

Minutes of: April 11, 2012  
Date Approved: May 9, 2012  
Date Filed/Village Clerk:

**April 11, 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  
David Kubaska Member

**Also in Attendance:**  
John Cavallaro Village Attorney  
Bill Williams Building Inspector

**Chairman Gallo announced the agenda as follows:**

**Item #1 Approval of Minutes from the March 14, 2012 meeting**

**Item #2 146, 150, 160 Main St. 233 Midland Avenue**

Extension for Special Permit Use

**Item #3 100 Main Street**

Variance for multi-family residential with commercial component

**Item #1 Approval of Minutes from the March 14, 2012 meeting**

Member DiSalvo motioned to approve the March 14, 2012 minutes, seconded by Member Palladino and carried with a vote of 5 – 0.

**Item #2 146, 150, 160 Main St. 233 Midland Avenue**

Mr. Null, attorney representing the applicant, stated that the Special Use Permit was granted back in 2008. This Special Use Permit permitted residential use for the buildings in a Residential/Business Zone. Building 146 was to be two lofts, building 150 planned to have residential and commercial while the remaining buildings, both 160 and 233 were to be all residential. While the Special Use Permit that was granted in 2008 did categorize the buildings as all residential, it did not specify that there would be residential units on the first floor. The applicant understood the approval as all residential meant that the first floor did indeed have residential units on the first floor. The applicant is present tonight to clarify and correct the semantic issue of the approval. Mr. Null noted that the public was re-noticed.

Mr. Phil Raffiani reviewed the original approved plans that were dated 2007. All the buildings had first floor residential units and were approved by the Planning Board and Zoning Board in 2008. It was agreed that retail on Midland Pl. and Midland Ave. would not be smart. The previous buildings built by Mr. Raffiani on Main St. also had residential use on the first floor.

Chairman Gallo stated that the present Zoning Board consists of all new members since the 2008 approval was granted.

Mr. Raffiani stated that the 2011 approval was granted by the current Planning Board. The plans did not change as the total square footage and the FAR stayed the same. The only retail would be located on the Main St. side of building 150.

Chairman Gallo thanked Mr. Raffiani for his time, work and generous contributions for the updates and changes made to the ECAP building.

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

#### **Public Comments**

Oliver Stauffer 145 Main St. stated that he was pleased with the plans. He voiced his concern regarding the parking situation in the Village. The two-hour parking meters limit the businesses from thriving.

Mr. Null noted that there was no reduction of the parking. The application provided all the required parking spaces, two spaces per unit. Mr. Null cited the Crestwood project whom did receive a variance for the parking requirement.

John Cavallaro, Village Attorney, did agree that the applicant is compliant with the Zoning Code parking requirements.

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

Chairman Gallo added that the Board would review the application and have a Special Meeting for this applicant on April 25, 2012 at 7:00pm. All agreed.

Member Palladino stated that although he may not be able to attend the Special Meeting, he was comfortable that the questions and concerns of the application were addressed.

**Chairman Gallo motioned for a Special Meeting at Village Hall on April 25, 2012 at 7:00pm with the work session to begin at 6:30pm. Member DiSalvo seconded the motion and was carried with a vote of 5 – 0.**

### **Item #3 100 Main Street**

Mr. Les Maron, attorney for the applicant, indicated that this application was before the Board on March 14, 2012. The variance sought is for 33 spaces where 53 spaces are required. This application has been before the Planning Board five times. The Planning Board recently forwarded a referral to the Zoning Board for the recommended issuance of the variances based on these recommendations:

1. The size of the parking spaces be no less than 9ft. x 18ft.
2. The width of the driving isle in the parking bay be no less than 24ft.
3. The overall width of the parking bay be no less than 60ft.
4. The project must have a minimum of 33 parking spaces
5. The Zoning Board review the parking on the Raffiani property

Mr. Maron added that the Planning Board indicated that they would like to see more glass on Main St. and Terrace Pl. sidewalk widened, therefore, there needs to be flexibility for the architect to provide the requests. The 33 spaces would provide the necessary flexibility. The 3315 sq. ft. of retail space which was originally planned for one site, may need to be divided into two smaller retail sites. He noted that the application passes the five-prong test where it will not have an adverse impact on the neighborhood. The variance sought was not substantial as it only is a 9% variance for the two feet less for the length of the parking spaces.

