

Minutes of: Dec. 9, 2009  
Date Approved: Jan. 13, 2010  
Date Filed/Village Clerk: \_\_\_\_\_

**December 9, 2009**  
**TUCKAHOE ZONING BOARD AND BOARD OF APPEALS**  
**TUCKAHOE VILLAGE HALL – 7:30pm**

**Present:** Gloria Rosell                      Chairperson  
Philip Allison                      Member  
John Santos                      Member

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

**Absent:** Kevin McBride                      Member  
Susan Crane                      Member  
Thomas Giordano                      Member

Chairwoman Rosell asked the applicants if they wished to proceed, as there were only three members of the Board present. Applicants agreed to continue with their presentations. Chairwoman Rosell announced the agenda as follows:

**Item #1   Approval of Minutes of the November 18, 2009 meeting.**  
**Item #2   52 Lake Ave.                      Return**  
**Item #3   184 Midland Ave.                      Area Variance**  
**Item #4   5 Harrison St.                      Area Variance**

**Item #1   Approval of Minutes of the November 18, 2009 meeting**  
**Motion by Chairwoman Rosell to approve the minutes of the November 18, 2009 meeting was seconded by Member Santos and approved by the Board with a vote of 3-0.**

**Item #2   52 Lake Ave.                      Return**  
The applicant Vito Giannelli was present and asked for the Board's decision.

**Member Allison offered a Resolution (see pgs. 3-7).**  
**Member Santos motioned to accept the resolution, seconded by Chairwoman Rosell and was carried with a vote of 3 – 0.**

Chairwoman Rosell noted that this application was unique in that this home was built in the early 1900's with no side or rear yard. These attached buildings were built to be rentals and later became single-family owned properties.

**Item #3 184 Midland Ave.****Return**

Roger and Anahita Kopet, architects for the project, indicated that there were originally two variances requested, the height and front yard set back. They resubmitted new drawings, which removed the need for the height variance. The only variance requested at this point is the front yard set back. The owner has been willing to work with the Board to reduce the size and height of the building.

Member Allison asked the architects about the second set of staircases. He noted that the suggestion of the removal of the second set was discussed at length during the workshop meeting. A decision by the Board was with the understanding that the second staircase was removed.

Ms. Kopet noted that the owner decided to keep the second set of stairs.

Mr. Rocco Salerno, the applicant's attorney, stated that these plans were submitted well over a year ago displaying two sets of staircases. He stated that he was surprised that at this late stage, the Board members were now discussing a part of the plan that was submitted a year ago. He added that the owner still has to appear before the Bronxville Zoning Board. After discussion with the owner, Mr. Salerno asked if the Board would approve the plans subject to eliminating the stairs.

John Cavallaro, Village Attorney, stated that the Board cannot make a commitment, but the Board will prepare a resolution for next month. The Board cannot make a formal resolution without updated plans.

Chairwoman Rosell added that the applicant must submit revised plans to Bill Williams the Wed. prior to the workshop. Workshop date is Jan 6, next public meeting- Jan. 13.

**Item #4 5 Harrison St.****Area Variance**

Steven Kliegerman, owner of the property and his architect, Ms. Bayer were present. Ms. Bayer noted that the owner had recently purchased a two-family home, which had illegal construction in the basement of both units. He is here now to make the lower levels legal. Prior to the purchase by Mr. Kliegerman, there was a day care center on one side of the structure. There is currently a half bath on that side, while the other side does not have a bathroom at all. There is a counter with a sink on both sides of the structure. This area was originally labeled storage use. The new owner would like to keep the lower level of the unit he is currently occupying for a playroom for his children. This would increase the FAR from .52-.61. He plans to restore the two garages. He plans to sell the second unit of the structure.

Mr. Kliegerman noted that he would like to make this legal. He was surprised the previous owner sold him this two-family house with the illegal construction. He has now paid \$16,000 in fines.

The Board members stated that they must schedule a site visit to view the property.

**Chairwoman Rosell wished all a Happy Holiday and a prosperous New Year.**

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.

ZONING BOARD OF APPEALS  
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

VITO A. GIANNELLI,

Premises: 52 Lake Avenue  
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 52 Lake Avenue, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 32, Block 7 and Lot 13 (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 area variances from the required restrictions set forth in the Zoning Code. Specifically, the Applicant seeks area variances for floor-area ratio ("FAR"), lot area and width, front yard set-back requirements, side yard set-back requirements, maximum building coverage, off-street parking requirements and an increase in the degree of non-conformity of the Premises.

The Premises is located in a Residence B Zoning District, which sets forth, in pertinent part, certain restrictions described herein. The FAR for the Residence B Zoning District is limited to 0.5. The Applicant proposes an FAR of 0.97. *See Section 4-3.6 of the Zoning Code.* In the Residence B Zoning District, the lot area shall not be less than 5,000 gross square feet and the lot width shall not be less than 50 feet for any one-family dwelling. *See Section 4-3.3 of the Zoning Code.* The Applicant proposes a lot area of 2,000 square feet and a lot width of 20 feet. Also, under Section 4-3.4.1, in the Residence B Zoning District, there shall be a front yard along each street line with a depth of not less than 25 feet. The Applicant proposes a front yard of 20.03 feet. Additionally, in this Zoning District, there shall be a side yard along each lot line with a width of not less than 9 feet. *See Section 4-3.4.2 of the Zoning Code.* In contrast, the Applicant proposes a side yard of 0.0 feet as his side yard set-back requirement. Finally, maximum building coverage in the Zoning District is limited to the sum of all areas covered by all principal

and accessory buildings as not to exceed 40% of the area of the lot. The Applicant proposes a maximum building coverage of 0.97. *See Section 4-3.5 of the Zoning Code.*

In addition to the above area variances, the Applicant is also required to provide one off-street parking space per guest sleeping room in addition to residence requirements. *See Section 5-1.2.1 of the Zoning Code.* The Applicant proposes 0 additional off-street parking spaces.

