

Minutes of: Apr. 10, 2019
Date Approved: May 8, 2019
Date Filed/Village Clerk:

April 10, 2019

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

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

Absent:	David Scalzo	Member
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Also in Attendance:

Bill Williams	Building Inspector
Gary Gjertsen	Village Attorney

Pledge of Allegiance

Chairman Ringwald announced the agenda as follows:

Item #1	Approval of minutes from the March 13, 2019	
	Regular Meeting	
Item #2	242 White Plains Rd.	Return
Item #3	283 Marbledale Rd.	Area Variance
Item #4	47 Rogers St.	Adjourned
Item #5	38 Pleasant Place	Adjourned

Item #1 Approval of minutes from the March 13, 2019 regular Meeting
Member Fiore motioned to approve the minutes from the March 13, 2019
meeting, seconded by Member Garitee and carried with a vote of 5 – 0.

Item #2 242 White Plains Rd. Return

Mr. Campana, design for the applicants, stated that there have been no changes to the submitted plans.

Chairman Ringwald noted that the public hearing was closed last month.

Chairman Ringwald offered the following resolution in the form of a motion:

AREA VARIANCE RESOLUTION

The application for numerous AREA VARIANCES requested by Matthew & Maria Campana whose address is 242 White Plains Road Tuckahoe

Sec 31, Block 2 Lot 7J

for relief from the following section of the zoning codes:

Lot 6A

4-2.3 Lot Area Width – Street line required is 101.60 feet. Applicant proposes 13 feet.

4-2.4.1 Front Yard – Front yard depth required to be 35 feet. Applicant proposes 27 feet.

4-2.4.2 Side Yard – Side yard requirement of 20 feet. Applicant proposes 16 feet.

Lot 6B

4-2.3 Lot Area Width – Lot area shall not be less than 10,000 square feet. Applicant proposes 7,493 square feet.

4-2.4.1 Front Yard – Front yard depth required 35 feet. Applicant proposes 25 feet.

4-2.4.2 Side Yard – Side yard requirement of 20 feet. Applicant proposes 9 feet.

4-2.4.3 Rear Yard – Rear yard depth requirement of 35 feet. Applicant proposes 25 feet.

BACKGROUND

Applicant owns a single family home located at 242 White Plains Road, Tuckahoe, NY. Applicant is seeking to subdivide his existing lot to create two lots, where the existing home will remain on one lot (6A) and a new home will be constructed on the other lot (6B). The existing

home would maintain its existing street frontage on Tara Way, while the new lot would have street frontage to White Plains Road but would need a new curb cut.

It should be noted that this Board does not have the authority to subdivide the lot as that would be in the purview of the Planning Board. However, if the proposed lot sub-division takes place, then the existing home will become non-conforming (via the front-yard, rear-yard and side-yard set-back requirements), and the proposed new lot and home will also not conform to the existing Zoning laws (based on lot size and front-yard, rear-yard and side-yard setback requirements).

DISCUSSION

This appeal is taken from a denial letter from the Tuckahoe Building Inspector dated April 20, 2018. This denial includes the necessary variances for the proposed newly constructed home as well as the existing home and lots that will become nonconforming. There was a subsequent denial issued by the Building Inspector, dated November 21, 2018, as the application was amended to drop the proposed newly constructed home from the application and the amended application only dealt with and showed the newly proposed nonconforming lot. However, this Board requested that the Applicant proceed with the information with the proposed home as this Board needed to know the potential consequences of the granting of a variance for a substandard lot. We are thus proceeding based on the original denial letter as that is what the Applicant appealed.

The instant application was initially heard by this Board on May 9, 2018 where this Board opened the public hearing. The Applicant and public were then subsequently heard on December 12, 2018, February 13, 2019 and March 13, 2019. The Applicant has submitted numerous documents and submissions to this Board and we have taken an extremely hard look at this application for almost a year.

There has been opposition to this application from the neighbor at 240 White Plains Road (directly adjacent to this property) and it can be argued that the granting of this application would impact them the most. Further, a number of neighbors from the properties located below the Applicant's property on Winslow Circle expressed concern of potential drainage issues, as Winslow Circle properties have consistent drainage problems currently and are worried that further development would make the drainage problems worse. Finally, during public comments, some neighbors argued that another curb cut and driveway on White Plains Road could make traffic conditions on a very busy road and intersection across from Immaculate Conception School and Church worse. The opinions of neighbors were not dispositive in reaching our decision.