John Cavallaro, Village Attorney, noted that conditions were discussed, whereas the retail space would be one unit measuring 3315 sq. ft. This Board could change the condition for not more than two units of retail space. The condition would not affect the parking as it is based on square footage. In addition, the condition could require that the commercial component of this Project consisting of 3,315 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 Alfasi motioned to re-open the public hearing was seconded by Member DiSalvo and unanimously carried by the Board.**

### **Public Comments**

Mrs. Angelillo, 84 – 88 Main St., voiced her concern regarding the retail space potential to be two spaces rather than one space. She noted that parking was a problem in the Village. If the retail space were now two retail units, more employees would be needed. Would the applicant have a restaurant at this site in the future? She asked if the applicant were to get the extension of the Special Use Permit, would the construction start soon. Mrs. Angelillo also voiced her concern that the project in Crestwood, the Raffiani project up on Midland and this project at 100 Main St. may be too many big construction projects happening simultaneously in this small Village. She added that the public notice did not mention the extension of the Special Permit. She asked if the water situation between the properties would be delayed.

Chairman Gallo noted that this Board has done its best to expedite 100 Main St. application. The applicant has worked with the Planning Board. The applicant has an interest in expediting this project. It is in the Village's best interest to grant the extension of the Special Use Permit.

John Cavallaro, Village Attorney, noted that the applicant provided sufficient notice to the public regarding this application.

Member Alfasi noted that this Board continues to grant variances for time. It is incumbent upon the applicant to move this process along. This Board would take into consideration if the applicant were not doing what he should to go forward and work with the Boards.

Noel Degaetano 33 Terrace Place asked about the two-way plans for Terrace Pl.

John Cavallaro, Village Attorney, stated that the applicant would request the change to a two-way street before the Village Board of Trustees, at a public hearing. The Village Planning consultant noted that an entrance on Main St. would not be safe and would add to the congestion of vehicles on Main St.

Mr. Degaetano noted that there was no view of Main St. from his property years ago. Now the trees are gone, he has a view of the traffic and the noise from Main St. There is no set back and therefore, Main St. has a tunnel feeling. It does not encourage residents to walk in town.

Chairman Gallo noted the vacant stores are a sign of the economic decline. This is a very big concern. Residents have to make an effort to shop/buy locally so that the stores do not go out of business.

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

Member Palladino asked the applicant the stage his plans were, as this is the project's third extension.

Mr. Maron noted that he has a meeting with the architect tomorrow. He plans to have a site plan for next month's Planning Board meeting. He also requested an uncoordinated EAF to expedite the process.

**Motion by Member Alfasi read the following: Resolution declaring a negative declaration under the State Environmental Quality Review Act for the premises of 100 Main St. Tuckahoe NY. This resolution shall take effect immediately.**  
**Member Kubaska seconded the motion and was carried with a vote of 5 – 0.**

## **Member Alfasi offered the following resolution as a motion:**

### **Background and Findings of Fact**

The Applicant is the record owner of the premises commonly known as 100 Main Street, Tuckahoe, New York and known on the tax map of the Village of Tuckahoe as Section 28, Block 5, Lots 3, 5 and 7 (the "Premises"). On June 11, 2008, this Zoning Board of Appeals (the "Zoning Board") granted a Special Use Permit for residential use in the BR District and area variances to enable the Premises to be developed with a mixed-use building containing residential apartments above the ground floor retail with storefronts along Main Street (the "Project"). The Premises previously was improved with three buildings located adjacent to one another, two of which fronted along Main Street and the other along Terrace Place, all of which have been torn down at this time. On February 17, 2010, the Applicant was granted an extension of its approvals for a one-year period. On August 24, 2011, the Applicant was granted a further extension of its approval for a one-year period. The Applicant currently requests a further extension of its approvals for an additional one-year period.

