

Minutes of: November 18, 2009
Date Approved: Dec. 9, 2009
Date Filed/Village Clerk: _____

November 18, 2009
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Gloria Rosell Chairperson
Philip Allison Member
Kevin McBride Member
John Santos Member

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

Absent: Susan Crane Member
Thomas Giordano Member

Chairwoman Rosell announced the agenda as follows:

Item #1	Approval of Minutes of the October 14, 2009 meeting.	
Item #2	20 Bronx Street	Return
Item #3	100 Main Street	Extension of Special Permit
Item #4	52 Lake Ave.	Area Variance
Item #5	110 Sagamore Rd.	Area Variance
Item #6	27 Rogers Street	Adjourned
Item #7	184 Midland Ave.	Adjourned

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

Item #2 20 Bronx Street Return

Chairwoman Rosell announced that the public hearing had been closed at the last meeting. Mr. Les Maron, attorney for the applicant, asked for the Board's decision.

Member Allison offered the following Resolution:

ZONING BOARD OF APPEALS
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

WILLIAM PISA, JR.,

Premises: 20 Bronx Street
Tuckahoe, New York,

Applicant.

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

Background and Findings of Fact:

The Applicant is the owner of the premises commonly known as 20 Bronx Street, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 36, Block 2 and Lot 9 (the "Premises"). The Premises is currently improved by a two-story dwelling which is adjacent to other residential dwellings in the community.

The Applicant seeks relief from the Village of Tuckahoe Zoning Code (the "Zoning Code") by means of an area variance for floor-area ratio ("FAR") from the required restrictions set forth in the Zoning Code.

The Premises is located in a Residence-B Zoning District, which requires, in pertinent part, that the FAR be limited to 0.5. *Zoning Code Section 4-3.6.*

The subject dwelling is a two-family dwelling with a first floor apartment measuring 878 square feet and the upper level apartment measuring 1,505 square feet. Thus, based on the first floor and upper level apartments, the FAR is .4766, which complies with the Zoning Code. However, the Applicant finished the basement for a playroom use by the first floor tenants. As a result, the Applicant increased the FAR. In total, the Applicant has added 444 square feet of usable space to the Premises. With the addition of the finished basement, the resultant FAR is .5654, which is 13% above the FAR of 0.5 that is set forth in the Zoning Code.

Conclusions of Law:

In order to grant the requested area variance, this Zoning Board must consider five factors in reaching its determination as follows:

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

- 2) Whether the benefits sought by the Applicant can be achieved by a feasible alternative to the 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 analyzing the above factors, this Zoning Board is left to consider whether the benefit to the Applicant outweighs the proposed detriments to the health, safety and welfare of the neighborhood or community. In applying the five-factor test and in evaluating the respective benefits and detriments of this application, this Zoning Board resolves to grant the application with conditions because the Applicant has satisfied the five-factor test.

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

No undesirable changes in the character of the neighborhood would result from the granting of the area variance for FAR. No exterior changes are being made to the footprint of the subject dwelling. Moreover, the FAR as proposed would be wholly contained within the subject dwelling due to the finished playroom located in the basement.

Additionally, there will be no change in the occupancy of the subject dwelling as the same will remain a two-family dwelling for all purposes. Thus, the finished basement area playroom will not negatively affect the character of the neighborhood nor will it result in a detriment to nearby properties.

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

The Applicant seeks to finish the basement area in the subject dwelling to better accommodate the first floor residence. Based on this record, there appears no other area in the subject dwelling that could be finished to accommodate the first floor apartment. Thus, no feasible alternative exists to finishing the basement area for a playroom use.

3) Whether the requested variance is substantial?

Here, this Zoning Board finds that the requested area variance is not substantial in relation to the building and lot on which it stands. The Applicant seeks a FAR of .5654 when the Zoning Code imposes a limitation of 0.5. Thus, the Applicant seeks a 13% deviation or variance from the requirements of the Zoning Code. This Zoning Board finds that this 13% variance is not substantial in light of the subject dwelling and the fact that no increases will be made to the footprint of the dwelling.

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

The proposed area variance will not produce adverse impacts on the physical or environmental conditions in the surrounding neighborhood. As stated, there will be no exterior changes to the subject dwelling and the occupancy of the dwelling will remain the same. The FAR variance will not generate additional environmental impacts such as poor aesthetics, increased traffic, greater parking demands, noise pollution or other negative environmental conditions.

5) Whether the alleged difficulty was self-created?

