

Minutes of: March 11, 2009
Date Approved: April 7, 2009
Date Filed/Village Clerk: _____

March 11, 2009
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Gloria Rosell Chairperson
Philip Allison Member
Susan Crane Member
Thomas Giordano Member
John Santos Member

Absent: Kevin McBride Member

Also in Attendance:
John Cavallaro Village Attorney
William Williams Building Inspector

Chairwoman Rosell announced the agenda as follows:

Item #1 Approval of Minutes of the JANUARY 14, 2009 meeting.
Item #2 146, 150, 160, 233 Main St. Extension
Item #3 346 Columbus Ave. Return
Item #4 20 Bronx St. Return
Item #5 81 Lincoln Ave. Area Variance
Item #6 35 Bronx St. Return
Item #7 11 Jackson Ave. Adjourned
Item #8 184 Midland Ave. Adjourned

Item #1 Motion by Chairwoman Rosell to approve the minutes of the January 14, 2009 meeting was seconded by Member Allison and approved by the Board with a vote of 4-0, with Member Santos abstaining.

Item #2 146, 150, 160, 233 Main St. Extension

Mr. William Null, attorney representing the applicant, indicated that due to the economic down turn, the applicant was now requesting a one-year extension.

Member Crane motioned for a resolution:

On March 12, 2008, the Applicant was granted the following variances and a special use permit as follows:

(1) that parcels with land uses in the Business/Residential Zoning District with greater than 50% residential use shall have a floor area ratio of no more than 1.2; The Applicant proposed 1.48;

(2) that no building shall exceed 42 feet in height from the average grade of the street line at the front of the property; the Applicant proposed 43'9" for the building located at 160 Main Street;

(3) that no building shall exceed three stories; The Applicant proposed 4 stories at 160 Main Street;

(4) that off-street parking spaces shall be provided and maintained on the same lot as the building or premises for which those spaces are provided, except with permission of the Zoning Board of Appeals to locate such parking on an adjacent lot having a similar owner; the Applicant proposed parking at 150 and 160 Main Street, Tuckahoe, New York;

and

(5) a special use permit to allow the proposed buildings having residential uses to be located within a Business/Residential Zoning District.

The applicant currently seeks an extension of the aforesaid variances and special use permit for a period of one year.

Now, therefore, be it resolved that the aforesaid variances and special use permit be and are hereby extended for a period of one year the same to expire on March 10, 2010 unless otherwise extended by resolution of this Zoning Board of Appeals.

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

Item #3 346 Columbus Ave. Return

Mr. Ross, applicant, indicated that the revised plans are to keep the garage the same height as is. Mr. Williams reviewed all the measurements of the revised plans and was satisfied.

Public Comments

Ralph Fuschillo, 69 Oakland Ave., stated that the revised plans only decrease the size of the building by one foot. The proposed plans are for another entire floor above the garage extending across three garages. He will no longer have the peak of the applicant's garage in his backyard view, but now an entire floor above the existing garage. It was his opinion that the proposed building was too big. He noted that there are currently six letters in the file from residents opposing this application.

Chairwoman Rosell noted that the Board suggested lowering the height approximately one foot and carrying the floor across the three garages. The Building Inspector will inspect the building for safety issues.

Patricia Fuschillo, 69 Oakland Ave., indicated that she opposed the application and stated that the noise level of commercial trucks on the weekends was a concern to many residents. The proposed plans will allow the applicant to continue to use this garage for commercial business and will be made even worse with the extra storage space. The applicant does not need an entire floor above the garage to store his lawn mower and snow blower. She asked the Board to consider all the letters of opposition on file and to consider her quality of life when rendering their decision.

Chairwoman Rosell asked the residents to file police reports if the activity returns. The property must be used for residential use, not commercial.

Mr. Ross stated that there are no complaints with the police department. He noted that the garage is unsafe and is in need of repair. He has invested a significant amount of money into improving the property and the garage will look much better than it looks now.

Member Allison voiced his concern regarding the activity the residents stated.

Mr. Ross stated that there will not be a problem in the future, there will be no construction and/or business conducted on the property.

Ralph Fuschillo asked the Board to consider lowering the height of the proposed garage a few feet rather than one foot. A structure with the height of 11ft. on the second floor seems too massive for some minor storage. The structure will stretch across three garage bays. He asked the Board to lower the height.

Mr. Ross noted that if the height were lowered it would become a crawl space. He offered to install a tall fence between the properties to obstruct the view.

