

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
October 11, 2018 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Rachlin, Alternate Member Kim,
Counsel Addona; Village Engineer Pennella; Secretary Meszaros

ABSENT: Members Maloney, Jolly and Weisel

Chairwoman Lawrence called the meeting to order at 7:35 p.m.

Ms. Lawrence moved, seconded by Ms. Rachlin, to go into Executive Session to discuss legal procedures at 7:35 p.m. All in favor. Motion carried.

The Board members returned to the meeting room at 7:42 p.m.

Ms. Lawrence moved, seconded by Ms. Rachlin, to come out of Executive Session. All in favor. Motion carried.

APPROVAL OF THE MINUTES – September 12, 2018

In Mr. Maloney's absence, there is no quorum to approve the September 12, 2018 meeting minutes; therefore they will be considered at the next regular meeting.

Counsel Addona advised all applicants present that there are only 3 Board Members present this evening and that all three members would have to vote yes in order to receive Board approval. She advised the applicants that they may adjourn to the next meeting if they so desire in order to have more Board Members present to vote on their application.

CONTINUATION OF PUBLIC HEARING – The Scipioni Group – 41 John Street

This application was re-noticed for 2 parking spaces. The notice was made available to the public at the meeting. The mailing receipts were received by the Secretary.

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Thursday, October 11, 2018**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

The Scipioni Group, LLC
4 John Street
Tarrytown, NY 10591

For variances from Chapter 305 of the Village of Tarrytown ("Zoning Code") for renovations to a two family dwelling to attach garage to principal building, add a second story above the garage and expand attic to third story.

The property is located at 41 John Street in the Village of Tarrytown and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70, Block 36, Lot 8 and is located in the M-2 Zone.

The variances sought are as follows:

§305-32 M-2 Multi-Family Attachment 6:1	Required/ (Permitted)	Existing	Proposed	Variance Required
Column(10) Total Coverage all Buildings	(30%)	69% 1,865 SF	79.6% 2,154 SF	49.6%
Column(11) Minimum Front Yard Setback John Street	20 feet	1.6 feet	1.6 feet	18.4 feet
Column (11) Minimum Front Yard Setback W. Elizabeth Street	20 feet	8.0 feet	8.0 feet	12 feet
Column (12) Minimum Side Yard Setback	8 feet	0 feet	0 feet	8 feet
Column (13) Minimum 2 Side Yard Setback	18 feet	0 feet	0 feet	18 feet
Column (14) Min. Rear Yard Setback John Street	26 feet	1.3 feet	1.3 feet	24.7 feet
Column (14) Min. Rear Yard Setback W. Elizabeth Street	26 feet	0 feet	0 feet	26 feet
Column (18) Maximum Height	2 ½ Stories	2 ½ Stories	3.0 Stories	1 Story
305-31 A (3) (c) Minimum Distance Between Multifamily Structures—45 John St.	25 feet	1.3 feet	1.3 feet	23.7 feet
*305-63 D (1) Minimum Off Street Parking 1-2 Family (2 per D.U.)	4 spaces	2 spaces	2 spaces	*2 spaces

*** NOTE ADDITIONAL VARIANCE FOR 2 PARKING SPACES**

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard.

Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting. Additional approval is required by the Architectural Review Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: September 28, 2018

Nicholas Fusco, Architectural Engineer for ZappiCo Real Estate Management Co., appeared, representing the applicants, The Scipioni Group, also present. Mr. Fusco presented the revised plan and said that most of the variances requested are for pre-existing non-conforming conditions on the property. They have submitted revised plans which will keep the existing roof but they have added dormers on each side to bring light into the structure. The finished space has been removed. There will be a pull staircase to the attic which will be used for storage only.

Ms. Lawrence asked what will be over the garage. Anthony Scipioni, the owner, came up and said they are proposing a 2 bedroom apartment with one bath to be used by his in-laws.