Under Section 5-1.6.3 of the Zoning Code, any building the use of which is in conformity with the regulations set forth in this chapter, or 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 non-conformity thereof. Under this application, the degree of non-conformity is increased by the Applicant's intended use.

#### **Conclusions of Law:**

In order to grant the requested area variances, 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 variances?
- 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 difficulties were 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 variances set forth above. 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 basement area located in the subject dwelling.

As it concerns lot area and width, front yard set-back requirements, side yard set-back requirements, and maximum building coverage, the current building presently exists and has existed for a number of years. With regard to those area variances, the subject building is in conformity with the surrounding neighborhood. Thus, no undesirable changes in the character of the neighborhood would result from the granting of the subject area variances.

Additionally, the site as proposed simply does not contain the sufficient off-street parking space to accommodate a guest sleeping room in addition to the other residence requirements. However, again, the site is remaining unchanged with the exception of the basement area and has existed in that condition for a number of years.

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

The Applicant seeks to finish the basement area in the subject dwelling by finishing the existing basement and one bathroom located in the basement area. Based on this record, there appears no other area in the subject dwelling that could be finished to accommodate the goals of the Applicant. Thus, no feasible alternative exists to finishing the basement area as proposed by the Applicant.

**3) Whether the requested variances are substantial?**

Here, this Zoning Board finds that the requested area variances are substantial in relation to the building and lot on which it stands. First, the Applicant seeks an FAR variance of 0.97 when the Zoning Code imposes a limitation of 0.5. Additionally, the Applicant seeks a lot area and width variance for a 2,000 square foot lot only 20 feet in width, when the Zoning Code imposes a minimum of 5,000 gross square feet with a lot width of not less than 50 feet. Moreover, the Zoning Code requires a front yard with a depth of not less than 25 feet, while the Applicant proposes a front yard of 20.03 feet. With respect to the side yard requirements, the Zoning code imposes a minimum of not less than 9 feet, while the Applicant is proposing a side yard set-back of 0.0 feet. Finally, the Zoning Code restricts that all principal and accessory buildings shall not exceed 40% of the area of the lot, while the Applicant proposes a maximum building coverage of 0.97.

With respect to off-street parking requirements, the Zoning Code requires one off-street parking space per guest sleeping room in addition to other residence requirements. Despite this requirement, the Applicant proposes 0 off-street parking spaces.

Despite the magnitude of the area variances which are sought, this Zoning Board finds that, although the requested variances are substantial, the substantiality of the variances are not fatal to this application because the subject dwelling has existed in the surrounding community in its present condition for a number of years. Simply

put, the subject dwelling is not in conformity with the requirements of the present Zoning Code but was built on an insufficient lot based upon a comparison to today's Zoning Code standards. The Applicant is not proposing to extend or enlarge the footprint of the subject dwelling nor make any exterior changes to the subject dwelling. In effect, although the number and substantiality of the variances are obvious, the fact remains that the resultant effect of the granting of the variances will result in a finished basement area with bathroom with no further changes.

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

The proposed area variances 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 area variances 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 difficulties were self-created?**

This Board finds that the alleged difficulties were self-created because the Applicant finished and completed the basement area without the necessary permits from the Village of Tuckahoe Building Department. However, balanced against the other four statutory factors, this Zoning Board finds that these self-created difficulties are 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.

**SEQRA:**

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 variances. 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 subject area variances referenced herein be and are 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 Rolls.

Dated: Tuckahoe, New York  
December 9, 2009

---

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

**SCHEDULE A**

CONDITIONS TO A CERTAIN APPROVAL FOR AREA VARIANCES GRANTED TO VITO A. GIANNELLI FOR THE PREMISES 52 LAKE AVENUE, TUCKAHOE, NEW YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE

1. The use of the proposed dwelling shall remain a one-family dwelling and in no event shall the basement area be converted into an illegal apartment. Moreover, in no event shall the subject dwelling be converted to a two-family dwelling. The basement area shall not be used as living quarters or for sleeping purposes.
2. Other than the plumbing that is currently existing, the Applicant shall have no further working plumbing in the basement and shall not in the future install working plumbing in the basement for any purpose whatsoever without the necessary permits and approvals from the Village of Tuckahoe Building Department.
3. Other than what is currently existing, there shall be no further bathrooms in the basement of the subject dwelling and the Applicant in the future shall not install any further bathrooms or any part thereof in the basement for any purpose whatsoever without the necessary permits and approvals from the Village of Tuckahoe Building Department.
4. 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.
5. 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.