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 permitting four stories, where there is a three story limitation,<sup>1</sup> given that the building will conform to the maximum permitted height of forty-two (42) feet;<sup>2</sup> and
3. An area variance for an increase in the allowable floor area ratio (FAR) from 1.2<sup>3</sup> to 1.96.

The Prior Approvals were the subject of two Article 78 proceedings initiated in the Supreme Court of the State of New York, County of Westchester by the owners of an adjacent apartment building, as follows:

- a. In the Matter of Joseph Angelillo and Victoria Angelillo, Petitioners, against the Village of Tuckahoe Zoning Board of Appeals, and Terry Burd (Index No. 15030/2008) (the "ZBA Proceeding"); and
- b. In the Matter of Joseph Angelillo and Victoria Angelillo, Petitioners, against the Village of Tuckahoe Planning Board, the Village of Tuckahoe Zoning Board of Appeals, and Terry Burd (Index No. 12046/2008) (the "Second Proceeding").

The ZBA Proceeding was the subject of a Decision, Order and Judgment dated September 17, 2009, dismissing the Article 78 proceeding and determining that the Zoning Board's decision to grant the Prior Approvals was "supported

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<sup>1</sup> See Village of Tuckahoe Zoning Ordinance § 4-5.3.3.

<sup>2</sup> *Id.*

<sup>3</sup> See Village of Tuckahoe Zoning Ordinance § 4-5.3.4.

by ample evidence in the record. . . [and that the Zoning Board] properly balanced the factors required to be considered by Village Law. . ." Similarly, the Second Proceeding was the subject of a Decision, Order and Judgment, dated October 2, 2009, dismissing the Article 78 proceeding and finding that the determinations adopted pursuant to Article 8 of the New York State Environmental Conservation Law and the rules and regulations promulgated thereunder at 6 N.Y.C.R.R. Part 617 (collectively "SEQRA") were both procedurally and substantively in compliance with applicable law. No appeals were taken from these Supreme Court decisions.

### **The Nature of the Application**

MC Equities now proposes to construct a new building at the Premises in the BR District located at 100 Main Street, Tuckahoe, New York and requests variances and approvals under Sections 4-5.4, 5-1.2, 5-1.2.1.4 and 5-1.2.1.5(e) of the Zoning Code. In particular, the Applicant seeks approvals authorizing the joint use of parking spaces for residential and retail uses, permitting not less than 33 parking spaces where 53 are required and reducing the parking space size and dimensions to 9-feet by 18-feet when 9-feet by 20-feet is required. The Applicant further seeks an extension of the previously granted Special Use Permit and FAR variance, which then authorized the construction of a four story building with not more than 22 residential units and not more than 3,900 square feet of multiple retail units. The building as currently proposed will be smaller than that previously approved and will have only three stories of not more than 18 residential apartments and not more than two retail units of not more than 3,315 square feet as combined.

MC Equities has requested an extension of the Special Use Permit and area variances granted by this Zoning Board on June 11, 2008, as modified herein, and further extended on February 17, 2010 and August 24, 2011 to construct, use and maintain the mixed-use building at the Premises. The Applicant requests that the Zoning Board approve a one-year continuation of the Special Use Permit and area variances that were previously granted in addition to granting the area variances requested herein.

The Applicant's goal remains the development of the Project, which is being reduced in size and intensity as described herein. In connection with its proposal, as previously noted, the Applicant requests a smaller FAR variance as well as variances authorizing the joint use of parking spaces for the residential and retail uses, permitting not less than 33 parking spaces when 53 are required and reducing the dimensions of the parking space size to 9-feet by 18-

feet when, in fact, 9-feet by 20-feet is required. The extension of the Special Use Permit from the Zoning Board is also required for the residential uses of the proposed building within the BR District.

