

Minutes of: February 17, 2010
Date Approved: April 14, 2010
Date Filed/Village Clerk: _____

February 17, 2010
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Gloria Rosell Chairperson
 Thomas Giordano Member
 Kevin McBride Member
 John Santos Member (arrived 8:05)

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

Absent: Susan Crane Member
 Philip Allison Member

Chairwoman Rosell announced the agenda as follows:

- Item #1 Approval of Minutes of the January 13, 2010 meeting.**
Item #2 100 Main Street Return
Item #3 5 Harrison St. Return
Item #4 5 Minturn Rd. Return
Item #5 138 Columbus Ave. Area Variance Special Use Permit
Item #6 146, 150, 160, 233 Midland Ave. Extension Special Use Permit

Item #1 Approval of Minutes of the January 13, 2010 meeting
Motion by Chairwoman Rosell to approve the minutes of the January 13, 2010 meeting was
seconded by Member McBride and approved by the Board with a vote of 3-0.

Item #2 100 Main Street Return

Mr. William Null, attorney for the applicant, requested the reinstatement and/or issuance of the Special Use Permit and area variances previously granted, based upon there being no materially changed circumstances since the prior approvals were granted.

Mr. Les Maron, attorney representing Mr. and Mrs. Angelillo stated that section 9-3 on the Tuckahoe Zoning Code states that the work on the property must be started within one year of the granting of the variance or the variance will be null and void This applicant should be required to submit a new application. He also stated that the Special Use Permit should expire if the work has not started within one year and completed within two years of the granting of the variances. The Special Use Permit application should have to start over. Mr. Maron noted that there is significant water damage on his client's property. The Village issued demolition permits, but the water issues

were not addressed. Mr. Maron's client requests that the Board impose conditions under the Special Use Permit and variances regarding the water problem.

Mr. Null stated that in Article 6.1.5 Special Use Permit, the demolition process is considered part of construction and therefore work has begun within the one-year requirement. As for the water issue, Mr. Null noted that the buildings abut a major hill. The drainage plans will be included in the building application.

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

(8:05 John Santos arrived)

Member McBride offered the following Resolution:

ZONING BOARD OF APPEALS
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

TERRY BURD,

Premises: 100 Main Street
Tuckahoe, New York,

Applicant.

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

Background and Findings of Fact

The Applicant is the record owner of the premises commonly known as 100 Main Street, Tuckahoe, New York and known on the tax map of the Village of Tuckahoe as Section 28, Block 5, Lots 3, 5 and 7 (the "Premises"). On June 11, 2008, this Zoning Board of Appeals (the "Zoning Board") granted a Special Use Permit for residential use in the BR District and area variances to enable the Premises to be developed with a mixed-use building containing residential apartments above ground floor retail with storefronts along Main Street (the "Project"). The Premises previously was improved with three buildings located adjacent to one another, two of which fronted along Main Street and the other along Terrace Place, all of which have been torn down at this time.

The previous approvals granted for the Project by this Zoning Board (the "Prior Approvals") were:

1. A Special Use Permit to allow residential units in the BR District; and
2. An area variance for an additional story permitting four stories, where there is a three story limitation,¹ given that the building will conform to the maximum permitted height of forty-two (42) feet;² and

¹ See Village of Tuckahoe Zoning Ordinance § 4-5.3.3.

² *Id.*

3. An area variance for an increase in the allowable floor area ratio (FAR) from 1.2³ to 1.96.

The Prior Approvals were the subject of two Article 78 proceedings initiated in the Supreme Court of the State of New York, County of Westchester by the owners of an adjacent apartment building, as follows:

- a. In the Matter of Joseph Angelillo and Victoria Angelillo, Petitioners, against the Village of Tuckahoe Zoning Board of Appeals, and Terry Burd (Index No. 15030/2008) (the "ZBA Proceeding"); and
- b. In the Matter of Joseph Angelillo and Victoria Angelillo, Petitioners, against the Village of Tuckahoe Planning Board, the Village of Tuckahoe Zoning Board of Appeals, and Terry Burd (Index No. 12046/2008) (the "Second Proceeding").

The ZBA Proceeding was the subject of Decision, Order and Judgment dated September 17, 2009, dismissing the Article 78 proceeding and determining that the Zoning Board's decision to grant the Prior Approvals was "supported by ample evidence in the record. . . [and that the Zoning Board] properly balanced the factors required to be considered by Village Law. . ." ZBA Decision, p. 3. Similarly, the Second Proceeding was the subject of a Decision, Order and Judgment, dated October 2, 2009, dismissing the Article 78 proceeding and finding that the determinations adopted pursuant to Article 8 of the New York State Environmental Conservation Law and the rules and regulations promulgated thereunder at 6 N.Y.C.R.R. Part 617 (collectively "SEQRA") were both procedurally and substantively in compliance with applicable law. (Copies of the Decisions in both Article 78 proceedings are annexed hereto and made a part hereof). No appeal was taken from these Supreme Court decisions.