This Board finds that the alleged difficulty was self-created because the Applicant finished and completed the basement area for a playroom use without the necessary permits from the Village of Tuckahoe Building Department. However, balanced against the other four statutory factors, this Zoning Board finds that this self-created difficulty is not fatal to this application.

Conditions:

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

SEORA:

Based on the foregoing, this Zoning Board finds and determines that: 1) the action taken herein is a Type II action under the State Environmental Quality Review Act and its implementing regulations; and 2) this Zoning Board is in possession of all information reasonably necessary to make the determination as to environmental significance concerning the application for the subject area variance. As a Type II action, this Board is not required to conduct an environmental review for significance.

Conclusion:

Based on the foregoing, it is resolved that the area variance referenced herein be and is hereby granted to the Applicant in accordance with this decision subject to the conditions set forth and contained on Schedule A, attached hereto. The Applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance with the New York Civil Practice Law and Rules.

SCHEDULE A

CONDITIONS TO A CERTAIN APPROVAL FOR AN AREA VARIANCE GRANTED TO WILLIAM PISA, JR. FOR THE PREMISES 20 BRONX STREET, TUCKAHOE, NEW YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE

1. The use of the proposed dwelling shall remain a two-family dwelling and in no event shall the basement area be converted into an apartment or living quarters. Moreover, in no event shall the subject dwelling be converted to a three-family dwelling.
2. All carpeting in the mechanical area of the basement shall be removed in its entirety.
3. The Applicant shall have no working plumbing in the basement and shall not in the future install working plumbing in the basement for any purpose whatsoever.
4. There shall be no bathroom in the basement of the subject dwelling and the Applicant shall not in the future install a bathroom or any part thereof in the basement for any purpose whatsoever.
5. There shall be no stove or oven in the basement and the Applicant shall not in the future install any stove or oven in the basement for any purpose whatsoever.
6. On an annual basis or more frequently as determined by the Building Inspector of the Village of Tuckahoe, the Applicant shall permit the Building Inspector into the subject dwelling, and particularly the basement area, to ensure the Applicant's and/or its successors' and/or assigns' compliance with the foregoing conditions.

Dated: Tuckahoe, New York
November 18, 2009

Gloria Rosell, Chairperson
Zoning Board of Appeals
of the Village of Tuckahoe

Member McBride motioned to approve the resolution, seconded by Member Santos and upon roll call was carried with a vote of 4 – 0.

Item #3 100 Main Street Extension of Special Permit

Mr. Goldblum, architect for Mr. Burd, owner of the property, requested an extension as the time period to complete the project has expired. The applicant did not begin the approved project due to a lawsuit filed against him and the Village of Tuckahoe by the owner of the adjacent property. The lawsuit was resolved in the applicant's favor. It was advised by the applicant's attorneys not to proceed with the approved plans during the lawsuit. Now that the lawsuit has been resolved, the applicant would like to continue with the approved plans.

Member McBride motioned to open the public meeting, seconded by Member Allison and carried by the Board with a vote of 4 -0.

Victoria Angelillo, owner of 84-88 Main Street, read the following letter to the Board:

P. O. Box 504
Tuckahoe, New York 10707
November 18, 2009

Zoning Board
Village of Tuckahoe
65 Main Street
Tuckahoe, NY 10707

Subject: Extension of Existing Variance for 92-94/100 Main Street

Dear Zoning Board Members:

We have just received Terry Burd's legal notice for a public hearing which states: "Request to Seek Extension of Existing Variance." As you know, we are the owners of 84-88 Main Street, the building next door to Mr. Burd's property. Our building has a row of stores on Main Street and apartments above. We have proudly owned our building since 1981 and have properly maintained our building and storefronts which have always had a very visible place on Main Street.

Mr. Burd's property has been vacant and poorly maintained for years. We have had flooding in the basement of our building from runoff from his property. Mr. Williams, the Building Inspector, is aware of this. When he was inspecting our building during a recent repair he questioned our contractor regarding the water he saw in our basement. Mr. Williams was then taken by our contractor to Mr. Burd's property at 92-94 Main Street and shown that the water was coming through the basement of Mr. Burd's property into our basement. It is very obvious from looking at and smelling the Burd property that it is covered with green and black mold and full of other health and safety hazards. Again, Mr. Williams is aware of this situation as he has been at our premises a number of times. It is **impossible** not to observe the condition. The stench of Mr. Burd's building has not only caused us to lose potential tenants but has created numerous problems and issues for our existing tenants.

The buildings on the Burd property must be demolished immediately so as not to continue to be a health hazard and eyesore on Main Street. The demolition of the buildings known as 92-94/100 Main Street must be done as soon as possible and must be a condition to any votes taken by the Zoning Board.