The Applicant, through the presentation of the architect and attorney, has made several arguments for why their variances should be granted:

- (1) The Applicant is challenging Article 2 and Article 4 of the Zoning Code that was adopted by the Village Board in 1999 ("1999 Zoning Law") which created districts in the Village and restricted building in each district respectfully. The Applicant argues that prior to the 1999 Zoning Law updates ("1999 Zoning Law"), they would have

been allowed by proceed with this project by right. The Applicant argues that the 1999 Zoning Law should not apply to their project for several reasons:

- a. The Applicant argues that the 1999 Zoning Law updates were passed haphazardly and without proper notice or legislative care; and thus, should be ignored.
 - b. The Applicant argues that the 1999 Zoning Law updates were illogical (i.e. that the setback provisions were too large and not keeping with other communities); and thus, should be ignored.
 - c. The Applicant argues that the 1999 Zoning Law updates were “confiscatory, unreasonable, unlawful, unconstitutional, and [therefore should be] invalid.”
 - d. The Applicant argues that their lot had always been intended to be sub-divided; and thus, should be grand-fathered.
- (2) Further, the Applicant argues that even if the 1999 Zoning Law is valid, the variances should be granted as:
- a. The variances are minimal and beneficial to the neighborhood, or at least keeping with the character of the neighborhood.
 - b. The Applicant argues that their proposed project – a sub-division of the lot and addition of a moderately-sized house – would be more in keeping with character of the neighborhood; rather than a hypothetical, alternative project that would allow, by right, a much larger single-family home, or alternatively, a smaller house on the subdivided lot.

We carefully consider each of the Applicant’s arguments:

Argument 1.A: The 1999 Zoning Law was passed with improper legislative care

We find this argument not in the purview of this Board.

Argument 1.B: The set-backs created by the 1999 Zoning Law were too drastic

We find this argument not in the purview of this Board. However, we make two observations:

First, the Village meetings indicate that the Zoning Law update was passed to prevent the subdivision of lots, as stated in the minutes of the June 14, 1999 Tuckahoe Village Board of Trustees meeting: “There have been some concerns by the Village Board regarding a recent trend to demolish older houses on larger properties and subdivide the properties to construct numerous new houses with reduced yard size or to build such new houses in the side yards between existing houses. This activity has a detrimental impact on the quality and character of the neighborhoods as it reduces open spaces and creates or increases parking and traffic problems. The Village Board has therefore determined that it is important to limit density in residential areas and that the most equitable means to accomplish this purpose is to amend the zoning ordinance to increase minimum lot sizes, lot widths and setback requirements for newly created lots. It is the intention of the Village Board that the present lot requirements shall continue to apply to all lots that exist as of July 1, 1999 so that existing lots will not become nonconforming by virtue of the new requirements.”

Second, if the Applicant feels the setbacks are illogical, the Applicant has recourse by petitioning the Village of Tuckahoe Board of Trustees and seek an amendment to the Zoning Code.

Argument 1.C: The 1999 Zoning Law was “unconstitutional” and “confiscatory”

Again, we find this argument not in the purview of this Board and make two further observations.

First, any changes to a zoning code or village master plan create changes in economics based on the allowed use. For example, a switch from a single-family use to multi-family use or from an agricultural use to an industrial use, will change the value of the property and are a normal consequence of any zoning or planning requirements. There is no evidence that this particular property was singled out by the Board of Trustees.

Second, this Zoning Board often sees developers seeking changes in the underlying Zoning or Use of a property. In other words, it is normal course of business for developers to seek economic rents from the Zoning Board by asking for variances from the underlying code. It is our duty to grant these variances only in extreme cases, and when the proposed changes do not alter the intent of the Zoning Code or Master Plan.

Argument 1.D: Their Property should be Grandfathered

The Applicant argues that Section 2-4 relaxed standards should apply. The Applicant has not sought an interpretation of the Building Inspectors denial letter, which has denied the application based on Section 4-2 of the Zoning Code. Section 2-4 of the Zoning Code was the section that created the districts in the Village. There is a “grandfather” clause contained in Section 2-4.5 which grandfathered in landowners that had a permit issued before the enactment of the law.

This Board acknowledges that some historical plans show the lot subdivided into two parcels. We also note that the lot was likely not developed as the 6B area of the property consists of a large rocky hill, and thus, it was likely impractical and/or non-economical to develop in the past. Second, this Board acknowledges that the Applicant had in the past had at least two sets of drawings created for the subdivision of the lot and the addition of a second house on the property. For reasons only known to the Applicant, these projects never proceeded.