The Nature of the Application

Mr. Terry Burd has requested an extension of the Special Use Permit and area variances granted by this Board on June 11, 2008, to construct, use and maintain the mixed-use building at these Premises. Mr. Burd states in his Application that he has diligently pursued work at the Premises beginning promptly following the issuance of the Special Use Permit and variances and prior to the issuance of the Site Plan Approval by the Planning Board, which Site Plan Approval has not been issued. Permits for asbestos removal and demolition were issued and the abatement was completed in the summer of 2008.

Pursuant to Article VI, Section 6-1.5 of the Zoning Ordinance, the previously granted Special Use Permit would expire if:

- (a) "construction has not been commenced within one year and has not been completed within two years of the date of final special permit approval;" or
- (b) "[T]he special use or uses shall cease for more than 12 months for any reason."

Further, Article IX, Section 9-3 of the Zoning Ordinance states that the previously granted area variances require that:

³ See Village of Tuckahoe Zoning Ordinance § 4-5.3.4.
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". . . work under such variance be commenced and diligently prosecuted within one year of the granting thereof, failing which such variance shall become null and void."

The Applicant states that work was timely begun and has continued to be diligently prosecuted at the Premises. The Applicant therefore asserts that both the Special Permit and area variances remain in full force and effect at this time, based upon the above-cited Sections of the Zoning Ordinance. Nevertheless, the Applicant has requested that this Zoning Board approve a one year continuation of the Special Permit and area variances that were recently upheld by the dismissal of the ZBA Proceeding and the Second Proceeding. In the alternative, the Applicant has requested the reinstatement and/or issuance of the Special Use Permit and area variances previously granted, based upon there being no materially changed circumstances since the Prior Approvals were granted.

The Applicant's goal remains the development of the Project, which has not been changed. In connection with its proposal, as previously noted, the Applicant requested an area variance for an increase in floor area ratio that will result from added retail space created, and an area variance for the number of stories proposed in the building. A Special Use Permit from the Zoning Board also is required for a residential use of the proposed building within the BR District. The Applicant has represented to the Zoning Board that it would utilize all design and construction techniques possible to minimize the impact that the proposed building would have on other buildings in the zoning district and those nearby.

Conclusions of Law

The Zoning Board considers it unnecessary to determine whether there is a need for an extension of the Prior Approvals at this time, or whether to grant a continuance for the Prior Approvals, as work promptly commenced and has continued at the Premises even during the pendency of the two Article 78 proceedings. Based upon the record before the Zoning Board, there have been no materially changed facts or circumstances that would provide a basis for reaching a different determination than that which reasonably and rationally supported the granting of the Prior Approvals.

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

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 application can be achieved by a feasible alternative to the variance?
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 difficulty was self-created?

In considering the abovementioned five factors, the Zoning Board must determine whether the benefits to the Applicant outweigh the detriments to the health, safety and welfare to the community if the variances are granted. After applying the above five factor test to this Application, the Zoning Board has resolved to grant this Application because the Applicant's proposal satisfies the above analysis. In considering the nature and scope of the Applicant's proposal, the Zoning Board has concluded that the area variances sought will not produce detrimental effects on the community, and that their scope will not have any appreciable negative impacts on adjacent lots or those in 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 no undesirable change in the character of the neighborhood would result from granting area variances for floor area ratio and the number of stories in the proposed building. With respect to the area variance concerning floor area ratio, the proposed building calls for a floor area ratio of 1.96. The floor area ratio for the Business/Residential zoning district is 1.2 where the use of a lot is 50% or more residential as measured by gross floor area. See Zoning Ordinance, Section 4-5.3.4. Although the floor area ratio will exceed the limits imposed by the Zoning Ordinance, this slight deviation will be adequately offset by similar buildings within the Business/Residential and nearby Business zonings district along Main Street. The slight increase in floor area ratio is mitigated by the additional fourth story to the proposed building, which brings the building's overall height to 42 feet. This height is the same or nearly identical to that of adjacent and nearby buildings.

With respect to the variance for number of stories, the proposed building will incorporate dormers into the slope of its roof on the fourth and uppermost story of the building. Incorporating dormers into the slope of a mansard roof having several pitch angles and rooflines will mitigate any negative aesthetic impacts from a fourth story on that of nearby and adjacent three story buildings. This type of aesthetic will reduce any imposing or perceived effects of a fourth story. Moreover, and significantly, the Application complies with the building height limitations for this BR District, i.e. the building height is only 42 feet.

