

Minutes of: Feb. 13, 2019
Date Approved: March 13, 2019
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February 13, 2019

TUCKAHOE ZONING BOARD AND BOARD OF APPEALS
TUCKAHOE VILLAGE HALL – 7:30pm

Present:	Tom Ringwald	Chairperson
	John Palladino	Member
	David Scalzo	Member
	Nathan Jackman	Member
	Anthony Fiore Jr.	Member ad hoc
	Christopher Garitee	Member

Also in Attendance:

Bill Williams	Building Inspector
Gary Gjertsen	Village Attorney
Noah Levine	BFJ Planning Consultant

Pledge of Allegiance

Chairman Ringwald announced the agenda as follows:

Item #1	Approval of minutes from the January 9, 2019	
	Regular Meeting	
Item #2	82 Wallace St.	Return
Item #3	242 White Plains Rd.	Return
Item #4	47 Rogers St.	Adjourned
Item #5	38 Pleasant Place	Adjourned

Item #1 Approval of minutes from the January 9, 2019 Regular Meeting
Chairman Ringwald motioned to approve the minutes from the January 9, 2019 meeting, seconded by Member Jackman and carried with a vote of 5 – 0, with Member Scalzo abstaining due to his absence.

Item #2 82 Wallace Street Return

Mr. Steven Accinelli, attorney for the applicant, noted that there were no changes made to the proposed plans.

Member Fiore reminded the applicant to be mindful to keep the property cleared of all debris and streets cleared. The neighbors do not want to get flat tires. Please get the necessary permission to use the fire hydrants.

Mr. Accinelli agreed.

Chairman Ringwald stated that the applicant must be careful of protecting the village trees.

Chairman Ringwald motioned to close the public hearing, seconded by Member Jackman and carried unanimously.

Member Scalzo offered the following SEQR resolution in the form of a motion:

RESOLUTION ADOPTING A NEGATIVE DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT FOR APPROVAL OF ZONING VARIANCES AS PART OF A PROPOSED MULTIFAMILY BUILDING AT 82 WALLACE STREET.

WHEREAS, the Tuckahoe Village Department of Buildings received a building permit application received on December 20, 2018 for a multifamily building at 82 Wallace Street.

WHEREAS, the “Proposed Action” is the request of four variances as part of a plan to redevelop the existing site as multifamily housing. The proposed building will include 32 units, 48 parking spaces, 45 of which are in an enclosed garage, and landscaped areas and screening along the frontages of the property along Wallace Street, Maynard Street and Limekiln Road.

WHEREAS, based on the Environmental Assessment Form (“EAF”), submitted by the Applicant, and any supplemental materials thereto, the Zoning Board of Appeals has determined that there will be no significant environmental impacts from this action as it concerns the proposed Project.

WHEREAS, the approval of the Proposed Action is classified as an Unlisted Action under Part 617 of the State Environmental Quality Review Act (“SEQR”); and

WHEREAS, under Tuckahoe Village law, the Zoning Board of Appeals is the only entity that can grant a zoning variance.

NOW, THEREFORE, BE IT RESOLVED, THAT:

Based on the information included in the EAF submitted by the Applicant, and any supplemental materials thereto and the criteria contained in the State Environmental Quality Review Act and its implementing regulations, the Zoning Board hereby adopts the attached Negative Declaration for this Unlisted Action under the State Environmental Quality Review Act.

This resolution shall take effect immediately.

Member Jackman seconded the motion and upon roll call was carried with a vote of 5 – 0.

