

Minutes of: Feb. 8, 2012
Date Approved: March 14, 2012
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February 8, 2012

TUCKAHOE ZONING BOARD AND BOARD OF APPEALS

TUCKAHOE VILLAGE HALL – 7:30pm

Present: Ronald Gallo Chairperson
Steve Alfasi Member
Nicholas DiSalvo Member
John Palladino Member

Absent: David Kubaska Member

Also in Attendance:

John Cavallaro Village Attorney
Frank Fish Village Consultant
Bill Williams Building Inspector

Chairman Gallo announced the agenda as follows:

Item #1 Approval of Minutes from the January 11, 2012 meeting

Item #2 Crestwood Station Plaza LLC Return

Item #1 Approval of Minutes from the January 11, 2012 meeting

Member DiSalvo motioned to approve the Jan. 11, 2012 minutes, seconded by Member Alfasi and carried with a vote of 3 – 0, with Member Palladino abstaining due to his absence.

Item #2 Crestwood Station Plaza LLC Return

Chairman Gallo noted that he received an email from the clerk's office written by a member of the Planning Board. This memo will be placed in the file.

Mr. John Richman, applicant, stated that there was a minor change to the plans based on the discussion at the workshop. The three two-bedroom units will be returned back to the original plans of six studio units. The bedroom count will stay the same.

Mr. Richman displayed a poster depicting a view of Columbus Ave. facing south. This photo showed the building which sits directly across the proposed site on Columbus Ave. This building sits at 99 ft. above sea level and is a three-story building, which measures 38ft., and the end gables measure 40 ft. The applicant has proposed a building, which will sit at 107.5 ft. sea level and measure 33.5 ft. high and 37 ft. with the parapet. The proposed building will be one foot lower than the building across the street. There is an 8.5 ft. difference in grade level from one building to the other. This includes 2ft. change in grade just on the street and 6.5 ft. change in grade going up the hill on Lincoln Ave.

Mr. Fish, Village Consultant, noted that the Village of Harrison, NY, just issued an RFP to develop the community adjacent to their Metro North station. The plans are for 50 residential units with parking. The building will have four stories and will measure 50 ft. tall. These areas near the train stations are now referred to as 'transit oriented developments'. The towns and villages are encouraging developers to develop near train stations to encourage transit use. With the ability to walk to the trains, in general, there are fewer cars per household. The developments near the train stations usually consist of studio, one and two bedroom units. Rarely are three bedroom units found.

Chairman Gallo stated that other communities are increasing revenue by concentrating on transit-oriented developments. He referred to a NY Times article regarding the Harrison development. There is an importance in altering the Zoning Code in the area surrounding train stations.

Member Alfasi asked what the ratio of parking per unit was at the transit-oriented developments compared to that of the normal ratio in towns.

Mr. Fish referred to a development that was studied in Yonkers. There were mostly studio, one and two bedroom units and the ratio used was one space per unit as there was a greater tendency to take the train. The household will still have a vehicle, but with one resident taking the train.

Member Alfasi noted that the current ratio in Tuckahoe is two spaces per dwelling. The dwelling could be a studio or a four or five bedroom home. The dwellings differ dramatically.

Mr. Fish recommended that the Zoning Code be modified to address that concern.

Member Alfasi noted that this application has proposed 61 spaces for 47 units. He asked if it was Mr. Fish's opinion that this applicant is providing sufficient parking spaces for the development.

Mr. Fish responded 'Yes'.

Chairman Gallo noted that a resident counted the number of employees in the Crestwood area and was concerned as to where additional employees would find parking spaces.

Mr. Richman stated that this resident did a walking survey of the Crestwood area counting the number of employees at each establishment. He noted that 40% of the commercial space in Crestwood comprise of eating establishments. Restaurants, bakeries, pizza places, Chinese takeout, sandwich shops etc. all require many employees for their business to thrive. This development will have only traditional retail, non-food establishments. Using the Urban Land Institute calculations, the number of employees would be 1 per 1000 sq. ft.

Chairman Gallo noted that the tax numbers supplied by the applicant seem a 'bit too rosy'. He asked Mr. Fish to speak about the tax numbers.

Mr. Fish noted that he asked his colleague Regina Armstrong representing Urbanomics, to review the applicant's projections, projected assessment and tax study. The data reflected the 49 units rather than the new number of 47 units. The projection of \$3.75 per sq. ft. is somewhat high. In her opinion, \$3.25 per sq. ft. is more reasonable. This amounts to \$100,000 per year to the school district. The probability is that the studio apartments will not have any school-aged children.