The public comments submitted in connection with the Prior Approvals decried the proposed building and its uses because of an alleged fear that it will lower the values of adjacent and/or nearby buildings. To the contrary, the proposed building will contribute a pleasant aesthetic and will blend in with the mixed building characteristics currently affronting Main Street. Enhancing aesthetics, quality of life for all of its citizens and improving the physical attractiveness of the Village are goals of the Master Plan that this Project will help foster. See Master Plan, Section 2.

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

The Applicant's proposal seeks to increase both the residential and commercial viability of the Premises by rendering it a mixed use building. The Premises is located in a zoning district that contains lots zoned for both residential and commercial uses. To accomplish the Applicant's goals, an increase in the number of stories with a consequent increase in floor space is required. To facilitate the proposed number of residential units on the second to fourth stories and further provide first floor retail space, the Applicant requires an area variance permitting a fourth story in this zoning district. While staying compliant with the 42-foot building height requirement in the Zoning Ordinance, the Applicant's fourth story will cast no negative effects on other buildings with respect to height.

The above area variances will also result in a higher percentage of usable floor space in the proposed building on the Premises. Thus, another area variance permitting a higher floor area ratio is the only means by which a larger structure with greater interior floor space could be built on the existing lot. Moreover, because the Premises is located in a Business/Residential zoning district, other feasible alternatives to granting the above referenced area variances are unavailable. Thus, based on the unique location of the lot and the minimum space required by this Project, no feasible alternative exists absent granting the instant variances.

3. *Whether The Requested Variances Are Substantial?*

Here, the Zoning Board has determined that the two area variances previously granted are not substantial when comparing the Project with that of adjacent and nearby properties. The Applicant has requested an area variance for the number of stories permitted in the Business/Residential zoning district. While adding another story may be substantial in nature, the overall height of 42 feet for the proposed building conforms to building height requirements in the Zoning Ordinance. Adding a fourth story while conforming to overall building height limitations is nothing more than a reconfiguration of usable space divided between two floors.

The Applicant also requests an area variance for a nonconforming floor area ratio of 1.96, which exceeds that limit of 1.2 for the Business/Residential zoning district. Despite the increase in floor area ratio that would result from granting this Application, the effects of such increase will be mitigated by the addition of a less obtrusive, unimposing four story design for the proposed building that will provide for retail space on the first story. Granting this area variance for floor area ratio will not produce any appreciable negative impacts. Thus, the net effects from granting the above area variances cannot be deemed "substantial" in nature.

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

The Zoning Board has determined that the requested area variances will generate no adverse impacts on the physical or environmental conditions in the surrounding neighborhood. This Project will not generate any negative significant environmental impacts such as poor aesthetics, increased traffic congestion, hazardous traffic rerouting, noise pollution, exhaust fumes or noxious odors, increased surface runoff, an increase in impervious surface coverage, poor drainage, sewerage problems, solid waste production and/or storage, steep slope erosion, subsidence, air pollution or negative impacts on ambient air quality in the area or any other negative environmental consequences.

This Project has been extensively studied and reviewed by planners, who have proposed adequate structural and environmental safeguards necessary to safely reach the Applicant's goals for the Premises without contradicting or negatively affecting any of the environmental considerations set forth in the Master Plan. *See* Master Plan, Section VII. Aesthetically, the proposed building will compliment the assorted retail and residential buildings that comprise and affront Main Street and produce no negative effects on its surrounding environment.

Despite the fact that that proposed building will have four stories, the overall height of the building will not exceed 42 feet, and thus otherwise conforming. Physically, the Project's height is similar to that of other surrounding and nearby buildings, and its overall profile remains consistent with the building context throughout the neighborhood. This Project is not physically imposing in the context of the surrounding buildings and the neighborhood.

Furthermore, the sloped roof will have little, if any, impact on the views afforded to neighbors of adjacent buildings. Despite a nonconforming fourth story, the 42 foot high mansard roof will provide better visibility for neighbors in adjacent buildings than a 42 foot high three story building with flat surfaces and a flat roof, which would occupy more volume and air space. Thus, the record before this Board does not support the complaints that occupants of adjacent buildings will suffer decreased visibility as a result of granting the above variances. These findings by the Zoning Board were confirmed by the Court's dismissal of both Article 78 proceedings.

The Applicant has also incorporated a side setback measuring approximately six feet wide and spanning over half the length of the boundary between the adjacent four-story building and the proposed building. This, in turn, will allow for better access to the proposed building and will generate a corridor of light, air and circulation between the Project and the adjacent building. This setback will minimize the impact of the Project on the light and air quality supplied to the existing courtyard on the adjacent property to the west of the Premises. Thus, the size and proximity of the proposed building compared to that of the adjacent property will be further mitigated by this

additional planning and design considerations. These findings by the Zoning Board also were confirmed by the Court's dismissal of both Article 78 proceedings.

