

Minutes of: Jan. 14, 2009
Date Approved: March 11, 2009
Date Filed/Village Clerk: _____

January 14, 2009
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Gloria Rosell Chairperson
Philip Allison Member
Kevin McBride Member
Susan Crane Member
Thomas Giordano Member

Also in Attendance:

Gary Gjertsen Deputy Village Attorney
William Williams Building Inspector

Chairwoman Rosell announced the agenda as follows:

Item #1 Approval of Minutes of the December 10, 2008 meeting.
Item #2 9 McKinley Street Area Variance
Item #3 100 Sagamore Rd. Return
Item #4 11 Jackson Ave. Return
Item #5 346 Columbus Ave. Return
Item #6 20 Bronx St. Area Variance
Item #7 97 Lake Ave. Return
Item #8 35 Bronx St. Adjourned
Item #9 184 Midland Ave. Adjourned

Item #1 Motion by Chairwoman Rosell to approve the minutes of the December 10, 2008 meeting was seconded by Member McBride and approved by the Board with a vote of 4-0, with Member Crane abstaining due to her absence.

Item #2 9 McKinley Street Area Variance

Mr. Alfred Delicata, attorney representing 9 McKinley St. Partners, LLC, requested that a variance be granted for the grade in the driveway to be 4.375in. above the required grade. The variance requested is 10.6%, which, in his opinion, was not substantial.

Chairwoman Rosell asked if the building was occupied.
Mr. Delicata stated that it was currently unoccupied.

Member McBride noted that he had visited the site and noticed proper drainage for the driveway.

Chairwoman Rosell motioned to open the public hearing, was seconded by Member Crane and was carried unanimously.

No Public Comments

Member McBride motioned to close the public hearing was seconded by Member Crane and carried unanimously.

Member McBride offered a Resolution for the application of an area variance requested by Mr. and Mrs. Calandra, 9 McKinley St. - Section 30, BLK 3 Lot 17 for relief of the following sections of the Zoning Code.

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: The relief requested (double driveway) would add to the aesthetics of surrounding homes.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. There is no other method available to the applicant other than the requested variance.
3. The requested variance is not substantial. The variance is not substantial in that the difference is 4.375 in.
4. The proposed variances will not have an adverse effect on the physical or environmental condition in the neighborhood in that the off-street parking would be a benefit to the surrounding neighborhood.
5. The alleged difficulty was self-created, but will not have a negative impact.

Member McBride made a recommendation to approve the requested area variance.

Member Crane motioned to adopt this resolution, seconded by Member Giordano and upon roll call was carried with a vote of 5 – 0.

Item #3 100 Sagamore Rd. Return

Mr. Les Maron indicated that the wood patio section is no longer part of this application. Mr. and Mrs. Gentile received their building permit in 2008. The portion of the patio has not been removed due to the weather conditions. The requested variance is for the stone steps in the rear yard, which lie within the required 4 ft. buffer from the property line. He asked the Board to look at the totality of the impact that the granting of this variance will have. He stated that the Board cannot deny this application without legal standards, and this applicant has met all the legal standards with regard to the NYS law.

Member Crane asked if the application included the steps at the top of the property.

Mr. Maron noted that the application was only for the steps from the patio to the upper property, and not the top layer of steps, which are not on the applicant's property. The upper steps are approximately 60 years old.

Mr. Seth Mandelbaum, attorney representing the owners of 90 Sagamore Rd., indicated that his client had raised several specific concerns regarding the steps. The steps were installed on the property line, which causes concern regarding personal injury on their property, whereas his clients would bare the burden and liability.

Member McBride motioned to close the public hearing, was seconded by Member Allison and carried unanimously.

Member Giordano offered the following Resolution:

VILLAGE OF TUCKAHOE ZONING BOARD OF APPEALS
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

Dean and Rita Gentile,

100 Sagamore Road, Tuckahoe, New York,

Applicants.

