

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
Village Hall – 1 Depot Plaza
October 13, 2022 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Weisel, Rachlin, Kaplan, Abraham,
Alternate Member #1 Jolly, Alternate Member #2 Kudla, Counsel Addona;
Village Engineer Pennella; Secretary Meszaros

ABSENT: All Present

Ms. Lawrence opened the meeting at 7:30 p.m.

APPROVAL OF MINUTES – September 12, 2022

Ms. Weisel moved, seconded by Ms. Rachlin, to approve the minutes of the September 12, 2022 meeting, as submitted.

The secretary recorded the vote:

Member Abraham:	Yes
Member Kaplan:	Yes
Member Weisel:	Yes
Member Rachlin:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

ADJOURNMENT:

Ms. Lawrence announced the following application which has been adjourned to next month at the applicant's request:

Michael and Janaki Degen - 86 Crest Drive - Variances to construct a second story over the existing garage and principal dwelling and a one-story rear addition.

PUBLIC HEARING - MMC Corporation/Montefiore Medical Center - 555 South Broadway

Ms. Lawrence advised that the applicant is seeking an interpretation/appeal pursuant to New York State Village Law and the Village of Tarrytown Zoning Code appealing the Building Inspector's determination that the intended proposed use is not a Research Laboratory, as defined by §305-5 of the Village Zoning Code, but rather a distribution center, and that the proposed Research Pharmaceutical Laboratory is not a permitted

principal use nor a permitted accessory or incidental use under Sections §305-34 A and B of the of the Zoning Code.

Counsel Addona advised the public that the Public Hearing was closed by this Board at the August 22, 2022 meeting. The applicant did not appear before this Board at the September 12, 2022 meeting due to code violations with the village which have been resolved. She advised that a draft resolution has been prepared and circulated in advance of this meeting for the Board's consideration which she is prepared to read.

The Board had no further discussion on this matter. Counsel Addona read the draft resolution into the record:

ZONING BOARD OF APPEALS RESOLUTION

Application of MMC Corporation/Montefiore Medical Center ("Applicant")
555 S. Broadway, 0 S. Broadway, 555 Broadway, Tarrytown, New York 10591 (the "Property")
Section 1.140, Block 88, Lot 8; Section 1.221, Block 129, Lots 5 & 6
OB (Office Building) Zoning District

WHEREAS, the Applicant has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector dated April 27, 2022 and last revised May 23, 2022 ("Denial Letter") that the Applicant's proposed use as a pharmaceutical laboratory and office renovations for the Montefiore Hospitals network (1) is not a permitted principal use under Village of Tarrytown Zoning Code ("Zoning Code") § 305-34(A) and (2) is not a permitted accessory use under Zoning Code § 305-34(B); and

WHEREAS, the Applicant submitted an application to the ZBA seeking an interpretation that the Denial Letter was issued in error because the use is a permitted research laboratory; and
WHEREAS, under New York Village Law § 7-712-b(1), the ZBA "may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken;" and

WHEREAS, a duly noticed public hearing was opened at the regular meeting of the ZBA on June 13, 2022 and continued to the ZBA's July 11, 2022 and August 8, 2022 meetings, and members of the public having the opportunity to attend and be heard, the public hearing was closed on August 8, 2022, and

WHEREAS, Village Code § 305-138(F) precludes a land use application from proceeding while there are pending Code violations and as a result this application was removed from the ZBA's September 12, 2022 agenda because the Applicant was issued several Appearance Tickets in August 2022 under the following laws:

- Village Code Chapter 183 – Garbage, Rubbish and Refuse
- Village Code Chapter 205 – Landscaping

- Village Code Chapter 258 – Stormwater Management (five violations)
- Village Code Chapter 97 – Building Construction
- 2020 Property Maintenance Code of the State of New York

WHEREAS, the ZBA has been advised that the pending violations have been resolved through the Justice Court and therefore it can proceed with this application; and

WHEREAS, this Board, after having the opportunity to visit the Property and after duly considering all the proofs and evidence before it, determines as follows:

IT IS RESOLVED, this interpretation is a Type II action under the State Environmental Quality Review Act and therefore no further environmental review is required, and
IT IS FURTHER RESOLVED, based upon the record before this Board, the Board makes the following findings:

