

Minutes of: January 13, 2010  
Date Approved: Feb. 17, 2010  
Date Filed/Village Clerk: \_\_\_\_\_

**January 13, 2010**  
**TUCKAHOE ZONING BOARD AND BOARD OF APPEALS**  
**TUCKAHOE VILLAGE HALL – 7:30pm**

**Present:** Gloria Rosell                      Chairperson  
              Thomas Giordano                Member  
              John Santos                        Member

**Also in Attendance:**  
              John Cavallaro                    Village Attorney  
              Michael Seminara                Code Enforcement Officer

**Absent:** Kevin McBride                    Member  
              Susan Crane                        Member  
              Philip Allison                       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 December 9, 2009 meeting.**  
**Item #2   100 Main Street                      Return**  
**Item #3   184 Midland Ave.                    Return**  
**Item #4   5 Harrison St.                        Return**  
**Item #5   110 Sagamore Rd.                    Return**  
**Item #6   5 Minturn Rd.                        Area Variance**  
**Item #7   27 Rogers St.                        Adjourned**

**Item #1   Approval of Minutes of the December 9, 2009 meeting**  
**Motion by Chairwoman Rosell to approve the minutes of the December 9, 2009 meeting was seconded by Member Santos and approved by the Board with a vote of 3-0.**

**Item #2   100 Main Street                      Return**

Mr. William Null, attorney for the applicant, noted that the applicant was requesting an extension for the approved variances granted on June 11, 2008. The building was approved for 4 stories with 21 apartments, 4000sq. ft. of retail space and 63 parking spaces, which is more than the Zoning Code requirement of 59 parking spaces. The Westchester Supreme Court has upheld the Zoning Code variances. He added that there is an underground stream, which runs under the property. As a result, there is a problem with the water affecting the adjacent property, which is

owned by Mrs. Angelillo. Mr. Null added that his client, Mr. Burd, has offered to install a sump pump for the adjacent property at his cost.

Mr. Les Maron, attorney representing Mr. and Mrs. Angelillo, owners of 84-88 Main St. noted that his clients' building had serious water damage. He stated that his clients retained engineers and architects to assess the damage. The engineer's report was submitted today, which Mr. Maron handed to the Board members. He asked the board to attach reasonable conditions so that the adjacent property be protected. The applicant should fund and install a sump pump, waterproof the party wall and submit details of the disposal of water contingent upon Mrs. Angelillo's approval. If these three conditions were attached to the approval, Mrs. Angelillo would have no further objections.

John Cavallaro, Village Attorney, stated that the Board would need to have a settlement agreement and if the applicant and respondent both agree, the Board could include the three conditions.

Mr. Null asked the Board for a short recess. Will return after the next applicant.

Mr. John Lambert 43 Terrace Place, voiced his concern regarding a significant drop at the NE corner, which is a safety issue for his young children. He asked to be notified when there is any excavation planned so he can take the necessary precautions. He would like to have his home and basement inspected prior and after the building is built.

Chairwoman Rosell stated that she would grant the short recess and call the next applicant.

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

Roger Kopet, architect for the project, indicated that the second staircase which was a concern for the Board was now removed from the plans. The only variance requested at this point is the front yard set back.

Member Giordano announced that the Board has the discretion to grant a 5ft. minimum set back, not the requested 0ft. set back. The Board cannot grant a variance of less than 5ft. from the property line.

Mr. Rocco Salerno, the applicant's attorney, stated that Bill Williams, Building Inspector, had prescribed the current variance.

Member Giordano stated that the Board reviewed the zoning code and this is the interpretation of the code. The Board does not have the discretion to grant a set back that is less than 5ft.

Mr. Salerno asked for the zoning code, which states this provision and asked for the Board's decision.

Member Giordano stated that the code was 4-3.4.5

**Member Giordano offered the following resolution:**

ZONING BOARD OF APPEALS  
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

FRANCIS SEGARRA,

Premises: 184 Midland 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 184 Midland Avenue, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 25, Block 2 and Lot 15B (the "Premises"). The Premises is currently vacant and 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 the front yard setback requirement set forth in the Zoning Code.

