

Minutes of: June 3, 2015
Date Approved: July 8, 2015
Date Filed/Village Clerk:

June 3, 2015
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Ronald Gallo Chairperson
David Scalzo Member
John Palladino Member
Tom Ringwald Member

Absent: Janice Barandes Member

Also in Attendance:
Gary Gjertsen Village Attorney
Bill Williams Building Inspector
Noah Levine Village Consultant

Pledge of Allegiance

Chairman Gallo announced the agenda of this meeting as follows:

<u>Item #1</u>	Approval of minutes from the May 13, 2015 Regular Meeting
<u>Item #2</u>	100 Main St Return
<u>Item #3</u>	32 Pleasant Place Return
<u>Item #4</u>	56 Underhill Street Return
<u>Item #5</u>	50 Columbus Ave Adjourned
<u>Item #6</u>	10 Fisher Ave. Adjourned

Item #1 Approval of minutes from the May 13, 2015 Regular Meeting
Chairman Gallo motioned to approve the minutes from the May 13, 2015 meeting, was seconded by Member Ringwald and upon roll call was carried 4 – 0.

Item #2 100 Main St Return

Chairman Gallo noted that the Board has worked diligently on this application for several months.

Chairman Gallo offered the following resolution for SEQR:

12-12-79 (3/99)-9c SEQR
State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Project Number Date: June 3, 2015

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Village of Tuckahoe Zoning Board of Appeals as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Impact Statement will not be prepared.

Name of Action: MC Equities, 100 Main Street, Tuckahoe, NY

SEQR Status: Type 1 Unlisted ✓

Conditioned Negative Declaration: ✓ No

Description of Action:

MC Equities (Applicant) is proposing to construct a new mixed use building located at 100 Main Street, Tuckahoe, New York (project site) within the Business Residential Zoning District (Figure 1: Project Location). The project includes 19 residential units (2 four-bedroom units, 6 three-bedroom units, 4 two-bedroom units and 7 one-bedroom units) and 2,642 square feet of commercial space. The Applicant seeks an extension of a previously granted Special Use Permit as well as the following five (5) variances from the Zoning Board of Appeals (ZBA):

- The allowance of a three (3) foot easterly side yard, where zero (0) feet are required and six (6) feet are permitted.
- The reduction in required parking from 52 to 37 on-site spaces, which will be shared between the residential and retail uses. 29 of the spaces measure 9 x 18 feet. Eight (8) spaces are be situated in tandem and measure 9 x 15 feet each. The ground floor plan with the parking layout is provided in Figure 2.
- The allowance of a four (4) story building, where three (3) stories are permitted.
- The allowance of a 1.78 floor area ratio (FAR), where 1.2 is permitted.
- The allowance of 77% building coverage, where 50% is permitted.

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

100 Main Street, Tuckahoe, NY

SEQR Negative Declaration

Reasons Supporting This Determination:

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

A Short Environmental Assessment Form (EAF) dated November 25, 2014 was submitted by the applicant for a 20-unit building. A Short EAF dated June 3, 2015 was revised to reflect the reduction in units from 20 to 19 units. The EAF forms were reviewed by BFJ Planning, the planning consultant to the Village and a Part II form was prepared which is attached. No significant adverse impacts were identified by either the planner or the ZBA. Initial concerns over parking, traffic and visual impacts have been addressed with the revised design and the reduction in number of units.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication In the ENB)

Member Ringwald seconded the motion and upon roll call was carried with a vote of 3-1 with Member Palladino voting No.

Chairman Gallo offered the following resolution:

In the Matter of the Application of MCEQUITIES LLC

Premises: 100 Main Street
Tuckahoe, New York,

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"). There have been several approvals by this Board in the past granting Special Use Permits and various variances on this property, however as of this instant application this Board determines that all previous approved variances and Special Use Permits have expired.

The prior applications and various variances and Special Permits that were approved will be discussed below.

2008 Approval

On June 11, 2008, this Zoning Board of Appeals (the "Zoning Board") granted to the owner of the property at that time, Terry Byrd, 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. Specifically, the 2008 approval was for a project for a four story building with not more than 22 residential units and not more than 3,900 square feet of multiple retail units.

The 2008 approvals granted for the project by this Zoning Board 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, given that the building will conform to the maximum permitted height of forty-two (42) feet; and
3. An area variance for an increase in the allowable floor area ratio (FAR) from 1.2 to 1.96.

The project was never built and a new project on the site was proposed.