With respect to the variance concerning floor area ratio, the proposed building will add a pleasant, modern building aesthetic that blends in consistently with the nearby streetscape while incorporating both retail and residential spaces into one of the Village's Business/Residential zoning district. Thus, the physical and environmental conditions of the Premises will have no negative effects on the surrounding properties or the greater community, as confirmed by the Court determinations in the previously noted Article 78 proceedings.

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

On the facts and the record, the Applicant's alleged difficulty was self-created because a smaller building could have been constructed on the Premises. However, this self-created difficulty is not fatal to the application. According to the plans submitted to the Zoning Board and arguments by architect Michael Goldblum, every effort has been taken to ensure that the proposed building will be minimally imposing and will blend in with the aesthetic, structure and scale of other buildings fronting Main Street. Indeed, these are express goals of the Project, which are consistent with the Village's Zoning Ordinance and the Master Plan.

In contrast, the difficulty here is not self-created to the extent that, if a smaller building was proposed, it would not blend in scale and otherwise remain consistent with the overall development plan for this zoning district. Further, the Applicant's difficulty is not self-created in that it fosters high density residential use in an area around the central business district, and in upgrading commercial area aesthetics to create a "more inviting and exciting image of the Village for its merchants". *See Master Plan.*

Considering the above factors, granting the proposed area variances as set forth in the Prior Approvals is consistent with the development goals of the Master Plan. Granting the above area variances would have no appreciable impacts on the community and would establish consistent precedent for future developers in the area. Thus, the Zoning Board has resolved to grant the above referenced area variances for this Project and to confirm that such Prior Approvals remain in full force and effect, whether due to being reinstated and ratified herein, or because they never lapsed and remain valid and binding at this time.

Special Use Permit

Pursuant to Section 6-1 of the Zoning Ordinance, the Zoning Board is granted the authority to issue special use permits as set forth in the Zoning Ordinance. "Any use designated in a given district as requiring a special use

permit shall be deemed to be a permitted use in such district subject to satisfaction of the conditions and standards set forth in this article in addition to all other requirements of this Zoning Ordinance.” Zoning Ordinance Section 6-1.1. More specifically, the standards prescribed in Section 6-1.6 for all special permit uses must be satisfied along with more specific requirements set forth in Section 6 of the Zoning Ordinance, which pertain to Business/Residential zoning districts.

Pursuant to Section 6-2.4 of the Zoning Ordinance, any new buildings or premises contemplating residential uses within a business/residential zoning district must comply with the requirements set forth more fully below.

A. Residential Uses in Business/Residential Zone

1. *Separate Entrances*

The proposed building on the Premises will incorporate both business (retail) and residential uses. However, the first story of the proposed building will house only retail space and the remainder of the building (the second through fourth floors) will be entirely dedicated to residential use. Consistent with Section 6-2.4 of the Zoning Ordinance, parts dedicated to residential use will be accessible through a common lobby or plaza located on the first (retail) floor of the proposed building. Additionally, residential sections of the proposed building will enjoy separate, private access via entrances located on the rear of the proposed building.

2. *Compatibility of Use*

The residential and commercial uses contemplated by this application are compatible with the Zoning Ordinance. Any residential uses within the proposed building will be situated on floors above those used for business or commercial uses in accordance with the Zoning Ordinance. Because the first story of the proposed building shall be used for retail purposes, it is deemed a compatible use under Section 6-2.4(3) of the Zoning Ordinance.

In determining that retail use is compatible with residential use, the Zoning Board considered factors such as noise, odor, pollution, anticipated parking operations and expected traffic volume. At a November 14, 2007 meeting of the Zoning Board, prior traffic impact studies performed on Thursday, October 24, 2007 from 6:00am to 10:00pm and the following Saturday during similar hours were presented and concluded that nine additional cars would result from granting this application. Factors such as noise, pollution and traffic volumes will not be significantly affected by a traffic increase of nine vehicles. Further, the retail character of the proposed business on the Premises will ensure that noise and other disturbances from business operations will be minimal and that regular business hours can be reasonably anticipated.

3. *Building Context*

In granting this application, the Zoning Board has considered the effects of this proposed building on that of adjacent and nearby buildings in the community. The proposed building will remain compliant with the height limitations of 42 feet for buildings in the Business/Residential zoning district. Additionally, the design will incorporate features and scales that are similar in character and compatible with the surrounding streetscape in the Zoning District, with the goal of creating an inviting “Main Street.” *See Master Plan.*

The overall dimensions of the building will be no larger than that of other buildings that front along Main Street. Despite the addition of a fourth story to the proposed building, the proposed mansard roof design utilizing multiple slope angles and rooflines in and above the fourth story will soften the aesthetic impact of a fourth story and allow the building to blend in with adjacent and nearby buildings. Thus, the proposed building will remain consistent with the surrounding context of adjacent and nearby buildings that make up the Business/Residential zoning district.