The 1999 Zoning Law update has now been in place for nearly 20-years. At this point, it is our opinion that the 1999 Zoning Law is valid, and that the property should not be grandfathered and exempt from the 1999 Zoning Law. Therefore, even if the Applicant were to have brought a proceeding for an interpretation, we would have agreed with the Building Inspector in that Section 2-4 would not apply.

We, therefore, based on the above are looking at the denial letter of Mr. Williams dated April 20, 2018 to the facts presented by the Applicant.

Argument 2.A: The Requested Variances are Minimal

It is determined, by this Board that the area variances requested are denied as the benefit to the Applicants of the area variance do not outweigh the detriment to health, safety, and the welfare of the neighborhood. We have applied the 5 prong test as follows:

1. There will be an undesirable change in the character of the neighborhood and there will be a detriment to nearby properties: The undesirable change would be an overcrowding situation. The Board finds the language outlined in the Village Board filing in 1999 related to amendments of section 4.1 specific in its intent to discontinue the ability of Applicants to “subdivide the properties to construct numerous new houses with reduced yards or to build such new houses in the side yards between existing homes.” It is clear the Zoning Code was put in place to prevent property owners from doing *exactly what is asked by this Applicant*; namely subdividing a lot and constructing a new building on the newly created substandard lot. Here, the Applicant is seeking to put a new home in their existing backyard.
2. The benefit sought by the Applicant can be achieved by some method feasible for the Applicant to pursue other than an area variance: The Applicant stated the need for a newly constructed home is for the benefit of the existing homeowners and as they age they are seeking a home that would be one level and easier for an elderly couple to live in. However, a solution would be for the Applicant to add on, as of right, to the existing home by extending the existing structure, or to outfit the existing home with features to make entry and egress easier.
3. The requested variances are substantial: The Applicant would need 7 variances all of which in this board’s view are substantial. The percentages are as follows:

Lot 6A

- a. Street Line – 87%
- b. Front Yard – 23%
- c. Side Yard – 20%

Lot 6B

- a. Area Width – 25%
- b. Front Yard – 29%
- c. Side Yard – 55%
- d. Rear Yard – 29%

It is clear on its face that the number of variances requested coupled with the degree of each of variance requested are substantial.

4. The proposed variance will have an adverse impact on the physical or environmental condition in the neighborhood in that: Environmental conditions such as possible drainage issues may impact the neighbors located at the properties below the Applicant. These concerns were expressed at the public hearing by the neighbors that reside below grade to the Applicant’s property. Further, the entrance to the proposed new home would be on White Plains Road. White Plains Road is a heavily used road and the location of the Applicant’s property is located at a bend in the road, which would make it difficult for vehicles exiting and entering the proposed new home.
5. The alleged difficulty was self-created: The Applicant owned this property for over 30 years, and has lived comfortably on the premises. They could have made a comparable

change as a matter of right for the first 10 years they owned the property. The law was changed in 1999 and no action was taken for almost 2 decades despite Applicant admitting they knew about the change of law within months of the enactment.

Argument 2.B The Requested Variances are Better than an Alternative Use

We find this argument not in the purview of this Board, as the Board cannot consider alternative, hypothetical or imaginary projects. We would further observe the Village Board of Trustees may have preferred larger homes on larger lots within the Village of Tuckahoe, or smaller homes with larger setbacks.

FINAL DETERMINATION

We acknowledge the effort expended by the Applicant and his professionals; however, in its simple form the Applicant is seeking to construct a home in his backyard, which is direct conflict with the intention of the law, enacted by the Village Board in 1999. The variances requested are too numerous and substantial, and as stated previously, the request for same are denied.

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

Item #3 283 Marbledale Rd. Area Variance

Mr. and Mrs. Labarbera stated that they were before the Board last year and received approval to finish the basement of their duplex.

They have now revised those plans to create two basements, one for each unit of the duplex. There will be a continuous wall built to separate the two basement areas. The original design for the wet bar will be decreased in size and a doorway will be installed to access the storage area.

The duplex in which the owners reside currently have 2.5 bathrooms; which will now have 3.5 bathrooms. The other unit currently has 2 bathrooms, which will increase to 3 bathrooms. The difference is that there is no bathroom on the first floor of this unit.

The footprint and the plans for the deck have not been changed from the original plans.

The only changes to the original plans is the continuous wall down the center of the basement to divide it into two units, a door for the storage area, the wet bar moved and to add one additional bathroom to each unit.

Chairman Ringwald noted that the board members would schedule a site visit. He requested that the applicant deliver the updated drawings to the Building Dept.

No Public Comments

Chairman Ringwald noted that the public hearing would remain open.

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.