2012 Approval

On April 11, 2012, the applicant was granted approvals for a new project on the premises, which proposed a scaled down development with a mixed-use building containing residential apartments above the ground floor retail with storefronts along Main Street. The 2012 approval was for a project for a three story building with not more than 18 residential apartments and not more than two retail units of not more than 3,315 square feet of multiple retail units as combined.

Specifically, the 2012 approvals granted for the project by this Zoning Board were:

1. A Special Use Permit to allow residential units in the BR District
2. Side yard setback of 3 ft
3. parking variance permitting not less than 33 parking spaces where 53 are required
4. reducing the parking space size and dimensions to 9-feet by 18-feet when 9-feet by 20-feet was required
5. An area variance for an increase in the allowable floor area ratio (FAR) from 1.2 to 1.32

It is important to note that the 2012 approval granted a parking variance, but the applicant did not request nor require a variance on the number of floors as the number of floors it proposed was 3.

On December 18, 2013 these variances expired as the applicant failed to either extend the Special Permit or the variances and the applicant failed to commence work on the site.

Current Application

Now before this Board is a new application from the applicant seeking an approval for a development with a mixed-use building containing 19 residential apartments above the ground floor retail with storefronts along Main Street. The applicant is proposing a hybrid of the two previously approved projects combining the variances amongst others from each into this new application. Specifically, the applicant is now seeking the following:

1. A Easterly side yard variance for 3 ft
2. A forth story when only 3 are permitted (The fourth floor shall consist of two 4 bedroom units and 1 one bedroom unit with a study/den.
3. An FAR (Floor area ratio) of 1.78 where only 1.2 is permitted
4. 37 parking spaces (including 4 tandem) where 52 is required
5. Parking space size for the tandem spaces of 9x15ft where 9x18ft are required
6. Building coverage of 77% where 50% is permitted.
7. A Special Use Permit to allow residential units in the BR District

CONCLUSIONS OF LAW AND DECISION

In our reasoning to grant the area variances herein, this 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.

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, with the exception of the tandem spaces, 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, 52 parking spaces are required and 37 parking spaces are proposed. BFJ Planning has confirmed that this ratio is acceptable for this project and said ratio will not cause any undue stress on the adjoining properties of the neighborhood.

With respect to the area variance concerning floor area ratio, the previous area variance approved in the 2008 approval was 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. This application is requesting a reduced FAR than what had already been approved to 1.78. This deviation will be adequately offset by similar buildings within the Business/Residential District and the nearby Business zoning district along Main Street, thus the deviation will fit within the character of the neighborhood.

With respect to the previously granted variance for number of stories, the applicant had been approved for a fourth floor in 2008 and the adjacent property is a four story building. It should be

noted that even though this applicant is seeking a fourth story they are not seeking a height variance.

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 15-feet for the tandem spaces 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 37 spaces where 52 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. 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 1.78, 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 15-feet for the tandem spaces 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 15-feet is an acceptable size for tandem spaces.

Finally, the reduction in parking spaces from 52 to 37 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 37 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 37.

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 complement 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 37 parking spaces where 52 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 for the tandem spaces of 9-feet by 15-feet where 9-feet by 18-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 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 granting of the variances herein is consistent with the development goals of the Master Plan. The granting of the variances herein would have no appreciable impacts on the community and would establish consistent precedent for future developers in the area. Thus, the Zoning Board has resolved to grant the above referenced area variances for this Project.

Special Use Permit

Pursuant to Section 6-1 of the Zoning 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 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.

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 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.

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, 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

As recommended by the Village's planning consultant, BFJ Planning, it has been found that providing a minimum of 37 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

CONDITIONS TO A CERTAIN GRANT OF AREA VARIANCES AND AN 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 19 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 2,642 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 1.78. 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 2,642 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 2,642 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 19 residential units comprised of 2 four bedroom units, 6 three bedroom units, 4 two-bedroom units and 7 one-bedroom units with one having a study/den. Included in these totals is the fourth floor, which shall have no more than 2 four bedroom units and 1 one bedroom unit with a study/den. Any deviation from the total number of residential units set forth as 19 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 41 bedrooms and any deviation from this total bedroom count of 41 shall require the further approval of this Zoning Board of Appeals.
8. None of the 37 off-street parking spaces proposed for the site, with the exception of the tandem spaces, 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 with the exception of the tandem spaces.
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 2,642 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. In no event shall the number of off-street parking spaces for this project be less than 37 parking spaces. In the event the Applicant seeks to decrease the number of parking spaces below the 37 stated herein, such decrease shall require the further approval of this Zoning Board of Appeals.
12. Fourth Floor units and dimensions shall not deviate from the plans filed on June 3, 2015.
13. Applicant shall begin construction within one year of the date of this approval.

