

Minutes of: Nov. 10, 2010
Date Approved: Dec. 8, 2010
Date Filed/Village Clerk: _____

November 10, 2010
TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present: Kevin McBride Acting Chairperson
Philip Allison Member
John Palladino Member
Nicholas DiSalvo Member
Ronald Gallo Ad-Hoc Member

Absent: Gloria Rosell Member
David Kubaska Member
John Santos Member

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

Acting Chairman McBride announced the agenda as follows:

Item #1 Approval of Minutes of the October 13, 2010 meeting.
Item #2 24 Oak Ave. Return
Item #3 138-140 Columbus Ave. Return
Item #4 1 Midland Ave. Adjourned
Item #5 36 Midland Place Adjourned

Item #1 Approval of Minutes from the October 13, 2010 meeting
Motion by Chairman McBride to approve the minutes of the October 13, 2010 meeting was seconded by Member DiSalvo and approved by the Board with a vote of 3-0, with Member Allison and Member Gallo abstaining.

Item #2 24 Oak Ave. Return
The applicant was not present.

No Public Comments

Member Allison motioned to close the public meeting, seconded by Member Gallo and carried by the Board with a vote of 5 -0.

Member Allison offered the following Resolution for the applicant Gregory Colbert, 24 Oak Avenue, Tuckahoe, NY:

Background and Findings of Fact:

The Applicant is the owner of the Premises commonly known as 24 Oak Avenue, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 32, Block 9 and Lot 7 (the "Premises"). The Premises is currently improved by a two story one-family dwelling that fronts on the public roadway commonly known as Oak Avenue. The overall lot area of the Premises is 4,028.9287 square feet. In addition, the Premises has a south side yard of 6 feet 1 inch, as well as an existing rear yard of only 29 feet 6 inches.

The Premises is located in a Residence B Zoning District that allows, in pertinent part, one-family dwellings as a permitted principal use. However, due to the lot's area and the proposed rear yard addition to the existing one-family dwelling, the floor area ratio ("FAR") proposed for the Premises is 0.6 in a Zoning District where the allowable FAR is 0.5.

The Nature of the Application:

The Applicant seeks to construct and add a rear yard addition to the dwelling existing on the Premises. The Applicant seeks to expand the existing non-conforming dwelling by adding a rear yard addition over a full basement with a new kitchen, bathroom and family room. The Applicant also seeks to add a new master bedroom and bathroom. In connection with the Applicant's proposed rear yard addition, he seeks a series of area variances because the proposed rear yard addition to the dwelling does not conform to the requirements of the Zoning Ordinance of the Village of Tuckahoe.

The nature and degree of the variances sought are as follows:

	<u>Required</u>	<u>Proposed</u>
Lot Area:	5,000 square feet	4,028.9287 square feet
Side yard setback:	9 feet	6 feet, 1 inch
Rear yard setback:	25 feet	12 feet, 4 inches
Floor Area Ratio:	0.5% (allowable)	0.6%

In total, the Applicant seeks five area variances from this Board because in addition to the foregoing, the Applicant is also altering, enlarging and/or rebuilding the non-conforming structure located on the Premises. Thus, under section 5-1.6.3 of the Zoning Ordinance, the Applicant seeks a fifth area variance because he is increasing the degree of non-conformity of the non-conforming dwelling located on the Premises.

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 considering the benefit to the Applicant weighed against the detriments to the health, safety and welfare of the neighborhood or community, this Zoning Board resolves to deny the application as presented because the Applicant has failed to satisfy the five-factor test.

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

The Applicant overlooks that the resulting lot, as proposed, will result in substantial and significant deviations from the requirements of the Zoning Ordinance. The resulting lot would be vastly substandard under any measure. The lot is required to be 5,000 square feet in size yet it is only 4,028.9287 square feet in size. One of the goals of the Village Zoning Ordinance was to increase lot size, thus reducing the overall number of lots and consequent denseness in the Village. The Applicant's proposal runs afoul of this goal. Notably, the Premises' lot area as existing is non-conforming in that it is only 4,028.9287 square feet. The rear yard addition, as proposed, on this substandard lot only exacerbates a condition that is already non-compliant with the Zoning Ordinance.

Moreover, the creation of insufficient yards impacts the surrounding community because the use of the Premises grows more dense, leaving insufficient buffers between adjacent properties. Specifically, as this application is concerned, the insufficient side yard and rear yard would result in a structure occupying more than the allowable space on the subject Premises.

Additionally, the FAR is exceeded in that 0.5 is the allowable FAR but the Applicant proposes an FAR of 0.6. The exceeded FAR impacts the surrounding community in that the dwelling as proposed covers more than the permissible amount of space, thus reducing the open space and buffers for the Premises.

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

Without question, the benefit sought by the Applicant can be achieved by an alternative in that the Applicant can reduce the size of the proposed rear yard addition, thus reducing the scope, impact and degree of deviations from the Village Zoning Ordinance. The Applicant has not sought a smaller rear yard addition in light of the number, degree and scope of the variances sought. The simple alternative for the Applicant would be to propose a smaller rear yard addition but the Applicant has failed to do the same, thus leaving the Zoning Board no choice but to deny the application based on the number, degree and scope of the variances sought.