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

Member Crane offered a Resolution for 346 COLUMBUS AVENUE

The application for the following variances requested by Mr. Rick Ross, for relief from the following sections of the Zoning Code:

Section 4-3.1.3 – which provides that “an accessory private garage space for not more than three vehicles, one of which may be a commercial vehicle of not more than three-quarter ton capacity, belonging to the owner or lessee of the property may be maintained.

Section 4-3.4.3 – which provides as follows: Rear Yard. There shall be a rear yard with a depth of not less than 25 feet; provided, however, that for any lot created after July 1, 1999, there shall be a front yard along each street line with a depth of not less than 35 feet.

Section 4-3.4.6 – which provides in part as follows: 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.

Section 5-1.6.3 – which provides that any building, the use of which is in conformity with the regulations set forth in this chapter, but which building does not conform to one or more of the requirements hereof other than the use requirements, may be altered, enlarged or rebuilt, provided that such building shall not be altered, enlarged or rebuilt so as to increase the degree of nonconformity thereof.

Section 7-1.2 – which provides in part that minor site plan review may be required for renovations, additions alterations and or modifications to a two family dwelling where the Building Inspector finds some question as to the conformity of the plans for such two-family dwelling to the standards set forth in the Code.

Recommendation is for the variances requested to be granted as the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood. The application is for a permit for an extension of a non-conforming use, in order to renovate an existing detached 3-car garage on the premises located at 346 Columbus Avenue .

The original application was dated September 25, 2008. The matter was opened for a public hearing on Wednesday, December 10, 2008. Based upon the Applicant's submission and discourse at the public hearing, it was suggested by the Zoning Board that the applicant not submit the application for a vote by the Zoning Board, but to instead revise his architectural and/or alteration drawings in such a manner to lower the proposed height of the improvement and repair to the existing 3-car garage. Voiced at the public hearing was concern with the Applicant's use of the garage as a storage facility for his commercial catering business.

On or about December 26, 2008, the Applicant submitted revised drawings. The height of the revised improvement is several feet lower than the height of the improvements in the original drawings.

Addressing the five factors to be considered in making such a determination:

There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: The roof of the existing 3 car garage is in disrepair, and requires replacement. The proposed revised alteration improves the symmetry of the structure and increases its usefulness, without significant negative impact in and of itself on the neighborhood or nearby properties.

The benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance: The existing footprint of the garage structure does not conform with the zoning requirements. The proposed improvements to the existing structure do not further extend the existing non compliance. Requiring strict compliance with the zoning code would require razing and rebuilding the entire structure.

The requested variance is substantial: While the existing rear yard setback of 1.6' is substantially less than the 25' setback requirement, the proposed improvement does no further impinge upon the existing setback.

With regard to the rear/side yard buffer set back of 5' of open space with natural materials, the existing 7' retaining wall with 6' picket fence above assures the reasonable separation between neighbors that is intended by the buffer requirement.

The proposed variance will have an adverse impact on the physical or environmental condition in the neighborhood in that: In and of itself, the proposed improvements to the existing structure, as set forth in the revised 12/26/08 drawings, do not negatively impact on the neighborhood's physical or environmental condition. The height of the structure has been decreased by several feet from the initial drawings, and is now no longer significantly higher than the height of the existing structure.

However, the Zoning Board remains concerned with the Applicant's continued use of the premises and existing structure for storage of his commercial equipment, a concern that was raised by several neighbors in the vicinity at the public hearing on December 10, 2008. Accordingly, any relief granted by this Board would be predicated and conditioned upon the Applicant's express agreement not to use the proposed improvement for commercial storage.

The alleged difficulty was not self-created: but pre-existed with the current structure. The proposed improvements will not further impact these conditions.

Accordingly, it is recommended to grant the requested area variances, however, only with the following stipulation and condition: that the improved garage not be used for commercial storage at any time. The Board adopts a negative declaration pursuant to SEQR.

Chairwoman Rosell motioned to adopt this resolution, seconded by Member Allison and carried with a vote of 4 – 0 with Member Santos abstaining.

Item #4 20 Bronx St. Return

Mr. Tom Abillama, architect for the applicant, noted that the Board members have visited the site. The section of the basement to be legalized is in total compliance with the Village Building code. There will not be a kitchen installed, as there is no intent to rent the space. If necessary, the applicant will remove the shower in the full bathroom.

Chairwoman Rosell stated that four members of the Board visited the site. The entire basement has been renovated without any building permits. The entire area is illegal as it increases the FAR. The Board has a right to require that the applicant tear down the renovations.

The owner's son stated that a licensed electrician and plumber completed the necessary work on site. The architect was retained at the time of construction.