### **Conclusions of Law**

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

To grant the area variances requested herein, 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 the Applicant can be achieved by a feasible alternative to the variance?
3. Whether the requested variances are substantial?
4. Would the variances have an adverse impact on the physical or environmental conditions in the neighborhood?
5. Whether the alleged difficulty was self-created?

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

It is also noteworthy that the Planning Board in preliminarily reviewing this application recommended the grant of the area variances sought herein and the extension of the Prior Approvals, as modified herein, subject to the following standards:

1. The size of the parking spaces be no less than 9-feet by 18-feet;
2. The width of the driving aisle in the parking bay be no less than 24-feet;
3. The overall width of the parking bay be no less than 60-feet;
4. The Project must have a minimum of 33 parking spaces; and
5. The Zoning Board review the parking on the prior development of Mirado Properties.

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

The Zoning Board has determined that no undesirable change in the character of the neighborhood would result from the granting of the area variances herein or the extension of the previously granted area variances. With respect to the issue of authorizing the joint use of parking spaces for residential and retail uses, the Village's planning consultant, BFJ Planning, has recommended that the parking spaces be shared and that no reserved parking space system be utilized in connection with this Project. In connection with the area variance sought for the number of parking spaces, this Board notes that, under the Project as proposed, 53 parking spaces are required and 33 parking spaces are proposed. The Planning Board, in its recommendation, specifically recommended that no less than 33 parking spaces be provided in connection with this Project. The recommendation of the Planning Board was based, in part, on the materials and data submitted by the Village's planning consultant, BFJ Planning, which found that 33 parking spaces would be adequate in connection with this Project. In addition, the Village's planning consultant, BFJ Planning, also recommended that the size of the parking spaces be reduced to a more standard size of 9-feet by 18-feet, when, in fact, 9-feet by 20-feet is required. BFJ Planning had indicated to the Planning Board that 9-feet by 18-feet is the standard size of parking spaces utilized throughout the County and in other communities.

With respect to the area variance concerning floor area ratio, the previous area variance approved a floor area ratio of 1.96, where the required floor area ratio for the Business/Residential District is 1.2, where the use of 50% of a lot is 50% or more residential as measured by gross floor area. *See* Zoning Code Section 4-5.3.4. The Applicant presently requests an extension of the previous area variance for floor area ratio but is requesting that the variance be reduced to a floor area ratio of 1.32 in connection with this Project. In either event, the floor area ratio will exceed the limits imposed by the Zoning Code, and although this deviation will be adequately offset by similar buildings within the Business/Residential District and the nearby Business zoning district along Main Street, there is a request for an increase above the 1.2 FAR limitation as set forth in the Zoning Code.

With respect to the previously granted variance for number of stories, the Applicant has agreed to reduce the building height to three stories and within the 42 foot overall height limitation, thus eliminating the need for the area variance for number of stories.

**2. *Whether The Benefits Sought By the Applicant Can Be Achieved By A***



### ***Feasible Alternative to the Variances?***

Under this proposal, this Zoning Board finds that a feasible alternative does not exist in connection with the variances requested herein. The reduction of parking space size to 9-feet by 18-feet will allow more parking spaces to be located on the Premises. The authorization to allow the joint use of parking spaces for residential and retail uses, as recommended by the Village's planning consultant, BFJ Planning, will further the use of the parking spaces that are provided under the proposed plan. Finally, permitting 33 spaces where 53 are required does not appear to have a feasible alternative based upon the lot size and overall dimensions of the proposed building as set forth in the plan submitted to this Zoning Board. Additionally, as mentioned, the previously granted area variance for FAR will be reduced from 1.96 to 1.32 and the additional previously granted variance for a fourth story will be eliminated in its entirety, as the building as proposed will only have three stories. Because the Premises is located in a Business/Residential zoning district, other feasible alternatives to granting the above-referenced area variances are unavailable. Thus, based on the unique location of the lot and the minimum space required by this Project, no feasible alternative exists absent the granting of the instant variances.