1. In 2021, the Applicant submitted a building permit application to the Village with plans that identified the use as a “pharmacy distribution center.” After receiving a denial letter from the Building Department on the grounds that said use was not permitted, the Applicant submitted an application to the ZBA seeking an interpretation of the Building Department’s denial letter and in doing so revised its plans to characterize the proposed use as “accessory storage.” However, the Applicant did not make any substantive changes to the plans or the proposed use other than what the use was called.
2. As part of the 2021 application, the Applicant had a full and fair opportunity to present the proposed use and any related arguments to the Board at that time.
3. Based upon the record before the Board, the ZBA issued a detailed resolution dated as of January 10, 2022, which Resolution is attached hereto and made a part hereof, denying the Applicant’s interpretation (“First Resolution”). The Record before the ZBA related to the First Resolution is also made a part of the record herein.
4. The Applicant did not bring an Article 78 proceeding challenging the First Resolution and the time to do so has passed, and therefore the First Resolution is binding precedent upon this Board.¹
5. In the current application, the Applicant has advised that the use and plan have not changed from what was previously proposed, only the way the use is being

¹ *Waylonis v. Baum*, 281 A.D.3d 636, 638 (2d Dep’t 2001) (“The doctrine of res judicata bars a party from relitigating issues which were or could have been litigated in a prior action or proceeding. It is well settled that the doctrine of res judicata applies to the quasi-judicial determinations of administrative agencies, including municipal zoning boards.”); *Greenville Fire District v. Town Board of Town of Greenburgh*, 202 A.D.3d 956, 958 (2d Dep’t 2022) (“Under the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated but also claims that could have been raised in the prior litigation.” Where a claim in a prior litigation is determined to be time-barred, the claimant is “therefore barred from relitigating that issue.”)

communicated to the Board.² As there is no substantive difference between the plan and use previously proposed, the Board is bound by its findings in the First Resolution.³ Therefore, the Board denies the application on this ground.

6. Notwithstanding such, and without waiving any rights or defenses, in the interest of efficiency and comprehensiveness the Board also separately addresses, and rejects, the substance of the new argument raised by the Applicant.
7. At the outset, it is noteworthy this is now the fourth iteration the Applicant is presenting to the Village of the proposed use. The Applicant presented a “pharmacy distribution center” use in the 2021 building permit application and an accessory storage use before the ZBA in the first application. In addition, while the first application was pending before the ZBA, on January 5, 2022 the Applicant submitted an application to the Village Board of Trustees for a zoning text amendment to add an additional accessory or compatible use in the OB district for “the storage of pharmaceuticals, vaccines, personal protective gears, and related goods, which goods may be used on-site or repackaged for use off-site.” The Board of Trustees declined to consider this request. This is now the Applicant’s fourth attempt in the last year presenting a use to the Village in an effort to have it fit within the confines of the Code as a research laboratory.
8. Further, during the submission and public hearing process on this application, the Applicant’s representations regarding the specifics of the proposed use varied considerably. In considering an interpretation application to assess whether the proposed use is permitted, the lack of a clear and consistent proposal makes it challenging for the ZBA to assess whether what the Applicant is presenting is (1) the use the Property will actually be used for and/or (2) permitted by the Zoning Code. As the ZBA is charged with assessing credibility,⁴ the ZBA determines that the Applicant’s statements made earlier in the process, when the application was first submitted and heard by the ZBA, are more reliable in representing the actual intended use than those made later in the process after the Applicant was confronted with the numerous Code provisions regulating a research laboratory use.
9. A research laboratory is a permitted principal use in the OB district under Zoning Code § 305-34(A)(4) subject to the following, specifically subsection (c): “[e]xcept as related to permitted accessory uses, there shall be no commercial manufacture on the premises of articles for sale, except with respect to small quantities of test, experimental or trial products, models or prototypes which may be produced in accordance with the provisions of this chapter related to accessory uses and except that prototype items

² June 13, 2022 ZBA meeting minutes, p. 6.

³ *Olson v. Scheyer*, 67 A.D.3d 914, 914-915 (2d Dep’t 2009) (“A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious.”).