B. Standards For All Special Permit Uses

1. *Compatibility with district*

The Zoning Board has resolved that the proposed use of the Premises is both harmonious and consistent with the uses prescribed for a Business/Residential District. This Project will help foster orderly, consistent development within the Business/Residential zoning district affronting Main Street. The dimensions and aesthetics of the proposed building will blend in with adjacent and nearby buildings in the zoning district and will add to the present continuity. Despite the fact that the proposed building will house residential apartments its occupants will be in close proximity to the retail space. It is probable that future occupants could patronize these retail facilities and others nearby, thus fueling the Village’s local economy. The proposed building is intended to be partially dedicated to furnishing retail services to residents and nonresidents of the Village of Tuckahoe, which is an expressly permitted use within the Business/Residential zoning district. *See Zoning Ordinance Section 4-6.1(a)(1).*

2. *Compatibility With Master Plan*

The Project is compatible with the Master Plan because one of its goals is to foster commercial and residential development in properties on Main Street. The Master Plan seeks to enhance economic development by improving aesthetics and by creating an inviting commercial environment to merchants. *See Master Plan.* Drawing on the goals of the Master Plan, the granting of the Prior Approvals and the maintenance thereof for this Project will increase revenue for local business owners, increase commercial thoroughfare to the area, increase property values

throughout the Village and will promote interest in revitalization of other commercially viable zoning districts in the Village. Thus, this Project is clearly harmonious with the above express and implicit goals.

3. *Services*

The proposed building will be readily accessible for fire and police protection. The building is located on a public street that is navigable by fire and police protection services. Nothing in this record or in any presentations before the Zoning Board suggests that police or fire protection services or their access to the Premises will be diminished or in any way hindered by this Project.

4. *Adjacent Properties*

The location, nature and height of the proposed building will not hinder or discourage development and use of adjacent buildings. The Premises is situated in a part of the Village that is zoned for mixed or combined residential and business uses. From any perspective in the Village, the height and dimensions of the proposed building will not exceed that of any surrounding buildings. Thus, the building height is compatible with Business/Residential uses in this zoning district. Moreover, reducing the impact of a fourth story by utilizing dormers built into the building's mansard roof will not create an imposing or incongruous building among those adjacent or nearby.

Rather, the proposed building will have pleasing aesthetics and will be a modest compliment to the other buildings nearby that front along Main Street. The intensity of the uses on the Premises and the overall footprint of the proposed building are consistent with other uses in this zoning district. The evidence proffered to the Zoning Board indicates that the following factors will not appreciably contribute to an increase in the intensity of use on the Premises: energy demand, ecological impacts, hazards to human health and the environment, air quality, surface and groundwater quality, traffic and noise levels, solid waste production, erosion, flooding, leaching, drainage and other factors concerning the intensity of use on the Premises. Thus, the properties adjacent to that of the proposed building will suffer no injury or deleterious effects from this Project.

5. *Nuisance*

The nature and scope of the residential and commercial uses of the Premises are such that they will not produce noise, fumes, vibration, noxious odors, flashing of lights or other similar nuisance conditions to the surrounding neighborhood. The largely residential character of this Project and the uses thereon will remain consistent with that of neighboring buildings. The business and residential profiles of the uses for the Premises are no more intense than those of nearby buildings and the zoning district as a whole. Additionally, no offensive,

dangerous, destructive, or hazardous conditions to the health of the surrounding community will be produced as a result of this Project and its proposed uses.

6. *Neighborhood Character and Property Values*

On this record, when the Prior Approvals were issued there was no evidence that the property values of adjacent and nearby lots in the community will be diminished whatsoever by granting approval for this Project. These facts and circumstances have not changed. The assertion by Mr. and Mrs. Angelillo that a water problem has resulted from the demolition of the buildings formerly on the Premises does not change the conclusions reached by this Zoning Board. It was stated before the Zoning Board that the Project will include infrastructure to address the high water table that exists in this area of the Village and extends well beyond the Premises. It is not the purview of this Zoning Board to address allegations by Mr. and Mrs. Angelillo regarding how the water in their basement occurred. That condition is one to be addressed, if at all, between private citizens in another forum.

The proposed building will contribute a more pleasing aesthetic in the neighborhood and may actually enhance the greater community. The three buildings, which were older and in poor condition with lower property values have been removed to enable the construction of the Project which bring with it more residential tenants to the Main Street neighborhood and a consequent increase in commercial activity. As a result of the influx of capital and economic support to the area, property values for lots adjacent to and nearby the Premises are likely to increase.