Conclusion

Based on the foregoing, it is resolved that the area variances currently applied for herein and the Special Use Permit 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.

Member Ringwald seconded the motion.

Discussion:

Les Maron noted a few corrections, which Gary Gjertsen agreed, were a misprint.

Corrections were made to the Resolution.

Roll Call – Member Ringwald – Yes

Member Scalzo - No

Member Scalzo stated that the Board and applicant have met for 6 months discussing this application. This property sits on the main thoroughfare of the village. Member Scalzo agrees that there is a need for a building on this vacant property and it is a unique lot. It steeps up the hill in the rear, it is surrounded by three and four story buildings. The decisions for this application are unique to this building due to the circumstances of this lot. All the variances have lapsed. This configuration of the building is denser. The applicant has never asked to repeat the original plans. The village has changed substantially since 2012 with the Glenmark project and the Marriott Hotel. The land has been vacant since 2008 and any variances are self-created. The hardships are self-created. The applicant has been accommodating in many instances. He has worked well with the neighbors including the Angelillo's and made changes based on BFJ Planning suggestions. The developer is trying to develop a very high quality building. The Board acknowledges and appreciates these efforts. There is a balance between the benefits of proposal to the developer and the community versus possible detriments. There has been no information on financials presented to the Board. The applicant purchased an empty lot and now asks the Zoning Board to approve Zoning variances to make a profit. The major concern with this building is the size and scale. It is too large for the lot and the parking is a huge issue. Parking is terrible in this area and Main Street is too narrow. There is a tremendous amount of traffic along Main Street and it is quite dangerous in the winter months with all the snow. He voiced his disagreement with the BFJ utilization rates. It does not take into account, guests, cleaners, nannies etc. using the parking lot on a daily basis. There will be a conflict and issues between neighbors concerning the parking situation. The Raffiani developments are beautiful and they provide plenty of parking spaces. There is minimal, if any, economic harm to offer more parking spaces. An excess of parking could possibly be rented out to commuters. The Master Plan called for more green space and separation. The Zoning Code requires front yard, rear yard and side yard space. It does not allow an applicant to

create a maximum utilization of the property. The plans for a fourth floor create a dilemma. The Master Plan calls for three floors, while the Angelillo's building next door is four floors. The proposed plans show a front façade that is only three floors, but the Board is trading off density, size, scale and the parking will be a detriment to the surrounding areas. The applicant is pushed this Board to the limit. In summary, the applicant has shown no financial information and is asking for a profitable project. The applicant is asking for massive variances. FAR and Area Coverage nearly 50% greater than allowed. A fourth floor. Parking 30% less than required by code in an area that is already lacking in parking. The applicant issues are 100% self-created. It is an empty lot. In addition, the request will have an undesirable change in the neighborhood character or to nearby properties.

Member Scalzo stated that he would like a great building on this lot, but unfortunately, these variances are too much and he must vote No.

8:30pm Chairman Gallo motioned to enter into Executive Session. Motion was seconded by Member Ringwald and carried with a vote of 4 – 0.

8:43pm Meeting resumed.

Chairman Gallo stated that during Executive Session the Board members had a conference call with Member Barandes. She asked that she be heard regarding this application. The Board will table this vote for 100 Main St. until Wednesday June 10, 2015 at 6:30pm.

Chairman Gall motioned to table this vote until next Wednesday June 10, 2015 at 6:30pm, seconded by Member Ringwald and carried with a vote of 4 – 0.

Member Ringwald and Member Scalzo's vote is still live.

Les Maron, attorney for the applicant, added that the applicant would consent to the additional one day.

Item #3 32 Pleasant Place

Return

Mr. Emilio Escaladas, architect for the applicant, noted that there were no changes to the application.

No Public Comments

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

Member Scalzo offered the following SEQR Resolution as a motion:

SEQRA RESOLUTION

Based on this application as submitted, this Zoning Board of Appeals finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEQRA and its implementing regulations.
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 proposed variance (or special use permit or both) application.
3. That the action taken herein shall not have a significant adverse impact on the environment and it is declared that a Negative Declaration is hereby adopted with regard to this action.