⁴ *Green 2009, Inc. v. Weiss*, 114 A.D.3d 788, 789-90 (2d Dep’t 2014) (noting the zoning board’s “findings pertaining to the petitioner’s lack of candor and good faith were credibility determinations, and issues of credibility were within the sole province” of the zoning board to resolve).

which may be called for specifically in development contracts undertaken for government or commercial agencies where such development contracts call for the delivery of such prototypes to confirm or exhibit the development of the work conducted.”

10. Zoning Code § 305-34(B)(2)(c) further qualifies the research laboratory use: “[i]n connection with the principal use of any lot for a research laboratory, the operation of what are customarily known as ‘pilot experimental facilities’ for processing or assembling units or products resulting from research, experimental and development work on one premises of such laboratory or for the assembly of other related units or tools incidental thereto shall be permitted, provided that: . . . [2] such assembled or processed experimental units shall consist only of small quantities of test or trial products, models or prototypes of newly developed or redesigned products for the purposes of testing the characteristics and qualities of such products and/or their consumer acceptance or of determining the technical feasibility of using the product design or assembly process on a full-scale repetitive production basis.”
11. In addition Zoning Code § 305-3 defines research laboratory as “[a]ny laboratory devoted exclusively to the pursuit of scientific or technological research, experimentation and development of natural, manufactured, processed or compounded material or products, including but not limited to biological food and other consumer products, electronic and electrochemical processes, products and equipment, pharmaceutical products, etc.”
12. Putting these three descriptions together, it is clear that this use does not satisfy the definition and requirements of a research laboratory under the Code.
13. The Applicant’s submission stated that the facility will “fill and package prescriptions and supplies for patients of the Montefiore Health System, provide pharmaceuticals and supplies to the MHS facilities and to provide clinical Laboratory services.”⁵ This is the same as the use that was proposed and rejected by the ZBA in the First Resolution.
14. In addition, the application stated “[p]atient specific medications are often available in commercially available strengths and dosage forms, that will be prepared for administration and/or in an alternative way. In order to prepare medications where the concentration or dosage form need to be altered to accommodate a patient’s weight, renal function, hepatic function or general preference, a licensed pharmacist must be able to prepare the medication from extemporaneously prepared or individual commercially available ingredients. The process, depending on a variety of factor [sic] can take place in a standard preparation area or a biologic clean room. The laboratory expects to stock medications and supplies necessary to prepare the patient specific medications.”⁶ The medication will then be sent to another facility where it will be

⁵ April 4, 2022 letter from Cardarelli Design & Architecture, P.C.

⁶ April 8, 2022 letter from Cardarelli Design & Architecture, P.C.

distributed to the Montefiore Medical Center hospitals by daily truck deliveries to and from the Property.⁷

15. The Applicant is proposing to commercially manufacture pharmaceutical products for sale to patients, which is not permitted under Zoning Code § 305-34(A)(4)(c). According to the description of the use provided by the Applicant, the pharmaceuticals manufactured on the site will all be distributed to the Applicant's patients. The Board makes note of the fact that the Applicant was inconsistent throughout the application and public hearing process as to who would be paying for the medications produced at this proposed facility. Initially, the applicant advised that the patients would be paying for the medication, but at the August 8, 2022 meeting the Applicant stated that the patients would not pay for the medication if they are part of the protocol, but if they are receiving drugs not part of the protocol they would pay for those.⁸ Further, despite being asked numerous times, the Applicant could not state who would be paying for the medication produced at this facility – listing insurance, manufacturers or foundations as potential sources. But what is clear is that a third party is paying for these medications to be produced and distributed to patients, making it more akin to a sale than, per the Applicant's reference, testing macaroni and cheese recipes as Kraft, the former occupant of the Property, did as a research laboratory.
16. The fact that the proposed layout will include conveyor belts further demonstrates that this is in essence a manufacturing/distribution use. The Village Engineer/Building Inspector explained to the ZBA that in his experience research laboratories do not have conveyor belts, which are used to move mass quantities of products. This is also consistent with the Applicant's description of the use that they will be tracking thousands of patients and manufacturing dozens of medications at any given time.
17. That the medications will be taken to another facility before they are disbursed throughout the Montefiore Hospital Network does not mean it is not a distribution facility. The number of daily vehicular truck trips to and from the Property to distribute the pharmaceuticals is proposed to be the same as in the first ZBA application. Once the pharmaceuticals leave the Property on trucks for distribution, there is no substantive difference in (and frankly no way to know) whether the pharmaceuticals are being sent directly to the hospitals (as with the first application) or are being sent to another facility before being sent to a hospital (as stated in this application).
18. Further, Zoning Code § 305-34(B)(2)(c)[2] limits the products that are produced to a small quantity of test or trial products for testing purposes and quality. Here, the Applicant advised that it hopes to track 3,000-4,000 patients receiving the medication prepared in this facility⁹ and included a list of 32 medications (with the qualification that the list was not exclusive) that will be prepared in the facility and distributed to patients