3) Whether the requested variances are substantial?

Indeed, the variances are substantial here. As the Premises is concerned, the lot area variance, as requested, is an approximate 20% deviation from the Zoning Ordinance's requirements. The side yard setback variance seeks an approximate 33% deviation from the Zoning Ordinance's requirements. As the rear yard is concerned, the Applicant seeks over an approximate 50% deviation from the Zoning Ordinance's requirements. Finally, with respect to the FAR variance, the Applicant seeks an approximate 20% deviation from the requirements set forth in the Zoning Ordinance.

This Board has correctly utilized the Zoning Ordinance's standards as the means to reach its conclusion on this prong of the five-factor test. The Zoning Ordinance is indisputably the governing regulation concerning the substantiality of the requested variances. This Board should not be compelled to perpetuate and exacerbate non-conforming uses in light of their contravention of the Zoning Ordinance's requirements.

Finally, the Applicant is seeking upwards of five variances here. The number and degree of the variances are substantial in light of the present application.

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

If the variances were granted, it would effectuate the creation of substandard lots having insufficient lot area, insufficient side and rear yards, and an FAR that exceeds the permitted limitation. Density is increased because smaller sized lots become subject to more construction, leaving insufficient open space. The Village Board of

Trustees recognized the density issue in the Village and specifically amended the Zoning Ordinance in response to that issue. The Village Board, in part, amended the Zoning Ordinance so as to provide for greater FAR limitations in an attempt to decrease the density issue that was occurring in the Village. The Board of Trustees recognized the physical conditions in the Village and the need to address density as an issue. A grant of the variances here would be contrary to the amendments to the Zoning Ordinance. Thus, the physical and environmental conditions in the neighborhood would be negatively affected by the granting of the variances.

5) Whether the alleged difficulties were self-created?

The Applicant purchased and continually used the Premises as a one-family dwelling without the benefit of the rear yard addition. The Applicant has not pointed to any proof demonstrating that he possesses some right, vested or otherwise, to add the rear yard addition, as proposed, to the Premises. Hence, the difficulty here is self-created. The Applicant contends that he purchased the Premises in its present condition, and that the Premises is unique. However, despite that contention by the Applicant, that does not change that the difficulty here was, in fact, self-created. Undeniably, the Applicant purchased a Premises that is non-conforming in several respects. Thus, the Applicant's difficulty can only be said to be self-created.

Conclusion:

Based on the foregoing, it is resolved that the application of Gregory Colbert is denied. The Applicant is notified of his right to appeal this decision in accordance with the New York Civil Practice Law and Rules.

Member Allison motioned to approve the Resolution, seconded by Chairman McBride and upon roll call was carried with a vote of 5 -0.

**Item #3 138-140 Columbus Ave. Return
Chairman McBride announced that the public hearing was still open for this application.**

Sy Gruza, attorney representing the applicant noted that this application is the for an Auto Body Shop to be relocated to this address. He noted that he submitted the requested Phase I and II of the Environmental Assessment Report. He submitted revised plans which depicted the site for the air compressor and the storage area of the tenant, Chrysler. In addition the plans include removing the existing curb cut and replacing it with new curbstone. It displays the elevation of the façade with new brick to match the existing size and color of the original brick.

Chairman McBride asked about the approximate duration of the tenant Chrysler.
Mr. Gruza noted that Chrysler should continue leasing the space for an additional 12 -18 months.

Member Allison asked if Mr. Gruza would review the Environmental Protection Agency rules and regulations and how the applicant will accommodate them.

Mr. Gruza stated that the proposed paint booth is a new upgraded version. The EPA requires that the paint booth have 98% efficient capture rate, this new paint booth has over a 99% rate. The solvent or Volatile Organic Compounds content now measures 10%, compared to years ago when it was 84%. The emissions, therefore are diminimous. There will be 55 gal. drums located in the shop for the immediate disposal of any rags or materials with any solvent material on it to prevent any additional fumes. These drums will be set on spill contaminant pallets as a precaution. A private carting company will remove the drums. There will be a fireproof cabinet to store all flammable materials. In addition, the exhaust fan which will be placed on the roof will be turned away from the nearby residences to reduce noise.

Member DiSalvo asked about the hours of operation.

Mr. Gruza stated the following: M-F 7:30am – 6:00pm
Sat. 8:00am - 3:00pm
Sun. Closed

No Public Comments

Chairman McBride motioned to close the public meeting, seconded by Member DiSalvo and carried by the Board with a vote of 5 -0.

Chairman McBride noted that the resolution will be prepared for next month's meeting.

Member Gallo asked John Cavallaro, Village Attorney, for the differentiation between an auto repair shop and an auto body shop.

John Cavallaro stated that there is no distinction between the two; the titles are used synonymously.

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.