### ***3. Whether The Requested Variances Are Substantial?***

Here, the Zoning Board has determined that the area variances previously granted are not substantial when comparing the Project with that of adjacent and nearby properties. While the Applicant has requested an extension of an area variance for the non-conforming floor area ratio, it is being reduced from the previously granted 1.96 to 1.32, which exceeds the 1.2 limit for the Business/Residential zoning district but does not appear to be substantial in its request. The extension of this area variance for floor area ratio will not produce any appreciable negative impacts.

In addition, authorizing the joint use of parking spaces for residential and retail uses is not a substantial area variance request. Moreover, the Village's planning consultant has recommended the joint use of the parking spaces for both residential and retail uses. Also, the size of the parking spaces from 9-feet by 20-feet is also not a substantial area variance request in light of the fact that the Village's planning consultant, BFJ Planning, has recommended that 9-feet by 18-feet is the standard size of parking spaces in the County and in other communities. This two-foot reduction in parking space size does not rise to the level of a substantial area variance request in the context of this Project.

Finally, the reduction in parking spaces from 53 to 33 on its face appears to be a substantial area variance request. However, the Village's planning consultant, BFJ Planning, has recommended and submitted materials to support the fact that the 33 parking spaces would be sufficient parking under the terms and conditions of this Project

as proposed. This recommendation by BFJ Planning resulted in the Planning Board issuing a recommendation to this Zoning Board for the granting of the area variance for the number of parking spaces to be a minimum of 33.

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

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

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

Despite the fact that that proposed building will have 33 parking spaces where 53 are required, the overall parking for the Project has been confirmed to be sufficient for the parking demands considered in relation to this Project. In addition, the authorization for the joint use of parking spaces for residential and retail uses will further accommodate the parking demands in the area and provide for a more sufficient parking arrangement on the Premises. Finally, the size of the parking spaces will not produce negative effects on the environment in that this Zoning Board is granting an area variance for parking space sizes of 9-feet by 18-feet where 9-feet by 20-feet is required.

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

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

On the facts and the record, the Applicant's alleged difficulty is arguably self-created because a smaller building could have been proposed on the Premises. However, this self-created difficulty is not fatal to the

April 11, 2012

application. Every effort has been taken to ensure that the proposed building will be minimally imposing and will blend in with the aesthetic, structure and scale of other buildings fronting Main Street. Indeed, these are express goals of the Project, which are consistent with the Village's Zoning Code and the Master Plan.

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

Considering the above factors, the grant of the variances herein and the extension of the proposed area variances as set forth in the Prior Approvals, as modified herein, is consistent with the development goals of the Master Plan. The grant of the variances herein and the extension of 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 and extend the above referenced area variances for this Project and to confirm that such Prior Approval, as modified herein, remain in full force and effect.

#### **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 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 that are set forth therein and more fully set forth herein.

#### **A. Residential Uses in Business/Residential Zone**

##### ***1. Separate Entrances***

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

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

## **2. *Compatibility of Use***

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

In determining that the retail use is compatible with the residential use, the Zoning Board considered factors such as noise, odor, pollution, anticipated parking operations and expected traffic volume. Factors such as noise, pollution and traffic volumes will not be significantly affected by a traffic increase of the vehicles as proposed. Further, the retail character of the proposed business on the Premises will ensure that noise and other disturbances from business operations will be minimal and that regular business hours can be reasonably anticipated.

## **3. *Building Context***

In granting this application, the Zoning Board has considered the effects of this proposed building on that of adjacent and nearby buildings in the community. As stated, the proposed building will remain compliant with the height limitations of 42 feet and the number of stories (3) for buildings in the Business/Residential zoning district. Additionally, the design will incorporate features and scales that are similar in character and compatible with the surrounding streetscape in the Zoning District, all with the goal of creating an inviting “Main Street.”