⁷ June 28, 2022 letter from Jack A. Addesso, PLLC

⁸ August 8, 2022 ZBA meeting minutes, p. 5-6.

⁹ June 13, 2022 ZBA meeting minutes, p. 7.

in the Montefiore Hospital Network.¹⁰ The Board finds this is not a small quantity of test or trial products. And while there is a testing component to creating these medications, the testing is not entirely done on site as a key component of the testing is through the distribution of the medications to the patients and monitoring how they respond.

19. In addition, the definition of research laboratory is a use “exclusively” for the pursuit of technological and scientific research. While there is undoubtedly a research component as the Applicant advised that qualitative and quantitative data regarding the efficacy of the medications will be retained and analyzed, that is certainly not the exclusive use as the primary use is the manufacturing and distribution of medication for patients in the Montefiore Hospital Network.

20. Ultimately, while the Board finds this use to be a favorable and beneficial use to the Applicant, its patients and the community, the ZBA is bound by what is permitted by the Code. And the Code does not permit this use. It is not a research laboratory but a facility for the manufacturing of medication for sale and distribution, with an ancillary research component. But as a research laboratory is a permitted principal use, the fact that research is associated with a different, unpermitted principal use, does not make that use permitted.

BE IT FURTHER RESOLVED, based upon the foregoing findings, the application is denied and the Building Inspector’s interpretation is upheld; and

BE IT FURTHER RESOLVED, the ZBA has now heard two applications for an interpretation of the same use within the course of a year; given the binding precedent placed upon this Board from the first application by controlling law, and the Board now considering and deciding this second application (with reservation of rights) that the Applicant acknowledged has no substantive difference, the Board will not hear any further interpretation applications regarding this property and use unless there is a material change to the plans and the proposed use.

Ms. Weisel moved, seconded by Ms. Rachlin, to approve this Resolution.

The secretary recorded the vote:

Member Abraham:	Yes
Member Kaplan:	Yes
Member Weisel:	Yes
Chair Lawrence:	Yes
Member Rachlin:	Yes

All in favor. Motion carried. 5-0

¹⁰ April 8, 2022 letter from Cardarelli Design & Architecture, P.C.

NEW PUBLIC HEARING – Andrew Eifler – 158 Crest Drive

The following public hearing notice was made available 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 13, 2022** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Andrew Eifler
158 Crest Drive
Tarrytown, New York 10591

For variances from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the installation of a shed at the north east corner of the property.

The property is located at 158 Crest Drive and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.80, Block 53, Lot 16 and is located in the R-10` zone.

The variances sought are as follows:

Code Section:	Required/ (Permitted)	Existin g	Proposed	Variance Required
§305-20 Residential R-10 Zone:				
§305 Attachment: 5:1 Column 17, Minimum distance of accessory building to rear lot line.	12 feet	n/a	5 feet	7 feet
§305 Attachment: 5:1 Column 16, Minimum distance of accessory building to side lot line.	12 feet	n/a	2 feet	10 feet

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 from the Village of Tarrytown Architectural Review Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: September 30, 2022

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

Andrew Eifler, owner of 158 Crest Drive, appeared before the Board and noted the survey that was provided with the application to the Board Members indicating the location of the proposed shed and the variances he is seeking to place it in the corner of his property. He advised the Board that he has three young children, many bicycles and car seats and needs additional storage space. The shed will be placed in the corner of the property. There is an existing shed on his neighbor's property which is adjacent to the location of the proposed shed.

Ms. Lawrence asked Mr. Eifler if there is any other location where the shed can be placed that would not require a variance. Mr. Eifler said there was no other location to place the shed that would be zoning compliant without losing the use of his yard.

