

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
January 13, 2020 7:30 p.m.

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

ABSENT: Alternate Member Jolly

Chairwoman Lawrence called the meeting to order at 7:32 p.m.

APPROVAL OF MINUTES – DECEMBER 9, 2019

Ms. Weisel moved, seconded by Ms. Rachlin, to approve the minutes of the December 9, 2019 minutes as submitted. All in favor. Motion carried.

EXECUTIVE SESSION

Ms. Rachlin moved, seconded by Ms. Weisel, to go into executive session for legal advice on procedure at 7:32 p.m. All in favor. Motion carried.

The Board members returned to the meeting room at 7:47 p.m.

Ms. Weisel moved, seconded by Ms. Rachlin, to come out of executive session. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING–Theodora Pouloutides– 59 N. Washington St.

Taylor Palmer, Attorney with the Law firm of Cuddy & Feder, appeared on behalf of his client and owner of the property, Theodora Pouloutides, also present, with her daughter. He introduced James Miller, R.A., the project architect. He explained that they are back for the continued public hearing in connection for an interpretation of the code, that the approval of the 5th unit be interpreted as an area variance, rather than a use variance, which they feel is the appropriate relief. They are also seeking variances associated with the fifth unit relating to parking requirements and lot size. No changes have or will be made to the exterior of the structure; they are just updating the existing fifth unit and bringing it up to current building and fire code standards.

Mr. Palmer referred to his supplemental submission to the Board dated January 3, 2020 and advised that he has been in touch with the Zoning Board attorney regarding case law relating to this matter which has been included in the Board submission.

He briefly went through certain points in this submission with regard to the area variance interpretation that they are seeking to allow for the 5th unit. In this matter, the property is located in the M 1.5 zoning district where the multi-family use is an as-of-right permitted use. It is existing multi-family structure and there will be no changes to

the exterior. The code defines a multi-family as a “building; a portion thereof containing three or more dwellings”. They are seeking a fifth unit. The village zoning code also includes specific dimensional requirements (a/k/a bulk requirements). The bulk requirement in the code is limited to no more than 4 units in one structure. To elaborate on this, the M 1.5 district does allow for more than 4 total units on one lot, although the zoning code limits 4 units to one building. So, basically, they would be permitted to put a 5th unit in the garage on this lot, but not in the existing structure. The code is only limiting that 1 additional unit in the structure. Based upon this information, Mr. Palmer feels that the relief sought should be interpreted as an area variance for one density unit, since density is also considered an area variance for a bulk standard. Mr. Palmer referred to the case law provided in the Board submission and said if they were proposing a cement plant in this zone, it would be out of character since it is a commercial industrial use; however, this is a multi-family use consistent with the character of the neighborhood. He again showed on the diagram, other properties with similar multi-family uses in the district, in close proximity to the property, and again noted the letters of support which were included with the application. With regard to parking, there is no available parking for the 5th unit, although they are providing parking on site. No records of existing non-conforming use exist but there are permits for other units in the building itself. They want to bring unit up to code and be fully functional.

Ms. Lawrence asked if anyone in the public had any comment.

Diane Tuohy, of 11 Storm Street, came up to speak. She sees the property from her backyard and it impacts her. She asked the Board if the 5th dwelling is already in place and if they have been collecting rent. Ms. Lawrence said the 5th unit has been in place for many years. She asked if the owner was forthcoming about it and if there were any fines imposed for this. Mr. Pennella said the owner received an order to remedy, not a notice of violation. They are before this Board to remedy the condition. This Board or the Building Department does not issue fines. Ms. Tuohy asked if the landlord is living on the property. Ms. Lawrence said she does not reside on the property but has owned the property for many years.

Ms. Tuohy said that parking in this area is precious. She has no driveway and circles the block to park all the time; it’s what they do. If the Board increases the number of allowable units, there will only be more problems with parking and overcrowding. It will also impact schools. She feels that the code is in place to prevent this overcrowding.

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

Ms. Lawrence asked if anyone Board Members or staff had any comment or question.

Mr. Kim confirmed with Mr. Palmer that the “Bulk Requirements” he refers to in his presentation is the dimensional table for the property relating to lot size, density, setbacks, etc.

