

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
September 12, 2016 7:30 p.m.

PRESENT: Chairwoman Lawrence; Members Maloney, Jolly, Weisel and Rachlin;  
Counsel Christie Tomm Addona; Village Engineer Pennella; Secretary Liz Meszaros

Chairwoman Lawrence called the meeting to order at 7:34 pm

APPROVAL OF THE MINUTES – July 11, 2016

Mr. Maloney moved, seconded by Ms. Weisel, and unanimously carried, that the minutes of July 11, 2016 be approved as submitted.

CONSIDERATION OF RESOLUTION:

**Tarrytown Associates 1-7 Main Street – Tarrytown, New York**

Leo Napior of Harfenist Kraut & Perlstein, appeared on behalf of the owner.

Counsel Addona stated for the record that this is not a continuation of public hearing since the public hearing was closed at the April 11, 2016 meeting. Counsel Addona advised that a resolution was drafted and circulated to the Board in advance of this meeting for their review and comment.

Chairwoman Lawrence asked Village Engineer Pennella if the violations have been satisfied. Mr. Pennella confirmed that he is satisfied.

No one was present in the public to comment.

Counsel Addona read the resolution into the record:

**ZONING BOARD OF APPEALS RESOLUTION**

Application of Tarrytown Associates, LLC (the “Applicant”)  
1-7 Main Street, Tarrytown, NY 10591 (the “Property”)  
Sheet 1.40, Block 18, Lot 1  
RR (Restricted Retail) Zoning District

WHEREAS, the Applicant has appealed to the Village of Tarrytown Zoning Board of Appeals (“ZBA”) from a determination by the Building Inspector that the Applicant’s proposal to restore the third floor of a structure on the Property that was previously damaged by a fire to create two new residential apartments does not comply with Chapter 305 of the Village of Tarrytown Zoning Code (“Zoning Code”), and

WHEREAS, the Applicant now seeks a variance from Zoning Code § 305-39(C) to allow a lot size of 15,861 square feet where 21,000 square feet is currently required, and with the proposed two additional residential apartments 23,000 square feet will be required, thus requiring a variance of 7,139 square feet from the proposed minimum lot size, and

WHEREAS, a duly noticed public hearing was held on this application at the regular meetings of the ZBA on March 14, 2016 and April 11, 2016, and members of the public having had an opportunity to speak on the application, the public hearing was closed on April 11, 2016, and

WHEREAS, the Applicant had certain violations on property it owned within the Village of Tarrytown and therefore the ZBA was barred by Zoning Code § 300-138(F) from taking action on this application until the violations were remedied; and

WHEREAS, in accordance with NY Village Law § 7-712-a, the Applicant and the ZBA mutually agreed to extend the time for the ZBA to make a decision on this application until the existing violations were remedied; and

WHEREAS, the Applicant submitted a plan set by Crozier Gedney Architects, PC last revised October 26, 2015 consisting of a Site Plan & Scope (T-100), Proposed Floor Plan (A-100) and Proposed Elevation (A-200) (collectively referred to hereinafter as the “Approved Plans”), and

WHEREAS, the Applicant previously submitted the same application in or about 2014, but due to certain issues raised by the Village with respect to parking, the Applicant did not pursue the application at that time, and

WHEREAS, there were previously 16 apartments in the building prior to the fire in the 1970s, and when the Applicant’s predecessor-in-interest repaired the structure after the fire, they reconfigured the structure to add two apartments, but without repairing the entire third floor of the structure, and therefore while there is the same number of apartments as there was before the fire, there is still the unfinished portion of the third floor that has the capacity for the two apartments that previously existed there, and

WHEREAS, when the application was previously before the Village of Tarrytown Planning Board (“Planning Board”) in 2014, the Tarrytown Fire Department reviewed the application and provided comments and recommendations for the circumstances under which the project should proceed and the Applicant has agreed to comply with the Fire Department’s comments, and