The Premises is located in a Residence-B Zoning District, which requires, in pertinent part, that the front yard setback be at least 25 feet. Zoning Code Section 4-3.4.1.

The subject Premises measures approximately 5,969 square feet and, as mentioned, is located in a Residence-B Zoning District. The Applicant proposes to construct a new one-family dwelling two and a half stories in height, measuring approximately 35 feet from the street level. In connection with this application, the Applicant seeks a front yard setback variance whereby the proposed new one-family dwelling with accessory structures would be situate at the front property line leaving a 0.0 foot front yard setback. The Applicant seeks no other variances in connection with this application.

As noted by the Applicant during the course of his application, the subject Premises is partially located in the Village of Tuckahoe and partially located in the Village of Bronxville. As stated by the Applicant's counsel during the course of his presentation, even if the Zoning Board in Tuckahoe approved the requested variance, the Applicant would still be required to present the application to the Zoning Board in the Village of Bronxville. The

portion of the property that is located in the Village of Bronxville measures approximately 12% of the subject premises. It includes a portion of the rear of the proposed subject dwelling.

### **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.

In considering the conditions to be placed on the grant of this approval, the Zoning Board has resolved that pursuant to Section 4-3.4.5 of the Zoning Code, the Applicant must set its new proposed dwelling with accessory structures back at least 5 feet from the front property line. Section 4-3.4.5 provides that, "[I]n addition to complying with all other provisions of this chapter, no accessory building shall project nearer to the street on which the principal building fronts than such principal building, except that, should topographic conditions be such that practical difficulties would be caused by this requirement with respect to the location of garages, the Zoning Board of Appeals may authorize the erection of such garages within not less than 10 feet of the street line where the natural slope of the ground within 25 feet of such line is between 12% and 20% and within not less than five feet of the street where such slope within 25 feet of such line exceeds 20%".

**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 a front yard setback with a 5-foot front yard from the front property line. Such a condition would be

consistent with the provisions of the Zoning Code and would not produce undesirable changes in the character of the neighborhood as many of the homes in the surrounding neighborhood do not have a 25-foot front yard setback.

Additionally, by situating the proposed new one-family dwelling 5 feet from the front property line, the proposed dwelling would be situated in such a manner as to be consistent with the character of the surrounding neighborhood and other homes in the surrounding community. Thus, the granting of the subject front yard setback variance with the aforementioned 5-foot requirement 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 construct a new one-family dwelling on the subject Premises to improve the same so as to make use of the now vacant Premises. Based on this record and in considering the topography of the site, it appears that the benefit sought by the Applicant cannot be achieved by a feasible alternative to the variance. Put another way, due to the topography of the site, the Applicant is not in a position to provide the required 25-foot front yard setback requirement.

**3) Whether the requested variance is substantial?**

Here, this Zoning Board finds that the requested area variance is substantial in relation to the lot and proposed dwelling. Under the provisions of the Zoning Code, the Applicant is required to provide a 25-foot front yard setback requirement. The Applicant has proposed a 0.0-foot front yard setback, which is a 100% deviation from the terms and provisions of the Zoning Code. However, this Zoning Board seeks to mitigate the substantiality of the requested area variance by imposing a condition that the provided front yard setback be at least 5 feet from the front property line.

**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. The granting of the requested area variance with the condition that the front yard setback be at least 5 feet 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 Zoning Board finds that the alleged difficulty was not self-created because the topography on the site prevents the Applicant from providing a 25-foot front yard setback requirement in connection with the type of dwelling proposed for the Premises. Although the Applicant could have proposed a smaller dwelling on the Premises that is more compliant with the provisions of the Zoning Code, this Zoning Board finds that, even in the event that difficulty was self-created, such 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 Zoning 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 Rolls.