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND DECISION**

Background and Findings of Fact

The Applicants, Dean and Rita Gentile are the record owners of the premises commonly known as 100 Sagamore Road, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 23, Block 2, Lot 12 (the "Premises"). The Premises is located in a Residence A-10 zoning district.

A. Nature of the Application

At its northerly boundary, the Premises fronts along Sagamore Road. The lot adjacent to the easterly boundary of the Premises is improved by a multifamily dwelling consisting of apartments. At its southerly and westerly boundaries, the Premises are adjacent to single-family dwellings. From its southerly boundary toward the center of the lot there is a steep elevation gradient on the Premises.

The two-story dwelling on the Premises has an attached wood deck wrapping around its southern, eastern and western sides. An existing, curvilinear, stone stairway adjacent to and touching the westerly boundary of the Premises transverses a steep slope running north to south on the Premises (the "Curved Stairway"). The Curved Stairway encroaches on the requirement that four (4) feet be maintained between this structure and the westerly boundary line of the Premises by the exception to side yard requirements as set forth in Section 4-1.4.4 of the Zoning

The Applicants seek permission to continue utilizing and to modify the Curved Stairway on the Premises. A summary of the proposed deviation from the Zoning Ordinance is as follows:

	<u>Required</u> (min.)	<u>Proposed</u>
Exceptions to Yard Requirements:	4 feet	0 feet

In total, the Applicant seeks an area variance from the Zoning Board for the Curved Stairway, which currently encroaches on the required four-foot westerly side yard also reducing it to zero.

Granting this area variance from Section 4-1.4.4 of the Zoning Ordinance subject to the condition that the Stairway is relocated inward from the westerly boundary of the Premises creating a setback of at least two (2) feet will help to alleviate any preexisting nonconformities in connection with this application. Granting this application subject to the above condition will not cast any detrimental impacts on other nearby lots in the A-10 Residence zoning district or the greater community.

B. Zoning Board of Appeals Proceedings

In a letter dated August 13, 2008, the Village's Building Inspector denied the Applicants' request to legalize a deck on the Premises for the following reasons: (i) the application would violate the fifteen (15) foot side yard setback requirements for the Premises;¹ and (ii) the application violates the "Exceptions to Yard Requirements" section of the Zoning Ordinance by encroaching on the requirement that at least four (4) feet be maintained between paved terraces, steps and walks and the property line. The Applicants appealed the Building Department's August 13, 2008 determination to the Village of Tuckahoe Zoning Board of Appeals (the "Zoning Board" or "ZBA") on August 15, 2008.

The above application was heard and considered by the Zoning Board, among other dates, at its September 10, 2008 meeting, its October 1, 2008 work session and its November 12, 2008 meeting as reflected in its minutes. In particular, the use, history and design of the Stairway on the Premises was discussed at length at this meeting. The respective design and configuration of the Stairway was also discussed by and among the Zoning Board members and the interested public. The Applicants and opponents to this application have submitted supporting documentation to the Zoning Board including, but not limited to letters, surveys, drawings and renderings outlining the location, dimensions and functions of the Stairway.

Conclusions of Law

To grant an area variance, the Zoning Board must consider the following five factors in its analysis before reaching a conclusion:

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 variance is substantial?
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?
5. Whether the alleged difficulty was self-created?

In considering the above factors, the Zoning Board must determine whether the benefits to the Applicants outweigh the detriments to the health, safety and welfare to the community if the particular area variance is granted. After applying the above five-factor test to this application, the Zoning Board has resolved to grant this application subject to the condition that the Applicants modify the location and placement of the Stairway in order to create at least a two-foot setback between the Stairway and the westerly boundary of the Premises, where a four-foot buffer is typically required pursuant to Section 4-1.4.4 of the Zoning Ordinance. In granting the relief requested herein, the Applicants must ensure that a setback of at least two feet is maintained between the Stairway, including any landings, and the westerly boundary of the Premises.