Member Scalzo offered the following resolution in the form of a motion:

AREA VARIANCE RESOLUTION

**The application for AREA VARIANCE requested by Orange World LLC
whose address is 82 Wallace Avenue, Tuckahoe**

Sec 34, Block 4 Lots 1,2,5,6,7,8,9,10

for relief from the following sections of the zoning code:

1. 4-4.3 Lot Area Depth – provides that dwelling units based on the land area provided shall not be less than 950 square feet. The applicant proposes 32 units for an average of 848 square feet.
2. 4-4.4.3 - Rear yard – there shall be a rear yard with a minimum depth of 30 feet and the applicant is proposing 10 feet

3. 4-4.6 Maximum coverage – the sum of all arears covered by principal building shall not exceed 35% and the applicant is proposing 49.8%.
4. 4-4.7 Floor Area Ratio – The FAR for Apartment 3 district is 1 and the applicant is proposing 1.4.

The following plans/drawings were taken into consideration and relied on by this Board in making its determination:

DRAWINGS # A-001 A-202 A-100 A-110 A-111 A-112 A-200 A-201 A-300

DATED 5/3/18 STAMPED RECEIVED 12/20/18

DISCUSSION

Applicant, Orange World LLC, is proposing to construct a new 32 unit residential building located at 82 Wallace Avenue in Tuckahoe. There are currently several vacant dilapidated structures that exist on the premises. A majority of these structures are built to the front property lines leaving no setback as they were grandfathered in by previous codes. These structures have become eyesores to the neighboring residential properties and clearly improvements need to be made to this property.

The applicant has been before this Board for numerous months attending both public hearings and work sessions. It should be noted that applicant's original proposal called for 52 residential units with an average square footage of 522 based on the lot size. Most importantly the original proposal called for a substantial parking variance. After receiving comments from this Board and the Village's Planner, Noah Levine of BFJ Planning, the applicant has reduced its units to 32 and has done away with the necessity of a parking variance.

Further, the overall design of the building has changed dramatically based on the comments from this Board. The original proposal offered a box shaped building and now the proposal is for a tiered building lessening the overall visual impact of the surrounding properties.

There has been little to no opposition for the project as the several residents that have spoke at the public hearing realize the need for this premises to be improved as the current condition is unsightly. We also note the owner to the north, who this project arguably impacts the most visually, is in favor of the project.

As stated previously, the Village's Planner, Noah Levine, has submitted comments to this Board by way of a memo dated January 9, 2019. Said memo raised no concerns as to the amended project and was favorable as to the overall project and design. In particular, the memo was in favor of the tiered structure of the building, the reduction of units and the fact that the project no longer requires a parking variance. The review further concludes that there will be little to no impact on the traffic in the area.

Based on the above and the analysis below it is determined by this Board that the area variance is granted as the benefit to the applicants of the area variance outweighs the detriment to health, safety and the welfare of the neighborhood. We have applied the 5-prong test as follows:

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: As stated previously there are currently multiple vacant dilapidated structures that have no setbacks that exist on the property. The proposed amended plan with a new structure with setbacks from the property will be greatly improve the neighborhood and surrounding area. The project calls for substantial green space while not taxing the parking or traffic in the surrounding area.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance: We agree with the applicant in that the existing property characteristics and property usage on all sides, as well as the applicable building code requirements, topography, site conditions and character of the neighborhood, the Applicant has achieved a desirable project that works and fits with the neighborhood and has minimized any adverse impact with respect to these considerations.
3. The requested variances are not substantial: The applicant, based on comments by this Board, has minimized the variances originally requested. Due to the topography of the project in that it is located on a steep hill and the size of the project, the fact that the applicant is only seeking 4 variances we find that the variances are not substantial in the number of variances requested and the size of the variances are not substantial. A majority of the existing structures have no setbacks, as they were a preexisting non-conforming. Thus, the setback variances now requested even though are not up to current code are far better then what is existing on the lot currently

4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that: Environmental conditions such as noise, parking, and traffic and negative aesthetics will not be increased as a result of this application. We have consulted with the Village's Planner and agree that the project will have little to no impact on traffic. Further, the amended application is not seeking a parking variance as parking, which is important to any project as parking is always an issue in the Village. Also, as stated previously the proposed project will be a substantial improvement to the neighborhood as to what currently exists are vacant dilapidated structures.
5. The alleged difficulty was self-created: Although the alleged difficulty was self-created, it is not fatal to this application.