Ms. Lawrence asked Mr. Fusco to go over the parking requirements. Mr. Fusco said that they are required to provide 4 parking spaces and currently they can only fit 2 cars in the garage. Mr. Scipioni added that he can fit three cars, but it is a tight fit. His in-laws do not drive, so they will not require a space. Ms. Lawrence expressed her concern that in the future this will change so there will be a need to provide parking for this unit. Mr. Scipioni advised Ms. Lawrence that he has resided at 4 John Street with his wife and family for 15 years. He has a parking space available to him at that residence, which he will be renting.

Ms. Lawrence asked about the need for the roof expansion. Mr. Fusco said the dormers have been installed to make the staircase more easily accessible. Mr. Pennella looked at the plan and advised that the headroom is 7 feet. Mr. Pennella also confirmed that they are not changing the ridgeline of the roof. He commented that the proposed dormers submitted in the revised plan submitted yesterday are still adding to the degree of non-conformity and will require a height variance. If the applicant wishes to keep this plan, it will have to be re-noticed for a height variance.

Ms. Lawrence said she is concerned if views will be affected. She advised the applicant that if they want to keep the plan as is, re-noticing will be necessary. She is also not pleased that they will be adding to the non-conformity.

Mr. Kim was concerned about the garage that will stick out and that they are bringing the façade closer to the street. Mr. Pennella said that the applicant has requested a variance for this in the notice.

Ms. Lawrence asked if anyone on the Board or staff had any questions or comments.

Ms. Lawrence would prefer that a vote not take place tonight in the absence of a full Board. She asked the applicants if they wanted to keep the dormers on the plan submitted, and if so, they would be required to re-notice for a height variance. Mr. Pennella also suggested that the dormer could be modified to not trigger the height variance.

Ms. Lawrence asked if anyone in the public would like to speak.

Timothy Leonard, of 11 John Street, came up and said he has lived across from the Scipioni's at 4 John Street for nine years. He has submitted a letter to this Board. He and his wife fully support this project and are excited about the improvements that are being made on the block. From a parking perspective, the parking is not as bad as it was when they first moved in. There were 8 people living in his house before they purchased it. He has seen a reduction in actual cars parked on the street since the code

is being enforced. Ms. Lawrence read Mr. Leonard's letter into the record which is attached as "Exhibit A".

The applicants advised that they will move forward without the dormers and submit revised plans before the next meeting. Counsel Addona advised that they should submit plans as soon as possible so that they have time to review the plan.

Ms. Lawrence moved, seconded by Ms. Rachlin, to continue the public hearing. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING–Emilio Escaladas,PE,RA– 22 Glenwolde Park

Emilio Escaladas, PE, RA, appeared before the Board. He presented revised plans as requested by the Board last month which have further reduced the FAR. The revised plan shows the significant change to the roof line which dropped by 3 feet. This revision has resulted in an additional 100 s.f. reduction in FAR. Mr. Escaladas reminded the Board that at the last meeting, they were comfortable leaving the area to the right all green and removing the existing garage since this is the gateway to the community. He feels that the reduced mass of the house and the removal of the garage will make it a more harmonious setting and improve the overall aesthetics of the neighborhood.

Ms. Lawrence asked the length of the proposed house. Mr. Pennella said it was 51 feet, 6 inches. Mr. Escaladas said the average home in the area is about 60 feet. Ms. Lawrence asked what was going on top of the garage. Mr. Escaladas showed the second floor plan indicating a bedroom on top of the new garage.

Ms. Lawrence asked if anyone in the public had any questions. No one appeared.

Mr. Pennella said that they are 16% over of what is permitted in this zone for the FAR. He suggested to further reduce the FAR, perhaps they could pull up the retaining wall about 2 feet and raise the grade for the basement. Mr. Escaladas did not think the Planning Board would be amenable to this since it is so close to the wetlands (about 40 feet) and he has already submitted a wetlands report to the Planning Board.