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

Member Scalzo offered the following Resolution in the form of a motion:

INTERPRETATION AND USE VARIANCE RESOLUTION

The application is for an interpretation and USE VARIANCE requested by _Kayo Mawashi LLC_____

Whose address is:_100 East Hartsdale Ave, Hartsdale, NY

Property: 32 Pleasant Place, Tuckahoe, NY

___Sec:_34___Blk:_10___Lot:_31___

The Applicant is seeking the following:

1. An interpretation as to whether a use variance is required when an existing non-conformity is enlarged.
2. If it is determined that a use variance is required the applicant is seeking relief from 5-1.6.2. Except as provided in § 5-1.6.4 below, no building which houses such a nonconforming use shall be:
 - (a) Structurally altered or enlarged;

Applicant is seeking to reallocate several of its tenants in its existing nonconforming property. The property when purchased by this applicant was being used as an illegal four family home as the property was a three family nonconforming use in a two family zone. Applicant reduced the tenancy to a three family property to come into compliance with its legal use. There is currently 2 families occupying the first floor of the premises and one family occupying the second floor of the premises. Applicant is seeking to relocate one of the families on the first floor to the basement. There will be no increase in the number of bedrooms that currently exist on the premises.

Thus, after hearing the applicant and reviewing the denial letter of William Williams the Building Inspector of Tuckahoe it is determined that the enlargement of a this nonconforming use will require a use variance.

Since it is determined that a use variance is required the recommendation is for a use variance to be granted as there has been shown by the applicant that the applicable zoning regulations and/or restrictions have caused an unnecessary hardship to the applicant.

The extension of the non-conforming use (three family dwelling in a two family zoning district) will not cause detriments to the surrounding community.

1. The Applicant cannot realize a reasonable return as shown by competent financial evidence submitted with the application. The applicant has shown by financial evidence that it may not be able to sustain the property in its current condition without extending the living area to the basement as such enlargement will generate increased rental income.
 2. This alleged hardship is unique and does not apply to substantial portion of district or neighborhood: Here the alleged hardship is unique as the three family use seeks to be extended into the basement. It does not apply to a substantial portion of the neighborhood.
 3. The requested variance will not alter essential character of the neighborhood: The extension of living area into the basement will not alter the essential character of the neighborhood. Here a new use is not being developed rather it is the extension of a prior non-conforming use.
 4. The alleged hardship has not been self-created: The lot size and zoning classification with prior use creates an alleged hardship for the applicant.
- A recommendation to approve the requested use variance with the condition that work be diligently commenced and completed within one year of the granting of the variance herein

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

Item #4 56 Underhill Street

Return

Chairman Gallo recused himself from this application, as the applicant is his neighbor.

Peter Constantine, attorney for the applicant, noted that he viewed the videos of rain that Mr. Fitzpatrick submitted last meeting. The video does not show what time of year it was taken. The ground could have been frozen which causes run off to be worse than during normal conditions. The plans to extend the applicant's driveway with new pavers will have the pavers pitched, which would alleviate the runoff problem viewed in the video. The applicant had to repair the retaining wall. He was denied access to the retaining wall from Mr. Fitzpatrick's property.

No Public Comments

Member Scalzo motioned to close the public hearing, seconded by Member Ringwald and carried with a vote of 4 – 0.

Member Scalzo noted that the property is 1925 circa and had huge shrubs separating the two properties. The shrubs were removed and replaced with a chain-link fence. The applicant is now requesting a variance to extend the driveway to the property line.

Member Scalzo offered the following Resolution as a motion:

In the Matter of the Application of John Puglisi

**Premises: 56 Underhill Street
Tuckahoe, New York,**

The Applicant, John Puglisi, is seeking to enlarge his driveway and is seeking relief from the following Section of the Village of Tuckahoe Zoning Code:

Section 4-3.46. Buffer. There shall be a Five-foot-wide landscaped buffer located within the required side and rear yards where these yards abut a property line. Such five-foot-wide buffer shall not contain impermeable or impervious surfaces for parking or driveways and shall be maintained as open space with natural materials such as grass, plants, and/or shrubbery. (L.L. No. 1-2005, § 1)

Background and Findings of Fact

The Applicant is the record owner of the premises commonly known as 56 Underhill Street, Tuckahoe, New York and known on the tax map of the Village of Tuckahoe as Section 29, Block 6, Lots 8 (the “Premises”). The Premises was built circa [1925] and is currently a [two-unit] rental property, occupied by renters, while the Applicant lives elsewhere.

Applicant seeks to widen the back half of the driveway located at the Premises so that the driveway extends right up to the property line. Previously located in the area where the applicant seeks to extend the driveway was a row of shrubbery, approximately 6’ high, which had absorbed rainwater and provided a sound, sight and air movement buffer between the Premises and the neighboring property. Applicant removed the shrubbery and installed a 4’ tall, highly porous, chain link fence. In addition, the Applicant began installing pavers to extend the existing driveway to the edge of the lot line without the approval of the Village. Applicant was issued a stop work order and was issued a violation for doing work without a permit. Applicant plead guilty and paid a fine for said work and is now seeking to legalize the work that had been performed and to legally complete the extension of the driveway, hence this instant application to this Board.