The Fire, Police, DPW per capita cost will not overwhelm the Village. It is still a net positive. (This applicant will provide private garbage removal.)

Chairman Gallo summarized the history of the application. The Zoning Code requires two parking spaces per unit. The county recommends one parking space per unit. The Board took this variance very seriously and it was discussed at length.

The height variance of 3.9 ft. is minimal. There are many, many ways to view the fourth floor. It could be referred to as a basement, cellar, etc. How it is measured is very complicated. There have been previous approvals for some buildings on Main St. The Board required the applicant to provide more parking spaces than the county required. The height variance is partially due to the lower level being a parking level due to the parking requirement. The height variance is not for 10 – 12 ft., but rather 3.9 ft. The benefit of the extra space is critical to this village.

The economic growth is critical to maintain financial integrity. The Board has confronted the applicant and he insists that it is at the bare bones. The bank only loans to those whom could pay back. There are very strict banking standards and regulations. The Board has certainly did their due diligence with this application.

Finally, the benefit to the community regarding the school is cash positive. If this application is approved, \$100,000 cash will go to the school district. This is an enormous benefit to the children and the school.

Member Alfasi noted that there are different zones throughout the Village. This is unique as it is a transit-oriented development. He is pleased that the applicant has been able to meet what the consultants deemed a proper ratio. This application is unique as the fourth story, although needed a variance; it is for parking below grade. When residents think about four stories, they will not be able to see four stories. The height of the building is 6 ft. taller than the houses across the street on Lincoln Ave. It is an L-shaped building. If this building were two separate buildings, each would be within the height requirement and there would be no need for a variance.

Chairman Gallo added that the Board members were concerned that the four story building setting a precedent, so it is limited that there are only three habitable levels.

Chairman Gallo offered the following resolution as a motion:

A RESOLUTION DECLARING A NEGATIVE DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT AS IT CONCERNS A CERTAIN VARIANCE AND SPECIAL USE PERMIT APPLICATION FOR THE PREMISES 300-308 COLUMBUS AVENUE, TUCKAHOE, NEW YORK

At a regular meeting of the Zoning Board of Appeals of the Village of Tuckahoe, New York (the "Zoning Board") held at Village Hall, 65 Main Street, Tuckahoe, New York on February 8, 2012.

WHEREAS, the Zoning Board of the Village of Tuckahoe is considering the grant of certain area variances and a Special Use Permit for the premises commonly known as 300-308 Columbus Avenue, Tuckahoe, New York; and

WHEREAS, the project consists of the development of the site with a mixed-use building consisting of 47 residential units (43 studio units and 4 one-bedroom units), 3,600 square feet of commercial space and 61 off-street parking spaces; and

WHEREAS, based on the Environmental Assessment Form ("EAF"), submitted by the Applicant, and any supplemental materials thereto, the Zoning Board has determined that there will be no significant environmental impacts from this action as it concerns the proposed Project.

NOW, THEREFORE, BE IT RESOLVED

Section 1. Based on the information included in the EAF submitted by the Applicant, and any supplemental materials thereto and the criteria contained in the State Environmental Quality Review Act and its implementing regulations, the Zoning Board hereby adopts the attached Negative Declaration for this Unlisted Action under the State Environmental Quality Review Act.

Section 2. That this resolution shall take effect immediately.

Member DiSalvo seconded the motion and upon roll call was carried with a vote of 4 – 0.

Chairman Gallo offered the following resolution in the form of a motion:

**Findings of Fact, Conclusions Of Law and Decision for Street-Works Development, LLC,
Premises: 300 – 308 Columbus Ave. Tuckahoe, NY**

Background and Findings of Fact:

The Applicant is the contract vendee of the Premises commonly known as 300-308 Columbus Avenue, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe (the "Village") as Section 42, Block 8 and Lots 5 and 10 (the "Premises"). The Premises is located within the Business/Residential Zoning District and consists of approximately 0.75 acres of land, which is located on Columbus Avenue near and at its intersection with Lincoln Avenue, all in the Village of Tuckahoe, New York.

The Applicant proposes to develop the Premises according to a plan that contemplates mixed-use development goals that will convert two existing gas stations in order to construct a new building facilitating both residential and commercial uses (the "Project"). In connection with the Applicant's proposal, it seeks certain area variances and a Special Use Permit from the Zoning Board of Appeals of the Village of Tuckahoe (the "Zoning Board").