This conditional grant will ensure that a minimum side yard of at least two (2) feet, rather than no side yard at all, shall be maintained along the westerly boundary of the Premises. In reviewing the nature and design of the Stairway, the Zoning Board has concluded that the subject area variance and the scope of the relief sought in this application subject to the above condition will not generate detrimental effects on adjacent lots, the zoning district and 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 the Stairway will not generate undesirable changes in the character of the neighborhood resulting from granting the area variance from the exceptions to yard requirements as set forth in the Section 4-1.4.4 of the Zoning Ordinance. Although the Stairway currently encroaches into the four (4) foot buffer adjacent to the westerly boundary on the Premises, this conditional grant of approval will only encroach on two (2) feet of the required four foot buffer—a minor encroachment on the westerly boundary of the Premises. Although this

¹ The Applicants have agreed to remove and/or replace the nonconforming portion of their deck, which renders their application for the 15-foot side yard setback requirement withdrawn and consequently moot. As a further condition
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area variance reduces the westerly side yard of the Premises, the encroachment is minor and only affects a relatively small length of the side-yard along the westerly boundary of the Premises.

Allowing the Stairway to retain the current configuration and creating setbacks in place of previous encroachments are unambiguously positive effects of this conditional approval. Requiring that a two-foot setback be maintained between the Stairway and the westerly boundary of the Premises will reduce potential source(s) of liability for any injuries arising from the use and/or misuse of the Stairway as affecting the Premises and/or the neighboring lot commonly known as 90 Sagamore Road (the "Adjacent Lot").

Subject to this conditioned approval, the Stairway can continue to serve the Applicants' interests while creating a larger setback between the Stairway and the Adjacent Lot. Thus, the existence and modification of the Stairway as per this conditional approval will create only positive effects on neighborhood character and will minimize any negative impacts on adjacent property owners.

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

The Applicants submit that the presence of below grade, immovable rock south of the dwelling on the Premises justifies construction of the Stairway in its current configuration. Subject to the condition that the Stairway does not encroach on a two-foot side yard setback along the westerly boundary of the Premises, this mode of ingress and egress cannot be practicably relocated, redesigned or altered other than modifying the existing Stairway to create the above side-yard. Thus, based on the unique location of the lot and the minimum space required for the Stairway, no feasible alternative exists absent granting the instant area variances subject to the conditions set forth herein.

3. *Whether The Requested Variances Are Substantial?*

Here, the Zoning Board has determined that the area variance discussed herein is not substantial. The Zoning Board has resolved to conditionally grant the area variance for the Stairway, which will result in a 50% deviation of the four-foot buffer along the westerly boundary of the Premises. The proposed conditional relief would permit the Stairway to remain largely in its current configuration subject to the condition that it is relocated further away from the westerly boundary of the Premises creating at least a two-foot setback between the Stairway, including any landings, and that boundary.

Considering the existing location of the Stairway, the above area variance is not substantial in that it will create at least a two-foot setback between the Stairway and the westerly boundary of the Premises where none previously existed. Because the Stairway only encroaches on a small portion of the westerly boundary of the

Premises in violation of requirements of Section 4-1.4.4 of the Zoning Ordinance, this is sufficient to mitigate any arguments that the size of the deviation itself is per se substantial.

Granting the area variance subject to the condition set forth herein would be only a minor departure from the stated requirements in the Zoning Ordinance. The practical effects of this area variance will impact a relatively small segment of the westerly boundary of the Premises. Thus, the net effects from granting the above area variance subject to the condition set forth herein cannot be deemed “substantial” in nature.

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

The Zoning Board has determined that granting the area variance subject to the two-foot setback requirement set forth herein will not generate any adverse impacts on the physical and environmental conditions in the surrounding neighborhood. The Stairway will have no significant environmental impacts such as poor aesthetics and will be set back an additional two feet from the westerly boundary of the Premises. No material aspects of the Stairway will change other than the distance it is set back from the westerly boundary of the Premises.