Ms. Lawrence does not feel that the FAR has been reduced enough. She advised the applicant that he can request a vote tonight but that there is not a full Board, or he can wait for a full Board and perhaps try to decrease the FAR further. She would prefer to wait.

Mr. Kim said in terms of FAR, the intent is to prevent mass. He does not feel that the additional grading to reduce the FAR is necessary, however, in terms of mass; he asked if it is possible to lower the ridge on the garage roof to eliminate some bulk. It may not change the number, but he feels it will look better.

Mr. Escaladas will consider the Board's concerns and return next month. Ms. Lawrence advised the applicant of the meeting change next month to Tuesday, November 13, 2018 due to the Veteran's Day holiday.

Ms. Lawrence moved, seconded by Ms. Rachlin, to continue the Public Hearing. All in favor. Motion carried.

NEW PUBLIC HEARING – David Barbuti, RA – 15 N. Washington Street

The following public hearing notice was provided to the public at the meeting:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Thursday, October 11, 2018**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

David Barbuti, R.A.
150 White Plains Road
Tarrytown, NY 10591

For a use variance from Chapter 305 of the Village of Tarrytown ("Zoning Code") to permit a one-family dwelling on the second floor of the rear building structure.

The property is located at 15 North Washington Street in the Village of Tarrytown and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.40, Block 16, Lot 4 and is located in the M-1 Zone.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard.

Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: September 28, 2018

The mailing receipts were received and the signs were posted. Board members visited the property.

David Barbuti, RA, the applicant, representing the owner of 15 N. Washington Street, appeared before the Board to seek a use variance to allow for a dwelling unit on the second floor of the rear building structure. He advised the Board that the retail space on the ground level was granted use variances in the past for retail space for a clothing company in 1975 and an antique store in 1987. The property has 2 structures on it. The front structure has 3 family units and is 11,010 sf. The rear structure is a two story

structure with vacant retail on the ground floor and a one family dwelling unit on the top. The total square footage is approximately 4,576 s.f. Presently there are 6 parking spaces in the courtyard. Variances were granted for this parking in 1975 and 1986. Under their proposal they are creating two indoor parking spaces which are presented in the plan. Mr. Barbuti passed out correspondence from Mark Blanchard, Attorney, of Blanchard & Wilson, LLP, representing the owner. He advised that Mr. Blanchard should be here soon as he is at another Zoning Board meeting.

Counsel Addona referred to the letter provided by Mark Blanchard, Attorney of Blanchard and Wilson, LLP, representing the applicant. She advised that since it was just submitted, she and the Board members would need an opportunity to review it in more depth. A brief discussion took place to clarify the use of the building. Ms. Lawrence said it is not a single family, it is rather mixed use. Mr. Barbuti said it is a mixed use building, but he has use variances for the first floor and is asking for a legalization of a dwelling unit on the second level. Counsel Addona agreed and confirmed that are here to legalize the second floor to a one unit residential. Mr. Pennella said his denial letter said that that the applicant is seeking a variance to legalize a one family dwelling unit above the ground floor. Mr. Barbuti noted that when the property was purchased by his client in 2008, the apartment existed, but this apartment was not picked up at the closing.

Mr. Barbuti briefly read through the points in the criteria in the letter which is attached as "Exhibit B". With regard to the financial hardship, Counsel Addona asked how much they are currently renting the apartment for. Mrs. Gelormino, the owner, advised that they are currently renting the apartment for \$4,000 per month which also includes parking.

Ms. Lawrence asked if the 2 car garage will have tandem parking. Mr. Barbuti confirmed that it will be tandem parking for that unit only.

Counsel Addona asked if they have been trying to find a tenant for the retail space. Mrs. Gelormino advised that Hanks Alley vacated the space about 8 years ago and it has not been rented since. At this time, there is no planned use for the space.