Mr. Eifler confirmed with Ms. Weisel that the shed will be 14 x 8 feet and will be placed 5 feet from the property line. Mr. Pennella advised that he drew the shed to scale on the survey and the doors of the shed will be facing the west side.

Ms. Lawrence noted the swing set/playset that she observed at the site visit which was placed on the property line. She asked Mr. Eifler if it was there when he purchased the property. Mr. Eifler said that it was not there when he purchased the property and that it was a pandemic purchase and it is used by the children in the neighborhood. Mr. Eifler searched the code and was unaware that a variance was needed for the swing set. Mr. Pennella advised that the swing set is considered an accessory structure and is identified in the code as a playset. If it is on the property line, a variance would be needed for it to remain at that location.

After a brief discussion, it was decided that the Board would only vote on the shed this evening as noticed and would consider a variance for the swing set if and when this matter comes before the Board.

Ms. Lawrence asked if anyone in the public would like to comment. There was no public comment. The Board Members had no additional questions.

Counsel Addona advised that this is a Type II action with no further environmental review required under SEQRA.

Ms. Weisel moved, seconded by Ms. Rachlin, to close the public hearing.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

Ms. Lawrence read through and responded to the criteria for an area variance.

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence stated that the proposed project will not produce any change in the character of the neighborhood since it will be placed in the corner of the property and will be adjacent to an existing neighboring shed.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence stated that the benefit sought by the applicant cannot be achieved by some other method other than the area variance due to the lot size.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that the while the requested variance is substantial, the applicant is limited due to the lot size and setbacks.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*
5. That the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that it is self-created but that does not preclude the Board from granting this variance.*

Ms. Weisel moved, seconded by Ms. Lawrence, to approve the requested variance for the shed and to authorize Counsel Addona to prepare a Resolution memorializing the discuss during the public hearing to include the general conditions.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

NEW PUBLIC HEARING – David A. Barbuti, Architect, PC – 21 North Broadway

The following public hearing notice was made available 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 13, 2022** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Dave A Barbuti, Architect PC
150 White Plains Road
Tarrytown, New York 10591

For a parking variance from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the change of occupancy of vacant office space on the second floor.

The property is located at 21 North Broadway and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.40, Block 18, Lot 4 and is located in the RR Zone.

The variances sought are as follows:

Code Section:	Code Requirements	Proposed/Required	Existing	Variance Required
§ 305-63 D.(1) Off-Street Parking for Office Use	2 spaces/separate office plus 1 space/employee	3 office suites: 6 spaces 3 employees: <u>3 spaces</u> Total required: 9 spaces	(non-existing granted per §305-132.C.) 5 spaces	4 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 from the Village of Tarrytown Architectural Review Board and the Planning Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: September 30, 2022

The mailing receipts were received and the sign was posted.

David A. Barbuti, RA, the project architect, appeared before the Board, representing the owner. He advised that he is returning to seek parking variances for the 2nd floor office space that will be occupied by the proposed tenant, Americare, which is one of the

largest home health care agencies in the state. The space is approximately 1500 s.f. and it has been vacant for several years. It was previously occupied by the “Watercooler”.

Ms. Lawrence acknowledged the letter received from Bridget Gallagher, the Vice President of Americare, dated September 22, 2022, describing the proposed use. Mr. Barbuti noted that they have six other locations throughout the tri-state area. The offices will be used to recruit and train individuals for home health aide services such as changing bedpans, operating beds, and other necessary skills. They hope to get as many as 20 trainees maximum per class which is what they have at their other locations. Most of their trainees are coming from Ossining, Peekskill and the White Plains area and rely on public transportation. Mr. Abraham referred to the letter that states that training will be for a three-week period. Mr. Barbuti believes the training will take place during the week for six or seven hours per day for a three-week period and not on the weekend.

Ms. Lawrence feels that there is no guarantee that there won't be additional cars but noted the need to fill the vacant office space in the village which will benefit existing retail shops. She remembers the “Watercooler” space where there were as many as 10 people in there at a given time. Mr. Barbuti also noted that the McKeel Lot is within walking distance and there are many available spaces during the day if they were to drive in. He also advised that there was a former martial arts studio which occupied the same space back in 1997 which had a certificate of occupancy for up to 49 people. Mr. Pennella noted that if the trainees/recruits were to drive in they would more than likely use the municipal lot for long term parking rather than parking on the street since that would require them to feed the meter more frequently.