Bill Williams, Building Inspector, indicated that the Certificate of Occupancy was approved for the home with the basement having no electricity, no plumbing, no carpet, no extra doors near boiler and no closet space in boiler room. The applicant did not file for a permit to do any of the construction to the basement. The applicant did pay a \$1500.00 fee for doing work without a permit.

Member Allison stated that the applicant has put the Board in an immovable position with 1200sq. ft. of illegal renovations.

No Public Comments

Member Giordano indicated that the Board understands the amount of expense and time taken to renovate the basement, but if the Board grants the approval, it would create a real problem with regards to setting a precedent. The FAR was put in place to prevent too many people from occupying a home. Even though the workmanship was done so well, it is not a reason to grant the approval.

Chairwoman Rosell indicated that the FAR was increased and a future owner of the property may decide to rent the basement. It could possibly become a three family house if approved. The Board will discuss the matter further and asked the applicant to return next month.

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

Item #5 81 Lincoln Ave. Area Variance

Mitchell Koch, architect for the applicant, submitted plans for a one-story garage to be built in the rear right hand corner of the property. The Zoning Code requires a 5ft. rear yard set back and 5ft. side yard set back. The applicant is seeking a variance for both requirements. There is no other place for the garage to be built. The driveway would need to be placed on the opposite side of the house to allow the vehicle to access the proposed garage.

Chairwoman Rosell reviewed photos submitted by the architect and indicated that the retaining wall needs repair. Drainage, curb cuts, retaining wall, driveway and garage are all to be considered for this application. The Planning Board should clear site review.

John Cavallaro, Village Attorney, stated that the Planning Board cannot proceed until the applicant applies for a variance.

Bill Williams, Building Inspector, noted that his office received a petition dated March 8, 2009 with 34 resident signatures in opposition of any application for 81 Lincoln Ave. The residents have lived with 4 years of continual construction on this house, with construction equipment, noise, and mess etc. The applicant has been fined several times. A letter from Mr. Crosby, dated March 5, 2009 along with photos of the property was received at the Building Dept. in opposition of this application.

Member Crane motioned to open the public hearing, seconded by Member Giordano and unanimously carried by the Board.

Donald Crosby, 9 Warren Ave., read his letter of opposition. (See attached.)

Ed Keenan 17 Warren Ave., indicated that there is a perpetual construction project at this site. The applicant dug out a trench on the side of the house to prepare for the proposed driveway. A large boulder is in the trench. The site is a hazard in the neighborhood. There is construction

beginning at 9:30 am on Sunday mornings. There is no regard for the neighbors, as well as the Village Building Dept. He opposes this application.

John Paterno, 77 Lincoln Ave., indicated that there will be significant damage to the roots of the mature trees if this application is approved. Once the damage is done to the tree roots, what happens if the tree falls? Who is responsible for the damage? He also voiced his concern regarding the drainage issue.

Mr. Koch indicated that there has not been any work done at the site for the last 6 months. The applicant has paid the fines and would like to legitimize the construction from this point. He is requesting a one-story garage in the rear of the property.

Member Allison asked the owner to address the concerns of the residents.

The owner of the property promised that all the construction equipment will be moved. The property will be cleaned up for the neighbors.

Member Giordano advised the applicant to consider a one-car garage attached to the house whereas there would be no need to apply for variances.

Mr. Koch indicated that there is a slope and there would not be ample room for the vehicle to turn into the garage.

Member Allison noted that this was a substantial variance.

Mr. Crosby added that the driveway has been started by the applicant. he also noted that the applicant ran generators when there was no electricity. The residents have been dealing with this noise and construction site for too long.

Elaine Gray Warren Ave., indicated that there is constant noise, mess, garbage dumps etc. The trees will die if this is approved due to the damage to the roots. This construction will affect the entire neighborhood. She voiced her concern regarding the decrease in green space in Tuckahoe.

Ginger Crosby, 9 Warren Ave., asked if the site would be cleaned up the correct way.

Bill Williams stated that he will inspect the site and will show the applicant what needs to be cleaned up.

Chairwoman Rosell stated that the application will be held over until next month.

Item #6 35 Bronx St. Return

Ms. Lara Vargas, V.P., representing the childcare center, stated that Supervisor Colavito offered a letter of intent for the lease from the Town of Eastchester, pending approval by the Board.

John Cavallaro, Village Attorney, stated the he received the letter this evening, which is a non-binding letter of intent of a proposed lease subject to approval of the Village Board of the Town of Eastchester.

The resolution will be prepared for next month's meeting based on the new plans and subject to receipt of the lease.

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 9:30 p.m.