7. *Traffic*

The Zoning Board recognizes that the proposed building could produce a slight traffic increase on public roadways leading to the Premises. However, expert studies conducted suggest that any traffic increase in the immediate area of the Premises will only be by a factor of nine vehicles. Indeed, this is a minimal increase in traffic and should not have any significant, negative effects on adjacent and nearby lots. The traffic impact study concluded that an increase of approximately nine vehicles during peak hours would result from granting approval for this Project, which is minimal in nature. Any increases in traffic will be adequately offset by the availability of off-street parking provided for the Project and more fully set forth below.

The traffic study conducted suggests that no appreciable increases in congestion will result from this Project, thus keeping the traffic volume and profile very similar to the status quo. Because the Premises will be used primarily for residential uses, the highest percentage of traffic to and from the Premises will be during peak traffic hours. Thus the impact of vehicles entering into and exiting from the Premises on the surrounding community will be for a very limited time period during the work week.

Additionally, the proposed building has been set back an additional 2 feet 6 inches on its east side, which will permit the Village to widen Terrace Place in the event that the traffic volume to the area increases. Thus, after consideration and study, the Zoning Board finds that the effects on traffic from this Project would be reasonable in nature.

8. *Parking*

Pursuant to the Zoning Ordinance, a minimum number of off-street parking spaces are required to accommodate the number of potential residential occupants and commercial patrons having access to the Premises as proposed. The Applicant has proposed that 42 off-street parking spaces be created to accommodate the 21 residential units comprising the proposed building. These parking spots will be housed by a fully-enclosed parking facility enclosed within the proposed building. Further, there will be 19 additional off-street parking spaces provided to serve the newly added retail space. This increase will result in a ratio of parking spaces to floor area of 1:200 square feet. Granting approval for this Project will not affect the availability of parking along Main Street whatsoever. All of the above provisions for off-street parking conform to the Zoning Ordinance and require no further action by the Zoning Board.

9. *Conformance with Regulations*

Except for requirements concerning floor area ratio and the number of stories permissible for the subject building, the Applicant has complied with the requirements for lot area, lot width, frontage, side yard setback, building coverage and height. Based on the foregoing, this Board finds that the Applicant has reasonably satisfied the conditions applicable to the issuance of special use permits as set forth in the Zoning Ordinance for the Village.

SEQRA

Based on the foregoing, the Zoning Board of Appeals of the Village of Tuckahoe finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEQRA.
2. This Zoning Board of Appeals is in possession of all information reasonably necessary to make the determination as to the environmental significance of the applications for area variances and the proposed special use permit.
3. The action taken herein shall not have any significant impacts upon the environment and declare that a Negative Declaration be adopted with respect to this action.

Conclusion

Based on the foregoing, it is resolved that the area variances referenced herein and the Special Use Permit that were previously granted pursuant to the Prior Approvals have been granted to the Applicant and hereby are ratified and reaffirmed as granted to the Applicant, so that there has been no lapse in continuity thereof and these and the Prior Approvals remain subject to the provisions of Article VI, Section 6-1.5 of the Zoning Ordinance, that provides the Special Use Permit will lapse only if:

- (a) "construction has not been commenced within one year and has not been completed within two years of the date of final special permit approval;" or
- (b) "[T]he special use or uses shall cease for more than 12 months for any reason."

Moreover, pursuant to Article IX, Section 9-3 of the Zoning Ordinance the previously granted area variances require that:

"... work under such variance be commenced and diligently prosecuted within one year of the granting thereof, failing which such variance shall become null and void."

For the purposes of this decision, the time periods noted above commence upon the filing of a signed version hereof in the Office of the Clerk of the Village of Tuckahoe. The applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance the New York Civil Practice Law and Rules.

Dated: Tuckahoe, New York
February 17, 2010

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

Member McBride motioned to approve this resolution, seconded by Member Santos and carried with a vote of 4 – 0.

Item #3 5 Harrison St.**Area Variance**

Steven Kliegerman, owner of the property noted his plans are 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. Mr. Kliegerman 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.

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

Member Giordano offered the following Resolution:

5 Harrison Street; Section 28, Block 8, Lot 10, Units A and B

These applications are each for a building permit in connection with pre-existing conditions in the basement of both units of the premises, an existing two family house, and specifically for relief from Section 4-3.6 of the Zoning Code – which provides in pertinent part as follows:

“Floor Area Ratio. The FAR for the Residence B District is 0.5.”

The proposed FAR for Unit A of the premises is 0.612.

In the Unit A application, applicant requests the continued use as a playroom of the existing basement playroom installed by the previous owner, and further requests the approval of the ½ bathroom, electricity and sink installed by the previous owner. The garage area is to be re-furnished back to a 2-car garage.

The proposed FAR for Unit B of the premises is 0.607.