The incline, elevation and proximity of the Stairway to the Adjacent Lot will not create any hazardous conditions for the Adjacent Lot owners in the event a person is hurt or injured while using the Stairway. The additional setback condition for the Stairway will create a safer condition on the Premises than that of the existing location and placement of the Stairway. Thus, the physical and environmental conditions on the Premises relating the Stairway and its setback from the westerly boundary of the Premises will cast only positive effects on the surrounding properties and/or the greater community.

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

On the facts and the record, the Applicants’ alleged difficulties are self-created in that they seek to reduce the side yard along the westerly boundary of the Premises from four feet to zero. Although the Applicants’ modifications of the Stairway such that it fully encroaches on the westerly side yard setback are self-created in nature, it is not fatal to this application.

In addition, due to the existence of immovable, solid rock in the steep-pitched yard adjacent to the southerly boundary of the Premises, the Curved Stairway could only be feasibly be sited, constructed and maintained in its current configuration on the Premises.

Adding the condition that the Stairway be relocated creating a two-foot setback from the westerly boundary of the Premises will alleviate the existing nonconformity on the Premises. This further mitigates the argument that any self-created difficulties should be fatal to this application.

Considering the five factors discussed here, granting the proposed area variance subject to the condition that the Stairway is set back from the westerly boundary of the Premises by at least two feet is entirely consistent with the requirements set forth in the Zoning Ordinance and with the development of other lots in the Residence A-10 zoning district. Granting the above area variance will have no appreciable impacts on neighboring lots and the community. Granting this relief will not establish inconsistent precedent with respect to granting other area variances and the enforcement of the Zoning Ordinance. Thus, the Zoning Board has resolved to grant the above-referenced area variance for this application subject to the condition set forth herein.

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Conclusion

Based on the foregoing, it is resolved that the subject area variance requested by the Applicants be granted subject to the condition that the existing Stairway, including any landings, is modified to be set back at least two feet from the westerly boundary of the Premises. The Applicants shall have 120 days from the date hereof to modify and change the Stairway so the same are set back at least two (2) feet from the westerly boundary of the Premises.

The Applicants' failure to modify and change the Stairway within 120 days from the date hereof in accordance with this conditioned approval shall render this conditioned approval null and void in which instance the Stairway shall be deemed to be in violation of the Village Zoning Ordinance. The Applicants and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance with the New York Civil Practice Law and Rules.

Dated: Tuckahoe, New York
January 14, 2009

Gloria Rosell
Zoning Board Chairperson

Member Allison motioned to approve the resolution was seconded by Member Crane and upon roll call was carried with a vote of 5 – 0.

Item #4 11 Jackson Ave. Return
Member Allison recused himself from this application.

Mr. Maron, representing the applicant, asked the Board to render their decision. He asked that the current use of the property be confirmed as a prior legal non-conforming use.

Chairwoman Rosell requested that the Board render their decision only after reviewing the survey.

Mr. Williams searched the file for a survey to no avail. The file included a 1983 electrical permit and various dated violations including a 1990 violation for alterations to the property without the proper permits.

Member Crane asked if the applicant had plans to clean up the property.
Mr. Maron noted that the applicant has started to clean up the property.

Chairwoman Rosell asked Mr. Maron to submit a survey for this property and noted that if the sheds on the property were permanent, the applicant would need to file for the necessary permits.

Item #5 346 Columbus Ave. Return

Mr. Ross, applicant, indicated that the revised plans are to keep the garage the same height as it is presently. In addition to lowering the height of the proposed garage, he will install a small window to the upper section rather than the proposed large window. There will be approximately 5ft. height on the second floor of the garage.

Mr. Williams reviewed the revised plans and questioned the height of the garage. He asked the applicant to set up a date that he and the architect could discuss the amended plans.

Mr. Ross agreed.