The Premises is located in a Business/Residential Zoning District. The Applicant requests area variances from the requirements of the zoning ordinance as follows: 1) a Special Use Permit pursuant to Section 4-5.3.1 and Sections 6-1.1 through 6-1.8 and 6-2.4 to allow 47 residential dwelling units above a business use in the Business/Residential Zoning District; 2) an area variance from the height requirement of Section 4-5.3.3 to permit the proposed building to exceed the 42-foot height limitation by 3.91 feet; 3) an area variance from the three-story height requirement of Section 4-5.3.3 to permit the subject building to have four stories along its Lincoln Avenue frontage; 4) an area variance from the off-street parking requirements of Sections 4-5.4 and 5-1.2(a) and 5-1.2.1.3 to permit 61 proposed parking spaces where 112 parking spaces are required; 5) an area variance from the parking space width requirement of Section 5-1.2.1.5(e) to permit 36 of the proposed 61 parking spaces to be less than 9 feet wide, i.e., 8.5 feet wide in order to accommodate the layout of the proposed 61 parking spaces.

The Nature of the Application:

The Premises consists of two tax lots where the subject building is proposed to be constructed. This construction will involve converting the two existing gas stations, which are non-conforming uses, to a mixed business/residential building consisting of 47 residential units (43 studio units and 4 one-bedroom units) with 3,600 square feet of commercial space. In addition, the Applicant proposes to provide 61 off-street parking spaces as well as a net addition of 8 on-street parking spaces adjacent to the Premises.

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

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	<u>Required</u>	<u>Proposed</u>
Height (in feet):	42'	45.91'
Number of Stories:	3	4
Parking (total residential and commercial):	112	61
Parking Space Width: (36 of the proposed 61 spaces)	9 feet	8 ½ feet

Pursuant to this Project, the Applicant seeks area variances for increases in building height, number of stories, overall number of parking spaces and parking space width. In addition, the Applicant seeks a Special Use Permit from this Zoning Board for the residential uses in the Business/Residential Zoning District.

In total, the Applicant seeks four area variances from the Zoning Board as well as the aforesated Special Use Permit. The Applicant has demonstrated to the Zoning Board that it will utilize all possible design, engineering and construction techniques to minimize the impact that the proposed buildings could have on other buildings in the Zoning District, those nearby buildings, and to mitigate any negative effects on the environment.

Conclusions of Law:

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 detriment to nearby properties?
- 2) Whether the benefits sought by the Applicant can be achieved by a feasible alternative to the variances?
- 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 difficulties were self-created?

When considering the above factors, this Zoning Board must determine whether the benefit to the Applicant 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 Applicant's proposal and Project satisfies the above analysis. In considering the nature and scope of the Applicant's proposal, the Zoning Board has concluded that the scope of the area variances sought will not have any appreciable negative impacts on adjacent lots or those in the greater community. To that end, this Zoning Board, in applying the statutory balancing test, finds that the benefit to the Applicant is not outweighed by the perceived detriments to the health, safety and welfare of the adjacent and greater neighborhood and/or community.

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

With respect to building height, the Applicant seeks an area variance from the height requirement of Section 4-5.3.3 to permit the proposed building to exceed the 42-foot height limit by 3.91 feet. The deviation of 3.91 feet will not produce undesirable changes in the character of the neighborhood or a detriment to nearby properties because, based on the topography of the subject site and the surrounding sites, views would remain somewhat consistent with the residential uses that surround the Premises. As the number of stories are concerned, the Applicant seeks an area variance from the three-story height requirement of Section 4-5.3.3 to permit the building to have four stories along its Lincoln Avenue frontage. While the Applicant argues that the proposed building, under an interpretation theory, complies with the requirement of Section 4-5.3.3 in that the parking area along Lincoln Avenue does not constitute a story, this Zoning Board has determined to grant an area variance from the three-story height requirement permitting four stories along the Lincoln Avenue frontage. Although the surrounding buildings on the adjacent sites are not four stories, this Applicant has designed the proposed building so that the four stories are contained within the 45.91 height limitation as it concerns the portion of the building along the Lincoln Avenue frontage. Having determined that a height variance is appropriate for the subject building, this Board finds that a building of four stories contained within a 45.91 height limitation would not produce undesirable changes in the character of the neighborhood or a detriment to nearby properties.