Dated: Tuckahoe, New York  
January 13, 2010

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

## **SCHEDULE A**

CONDITIONS TO A CERTAIN APPROVAL FOR AN AREA VARIANCE GRANTED TO FRANCIS SEGARRA FOR THE PREMISES 184 MIDLAND AVENUE, TUCKAHOE, NEW YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE

1. That the approval and area variance granted herein is subject to the condition that the Applicant obtain all necessary approvals, permits and/or variances from the Village of Bronxville and its respective boards, councils, committees and/or officials. The area variance granted herein shall not take effect until and unless the Applicant has obtained all necessary approvals, permits and/or variances from the Village of Bronxville and its respective boards, councils, committees and/or officials.
2. That the area variance granted herein is subject to the condition that the new proposed dwelling with accessory structures, planned for the subject Premises, be placed and situate at least 5 feet from the front property line of the subject Premises, it being the intent of this Zoning Board of Appeals to ensure that the new subject dwelling with accessory structures have a front yard setback of at least 5 feet.

**Chairwoman Rosell motioned to approve the resolution, seconded by Member Santos and upon roll call was carried with a vote of 3 – 0.**

Mr. Salerno stated that this application has been before the Board for a year and this was the first time the Board discussed their discretion to grant a 0ft. front yard set back. He added that last month was the first time the Board stated that the second stairs was not acceptable. Mr. Salerno stated that these items should be stated during the beginning stages of the process, not at the end.

### **Item #2 100 Main Street**

#### **Chairwoman Rosell recalled 100 Main Street**

Mr. Null asked to return next month. His office will record all that is agreed upon between parties and submit the agreement to John Cavallaro, Village Attorney. The conditions that would be agreed upon will be that Mr. Burd will seal the wall when weather permits, provide a de-watering facility like a sump pump and will submit the agreement to John Cavallaro.

### **Item #4 5 Harrison St. Applicant not present.**

#### **Area Variance**

**Item #5 110 Sagamore Rd. Return**

Mr. Maron, representing the applicant asked for the Board's decision.

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

**No Public Comments**

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

**Member Santos offered the following resolution:**

In the Matter of the Application of  
Biancardi/Lee  
Premises: 110 Sagamore Road  
Tuckahoe, New York,

The Applicants are the owners of the premises commonly known as 110 Sagamore Road, Tuckahoe, New York and identified on the tax map of the village of Tuckahoe as section: 27 Block: 7 Lot: 4,5 (the "Premises"). The Premises is currently a two-Story dwelling, which is adjacent to other residential dwellings in the community.

The Applicant seek relief from the village of Tuckahoe zoning code by means of an area variance for the floor-area ratio ("FAR") from the required restrictions set forth in the zoning code.

The premises are 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 measuring 3,245 square feet, which complies with the zoning code. However, the applicant finished the basement for a Playroom/family room. As a result, the Applicant increased the FAR. In total, the Applicant has added 706.5 square feet of useable space to the premises. With the addition to the finished basement, the resultant FAR is .608, which is .11 above the FAR of 0.5 that is set forth in the zoning code.

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 request variance is substantial?
- 4.) Would the variance have an adverse impact on the physical or environmental conditions of 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 the 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 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/family room 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/family room 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 their residence. Based on this record, there appears no other area in the subject dwelling that could be finished to accommodate each family. Thus, no feasible alternative exists to finishing the basement area for a playroom/family room 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 .608 when the Zoning Code imposes a limitation of 0.5. Thus, the Applicant seeks a .11 deviation or variance from the requirements of the Zoning Code. This Zoning Board finds that this .11 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 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.

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 regulation; 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 recommended to grant the requested variance.

**Chairwoman Rosell motioned to approve the resolution, seconded by Member Giordano and upon roll call was carried with a vote of 3 – 0.**

**Item #6    5 Minturn Rd.                      Area Variance**

Mr. Martin Diano, architect for the applicant, requested an area variance to increase the FAR from .5 to .66. The owners purchased this home in 1993 with a finished basement. The basement included a bedroom, kitchen, full bath and family room. While repairing the basement the owner approached the building inspector for advice and was notified of the illegality of the basement. He is now in the process of making the basement legal. The removal of the kitchen has begun.

Member Giordano stated that the Board was concerned about the full bath and the bedroom with a closet as future owners may likely rent out the space as an apartment.

Chairwoman Rosell stated that the existing entertainment room is legal.

Mr. Diano noted that the applicant was willing to remove the kitchen, change the full bath to a half bath, remove the wall dividing the bedroom to the family room and remove the closet. The existing entertainment room and the existing window will remain.  
He will 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.