Lastly, work under these variances must be commenced and diligently prosecuted within one year of the granting thereof, failing which such variances shall become null and void.

Member Jackman seconded the motion and upon roll call was carried with a vote of 5 – 0.

Chairman Ringwald thanked the applicant for working together and listening to the Board's input. The applicant could have built a big tall box as of right, but instead worked with the Board.

Item #3 242 White Plains Rd. Return

Robert Kerrigan, attorney for the applicants, noted that the applicants are longtime residents in the Village of Tuckahoe. The original zoning ordinance in 1960 was 5000sq. ft. The revised zoning ordinance was changed in July 1999 to 8500 sq. ft.

Member Jackman noted that the zoning code was changed for all the residents. Mr. Kerrigan noted that this property was an anomaly as it is the only property in the southern district of Tuckahoe that was affected by this change.

Member Scalzo asked if the applicant feels he was purposely discriminated against. Mr. Kerrigan noted that the applicant for 297 Dante Ave may have been. The goal of the Board at that time was to increase the green space. The plans that were

presented by Mr. Ruggliano, 297 Dante Ave., had more green space but that was not approved.

Mr. Kerrigan added that the applicant has a petition signed by 21 neighbors that support the application.

The Campanas would like to age in place. They have lived here for over 40 years.

Mr. Kerrigan stated that the Campanas were on their way to divide their property back in 1998. The architect submitted plans to subdivide the lot.

Mr. Campana, son of Mr. and Mrs. Campana and architect for the project, noted that he met with Mr. and Mrs. Beverly for 1.5 hours. He also received 21 neighbor's signatures whom are in support of the application.

He summarized some points: 242 fronts both Tara Way and White Plains Rd.

The curb cut will be on Rt. 22, the property is 22,000 sq. ft. and the utility analysis proves that the property was set up to be subdivided by end user.

His parents purchased the property in 1987 with the plans to subdivide. April 5, 1994 plans were drawn to subdivide with the new lot measuring 7114 sq. ft., which exceeded the minimum, by 2000 sq. ft.

In 1998, Joseph Crocco was hired to design a house and make the original house face Tara Way. The survey shows the subdivision line.

This was a well thought out long-term plan.

At no time, did the Building Inspector inform the Campanas or Mr. Crocco that the zoning code will change soon and their property will be affected.

Mr. Campana presented the minutes from the meetings held in 1999, where there was never a mention of the upcoming changes to the zoning code.

There was a notice in the Journal News 14 days prior to the meeting.

Mr. Campana noted that the current boards have meetings and forums for the public to voice their opinion. Back then, that was not the case.

The zoning code was proposed in one single meeting, with no public comments. A change of this magnitude had no public comments. The architect did not get informed at the time.

This lot is the largest lot in the southern district and is the only lot that is large enough to subdivide. This is the only lot that this local law could be applied to.

Member Jackman voiced his concern regarding the intent of the Board when making the zoning change. He read from the minutes that the Board was concerned about a trend whereas residents could build a house between two existing houses.

Mr. Campana noted that the minutes stated that the Board did not want subdivisions to be a 'trend'. He added that in the entire 1990 decade, in 1992 there was one subdivision approved and in 1999 there were only two subdivisions in Residential B zone that were approved. Mr. Campana noted that he disagrees that there was a trend; this does not seem to qualify as a trend.

	Pre 1999	after July 1, 1999
Minimum Lot size	5000sq. ft.	10000sq. ft.
Rear/Front yard setback	25 ft.	35 ft.
Side yard setback	9ft.	20 ft.

These are unreasonable setbacks that are more restrictive than Eastchester and Bronxville. They are more restrictive than any municipality in Westchester.

Mr. Campana noted that the property could be subdivided into two 10000 sq. ft. lots, but the shape of the properties would be odd.