The Applicant also seeks an area variance from the off-street parking requirements of Sections 4-5.4 and 5-1.2(a) and 5-1.2.1.3 to permit 61 off-street proposed parking spaces where 112 parking spaces are required. Under the Village's Zoning Code, there is a requirement of two spaces per residential unit. In addition, as the commercial component of the Project is concerned, one parking space is required for every 200 square feet of commercial space which may be deviated to a ratio of one parking space per 300 square feet of commercial space. The Village's Zoning Code requires two parking spaces per residential unit irrespective of whether the residential unit is a studio

apartment or multi-bedroom dwelling. The Zoning Code fails to take into account that, for this Project, there are proposed 43 studio units and four one-bedroom units. Bearing in mind that this Project remains across from the Crestwood train station and the units are mostly intended for single occupancy, it is this Board's determination to grant the parking variance, in that such grant will not produce undesirable changes in the character of the neighborhood or a detriment to nearby properties.

This Board further finds that, one to one and one-quarter parking spaces per residential unit will suffice to meet the parking needs of the Project. In August 2010, the County of Westchester Planning Board recommended a one space per residential unit ratio in its consideration of the prior Project, which consisted of 26 residential units which included 21 two-bedroom units. In its later review of the Project, on November 21, 2011, the County of Westchester Planning Board indicated that it supported the proposed parking variance because the existing zoning requirements for parking are excessive.

Additionally, with the application of generally accepted traffic engineering standards, the Village's traffic engineers and planning consultants recommended that a traffic variance is supportable for this development. By a January 6, 2012 memorandum, BFJ Planning, the Village's planning consultant, found that this Project, being adjacent to the Crestwood Metro North train station, is considered to be a transit-oriented development. With regard to studio units and one-bedroom apartments, BFJ Planning found that the car presence will be in the range of 1 to 1.25 cars per unit. BFJ Planning further found that in the morning at 8 a.m., there will be a minimum vacancy of 17 spaces; at 9 a.m., there will be a minimum vacancy of 22 spaces; at 6 p.m., there will be a minimum vacancy of 21 spaces and at 10 p.m., there will be a minimum vacancy of 9 spaces. BFJ Planning further found that these vacant spaces can be used by the tenants/employees/merchants of the commercial space. With respect to the commercial space, BFJ Planning estimated that the actual parking demand for the commercial space at the Premises will be in the vicinity of 3 spaces per 1,000 square feet for retail or office. Thus, BFJ Planning concluded that the actual parking demand for the 3,600 square feet of commercial space is approximately 11 to 12 spaces in total and that the demand for the merchants/employees is likely 4 to 5 spaces, thus the parking demand for the commercial space customers would be about 6 to 7 spaces.

Based on the foregoing, this Zoning Board finds that the grant of the parking variance is appropriate under the circumstance and will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

With respect to parking space width, the Applicant seeks an area variance from the parking space width requirement of Section 5-1.2.1.5(e) to permit 36 of the proposed 61 spaces to be less than 9 feet wide. Specifically, the Applicant proposes parking spaces that are 8 ½ feet wide in order to accommodate the layout of the proposed 61 parking spaces.

This Zoning Board finds that the 6-inch deviation from the proposed 9-foot parking space size will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. In fact, this Zoning Board finds that the 6-inch deviation will provide for a more efficient parking layout and further permit a greater number of off-street parking spaces.

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

Based on the Project's economic viability and the design of the project for 47 residential units with 3,600 square feet of commercial space, this Zoning Board finds that feasible alternatives to the variances sought do not exist in the present case. For example, with respect to building height, a feasible alternative to the 3.91-foot deviation does not exist with respect to the design of the proposed building. Similarly, permitting the proposed building to have four stories along its Lincoln Avenue frontage presents no feasible alternative to the variance with respect to the number of stories sought. Moreover, based on the size of the Premises and the fact that the development is a transit-oriented development, no feasible alternative exists with respect to the number of parking spaces variance. Additionally, the area variance that seeks to reduce the parking space width from 9 feet to 8 ½ feet wide with respect to 36 of the proposed 61 parking spaces presents no feasible alternative other than the grant of the variances in order to fit and arrange the proposed 61 off-street parking spaces.

3) Whether the requested variances are substantial?