As you are aware, in the past we had serious concerns about Mr. Burd's plan for the 92-94/100 Main Street Project and his maintaining of the property. We still have

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problems and there are issues that you must consider.

First, the latest notice says it is for an extension of "existing variance". The Zoning Board approved Mr. Burd's variance application in June 2008 for two variances, not just one variance as implied in the latest notice. The legal notice is misleading and is not correct.

Section 9-3 of the Zoning Law states that if work is not started within one year the variance will be "**NULL and VOID**". Mr. Burd has not started the work. It does not matter what the reason for him not starting was. He has lost the variance approval. Like the Code states his last approval is **NULL and VOID**. He can't just ask for an extension - he has to start again. It has been said that this condition in the Code is there because over time things and conditions change thus people have to use their variances not just wait around.

Things have changed since the variance was approved in June 2008. There have been more large projects approved. For example, where the Crestwood RV used to be, thus traffic issues have changed and must be studied again. The whole financial meltdown and downturn has happened. Can the project still get financed, built, and then rented? Also, we were told that there is new zoning for Marbledale Rd which is nearby. How will that affect Main Street between traffic and other new projects on Main St and in other places? Further, it seems that Tuckahoe's new Storm Water Management Regulations must be carefully considered especially since our building is being flooded by runoff and water from Burd's property.

Actually, there is no such thing as an extension for a variance. The last approval did not expire; the Zoning Law says it is "**NULL and VOID**". Completely new approvals must be asked for and received, not just rubber stamping an extension like the Board seems to want to do.

While looking at the variance consider this: Assuming Mr. Burd's plan remains unchanged his proposal to use part of the first floor retail space for bicycle storage sends up a red flag for the following reasons:

- Under the Tuckahoe Zoning Law bike storage is not a permitted use in retail space.
- One of the objectives of the Village of Tuckahoe's Comprehensive Plan (specifically Goal #4 Foster Vital Retail Centers) is to "**MAINTAIN STRONG RETAIL USES ON THE GROUND FLOOR**".
-
- Main Street is a mere two blocks from the train station.

- Tuckahoe's Schools and major shopping areas are separated by steep hills. People do not ride bicycles up and down steep hills to go shopping and/or to school.
- Why not just put a bike rack in the garage?

In view of the fact that Mr. Burd's plan does not have enough parking for any more retail space, It appears obvious the bike storage area may be a ruse for some other future use.

Further, Mr. Burd's building should be further away from our building than the mere six (6) feet that was approved, especially because of the visible mold and continuing water and mold problems. His project cuts out the air, light and ventilation for our building's residents and can lead to a worse mold and water problem.

Besides the variance, the Zoning Board also gave Mr. Burd a special permit to have the apartments. He needed a special permit to have apartments in the Business /Residential zone on Main St. Under Section 6-1.5 of the Zoning Law a special permit EXPIRES if construction has not started within a year and completed within 2 years. Since he hasn't done either, Mr. Burd's special permit that he got in June 2008 has **EXPIRED**.

Since it doesn't say "**NULL and VOID**" like with the variances, when an approval expires you normally should be able to ask for an extension. **Except the extension should be applied for before the approval expires**, not after it is no longer valid as is the case here. Mr. Burd should have to start the process for the special permit again.

More importantly, Mr. Burd's 10.26.09 legal notice for a public meeting only talks about "extension of variance" and does not mention a special permit. Section 6-1.1 of the Zoning Law allows the Zoning Board to grant a special permit only "after public notice". There has been no public notice so the Zoning Board cannot act.

It is incumbent upon you to deny this application for an "extension of existing variance". You must consider this as **two new** applications – one for two variances and one for a special permit. It is not a simple "extension of existing variance" as Mr. Burd would like the Board and the public to believe. Please consider all of our practical problems with Mr. Burd's project and application and also the serious legal problems that we have raised.

Thank you for your time.

Sincerely,

 Victoria Angelillo

Mrs. Angelillo stated that Mr. Burd could have applied to the court for a 'stay.' Instead, Mr. Burd chose to let the building sit there. She indicated that the proposed plans include a bike storage area where retail space should be.

Mr. Goldblum noted that these are the same plans that were presented in June 2008 for approval. The bike storage area is a Planning Board issue and the Zoning Board does not have to issue a variance for that part of the plan. The light and air issue has been addressed. Mr. Burd agreed to set the building back 6ft. from Mrs. Angelillo's building and the court has viewed this as reasonable.