Ms. Lawrence asked if anyone in the public would like to speak. No one appeared.

Ms. Lawrence moved, seconded by Ms. Rachlin, to continue the public hearing in order to give Board Members time to review the additional material submitted this evening and also have a full Board. All in favor. Motion carried.

ADJOURNMENT

Ms. Lawrence moved, seconded by Ms. Rachlin, and unanimously carried, that the meeting be adjourned – 8:45 p.m.

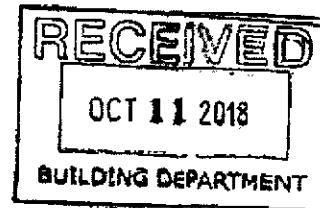
Liz Meszaros- Secretary

Exhibit A
41 John Street Application

Submission from Timothy Leonard and Juliana Aloia

October 11, 2018

Zoning Board of Appeals
Village of Tarrytown
One Depot Plaza
Tarrytown, NY 10591



Re: The Scipioni Group
41 John Street
Tarrytown, NY 10591

Dear Members of the ZBA,

We would like to offer support to our neighbors Anthony and Sara Scipioni in their request for various variances for their property on 41 John Street.

We reside at 11 John Street and have lived across the street from Anthony and Sara at their current residence at 4 John Street for the last nine years. Although their building at 4 John Street was renovated before we moved in, from what I understand, they put a lot of work and effort into renovating and preserving the beautiful architectural details of their building, centrally located at the corner of Main Street and John Street. We have no doubt that the same thoughtful and quality renovations will go into their new property at 41 John Street.

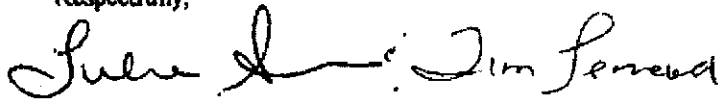
As you all know, Tarrytown's Main Street has become a tourist attraction for a multitude of reasons so maintaining, preserving and improving the surrounding areas will only increase its appeal. John Street, being one of the few residential streets right off of Main, has many people, including those tourists walking its sidewalks on their way to Main Street. Over the last few years as more young families (including my own) have moved onto John Street, there has been an influx of home renovations. Our weathered homes of the 1890s are being restored and brought back to life. As we know, good change brings about more good change. This helps all of us within the neighborhood and community.

41 John Street needs some major love. There are no changes that the Scipionis' can make to this home that will take away from our street. In fact, the house, in its current state is taking away from our street. Given the history of their prior renovations and having viewed their initial plans, John Street is slowly becoming the charming walk on the way to Main Street.

Regarding the parking situation, we have parking issues in Tarrytown, especially when the Music Hall has a show. That is another discussion for a different time. Making 41 John Street into a "legal" two-family will not hurt our current situation as nothing will actually be changing use-wise. In fact, now that the building will be owner-occupied, things could potentially be better. Many of the homes on John Street are multi-family and even our own single-family home at 11 John was once used as a multi-family before we purchased it. Our purchase most likely reduced some cars at the time.

The Scipionis are not only looking to renovate their home, they are looking to improve our street, neighborhood and community. We have no reservations about any of the changes and improvements that they will be making at 41 John Street. In fact, we look forward to its completion.

Respectfully,

Handwritten signatures of Juliana Aloia and Timothy Leonard. The signature on the left is 'Juliana Aloia' and the signature on the right is 'Tim Leonard'.