WHEREAS, the Village of Tarrytown Planning Board, as lead agency pursuant to the State Environmental Quality Review Act (“SEQRA”), conducted a coordinated review for this Unlisted action and issued a Negative Declaration finding that there will not be the potential for any significant adverse environmental impacts from the proposed project, and

WHEREAS, in issuing the Negative Declaration, the Planning Board made specific note of the fact that the Applicant had submitted a Municipal Parking Lot Survey, which concluded that there is currently an excess of 40 or more parking spaces available within the nearby municipal

lots during peak hours, and the Applicant then supplemented the survey after the former Citibank parking lot was no longer available to the public, and still found that there were sufficient vacant spaces available in the two municipal lots that are within walking distance of the Property, and

WHEREAS, the Planning Board noted in the Negative Declaration that the Applicant intends to contribute a total of \$12,500 to the parking fund for the 5 parking spaces required that cannot be provided, as is permitted by Zoning Code § 305-63(C)(7)(d), and

WHEREAS, the Applicant's neighbor, the Music Hall, submitted a letter to the ZBA in support of the variance application, and

WHEREAS, to the extent members of the public expressed concern with the proposed project with respect to parking and fire safety, these issues have been addressed by the Applicant and the Village, and

WHEREAS, after duly considering all the proofs and evidence before it, this Board determines as follows:

IT IS HEREBY RESOLVED, the findings of this Board are as follows:

There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variances requested. The Property has been operating with 16 residential apartments for several decades and an additional 2 apartments in a space that is already constructed and housed apartments prior to the fire, and for which there will be no need to increase the footprint or the exterior walls of the structure, will not cause an undesirable change in the character of the neighborhood. The Planning Board investigated the parking and found that there will be sufficient parking in the area to accommodate the increase in residents and the Applicant will comply with the Fire Department's comments related to the proposed redevelopment.

The benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking area variances. Due to the size of the lot, the Applicant cannot reconstruct the space that previously housed residential apartments without seeking a variance as the minimum lot size is contingent upon the number of residential units. With respect to parking, the Applicant did seek another means of achieving the benefit without seeking a variance by presenting to the Planning Board that this was an appropriate situation for the Applicant to pay into the parking fund in lieu of providing the requisite parking.

While the variance being sought over what is permitted is arguably substantial, the variance sought as compared to what is currently existing is not substantial.

The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Planning Board conducted a coordinated SEQRA review and issued a Negative Declaration, finding that there would not be any adverse environmental impacts on the area. There is sufficient

parking in the area to accommodate the additional residential units. The Planning Board also found that the restoration would enhance the neighborhood and is consistent with the objectives set forth in the 2007 Tarrytown Comprehensive Plan Update.

The hardship is not self-created to the extent that the lot is nonconforming and, even though the structure is already operating as a mixed-use development with 16 residential units, the required minimum lot area is directly correlated to the number of residential units proposed. In addition, the Applicant's predecessor-in-interest reconfigured the structure after the fire to include two additional apartments without reconstructing the apartments on the top floor where the exterior walls still remained. To the extent that the hardship is self-created because the Applicant seeks to construct more apartment units over what is permitted given the size of the lot, this factor is not determinative on whether the ZBA grants the application.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. The variance is granted solely in connection with the Approved Plans (all of which are attached to this resolution and incorporated by reference) and the variance is granted only to the extent that it is necessary to complete the proposed restoration of two residential apartment units on the third floor of the structure and within the existing frame of the structure. If any changes are made to the Approved Plans (other than those deemed by the Building Inspector to be minor field changes), this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances.
2. The variances are granted subject to the property continuing as its current use of a mixed use retail/residential structure with various retail uses on the first floor and a proposed 18 residential apartments on the second and third floors.
3. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the plans or construction or any other phase of the project.
4. This variance is granted subject to the accuracy of the representations made by the Applicant to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the ZBA the variance grant may be deemed void, in which case the Applicant must make a new application to the ZBA for approval of any and all variances.
5. The Applicant shall procure a building permit from the Building Department within one (1) year of the date of this Resolution or from obtaining site plan approval, whichever is later, and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance grant becomes void; and any request

for extending the time within which to obtain said building permit shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.