This Zoning Board finds that the requested variances are not substantial in light of the data presented and the record before this Board. With respect to the area variance for building height, this deviation is only a 3.91 foot deviation from the requirements of the Tuckahoe Zoning Code. In other words, it is less than a 10% deviation from the requirements of the Zoning Code. The area variance which seeks to increase the number of stories from three to four along the Project's Lincoln Avenue frontage is a 25% deviation from the requirements of the Tuckahoe Zoning Code. However, this Zoning Board finds that it must take into consideration the context of the variance sought and not simply apply a mathematical formula in order to determine this prong of the area variance statutory test. With the foregoing stated, the fourth story along the Lincoln Avenue frontage is not a substantial variance in the context of the Project as a whole and the impacts on the surrounding community. Important to this prong of the area variance test,

it again must be noted that the fourth story on the Lincoln Avenue frontage is only requiring a 3.91-foot deviation in terms of building height.

With respect to the parking space requirement, the Applicant is proposing 61 parking spaces where 112 are required. Based on a mathematical calculation, it would appear that this variance is indeed substantial. However, when taking into consideration the comments and memoranda of the County of Westchester, the Village's planning consultant and the Applicant's traffic engineer, in the context of the Project as a whole, this Zoning Board finds that this parking variance is not substantial.

Finally, with respect to parking space width, the Applicant seeks only a 6-inch deviation from the Zoning Code's requirement of a parking space width of 9 feet. Based on the comments of BFJ Planning, the Village's planning consultant, the Zoning Board finds that this 6-inch deviation is not substantial.

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

On this record, there is no evidence that the 3.91-foot deviation in building height will produce adverse or negative effects or impacts on the physical or environmental conditions in the neighborhood or district. As mentioned, the building height variance is relatively small in that it represents less than a 10% deviation from the requirements of the Zoning Code. Equally, the grant of the area variance from three stories to four stories along the proposed building's Lincoln Avenue frontage will not result in adverse effects or impacts on the physical or environmental conditions in the neighborhood or district.

Based upon the County of Westchester's comments, the memorandum submitted by BFJ Planning and the submissions by the Applicant's traffic engineer, the proposed 61 off-street parking spaces will suffice to provide sufficient parking for this Project. This Zoning Board finds that, based upon the expert testimony and submissions, a sufficient number of off-street parking spaces will be provided by the Applicant. In addition, it is worth noting that the Project will result in an increase in on-street parking spaces of 8. Indeed, the parking space requirement will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Lastly, the parking space width requirement of 9 feet as reduced to 8 ½ feet will only increase the number of off-street parking spaces provided for the Project and will not have the effect of creating adverse impacts on the physical or environmental conditions in the neighborhood or district.

5) Whether the alleged difficulties were self-created?

On this record, the Zoning Board finds that the alleged difficulty, particularly with respect to the parking variance was, in fact, self-created. However, this Zoning Board further finds that this finding of a self-created difficulty would not preclude the granting of the area variances sought herein. Moreover, any self-created difficulties arising from or accompanying this Project are not fatal to this application.

Special Use Permit:

Pursuant to Section 6-1 of the Zoning Code, the Zoning Board is granted the authority to issue Special Use Permits as set forth in the Zoning Code "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 Code, 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 Code, which pertain to Business/Residential Zoning Districts. Pursuant to Section 6-2.4 of the Zoning Code, 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 the Business/Residential Zone

1. Planning Board

Before this application was brought before the Zoning Board, it was first presented to the Planning Board of the Village of Tuckahoe for a preliminary review as required. The Planning Board issued a specific recommendation in connection with the variances and Special Use Permit requested herein. The Planning Board indicated that, "based on our preliminary review of the application and the Project, as revised, we recommend that the Special Use Permit be granted in that residential uses above business uses in the Business/Residential Zoning District is compatible with the goals and intent of the subject Zoning District. Moreover, we further recommend that the Special Use Permit be granted in that the issuance of the same would be compatible with the Village's Master Plan, whereby residential uses on upper floors in the Crestwood area would be consistent with the Master Plan adopted in 2008." Further, "in connection with the sought-after variances as described above, this Planning Board does not recommend the granting of the variances for building height, number of stories, off-street parking requirements or the parking space width requirement. This Planning Board recommends that the granting of the foregoing variances would be incompatible

with the character of the surrounding neighborhood and community.” Indeed, under the specific Special Use Permit requirements, this application was given preliminary consideration by the Planning Board.

2. *Separate Entrances*

The Project will provide adequate and separate entrances and/or access points to the proposed building on the Premises. There will be separate entrances for the residential and commercial uses.

3. *Compatibility of Use*

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

It is worth noting that the use contemplated by the Project would be conforming with the Zoning Code’s mandates in that a mixed use development would be developed on the Project site consistent with the Business/Residential Zoning District. Moreover, no food-related uses, theaters or cabarets are proposed for the proposed commercial component of the Project.