Juliana Aloia & Timothy Leonard

Exhibit B
15 N. Washington Street

Submission from Mark Blanchard, Attorney
Blanchard & Wilson, LLP

MARK W. BLANCHARD
PARTNER

KRISTEN K. WILSON
PARTNER
**Also admitted in CT*



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ALAN H. ROTHSCHILD
OF COUNSEL

DENNIS E.A. LYNCH
OF COUNSEL

October 11, 2018

VIA HAND DELIVERY

Village of Tarrytown Zoning Board of Appeals
One Depot Plaza
Tarrytown, New York 10591
Attention: Lizabeth Meszaros, Secretary to the Zoning Board of Appeals

**RE: Application for Legalization of Existing Second-Floor Apartment
By Use-Variance
15-17 North Washington Avenue
Application No.: 2018-6546**

Dear Chairman Lawrence and Members of the Zoning Board of Appeals:

The undersigned has been retained by 15 N Washington LLC ("Owner") to serve as land-use counsel for the above referenced application ("Project") wherein the requested relief is in the form of the legalization of a pre-existing non-conforming use of a second-floor residential dwelling by the granting of a use-variance to allow for the second-floor residential dwelling at 15-17 North Washington Avenue ("Property"). This letter is submitted in supplement to and in support of the materials previously submitted by David A. Barbuti, Architect PC.

Standards for Approval of a Use Variance Under Village Code Section 305-118

- a. **The Board must consider the issue of financial hardship and either there is a reasonable return on the subject property.**

Under the Village Code, this Board is empowered to grant a use variance from the strict application of the requirements of the code upon the satisfaction of certain conditions. *See, Village Code at § 305-118(B)(2). Also, see generally, Matter of Village Board of Village of Fayetteville v. Jarrold*, 53 NYS 2d 251 (1981). The first prong of the four-part test to grant a use variance requires the applicant to show that it cannot realize a reasonable return on the property as demonstrated by competent financial evidence. The Owner herein submits a copy of the property expense ledger, the entries demonstrate that the first prong of the test is satisfied. See, Ledger attached hereto as Exhibit A.

The documented evidence herein, as well as supplemental evidence this Zoning Board of Appeals ("Board") may require, will demonstrate that the Property's operating expenses for the calendar year were close to ninety-eight thousand (\$98,000.00) dollars. The Board will note that rental income for the entirety of the property, less the second-floor unit, was approximately eighty-five thousand (\$85,000.00) dollars. The rental from the second-floor unit was essential during the due-diligence period and was a deciding-factor in the decision to purchase the Property.

Therefore, without the income from the existing dwelling, the Property would run at a loss and prevent the Owner from realizing any return, let alone a reasonable return. The rental income from the unit in question is absolutely vital to the operation of the property and satisfies the first prong of the use variance test.

b. The Board must consider whether the alleged hardship is unique to the subject property and does not apply to a substantial portion of the neighborhood.

The Property is located within the M-1 Zone. The M-1 Zone allows multi-family residential uses as *permitted, as-of-right*, uses. Here, the Owner is not establishing an incompatible or perhaps noxious use within this residential zone, as many use-variances unfortunately tend to do. The Owner is not seeking to install a use that is an anathema to the local implementation of the Village's orderly zoning. The use is not in contravention to the comprehensive or master plans. The reality is quite the opposite. The M-1 District is a well-planned district with sufficient density to bring foot-traffic to the vibrant Tarrytown downtown. It is surrounded by other residential zones that fit with the well-established character of the neighborhood. Here, the undeniable compatibility of the second-floor residential dwelling cannot be overly stressed. The unique features of the Property, with residential units at the front of the site complemented by the brick building in the rear, make it well-suited for this Board to exercise its discretion to grant the variance. Certainly, the legalization requested herein is a far better option than the more intense uses permitted under *Code § 305-33(B)*.

This application is before this Board due to an interpretation that the second-floor dwelling is impermissible as an accessory use Under *Code § 305-33(B)*. However, this information must not be reviewed in a vacuum. As a list of far more intense permitted accessory uses, the Owner may install the following: home occupation or professional offices, day-care centers, a swimming pool or tennis courts. The storage boats, tents, trailers, recreational vehicles or mobile homes is allowed. Furthermore, one may raise food crops, install solar equipment or wind energy devices. Certainly, those uses that are more intrusive than the existing second floor dwelling.