Bill Williams, Building Inspector, stated that 'at no time did Mrs. Angelillo's contractor show him the water damage from Mr. Burd's property.'

Mrs. Angelillo claimed that her contractor did indeed take Mr. Williams to Mr. Burd's property. She also stated that she was concerned that the notice for this application had not been advertised properly.

Clare Mattola, 43 Terrace Place, agreed that demolition of this building should be done immediately. The smell and mold are a concern. She has called the Police Dept. several times concerning kids loitering on the property. There is no security fence around the property, which is a safety issue. There is a significant drop in the grade which is unsafe and requires a fence between the applicant's property and her property. She also stated that there is an increase in animals living in the vacant building. Mrs. Mattola has spoken with the Police Dept., Building Dept. and Animal Control regarding this matter.

Chairwoman Rosell noted that there are a number of issues presented this evening. Most of the concerns mentioned are enforcement issues.

John Cavallaro, Village Attorney, stated that the water problem mentioned by Mrs. Angelillo is considered a nuisance on one property migrating to another property. In addition, the County Health Dept. may have to be notified concerning the mold and smell coming from the building.

Mr. Burd stated that he would like to demolish the building as soon as possible. He was advised not to during the lawsuit. He mentioned that he is very frustrated as the lawsuit filed by Mrs. Angelillo has cost considerable money and time. He does not feel confident that the banks would approve the necessary loans now. Because of his frustrations with Mrs. Angelillo, he stated that he may demolish the building and leave a hole in the ground. Mr. Burd also noted that Mrs. Angelillo had tried to extort money from him.

Mrs. Angelillo stated that she did what she had to, to protect her property. The extortion claim is a lie. She stated that both she and Mr. Burd spent a lot of money on lawyers and this court case and she has lost tenants in the meantime. Mrs. Angelillo noted that Mr. Williams has been on her property at least 4 times.

Member McBride stated that there are 3 different issues- Zoning Board issues, Planning Board issues and Enforcement issues. This Board cannot take on all the issues.

Chairwoman Rosell stated that the Board needs time to discuss the application.

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

Item #4 52 Lake Ave.

Area Variance

Vito Gianelli, representing his father, owner of the property, indicated that his father was now applying for a variance for a finished basement in which the work was already done. The bathroom in the basement was in the house at the time it was purchased by his father. There was water damage during a storm a few months ago and his father decided to replace the tile in the bathroom. As a result, it was determined by the Building Inspector that the bathroom and family room in the basement were not approved. He is now trying to correct the problem. The basement consists of a family room, recreation room, bathroom with a shower and a closet. In addition, there is a boiler room and mechanical room. There are 3 means of egress and the basement meets all the requirements for fire safety.

Member Allison motioned to open the public hearing, seconded by Member Santos and carried by the Board.

No Public Comments

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

Chairwoman Rosell noted that the Board members will visit the property. The applicant must return next month for the Board's decision.

Item #5 110 Sagamore Rd.

Area Variance

Mr. Les Maron, attorney for the applicants, noted that this is a two-family dwelling owned by two-families. The home is located in a Res. B zone. There are 3 bedrooms in each unit with 7 children total between the two families. The property is a steep slope, with a back yard of 40ft. but mostly driveway. There is 9ft. on each side of the home. The front yard is also a very steep slope. As a result of the slope in the property, in 2007 the families decided to finish the basement with two separate family rooms, each with its own half bath and its own entry. The families were not aware that they needed to file for permits. Mr. Maron noted that prior to the establishment of the FAR requirements, it was common practice to finish one's basement for additional family rooms. The applicants have submitted them as built plans. He noted that the two large closets should be exempt from the FAR calculations, but were included. There is no other option for space as the topography of the property is just a slope. He noted that there will be no negative impact to the neighborhood. Mr. Wallace cited the Colon application at 51 Wallace where the Board approved a 26% increase in the FAR. This application is for a 21% increase. The families would just like to legalize the playroom and have already paid the penalty. Mr. Maron submitted 3 letters from adjacent property owners all in support of this application. (see file)

Member McBride noted that the submitted survey was extremely difficult to read. He also stated that every application is unique and the Board will not be swayed by their decision with 51 Wallace Street. This Board looks at every application separately.

Member Allison motioned to open the public hearing, seconded by Member McBride and carried by the Board.

No Public Comments

Member McBride motioned to close the public hearing, seconded by Member Santos and carried by the Board.

Chairwoman Rosell stated that the Board will need to visit the premises prior to their decision. The applicant should return next month.

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.