In the Unit B application, applicant requests the continued use as a playroom of the existing basement playroom, and further requests the approval of the electricity and plumbing installed by the previous owner. The garage area is to be re-furnished back to a 2-car garage.

Recommendation is for both variances to be granted, as the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood, and we believe that the proposed modifications by the applicant are sufficient to counter abuses of the premises by previous owners.

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

1. Will there be an undesirable change in the character of the neighborhood and will there be a detriment to nearby properties? We find that there will be neither. We have been advised that the previous owner had used the premises as a day care center, a use not permitted under the Zoning Code. The applicant’s selective demolition, including restoration of the existing garage area to 2-car garages – while still resulting in an excess of the permitted FAR – restores the contemplated use of the premises, which is a desirable change.
2. Can the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue other than an area variance? While the applicant could demolish more of the

existing improved space in Units A and B, thus reducing the FAR to a ratio that is permissible under Section 4-3.6, we believe that more extensive demolition would impact the use and enjoyment of the basements of the premises as playrooms.

3. Is the variance requested substantial? At roughly 20% above the maximum FAR for each unit, we cannot say that the variance is not substantial. However, in light of the other factors, we find that this in and of itself does not necessitate a denial of the application.

4. Will the proposed variance have an adverse impact on the physical or environmental condition in the neighborhood? We feel that the improvements proposed by the applicant to both units will have a positive impact on the physical and environmental condition on the neighborhood. The selective demolition and improvements to the units would foster the use of the units for their intended purposes, each as separate single family residential units, and inhibit the misuse of the units for day care, or other uses that are not permitted by the Zoning Code.

5. Is the alleged difficulty self-created? It is our understanding that the offending conditions were present when the Owner purchased the premises. The Owner's proposed demolition and construction will result in a lessening of those offending conditions.

Accordingly, subject to completion of the demolition and improvements proposed by the applicant to Units A and B in the drawings presented dated June 11, 2009, it is recommended to grant the requested variances for both Units A and B of the premises.

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

Item #4 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.

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

Member Giordano offered the following Resolution:

The application for an area variance requested by Mr. Hyun Shin for relief from the following section of the Zoning Code Section - 4-3.6 – which provides as follows: Floor Area Ratio. The FAR for the Residence B District is 0.5.

Recommendation is for an area variance to be granted as the detriment to the health, safety and welfare of the neighborhood is outweighed by the benefit to the applicant: The application is to

allow for the basement of the dwelling to be kept in finished condition, to allow for additional floor area in the basement for utilization by the first floor occupant. The increase in floor area to the finished basement results in a floor area ratio of 0.66 – 0.16 in excess of the maximum of 0.5 permitted under Section 4-3.5 of the Code.

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

1. Will there be an undesirable change in the character of the neighborhood and will there be a detriment to nearby properties? The residence is located in a Residence B district. In order to further the goal of preserving neighborhood quality, no more than two families may live in a dwelling in such a designated district. The floor plan provided (Drawing A-1 dated 9/14/09; the “Drawing”) suggests changes to the existing configuration that would prevent the use of the premises by this applicant or a subsequent owner of the property for the housing of an additional family in the dwelling. The Drawing shows the removal of all kitchen appliances, plumbing fixtures, court tops and cabinetry, as well as the cap off of all plumbing lines and power supplies into walls in the northwest corner of the premises’ basement floor. The Drawing also shows the removal of the existing tub/shower in the existing bathroom on that floor, as well as the capping off of all plumbing lines into the wall. The Drawing further shows the removal of the existing walls and door separating the new family room from the former bedroom along the western half of the basement area. We find that the changes proposed by the applicant, once implemented, would remove the potential to create an undesirable change in the character of the neighborhood and detriment to nearby properties.
2. Can the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue other than an area variance? The Board finds that the proposed modifications to the premises, once implemented, would remove the potential detriment to nearby properties. Thus, while the variance requested still results in the maximum FAR being exceeded, the attendant threat of creating a space for a third living unit in the premises has been sufficiently reduced.
3. Is the requested variance substantial? While the requested increase of floor area ratio is more than 20% above the 0.5 FAR permitted under the Code, the proposed modifications to the basement as set forth in the Drawings reduce the potential for abuse caused by the habitable living space in the basement.
4. Will the proposed variance have an adverse impact on the physical or environmental condition in the neighborhood? We feel that with the implementation of the proposed modifications set forth in the Drawing, the potential for abuse due to the amount of gross floor area of the dwelling in relation to the overall floor area of the lot allows has been significantly reduced, thus avoiding an adverse impact on the physical/environmental condition of the neighborhood.
5. Was the alleged difficulty was self-created? We find that it the alleged difficulty was not self-created.