Public Comments

Ralph Fuschillo, 69 Oakland Ave., stated that he too reviewed the revised plans and the numbers just do not add up. It was his opinion that the proposed building is too big.

Item #6 20 Bronx St. Area Variance

Mr. Tom Abillama, architect for the applicant, requested an area variance to increase the FAR for a semi finished basement. The owner finished a playroom and a full bath for use by the first floor apartment. The finished area has all the current building code requirements such as smoke detectors and carbon monoxide detectors. The playroom has an emergency exit to the driveway. There are no plans for a kitchen in the basement. The finished playroom will increase the FAR by 10%. He added that the storage area adjacent to the playroom has been finished with sheetrock. It is still being used as a storage area, but the walls are finished. The applicant does not intend to rent out the basement, it is only for the first floor apartment to utilize.

The Board agreed to visit the site with Mr. Williams on Feb. 4 at 6:30pm. The applicant must also submit an affidavit from the publications.

Chairwoman Rosell motioned to open the public hearing, was seconded by Member Crane and carried unanimously.

Jeff Zuckerman, 24 Bronx St., noted that he lives next door to the applicant. He voiced his opinion that the applicant never intended anything illegal, he just finished the walls and did not understand the FAR requirements.

Applicant will return next month.

Item #7 97 Lake Ave. Return

Mr. John Ferrara, architect for the applicants, Louis DiNapoli owner of Angelina's Restaurant, submitted revised site plans with the widened handicap parking space.

Mr. Williams stated that the revised plans are fine.

Mr. Ferrara produced two letters from the property owner of the adjacent property to allow the restaurant the use of 51 and 5 parking spaces, for a total of 56 parking spaces.

Mr. Williams noted that 31 parking spaces were required and therefore the applicant provided additional spaces.

Mr. Gjertsen advised the Board that the restaurant owners will be self-motivated to provide sufficient parking for their patrons.

No Public Comments

Member McBride motioned to close the public hearing seconded by Member Allison and unanimously carried by the Board.

Member Crane offered the Resolution for the application of an area variance requested by Angelina's of Tuckahoe, Inc., for relief of the following sections of the Zoning Code: Section 5-1.2.1 off Street parking requirements, which provides in pertinent part that "All structures and land uses shall have a sufficient amount of off-street automobile parking to meet the needs of the persons employed at, or making use of such structures or land uses." Section 5-1.2.1.2, which provides in pertinent part that any parking facilities now existing to serve such structures or uses shall not in the future be reduced.

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood: The application is to construct a new sunroom on the premises located at 97 Lake Ave., Section 32, Block 4, Lot 6.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: The proposed sunroom does not create a detriment or undesirable change as long as there is adequate dedicated parking to accommodate the space for this room.

2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. In order to create additional seating for the applicant's restaurant, we see no other feasible method other than the pursuit of an area variance.
3. The requested variance is not substantial. The applicant's sunroom eliminates several parking spaces from the existing lot. As long as there are commensurate parking spaces available to accommodate the restaurant's patrons, we find that the variance is not substantial.
4. The proposed variances will not have an adverse effect on the physical or environmental condition in the neighborhood in that as long as there is adequate parking dedicated to the premises, we see no detrimental impact on the neighborhood.
5. The alleged difficulty was self-created, while self-created, the sunroom has not been constructed and the applicant's have acted properly in seeking approval prior to construction.

Member Crane made a recommendation to approve the requested area variance with the stipulation that the applicant continue to maintain sufficient dedicated parking spaces to accommodate its patrons, whether these are its own spaces, those of the adjacent lot, or otherwise. The Board adopts a negative declaration pursuant to SEQR.

Member McBride motioned to adopt this resolution, seconded by Member Allison and upon roll call was carried with a vote of 5 – 0.

There being no further comments from the public or business before the Board, upon motion duly made, seconded and unanimously carried, the meeting was adjourned at 9:05 p.m.