Here, the request is to legalize a second-floor residential dwelling within a neighborhood that is full of residential buildings with second-floor dwellings. Enforcing the removal of the existing apartment would create a unique hardship in this multi-family neighborhood that allows structures with up to *four* dwelling units. Therefore, it is respectfully submitted that the second prong is satisfied here as to the existing second-floor dwelling

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- c. **The Board must consider whether the requested variance will alter the essential character of the neighborhood.**

The Project will not, in any way, alter the essential character of the neighborhood. The unique layout of the Property is such that the use in question is, for all practical purposes, unseen from North Washington Avenue. And as mentioned above but reiterated and stressed here, this application is to legalize a unit that has existed for at least twenty-years; however, that term of that existence is probably closer to forty-years. There is no parking deficiency here, there will be no construction required. This approval, if granted, will not result in a single site-improvement or building-permit related activity. To that end and on the contrary, the Owner has submitted evidence that the unit in question has been the benefit of previous building-permits and has passed prior inspections. There is simply no reasonable argument stating that the approval will alter the use of the neighborhood. Therefore, it is respectfully submitted that the third-prong has been satisfied.

- d. **The Board must consider whether the alleged hardship was self-created.**

In this instance the very-real hardship was not created by the Owner. The Property was purchased in an arms-length transaction with the deed and survey showing the existing buildings, within which the dwelling unit in question was established. There was valid certificate of occupancy and clean-title was passed from seller to buyer. In addition, and as mentioned above, the unit in question has been in existence for decades. "Hardship is self-created, for zoning purposes, where the applicant for a variance acquired the property subject to the restrictions from which he or she seeks relief". *Lim-Kim v. Zoning Bd. of Appeals of Vill. of Irvington*, 586 N.Y.S.2d 633, 635 (N.Y. App. Div. 1992). As mentioned above, this is an interpretation for permission to legalize a residential use within a district that allows multi-family residential housing.

Conclusion

It is well settled law that judicial review of a zoning board determination is limited to an examination of whether it has a rational basis and whether the determination is supported by substantial evidence. *See, Matter of Ifrah v. Utschig*, 98 NY 2d 304 (2002). It is respectfully submitted that as it relates to this application, the Owners have met each burden of the four-prong test and this Board has a substantial basis upon which it can grant the requested relief.

Very truly yours,

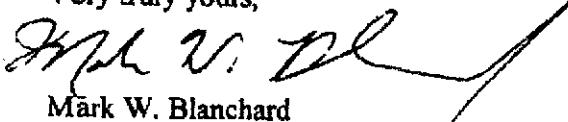
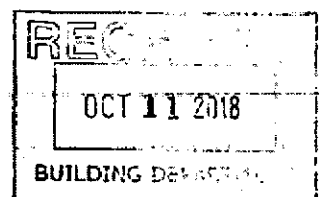

Mark W. Blanchard

EXHIBIT A



Expenses 15 + 17 170. W. W. W. St.

Electrician	600	
Plumber	150	
Plumber	600	7350.
Plumber	500	
Plumber 1/2 inch 2nd Fl. beam	4500	
Plumber	542	
Heating oil	2908	
Contractor Bill	271	7450.
" AC	199	
Heat Control 15 foot	3580	
Elect 1st Fl. Trolley Shop	1197	
Village 3rd	100	
County Tax Grouping	1792	15792
School Tax	3826	
" "	2777	
Town Tax	19238	
" "	3551	
Water	7401	34052
Real Estate Broker	862	
Legal	3000	
Accounting	3000	
Insurance	6000	33290
Landmark	9290	
Handyman	12000	
Home Depot	3000	
Ball Fitter	3000	
Brown Contractors		
Management		

Rent 2nd Fl. Trolley Shop	4000	
1st Fl. Duplex	3000	36000
2nd Fl.	2000	24000
3rd Fl.	8100	26200
		785200.