Counsel Addona advised the Board to leave the public hearing open depending upon how they decide on this interpretation this evening.

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

Mr. Kim moved, seconded by Ms. Weisel, that the application before them be interpreted as an “area variance”, not a use variance. All in favor. Motion carried.

Counsel Addona advised with regard to SEQRA, this is an Unlisted Action and the Board may consider doing an un-coordinated review for the area variances should they wish to decide on this application this evening.

Ms. Rachlin moved, seconded by Ms. Weisel, to declare this Board Lead agency for an uncoordinated review with regard to this unlisted action. All in favor. Motion carried.

Counsel Addona asked the applicant to go over the area variances that they are seeking as noticed for the benefit of the Board and public.

- (1) A variance of 1 dwelling unit where the Applicant has 5 dwelling units and Village of Tarrytown Zoning Code Section 305-32A(3) permits a maximum of 4 dwelling units;
- (2) A variance of 3 parking spaces where the Applicant is proposing 0 additional parking spaces and Village of Tarrytown Zoning Code Section 305-63D(1) requires 2.5 parking spaces for the fifth dwelling unit; and
- (3) A variance of 1,500 square feet of lot area where Village of Tarrytown Zoning Code Section 305-32, Attachment 6, Column 6, requires 1,500 square feet of lot area for the fifth dwelling unit.

Mr. Palmer noted that the property has been owned by the applicant since 1974 and has been used as 5 units since this time. He referred to exhibit “J” in the submission which lists a number of multi-family properties that are similar and in close proximity to their property.

- 50 N. Washington – 6 units
- 52 N. Washington – 5 units
- 69 N. Washington – 24 units
- 89 N. Washington – 6 units
- 50 Wildey Street - 5 Units

He introduced James Miller, R.A., the project architect, who briefly presented the site plan and went over the remaining variances. Mr. Miller showed the 5 parking spaces on the plan that they are providing on-site. He stated that the way the spaces are laid out, there is enough room for smaller cars to turn, enter and exit without difficulty. The existing garage can also fit one car. The other side is being used for storage. Mr. Pennella suggested taking down the garage and providing more parking on site. He feels that the space is too tight and it will be very difficult for cars to maneuver in and out

of the property. Mr. Palmer said that this is going to site plan where this can be evaluated. Ms. Lawrence agreed that the lot will not work for larger cars. Mr. Palmer said that off-street parking is a real luxury in this area and it positively benefits the community.

Ms. Lawrence is curious to see if the 5 unit homes referenced by Mr. Palmer are in fact legal. She asked if they have certificates of occupancy? Mr. Palmer said he is not sure if they have certificates of occupancy since there are no files relating to when they were constructed. Many could have been constructed prior to the creation of the zoning code. They are however similar to the use they are proposing. They are going through a legalization for this property and his client feels that this is a pre-existing non-conforming use and was built as such. It has been there for many years and is consistent with the character of the neighborhood. Ms. Lawrence said the homes you specify may or may not be legal and comparing the subject property to a 24 unit is not really comparable. Mr. Palmer's point is that the character of the area is not just single family homes and this district has a composition of more than what the applicant is seeking.

Mr. Pennella advised the Board that the fifth unit is not legal. It is believed it was constructed in the late 70's and renovated within the last 10 or 15 years, so it is not a pre-existing non-conforming use. The code came into play in 1959 and this unit was built after that. With regard to the other properties mentioned, it is hard to say, but he can confirm that 69 N. Washington Street is pre-existing, non-conforming.

Mr. Palmer referred to his lengthy submission with regard to satisfying the criteria that he submitted and briefly summarized each 5 criteria.

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. Mr. Palmer referred to the comparable unit discussion, off-street parking is provided for most of the tenants and with regard to lot size they mentioned the ability to have more than one structure and build more than 4 total units on the lot.
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. Mr. Palmer said that there is no alternative method to provide the 5th unit in the building; the limitation is in the code. It is similar to other buildings in the area. He also referred to the full balancing test and no one factor is controlling the others.
3. That the requested area variance is not substantial. Mr. Palmer does not feel that the relief sought is substantial compared to other properties in the zone. The applicant is not proposing any changes other than interior.
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Mr. Palmer

said that the only exterior change would be the outside stair width; otherwise it is only interior alteration.