Accordingly, it is recommended that the requested area variance be granted subject to the conditions that: (1) the modifications set forth in the Drawing are fully implemented within 2

months of today's date; and (2) that the premises are subject to and pass an inspection upon completion of the modifications.

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

Chairwoman Rosell introduced and welcomed the newest member of the Zoning Board, Mr. John Palladino. Mr. Palladino has been a resident of Tuckahoe for over 40 years.

Item #5 138 Columbus Ave. Area Variance/Special Use Permit

Mr. Steve Accinelli, attorney representing the applicant, stated that the applicant would like to open a dog training facility, which would provide dog training, boarding, day care, basic grooming, private and group training. The property consists of 8600 sq. ft. all on one floor. A reception area, two training rooms, kennels, one car garage, and three additional parking spaces on the property for the four employees. There will be no exterior changes to the structure. The interior renovations will be to code. The facility will be entirely indoors, as a result there will be no nuisance situation, no noise, no fumes or similar conditions. The storage of waste will be collected and placed in medical bags and stored in the facility. A private waste collector maybe utilized. No activities for the dogs will be outdoors. The walls will have noise barriers similar to those used in concert halls. The noise level will be kept well below the legal limits. As for parking, there are many metered parking spaces surrounding the building which could be shared by the clients. The applicant plans to offer clients at home pick up service for the dogs, which will lessen the traffic flow. There should be no traffic congestion.

Mr. Jonathon Walko, architect for the applicant, noted that the building will have three areas. The public zone, the middle area which will house the training area and grooming, and the back area which will be the kennels and storage of the waste. There will be sound blankets on the ceiling and sound panels on the walls to muffle the noise. The air conditioner on the roof will be replaced. The plan is for 50 kennels of mixed sizes. There could possibly more than 50 if there is a demand. There is no state license for this type of school/training facility. No official sponsors or governing body for school licensing.

Member McBride voiced his concern regarding the use of the term 'school' rather than 'kennel'. Steve Accinelli noted that the term school is defined as a facility where training occurs. Bill Williams, Building Inspector, stated that the Planning Board sent this application before the Zoning Board to determine if this is a kennel or school.

Member Santos motioned to open the public hearing, seconded by Member Giordano and was carried unanimously by the board.

Public Comments

Dennis Lucente 130 Columbus Ave.
Joe Lucente Pleasant Ave.
John Riccoboni 146, 148 Columbus Ave.

Sam Sangiorgi 118 Pleasant Ave.

All the above residents voiced their opposition to this application. Each agreed that the following issues were concerns: the barking/noise level, air ventilation (the roof is street level to most surrounding homes), many untrained dogs walking passed their homes would be unsafe for their children, decrease in property value as future tenants would not be interested to live near this facility, the kennels would be in business 24/7, dogs walking to the facility leaving their waste on their properties, parking already congested, increase in traffic, dogs barking on the way to the facility and Assumption Church is nearby with their new Reflection Garden and funerals, weddings, the noise could be a problem.

Mr. Steve Tilly, architect, stated that his company has experience with recording studios and will sound proof this facility. A cork lined room will absorb the noise. The building will be sealed using sophisticated techniques to test for leaks. The building is masonry, so the noise will not vibrate. The windows will have secondary glass to seal the noise as well. The space will be mechanically ventilated.

Member Santos asked if a dog were to stay 3 – 4 days, they will not be given a chance for fresh air or outdoor exercise.

Mr. Tilly stated that there will be no outdoor activity for the dogs. The facility will be completely indoors.

The applicant stated that he has 10 years experience with training dogs. Dogs bark when they are confined. This facility will allow the dogs plenty of time to exercise and train. The facility will be quiet. An epoxy style floor will help kill germs and contain the noise. He noted that there will be an at home pick up service. The clients that do come to the training facility for private lessons would be scattered throughout the day.

Other facilities in the surrounding areas similar to this proposed facility are :

Uberdog -- West Hartford, CT
Dog Gone Smart -- Norwalk, CT
Best Friends – White Plains, NY

Bill Williams, Building Inspector, noted that the following items need to be submitted by the applicant

- a report from an acoustical engineer on sound
- Phase I on site environmental issues
- traffic study from a traffic engineer
- outline school vs. kennel
- money in escrow for the Village to send the above reports to consultants for review.

Member Palladino asked about the 24 hour ventilation air handlers and their proposed location.

Mr. Accinelli stated that the location was not determined yet.

The applicant will return next month.

Item #6 146, 150, 160, 233 Midland Ave. Extension Special Use Permit

Mr. William Null, attorney for the applicant, requested the reinstatement and/or issuance of the Special Use Permit and area variances previously granted, based upon there being no materially changed circumstances since the prior approvals were granted.

Chairwoman Rosell noted that the Board would prepare a resolution for 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.