4. *Building Context*

With respect to building context, the proposed building is consistent with the scale, setbacks and zoning of the surrounding buildings. The height of the proposed building is consistent with the heights of the building directly across the street on Columbus Avenue, the buildings across the street on Fisher Avenue, and the Church building, which is at a higher elevation, on the adjoining property to the rear. Further, the full extent of the height of the proposed building will not be noticeable from Columbus Avenue and will only be noticeable from Lincoln Avenue, where the adjoining Church has a higher roof, and where, under the Zoning Code, a new building on the Church property could be constructed with a roof up to 11 feet higher than that of the proposed building. Thus, the proposed building will remain consistent with the surrounding context of adjacent and nearby buildings that make up the surrounding Zoning Districts.

B. Standards for All Special Use Permits

1. *Compatibility with District*

This Zoning Board has resolved that the proposed use of the Premises is both harmonious and consistent with the uses prescribed for the Business/Residential Zoning District. The Project, as proposed, would be more conforming than the current non-conforming gas stations with commuter parking. The dimensions and aesthetics of the proposed building will complement adjacent and nearby buildings in the Zoning District and will further the goals of the Business/Residential Zoning District.

2. *Compatibility with Master Plan*

The Project is compatible with the 2008 Master Plan. Specifically, the 2008 Master Plan recommends residential uses on the upper floors in Crestwood and calls for the consideration of downward adjusted parking ratios.

In addition, increasing the revenue of the local business owners, commercial thoroughfare and property values in the Village and 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 those expressed and implicit goals.

3. *Services*

The proposed building will be readily accessible for fire and police protection. The building, as proposed, 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 suggest 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 building will not hinder or discourage development in the 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. The church property to the east has a height that exceeds the proposed building and the commercial uses to the south will not be hindered in their development as a result of the proposed Project.

5. *Nuisance*

The nature and scope of the residential and commercial uses of the Premises will be such that no noise, fumes, vibrations, flashing of lights or other similar nuisance emissions to the surrounding neighborhood will occur. Additionally, no offensive, dangerous, destructive or negative 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 this record, there is no evidence that the property values of adjacent and nearby lots in the community will be diminished by granting approval for this Project. This Project will add to the Village’s overall local economy, tax base, school district support, diversity and housing availability.

A February 1, 2012 projected assessment and taxes study performed by Urbanomics showed that under an income approach to property evaluation, the Project would yield a projected market value of \$8.1 million with an aggregate tax liability of \$245,319.00. Of this, property tax revenues for the Village of Tuckahoe would be \$57,607.00. The Urbanomics study went on to conclude that, even assuming a conservative rental rate of \$3.25 per square foot with a 3% vacancy rate, the market valuation of the property for assessment purposes would be reduced from \$8.1million to \$7.2 million. Given the 2011 tax rates, under that scenario, the proposed development would be at \$218,062.00 for its tax liability and the Village tax revenues would be \$51,206.00.

As the School District is concerned, the Urbanomics study concluded that, at current costs of \$20,532 per pupil in the Eastchester Union Free School District, including costs covered by inter-governmental aid, the proposed development will generate at least \$100,000 as a positive net benefit for this most costly public service.

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 business area of the Crestwood region. These potential changes in neighborhood character and property values will generate indisputably positive socio-economic results for the Village.

7. Traffic

The traffic and parking study submitted by the Applicant demonstrates that there will be a reduction of peak a.m. traffic and similar trips during the p.m. peak as compared to the existing use of the gas stations with commuter parking.

According to a December 12, 2011 memorandum submitted by BFJ Planning, the Village's planning consultant, the traffic group at BFJ Planning indicated that it "had reviewed the traffic study submitted by the Applicant's consultant, John Meyer Consulting." The traffic group at BFJ Planning concluded that, "we believe that the traffic calculations are reasonable and that the conclusions of the study [the Applicant's study] are also substantiated by our own review. In essence, the traffic levels of service in the area should not change significantly due to this development."

Indeed, this 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 Code, a minimum number of off-street parking spaces are required to accommodate the number of residential occupants and commercial patrons in the proposed building on the Premises. For the reasons above stated in the granting of the parking variance, this Zoning Board has resolved that sufficient parking will be provided on site for the uses contemplated in connection with this Project. The off-street parking spaces proposed in connection with this Project are consistent with the expert recommendations made before this Zoning Board.