Mr. Campana noted that the Village of Bronxville is located 200 yards south on Rt. 22 and Eastchester in 100 yards north on Rt. 22.

Mr. Campana presented plans to construct a house on a 8088 sq. ft. lot, which is a larger lot size than 85% of the lots in this district.

Lot 6A will measure 12430 sq. ft., which will require 4 variances, 3 of which are non-conforming conditions; side yard, set back and street line. Also, a 20ft. rear yard setback to the shared property line. There is an open covered porch on the existing house, which measures 11ft. deep.

Lot 6B would measure 8088 sq. ft., which also requires 4 variances.

To create a balance, the applicant measured the neighbor's side yards. 240 White Plains rd. side yard is 9 sq. ft. and 244 White Plains Rd. is 11 sq. ft.

The 2200 sq. ft. proposed house will have a 30 ft. set back from Rt. 22, 12.2 ft. side yard, 11.4 ft. side yard, and 20.4 ft. rear yard.

Mr. Campana stated that he took aspects from both adjacent houses and incorporated them into the design of the proposed house. Placed garage on the south side, front door in centrally located and the house will be 1.5 stories and will conform to FAR standards and will conform to building height.

Mr. Campana noted that he consulted with the Tuckahoe Police Dept., to review 10 years of data on accident reports. There were 18 traffic accidents in that vicinity, whereas 14 of the accidents were vehicles bumping into one another due to the traffic light. There was no accident due to a vehicle making a U-turn. He also consulted with Frank DiMarco, DPW, whom provided a letter of support, as there would be no negative impact to the area.

Mr. Campana stated that 100% of the current homes in this district comply with the pre 1999 regulations and 0% comply with the July 1, 1999 regulations. The proposed house on 242 White Plains Rd. would be the only house in this district that has to conform to the new regulations.

Mr. Campana used 262 Dante Ave. as an example: The Rugglianos had a 14700 sq. ft. with a tiny house. They came to the Board after the zoning code was changed with a proposed lot with two modestly sized houses on a subdivision. They were denied the application. The Rugglianos decided to build a massive house as of right. Mr. Campana argued that if the Board was concerned about the loss of green space, this example proved that that was not the case at all.

This was an existing lot; therefore, the house can meet the pre-1999 zoning regulations, as all lots that existed prior to July 1, 1999 were to be subject to the 1960 ordinance. Any lot created after July 1, 1999 must comply with the new zoning ordinance.

Member Jackman questioned Mr. Gjertsen, if the 1999 zoning ordinance did pass quickly, in what manner would the public challenge the change?

Mr. Gjertsen, Village Attorney, noted that the applicant would have had to file an Article 78 against the Village.

The question now is, when did that right expire; as it has been 20 years.

Mr. Campana noted that his parents did not have the means nor the knowledge to combat this at that time.

Mr. Kerrigan noted that there is no statute of limitations for something unconstitutional. He asked to discuss this further with Mr. Gjertsen.

Member Scalzo questioned, if the law was passed to prevent applicants to do what you are proposing to do or is this a mere unintended consequence of a poorly conceived law.

Mr. Campana noted that this ordinance unintentionally is prejudice against his parents property, the law was not made because of this lot.

Member Jackman asked what the measurements were for the proposed house from structure to structure.

Mr. Campana stated 21.2 ft. on the south side and 22.4 on the north side.

Public Comments

Mike Beverly 240 White Plains Rd. submitted an entry note.

He stated that he strongly opposes this application. The new Zoning Code was established for a purpose. The purpose, according to the minutes dated June 14, 1999 was to limit density in residential areas, and to conserve property values.

He indicated that the proposed house would be built on top of his house.