6. The failure to observe and perform these conditions shall render this resolution invalid.

Mr. Maloney moved, seconded by Ms. Weisel, with Ms. Rachlin abstaining, that the parking variance be granted. All in favor. Motion carried.

**CONTINUATION OF PUBLIC HEARING –**  
**From the Valley LLC – 24 Main Street – Tarrytown, New York**

David Starkey, Managing Agent of Sweetgrass Grill, 24 Main Street, is before the Board to seek a variance to construct a storage area in the rear of the existing building to allow for better food preparation and storage in the kitchen.

Chairwoman Lawrence advised that the Board was not able to act on this application until the shed had been removed from the property. Village Engineer Pennella confirmed through inspection that the shed was removed today.

Chairwoman Lawrence asked if Mr. Starkey had any comments to the Board.

No one was present in the public to comment.

Mr. Jolly asked about the new shed. Mr. Starkey said that instead of building an extension they will install an exterior walk-in and attach it through the back of the wall.

Counsel Addona asked if new plans were submitted. Mr. Pennella confirmed that new plans were submitted and reviewed and that he was satisfied with the plan.

Chairwoman Lawrence asked what a walk-in is. Mr. Starkey explained that it was a large refrigeration unit. Mr. Pennella said the walk-in comes in panels, is insulated and has temporary footings and that it is a floating structure which can be relocated should the applicant decide to move.

Chairwoman Lawrence moved, seconded by Mr. Maloney, to close public hearing. All in favor. Motion carried.

Counsel Addona advised that a resolution was drafted and circulated to the Board in advance of this meeting for their review and comment.

Counsel Addona read the proposed resolution:

**ZONING BOARD OF APPEALS RESOLUTION**

Application of From the Valley, LLC (the “Applicant”)

24 Main Street, Tarrytown, NY 10591 (the “Property”)

Sheet 1.70, Block 34, Lot 10

RR Zoning District

WHEREAS, the Applicant is the lessee of the Property and has appealed to the Village of Tarrytown Zoning Board of Appeals (“ZBA”) from a determination by the Building Inspector that the Applicant’s proposal to construct a 136.5 square foot storage area in the rear of the restaurant operating on the Property does not comply with Chapter 305 of the Village of Tarrytown Zoning Code (“Zoning Code”), and

WHEREAS, the Applicant now seeks a variance from Zoning Code 305 Attachment 10 of 3.6% (177 square feet) to have a principal building coverage on the lot of 53.6 % (2,638 square feet) where a maximum of 50% (2,461 square feet) is permitted and 50.6% (2,495 square feet) is currently existing on the Property, and

WHEREAS, a duly noticed public hearing was held on this application at the regular meeting of the ZBA on July 11, 2016, and continued to the ZBA’s regular meeting on September 12, 2016, and members of the public having had an opportunity to speak on the application, the public hearing was closed on September 12, 2016, and

WHEREAS, the ZBA was precluded from taking action on this application at its July 11, 2016 meeting pursuant to Zoning Code § 300-138(F) because there was an existing violation on the property as the prior tenant had installed a shed in the rear of the Property without obtaining the proper permits and approvals from the Village and the State Department of Health, and

WHEREAS, the ZBA having been advised by the Village Engineer/Building Inspector that the illegal shed had been removed, and as a result the violation on the Property had been remedied, the ZBA can now take action on the application, and

WHEREAS, the Applicant submitted a signed and sealed survey of the Property prepared by Stephen F. Hoppe, L.S. dated September 30, 2015, a signed and sealed Site Plan, Partial Floor Plans & Exterior Elevations prepared by Luis Saiz, Jr. dated February 5, 2016 (ZB1) and photographs of the Property and the location of the proposed storage area, and