9. Conformance with Regulations

The Applicant has complied with the requirements for lot area, lot width, frontage, side yard set-back, front yard set-back and rear yard set-back. As mentioned above, the Applicant seeks deviations from the Zoning Code for building height, number of stories, number of off-street parking spaces and parking space width. This Zoning Board finds that the Applicant has substantially conformed to the regulations applicable to this Project.

Based on the foregoing, this Zoning Board finds that the Applicant has reasonably satisfied the general and specific conditions applicable to the issuance of a Special Use Permit as set forth in the Zoning Code for the Village.

The Applicant's Alternative Relief:

In view of the granting of the foregoing variances and Special Use Permit, this Zoning Board need not render a determination on the alternative relief requested by the Applicant with respect to interpretations or special permit modifications regarding building height and stories.

Conditions:

This Zoning Board's grant of the variances herein and the Special Use Permit for the Project are subject to the conditions set forth on Schedule A attached hereto and made a part hereof and incorporated by reference herein. This Zoning Board finds that the conditions set forth on Schedule A are reasonable conditions imposed on the Applicant in an effort to make the project more harmonious with the Village's laws and ordinances, in addition to further reducing any perceived negative environmental impacts from the Project. The conditions set forth on Schedule A are applicable to and binding on the Project.

Conclusion:

Based on the foregoing, it is resolved that the variances referenced herein and the Special Use Permit as 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 with the New York Civil Practice Law and Rules.

SCHEDULE A

CONDITIONS TO A CERTAIN GRANT OF AREA VARIANCES AND A SPECIAL USE PERMIT TO THE APPLICANT STREET-WORKS DEVELOPMENT, LLC FOR THE PREMISES COMMONLY KNOWN AS 300-308 COLUMBUS AVENUE, TUCKAHOE, NEW YORK

1. The referenced building height and number of stories variances are conditioned on the limitation to no more than three habitable levels facing Lincoln Avenue (excluding the parking areas, elevators, fire stairs and corridors) and three habitable levels facing Columbus Avenue.
2. The area variances granted herein and the Special Use Permit granted herein are conditioned upon the development and use of the property substantially as set forth in the following plans and drawings submitted to the Zoning Board:

John Meyer Consulting, PC Drawings:

<u>Dwg. No.</u>	<u>Title</u>	<u>Rev.#/Date</u>
SP-1	"Cover Sheet"	#2 01/23/2012
SP-2	"Existing Conditions"	#2 01/23/2012
SP-3	"Layout and Striping Plan"	#3 01/23/2012
SP-4	"Grading and Utilities Plan"	#2 01/23/2012
SP-5	"Sediment & Erosion Control Plan"#2	01/23/2012
SP-6	"Landscaping Plan"	#2 01/23/2012
SP-7	"Site Cross Sections"	#3 01/23/2012
SP-7A	"Site Cross Sections"	#1 01/23/2012
SP-8	"Site Details"	#2 01/23/2012
SP-9	"Site Details"	#2 01/23/2012
SP-10	"Site Details"	#2 01/23/2012
SP-11	"Site Details"	#2 01/23/2012

Street-Works Consulting, LLC Drawings:

<u>Dwg. No.</u>	<u>Title</u>	<u>Date</u>
A-101	"Columbus Av. Plan"	01/23/2012
A-102	"Typical Upper Level"	01/23/2012
A-103	"Top Level Plan"	01/23/2012
A-201	"Building Elevations/Perspectives"	01/23/2012

3. The residential component of the Project shall be limited to 47 residential units comprised of 43 studio units and 4 one-bedroom units. Any deviation from the total number of residential units set forth as 47 residential units shall require the further approval of this Zoning Board of Appeals.
4. The total number of bedrooms for this Project shall not exceed 47 bedrooms and any deviation from this total bedroom count of 47 shall require the further approval of this Zoning Board of Appeals.
5. The commercial component of the Project shall be limited to 3,600 square feet. Any deviation in the size of the commercial component of the Project shall require the further approval of this Zoning Board of Appeals.
6. Except for the six tandem spaces, none of the 61 off-street parking spaces proposed for the site shall be designated or reserved for any particular user, but pursuant to Sections 4-5.4 and 5-1.2.1.4 of the Zoning

Code, shall be jointly used by the residential and commercial users by reason of variation in the probable time of maximum use by patrons, employees and residents.