He cited the 5-prongs to be considered. There will be a detrimental impact to his house next-door, as he purchased the home with the understanding that lot 6A was one lot. He voiced his concern that his property value will decrease if this house is built. He noted that this is a highly populated area. Prong #2 he noted that this requested variance is substantial and will create an undesirable change to the character of the neighborhood. Prong#3 the proposed variance will have an adverse impact on the physical or environment condition in the neighborhood as Lot 6B is primarily bedrock and drilling may have a detrimental effect on his house.

Mr. Beverly asked the Board to make their decision based on the current zoning laws. He noted that although he appreciates the effort of the signatures obtained by Mr. Campana, they are not representative of the people that will be directly affected by this house. The two houses adjacent to this house will bear the brunt. The major concerns are the density, property values and the traffic.

Paul Difucci 30 Winslow Circle noted that he appreciated the thorough work done by Mr. Campana, but his major concern is that there is a substantial runoff of water down to his area.

Mr. Campana noted that there would be a run off plan that will be prepared by a civil engineer.

Mr. Kerrigan noted that when the Beverly family purchased their home, the title company must have identified the adjacent lots with cross divisions from the original sub division.

Member Scalzo asked if Lot 6B was not developed due to the rock on the site.

Mr. Campana noted that it was his opinion that the developer, back in 1985, did not go through the expense of clearing the rock at the time. Also at that time, the interest rates were 16% so the developer made his money, placed the plans into effect to be subdivided but did not go further due to cost.

Chairman Ringwald asked if any lots in the development were subdivided. Mr. Campana said no.

Member Jackman asked about 246 White Plains Rd., the property measures 18900 sq. ft. and is in the same zone.

Mr. Campana noted that it is not 20000sq. ft. with a house on one end of the lot. It is 18900 sq. ft. with a house in the center of the lot. In the event of that property to subdivide, the applicant would need to demolish an existing home and build two homes.

Member Jackman asked Mr. Beverly if the primary concern regarding this project is the proximity of the proposed house or the bedrock.

Mr. Beverly stated that all of the above are his concerns. H added that he purchased his house with the understanding that 6A and 6B were one building lot.

Mr. Beverly added that he did not find any minutes in the binder of the preceding months prior to the Zoning Code change.

Mr. Campana noted that he FOILED the minutes for that time period and had all of them. He addressed Mr. Beverly's concern regarding the loss of light to that side of the house. He noted that the Beverly's Northside of the house is adjacent to his property. In addition, the sun rises in the East and sets in the West. He added that Mr. Beverly has 10 arborvitaes, which blocks their window already.

Mike Campana 21 Fairview Ave., son of Mr. and Mrs. Campana, as of right, this applicant can build a 10,000 sq. ft. house with only 9ft. setbacks. This proposed design is better for the Beverly's than a big house. He added that this proposed house would certainly fit into the character of the neighborhood. Regarding to the issue of density, the Village just granted approval for a 32-unit apartment building.

Tom Carpenter 36 Winslow Circle added that Winslow Circle has a substantial water problem that would need to be addressed as Lots 6A and 6B have the highest elevation. Possible holding wells would help. He added that he changed the position of his driveway from White Plains Rd. to Winslow Circle due to safety reasons.

Mrs. Beverly added that her house is not up for debate. She is making improvements to the property a little at a time as she and her husband are a young couple.

Larry Marciano 20 Winslow Circle noted that there is rock under the basement. The bottom of Winslow Circle has always had water/drainage issues.

Chairman Ringwald motioned to keep the public hearing open, seconded by Member Palladino and carried unanimously by the Board.

Gary Gjertsen added that this is a complex application and it is his opinion that a planning consultant be present to advise.

Mr. Campana noted that having a planning consultant present is a huge expense for the applicant. He noted that the same issues would be discussed.

Member Scalzo noted that the Board has to weigh the application in its totality or in pieces. There are also variances to the existing house that must be considered.

Member Jackman stated that his opinion was that a planning consultant was not needed.

Item #4	38 Pleasant Place	Adjourned
Item #5	47 Rogers St.	Adjourned

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.