The overall dimensions of the building will be no larger than that of other buildings that front along Main Street. Thus, the proposed building will remain consistent with the surrounding context of adjacent and nearby buildings that make up the Business/Residential zoning district.

## **B. Standards For All Special Permit Uses**

### **1. *Compatibility with district***

The Zoning Board has resolved that the proposed use of the Premises is both harmonious and consistent with the uses prescribed for a Business/Residential District. This Project will help foster orderly, consistent development within the Business/Residential zoning district affronting Main Street. The dimensions and aesthetics of the proposed building will blend in with adjacent and nearby buildings in the zoning district and will add to the

present continuity. Despite the fact that the proposed building will house residential apartments, its occupants will be in close proximity to the retail space. It is probable that future occupants could patronize these retail facilities and others nearby, thus fueling the Village's local economy. The proposed building is intended to be partially dedicated to furnishing retail services to residents and nonresidents of the Village of Tuckahoe, which is an expressly permitted use within the Business/Residential zoning district. *See Zoning Code Section 4-6.1(a)(1).*

## **2. *Compatibility With Master Plan***

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

## **3. *Services***

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

## **4. *Adjacent Properties***

The location, nature and height of the proposed building will not hinder or discourage development and use of adjacent buildings. The Premises is situated in a part of the Village that is zoned for mixed or combined residential and business uses. From any perspective in the Village, the height and dimensions of the proposed building will not exceed that of any surrounding buildings. Thus, the building height is compatible with Business/Residential uses in this zoning district.

Rather, the proposed building will have pleasing aesthetics and will be a modest compliment to the other buildings nearby that front along Main Street. The intensity of the uses on the Premises and the overall footprint of the proposed building are consistent with other uses in this zoning district. Based on the records before this Zoning Board, this Zoning Board finds that the properties adjacent to that of the proposed building will suffer no injury or deleterious effects from this Project.

**5.        *Nuisance***

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

**6.        *Neighborhood Character and Property Values***

On this record, when the Prior Approvals were issued there was no evidence that the property values of adjacent and nearby lots in the community will be diminished whatsoever by granting approval for this Project. These facts and circumstances have not changed, despite that the Applicant does seek additional area variances to create this Project. The assertion that a water problem has resulted from the demolition of the buildings formerly on the Premises does not change the conclusions reached by this Zoning Board.

The proposed building will contribute a more pleasing aesthetic in the neighborhood and may actually enhance the greater community. The three buildings, which were older and in poor condition with lower property values, have been removed to enable the construction of the Project which brings with it more residential tenants to the Main Street neighborhood and a consequent increase in commercial activity. As a result of the influx of capital and economic support to the area, property values for lots adjacent to and nearby the Premises are likely to increase.

**7.        *Traffic***

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

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

**8. *Parking***

Pursuant to the Zoning Code, a minimum number of off-street parking spaces are required to accommodate the number of potential residential occupants and commercial patrons having access to the Premises as proposed. As recommended by the Village's planning consultant, BFJ Planning, it has been found that providing a minimum of 33 parking spaces on site will be sufficient parking for the parking demands associated with this Project. Thus, this Zoning Board finds that the Applicant will be providing sufficient parking in connection with this Project.

**9. *Conformance with Regulations***

This Zoning Board finds that the Applicant has reasonably satisfied the conditions applicable to the issuance of a Special Use Permit as set forth in the Zoning Code for the Village.

**Conditions**

The approvals granted herein are subject to the conditions set forth and contained on Schedule A, attached hereto, made a part hereof and incorporated by reference herein. This Board finds that the conditions set forth and contained on Schedule "A" are reasonable conditions imposed on the Applicant in an effort to make this Project more compliant with the Zoning Code as well as to reduce environmental impacts, if any, associated with the Project.