Before the application came before, the Chairman of the Zoning Board of Appeals, Ron Gallo, recused himself of the application, as his house neighbors the Premise. Board member David Scalzo assumed the role of Acting Chairman throughout the application process.

The Applicant’s attorney initially presented the application at the ZBA work session. Based on those discussions, the ZBA scheduled a public visit to the site on April 8, 2015, which was attended by the Applicant’s attorney, all ZBA members – except the recused Chairman, the ZBA Attorney, and Bill Williams, the Building Inspector. The Applicant’s lawyer presented at the regularly scheduled public ZBA meeting on April 8, 2015. The Board, also heard opposition from the neighbor adjoining the Premises at said public hearing. The neighbor, John Fitzpatrick, entered a video into the record showing the flow of water from the Premises onto his property during a storm and Mr. Fitzpatrick alleged that the water issue began once the applicant removed the shrubbery from the area in question. The ZBA also received a letter from Henry Caporoso, stating that the individual would support a change, on the condition that it alleviated the parking on the street. There were no other members of the public that addressed this board on the instant application.

Conclusion of Law and Decision

This 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?

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 even though most homes in the neighborhood have their driveways “grandfathered” to the property line and the granting of the variance would not produce an undesirable change to the neighborhood, it is determined that the granting of the variance would cause a detriment to the adjoining property.

First, setbacks are clearly a way for the Village Board to create separation between neighbors. By replacing the existing shrubbery with a highly porous chain link fence, the Applicant eliminated any buffer between the neighbors.

Second, the variance requested is not minimal, rather the Applicant is seeking a 100% reduction of the setback created by the Zoning Code. Therefore, since there will be no buffer between the Premise and the adjoining property it is determined that there will be a detrimental impact to the adjoining property.

Third, in observing the video submitted by the adjoining property owner, it is evident that the removal of water-absorbing shrubbery and the filling in of the section in question of a non-porous surface impacts the flow of the water and thereby adding to the detrimental impact of the adjoining property.

Fourth, when directly queried, the Applicant’s lawyer said that the driveway expansion would not allow the Applicant to accommodate additional cars; and thus, the proposed relief would not provide a benefit to the neighborhood.

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

The Applicant has requested relief from the Zoning Code so the applicant can widen his driveway so as to maneuver his car easier in the driveway. However, the existing Premises and its driveway has existed for 75+ years without any significant hardship. One feasible alternative would be to leave the driveway as-is.

Second, the Zoning Board finds that another feasible alternative would be to extend the driveway into the backyard without the necessity of a variance.

3. Whether The Requested Variances Are Substantial?

Here, the Zoning Board has determined that the area variance is substantial as the applicant is seeking a 100% variance by proposing to extend the driveway right up to the adjoining properties boundary line. Importantly, the Applicant has not proposed any sound, sight or air movement buffer between the Premises and adjoining property, and when queried by the ZBA about such a buffer (such as a 6' ft solid wood fence), the Applicant's attorney said that the Applicant was unwilling to consider that at this point.

3. 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 an adverse impact on the physical and environmental condition in the surrounding neighborhood, and especially the next door neighbor. Specifically, the video submitted by the adjoining neighbor shows that the water flow from the Premises causes an impact on the neighbor's property. Without there being a buffer the water appears to run straight from the Premises onto the neighbor's property causing an adverse impact on the neighbor's property.

4. Whether The Alleged Difficulty Was Self-Created?

Lastly, it is determined by this Board that the difficulty was self-created. It is clear from the pictures entered into the record from the Building Department that at one point the buffer that had existed contained a row of vegetation. This buffer of vegetation was clearly removed by the applicant causing the current condition of the Applicant's property. Thus, by the applicant removing the vegetative buffer he has caused the condition that currently exists.

In addition, the applicant alleges that a reason for the necessity of the variance is that the pavers that comprise the "middle" of the driveway are now separating necessitating the need for the pavers to be extend to the wall that is the property line. It is clear from the pictures submitted in the record that there existed a border of Belgium Block, which had held all the pavers in place. The applicant removed said Belgium Block, which appears to be the reason the remaining driveway paver are separating. Thus, by the Applicant removing the Belgium Block the alleged difficulty was self-created.

Conclusion

Based on the reasons stated herein the Application of John Puglisi dated December 29, 2014 for a variance to widen his driveway is Denied.

Member Ringwald seconded the motion and upon roll call, the motion to deny the variance was carried 3 – 0.

Item #5 50 Columbus Ave
Item #6 10 Fisher Ave.

Adjourned
Adjourned

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.