WHEREAS, after duly considering all the proofs and evidence before it, this Board determines as follows:

IT IS HEREBY RESOLVED, that this is a Type II action under the State Environmental Quality Review Act, and therefore no further environmental review is required, and

IT IS HEREBY FURTHER RESOLVED, the findings of this Board are as follows:

There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variances requested. As part of the proposal, the Applicant removed an existing, larger storage shed that existed in the

location of the proposed storage area for years. In addition, the storage area will be placed in the rear of the property where it will not be visible from the street/sidewalk and front of the Property. The Applicant also represented that the proposed storage area will create increased efficiency of the restaurant operation, which will result in fewer employee trips outside and will therefore benefit those neighbors to the rear of the property by reducing any potential noise associated with this activity.

The benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking this area variance. The existing shed was constructed by the prior tenant due to the inadequacies of the existing kitchen and storage areas to service a restaurant's needs and the only way to remedy that is to install an additional storage area on the property, which will result in going over the maximum building coverage and thereby require a variance.

A variance of 3.6% over what is permitted (177 square feet on a 4,922 square foot lot) and 3% over what is existing is not substantial.

The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The proposed storage area will replace an existing, larger shed and will more efficiently serve the needs of the restaurant to reduce the number of times employees have to go to the storage area, thus reducing any potential noise impacts associated with the restaurant's operation. In addition, the proposed structure will be used as a storage area and therefore will not create any adverse impacts related to smoke, gas, odor, heat, fumes, vibrations or flashing lights. The Applicant has also represented that the storage area will not generate waste water or sewage, will not require a water source, and will reduce the likelihood of insects, vermin and other vectors by creating a secure inside space for perishable goods.

The hardship is not self-created to the extent that the existing shed was on the property when the Applicant began leasing the property and the shed was on the property for the purpose of providing supplemental space necessary for a restaurant to operate. The Applicant proposes to replace that shed with a smaller storage area.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. Except as otherwise set forth in the below conditions, the variance is granted solely in connection with the plans submitted by the Applicant to install the proposed 136.5 square foot storage area. If any changes are made to the Approved Plans (other than those required herein and those deemed by the Building Inspector/Village Engineer to be minor field changes), this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances.
2. To the extent the Applicant has not already done so, the Applicant shall submit revised plans for the review and to the satisfaction of the Village Engineer/Building Inspector that alter the existing proposal only to the extent that they depict the

- proposed storage area as not having footings and not being permanently affixed to the ground.
3. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the plans or construction or any other phase of the project, including, but not limited to, the New York State Department of Health.
  4. The Applicant shall comply with all other applicable federal, state and local rules and regulations.
  5. This variance is granted subject to the accuracy of the representations made by the Applicant to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the ZBA the variance grant may be deemed void, in which case the Applicant must make a new application to the ZBA for approval of any and all variances.
  6. The Applicant shall procure a building permit from the Building Department within one (1) year of the date of this Resolution or one (1) year from obtaining the last required land use board approval (i.e. planning board or architectural review board), whichever is later, and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance grant becomes void; and any request for extending the time within which to obtain said building permit or complete said work shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.
  7. The failure to observe and perform these conditions shall render this resolution invalid.

Chairwoman Lawrence asked if the Board had any other questions.

Mr. Jolly asked for clarification about the size of the shed; he thinks there is an inconsistency in the numbers in the resolution. Counsel Addona explained that what Mr. Jolly is referring to is the building coverage. Village Engineer Pennella said they are already over existing coverage, but the shed itself is smaller than what they what was proposed before. Counsel Addona explained that the 50.6% is with the removal of the shed that was not supposed to be there in the first place.

Mr. Maloney moved, seconded by Chairwoman Lawrence, that the variance be granted. All in favor. Motion carried.

#### ADJOURNMENT

Mr. Jolly moved, seconded by Chairwoman Lawrence, and unanimously carried, that the meeting be adjourned – 8:00 p.m.

Liz Meszaros, Secretary