7. The entry to the parking area off Fisher Avenue shall be marked with a “permit parking only” sign and all residents and/or merchants/employees shall be required to obtain a sticker or hang-tag which shall be displayed when they park on-site.
8. In the event that there is significant abuse of the parking spaces as determined by the Village Building Inspector and/or the Village Planning Consultant in their sole discretion, the owner shall install a gate activated by a remote card at such time as the Building Inspector and/or Village Planning Consultant shall direct.
9. The commercial component of this Project consisting of 3,600 square feet of commercial space shall not be used for restaurants, food-related uses (any business where food is served, sold or prepared), theaters or cabarets.

Member DiSalvo seconded the motion and upon roll call was carried with a vote of 3 – 1.

Member Palladino voted in opposition and offered the following remarks:

Before I cast my vote regarding this project, let me give you some insight as to why. I have nothing against this project. In fact, since the residential portion of this project is made up of primarily studio and a few 1 bedroom units it has one significant upside, it should have very little or no impact on student population in the school district, while providing tax revenue to both the local school district and the village.

The problem lies in the variances requested and their size. While the Zoning Board’s function is to provide relief, that relief should be reasonable and not have significant impact on both the neighborhood and neighbors. That is why there is the 5 Prong test, which is the tool employed by Zoning Boards to make these determinations.

The variances the petitioner has requested start with the number of stories. The Zoning Code in the BR district limits the number of stories to 3. The petitioner has requested 4 stories on Lincoln Avenue. That is a 33% increase over what is allowed by code. Now, if a story increase is granted, because of the design of the project, a 3.91 foot height variance will be necessary because the project, as designed, is 46 feet tall with a fourth story. The height limit in the BR district is 42 feet. **While 3.91 feet is not a substantial amount there are no 46 foot buildings in Crestwood, as well as no 4 story buildings.**

Next is parking. The code calls for 2 parking spaces per residential unit, and 1 space for each 200 square feet of commercial space. For this project, as per the last submission, that would be a total of 112 parking spaces to be provided. The proposal provides for 61 parking spaces. That is 54.5% of code and would require a 45.5% variance, almost half, plus now the 61 spaces would be shared between, not separate from, both residential and commercial tenants. Also, a variance is requested for a reduction in width of 36 spaces, which is 59% of the total number parking spaces being provided, from a code requirement of 9 feet to 8 feet 6 inches.

There has been very little attempt at compromise, especially with regard to the elimination of the fourth floor, which would do away with 2 requested variances, and significantly lessen the impact on parking requirements per code. Our responsibility as a zoning board is not the maximization of

return on investment for a developer, but maintaining the integrity of our zoning code and our neighborhoods for the benefit of our fellow residents.

When this parcel was rezoned, it is my understanding that the Village Board would only consider rezoning and would not accept any changes with regard to parking requirements, or BR zone requirements. Also the Planning Board, at a special meeting, unanimously and adamantly recommended to the Zoning Board, rejection of all variances. It also recommended with regard to this project and as required by code, the issuance of a Special Use Permit solely to permit residential units in the BR Zone, nothing else.

It is my opinion, if these variances are approved, whether by direct variance or being made part of Special Use Permits, the Zoning Board will be in a very vulnerable position with future petitioners, especially with regard to parking, because they will want similar relief. Also petitioners in the BR district, will request similar relief with regard to number of stories and height limitations.

I reviewed, on the village website, previous Village Board meetings which took place at the time this parcel was being considered for rezoning. A resident, who happened to be an attorney, asked the board what would protect the residents from the developer doing anything it desired if the rezoning passed. She was told by a trustee at that time that was why there were boards, planning and zoning, in existence to protect the residents.

In my opinion, as per the 5 prong test, these variances, if granted, for the benefit of the applicant do not outweigh the detriment to health, safety and welfare of the neighborhood, therefore I respectfully vote NO.

Member Alfasi voted in favor of the application and offered the following remarks:

Member Alfasi stated that he does not want the residents to lose sight that if the applicant were to build two separate buildings, they did not require a variance. The uniqueness is that this is one building and therefore creates the necessity of the height variance. The fourth story was created due to the parking situation. The two separate buildings would be allowed by code. These are not subtle points, rather they are key to our decision. The consultant's recommendation for the parking ratio was a tremendous concern. The development being near the train station made it a special situation.

Chairman Gallo voted in favor of the application and offered the following remarks:

Chairman Gallo stated that this project will be a tremendous benefit to the community. The Zoning Code needs changes based on circumstances. One has to be open minded to all the benefits. This development is also a tremendous benefit to the school.

He thanked the Board members for all the hours spent on discussing and researching this application, he thanked Mr. Fish, Mr. Williams and Mr. Cavallaro for all their time and advice.

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.