**SEQRA**

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 SEQRA.
2. This Zoning Board of Appeals is in possession of all information reasonably necessary to make the determination as to the 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 currently applied for herein and the area variances and the Special Use Permit that were previously granted pursuant to the Prior Approvals are hereby granted to the Applicant as modified by this Findings of Fact, Conclusions of Law and 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.

## **SCHEDULE A**

CONDITIONS TO A CERTAIN GRANT OF AREA VARIANCES AND A CERTAIN EXTENSION APPROVAL FOR A SPECIAL USE PERMIT AND AREA VARIANCE EXTENSION GRANTED TO MC EQUITIES FOR THE PREMISES 100 MAIN STREET, TUCKAHOE, NEW YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE

1. In no event shall the number of residential units associated with the Project exceed 18 residential units. In the event the Applicant seeks to increase the number of residential units, such increase shall require the further approval of this Zoning Board of Appeals.
2. In no event shall the commercial/retail space on the ground floor of the Project exceed 3,315 square feet. In the event the Applicant seeks to increase the square footage of the commercial/retail space, such increase shall require the further approval of this Zoning Board of Appeals.
3. At all times, the Applicant shall retain one hundred percent (100%) of its storm water on site and shall not permit such storm water to migrate to adjacent locations. At all times, the Applicant shall remain compliant with the Village of Tuckahoe's Stormwater Control Local Law (Local Law No. 1-2006 et seq., as amended).
4. In no event shall the floor area ratio for the Premises and proposed building exceed 1.32. In the event the Applicant seeks to increase the floor area ratio for the proposed building and/or the Premises, such increase shall require the further approval of this Zoning Board of Appeals.
5. That the retail space consisting of 3,315 square feet shall be leased as not more than 2 retail spaces without further division or subdivision of the same. Any decrease or subdivision or division of the retail space to more than 2 retail units from the 3,315 square feet as proposed shall require the further approval of this Zoning Board of Appeals.
6. The residential component of the Project shall be limited to 18 residential units comprised of 14 two-bedroom units and 4 one-bedroom units. Any deviation from the total number of residential units set forth as 18 residential units shall require the further approval of this Zoning Board of Appeals.
7. The total number of bedrooms for this Project shall not exceed 32 bedrooms and any deviation from this total bedroom count of 32 shall require the further approval of this Zoning Board of Appeals.



8. None of the 33 off-street parking spaces proposed for the site shall be designated or reserved for any particular user but rather shall be jointly used by the residential and commercial users. No one should have a named, numbered or reserved space.
9. All residents and/or merchants/employees shall be required to obtain a sticker or hangtag which shall be displayed when they park onsite. All parking should be by permit or sticker for residents and merchants.
10. The commercial component of this Project consisting of 3,315 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.
11. That the wall-to-wall size for the parking spaces and parking aisle shall be at least 60 feet comprised of parking spaces 18 feet in length and a 24-foot-wide parking aisle.
12. That the dimensions of the parking spaces shall be at least 9-feet wide by 18-feet in length.
13. In no event shall the number of off-street parking spaces for this project be less than 33 parking spaces. In the event the Applicant seeks to decrease the number of parking spaces below the 33 stated herein, such decrease shall require the further approval of this Zoning Board of Appeals.
14. That the extension granted herein shall be good and valid through April 10, 2013.

**John Cavallaro, Village Attorney, repeated Condition #5 to clarify that the retail space consisting of 3,315 square feet shall be leased as not more than 2 retail spaces without further division or subdivision of the same. Any decrease or subdivision or division of the retail space to more than 2 retail units from the 3,315 square feet as proposed shall require the further approval of this Zoning Board of Appeals.**

**Member Kubaska seconded the motion and the resolution was carried with a vote of 5 – 0.**

Chairman Gallo stated that he received a letter from a resident whom misunderstood his words. He noted that this village ‘thrives’ for economic development, not ‘drives’. He added that supporting the local businesses is key. He cited a town in NJ that was considering charging businesses for emergency calls. This is indicative of the financial problems the communities are facing. He thanked all the members for their hard work.

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.