

Return

Chairman Gallo offered a Resolution for the application for an area variance requested by Joseph McGrath 1 Midland Ave., Tuckahoe NY. for relief of the following sections of the Zoning Codes: Section 4-4.3 Lot Area and depth, Section 4-4.4.2 Side yard, Section 5-1.2 Off Street Parking and Section 4-4-4.1 Front yard. All variances will be consistent with plans filed with the Building Dept. and dated January 22, 2011

Based on the record recommendation for area variances to be granted as the benefit to the applicant of the area variances 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.
3. The requested variances are not substantial.
4. The proposed variances will not have an adverse impact on the physical or environmental condition in the neighborhood.
5. The alleged difficulty was not self-created.

The Board adopts a negative declaration pursuant to SEQR. The work must be completed within one year of variances granted.

Chairman Gallo motioned to approve the resolution was seconded by Member Alfasi and carried unanimously with a vote of 4 – 0.

Item #5 25 Oakland Ave.

Renewal Special Use Permit

Mr. Chris Allacco, attorney representing the Woodlot Christian Pre-School, noted that the applicant seeks to continue the operation of its day-care facility. It seeks to renew and extend the previously granted special use permit (2008) to operate a day-care facility in the Business-zoning district from the Zoning Board. The applicant operates a day-care facility licensed by New York State to prepare children ages 2 years, 9 months to 6 years old for kindergarten. The applicant has

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fulfilled all the requirements set forth by the Special Use Permit. It continues to monitor the drop off and pick up areas with an employee present, an intercom system and radios. There have not been any problems reported with regards to the traffic flow.

Chairman Gallo motioned to open the public hearing, seconded by Member Palladino and carried unanimously by the Board.

No Public Comments

Chairman Gallo read a letter from the Guarino family, 16 Oakland Ave. Tuckahoe, NY offering their support for the renewal of the special use permit for Woodlot Christian Pre-School. (See file)

Chairman Gallo motioned to close the public hearing, seconded by Member Palladino and carried unanimously by the Board.

Member Kubaska motioned to extend the Special Use Permit for Woodlot Christian Pre-School located at 25 Oakland Ave. for one year, was seconded by Chairman Gallo and carried unanimously by the Board.

Item #3 100 Main Street Return

Mr. Gjertsen stated that this application has been before the Board for quite some time and has a lot of history. He spoke to Bill Williams, Building Inspector via the phone as he is on vacation and he noted that the new EAF submitted from the applicant has not been reviewed by the Village Consultants. Mr. Fish needs to review the new EAF dated May 26, 2011 and report his findings to the Board for consideration.

Mr. Gruza noted that he sent the new EAF via Federal Express on May 26, 2011 to the Board and the Building Department. He noted that the new EAF was the same as the original EAF.

Mr. Seminara, Code Enforcement Officer stated that the updated EAF should include the new developments being discussed in the Village. There is a development of 123 units on Midland Ave. that should be considered in the new EAF, as it was approved two years ago. The Village consultants must have time to review the updated EAF.

Mr. Gruza noted that there are site-specific questions on this project in the new EAF.

Mr. Gjertsen stated that the Building Dept., Mr. Williams, and Mr. Fish have not reviewed the updated EAF submitted May 26, 2011.

Member Alfasi stated that although the EAF was timely submitted, the consultants have not reviewed it. He stated that he sympathized with the applicant, but the Board cannot vote on this application without the consultant's input.

Chairman Gallo also apologized and stated that this was serious as time is money. He assured the applicant that he would personally see to it that the application will move forward. He will have an answer next meeting, which is September 13, 2011.

Mrs. Angelillo asked as to why the public hearing was closed if the new EAF results were not made public. She asked how it may impact other properties.

Chairman Gallo noted that the vacant lot causes many issues such as flooding. He will work with the Village Attorney, the applicants and neighbors to reach a solution. He will reach out to Mrs. Angelillo.

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.