Ms. Lawrence asked if there was anyone in the public who wished to comment. No one appeared.

There were no more questions from the Board.

Counsel Addona advised that this is at Type II Action with no further environmental review required under SEQRA.

Ms. Rachlin moved, seconded by Ms. Weisel, to close the public hearing.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

Ms. Lawrence read through and responded to the criteria for an area variance.

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variances. *Ms. Lawrence stated that the proposed project will not produce any change in the character of the neighborhood since it is an interior office renovation and there is no parking available on site which is consistent with many businesses in the area.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence stated that the benefit sought by the applicant cannot be achieved by some other method other than the area variance due to the inability for the applicant to provide parking on site.*
3. That the requested area variances are not substantial. *Ms. Lawrence stated that the requested variance is substantial but there is no other alternative since there is no parking on site.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district since there is no parking on site for many businesses/properties in the area.*
5. That the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that it is not self-created since there is no way for the applicant to provide off-street parking.*

Ms. Weisel moved, seconded by Mr. Abraham, to approve the requested variances and authorize Counsel Addona to prepare a Resolution memorializing the discussion during the public hearing to include the general conditions of approval and the requirement that the applicant pay \$4,000 into the Village Parking Fund for 4 off-street parking spaces that they are unable to provide, which will be a requirement of site plan approval.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

NEW PUBLIC HEARING – Shirley and John Ecklund – 3 Emerald Woods

The following public hearing notice was made available 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 13, 2022** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Shirley and John Ecklund
3 Emerald Woods
Tarrytown, New York 10591

For a variance from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the installation of a shed at the south east corner of the property.

The property is located at 3 Emerald Woods and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.190, Block 112, Lot 21 and is located in the R-60 zone.

The variance sought is as follows:

Code Section: §305-15- Residential R-60 Zone:	Required	Existing	Proposed	Variance Required
§305 Attachment: 5:1 Column 17, Minimum distance of accessory building to rear lot line. (Note 2 – R- 60² setbacks may be reduced to R- 30 setbacks)	18 feet	n/a	16.7 feet	1.3 feet

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 from the Village of Tarrytown Architectural Review Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: September 30, 2022

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

Shirley Ecklund, the owner of the property, appeared before the Board to seek a variance for an existing shed that was built on her property and placed 1.3 feet into the setback as a result of an error made by the contractor during the construction. She noted that the contractor had offered to move the shed but that would have caused damage to the flooring and potential damage to the patio itself. The neighbors have all been notified and they have no objection to keeping the shed in its existing location. She noted a letter received from the neighbor at 7 Stephen Drive, in support of the variance.

Ms. Lawrence advised that it is unfortunate that the mistake occurred and that the shed has a foundation and can't be moved easily.

There was no one in the public to comment.

There were no additional questions from the Board.

Counsel Addona advised that this is at Type II Action with no further environmental review required under SEQRA.

Ms. Weisel moved, seconded by Ms. Lawrence, to close the public hearing.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

Ms. Lawrence read through and responded to the criteria for an area variance.

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variances. *Ms. Lawrence stated that the proposed project will not produce any change in the character of the neighborhood. The shed has been placed 1.3 feet into the setback due to an error by the contractor during construction.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence stated that the benefit sought by the applicant cannot be achieved by some other method other than the area variance due to the error made during construction.*
3. That the requested area variances are not substantial. *Ms. Lawrence stated that the requested variance is not substantial.*

4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variance is minimal and will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood and there is no objection from the neighbors.*
5. That the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that it is self-created but that does not preclude this Board from granting the variance.*

Ms. Rachlin moved, seconded by Ms. Weisel, to approve the requested variance and authorize Counsel Addona to prepare a Resolution memorializing the discussion during the public hearing to include the general conditions of approval.

The secretary recorded the vote:

Member Kaplan:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes
Member Abraham:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 5-0

ADJOURNMENT:

Ms. Weisel moved, seconded by Ms. Rachlin, to adjourn the meeting at 8:30 p.m.

All in favor. Motion carried. 5-0

Liz Meszaros- Secretary