5. That the alleged difficulty was not 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. Mr. Palmer said that this again goes back to the balancing test but his client has submitted that it was an existing non-conformity and is here to legalize the unit.

Ms. Lawrence asked Mr. Palmer, if, in all the years they owned the house, did the owner ever inquire whether or not this unit was legal, or did they just assume it was legal? Mr. Palmer explained that Mr. Pouloutides, who is deceased, handled the affairs. Mrs. Pouloutides and her daughter are now handling his estate. Both Mrs. Pouloutides and her daughter have lived on the property and know of the unit. They submitted a FOIL request to view the building department file and the tax records do say 5 units. It should be noted that the applicant was working to legalize this unit prior to the issuance of the order to remedy. They are trying to bring the unit up to code and did submit building permit.

Mr. Pennella again clarified that this is a notice to remedy, not a notice of violation. If an owner comes forward within a reasonable amount of time, the building department does not issue a court appearance ticket.

A brief discussion took place about the SEQRA process with regard to the next steps.

Ms. Rachlin moved, seconded by Ms. Weisel, to continue the public hearing at the next regular meeting scheduled for February 10, 2020.

NEW PUBLIC HEARING – Lin Quiang d/b/a Diamond Nail Spa – 1 Neperan Road

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 Monday, January 13, 2020**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Lin Quiang d/b/a Diamond Nail Spa
15114 33rd Street
Flushing, NY 11354

To seek an interpretation of the Building Inspector's determination of Zoning Code Section §305-39.A(6), that a nail salon is not a permitted use in the RR Zone since a permitted business must derive approximately 50% of its revenue from the retail sale of goods and that services are allowed to be provided only as incidental to the sale of goods.

The property is located at 1 Neperan Road, Tarrytown, NY and is shown on the tax maps as Sheet 1.80, Block 41, Lot 15 and is in the RR 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.

Additional approval will be required by the Planning Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: January 3, 2020

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

John J. Hughes, Jr., Attorney, appeared on behalf of his client, Lin Quiang, also present. Mr. Hughes explained that Ms. Quiang entered into a lease agreement with the owner of 1 Neperan Road to operate a nail salon business in a smaller unit located on that road. She subsequently submitted a building permit with plans for renovations to the space in pursuit of this business. Mr. Hughes explained that typically, with a change of use, the building inspector will determine that site plan review is required because of the parking requirements in the RR zone, but in this case, the Building Inspector made a determination that a nail salon is not a permitted use in the RR Zone since a permitted business must derive approximately 50% of its revenue from the retail sale of goods and that services are allowed to be provided only as incidental to the sale of goods.

Mr. Hughes is here on behalf of Ms. Quiang to seek an interpretation of the section of code. He said he would be referring to Sections 305-39.A(6)(7) and (8) of the code and confirmed that the Board had these sections of the code in front of them. He advised that his client has not been to the Planning Board until this interpretation is resolved. He feels that this hearing will be helpful in determining future permitted uses in this zone.

Mr. Hughes feels that when the zone was created, the intent of the code was to create a retail district knowing that there were existing dwellings so, to that end, some uses were restricted to accommodate the residential use.

With regard to 305-39.A(6) – fully enclosed structure for the sale of goods at retail; he refers to a use such as a hardware store, or a clothing store. Then in the code, it says, “OR”, the performance of customary personal services. The “OR” is important in this section. Mr. Hughes interprets this part as a different concept and feels that the two should not be tied together. Mr. Hughes stated that Mr. Pennella has considered both

parts of this section together when he made his interpretation; again he does not feel that they are connected.

Mr. Hughes offered examples of retail services such as shoe repair place, yoga or pilates studio, a tutorial, like a Kumon or Huntington, or a nail spa, barber shop or maybe even skin care. He noted that these uses exist throughout the entire retail area of Tarrytown. These same type of uses are also in retail strip malls. These uses are common to retail. For these reasons, Mr. Hughes believes that this phrase in the code was not meant to be limited to the sale of goods. To prove his point further, 305-39.A(6a), lists the prohibited uses in the district, which are specific such as, no wholesaling, fabricating, manufacturing converting, finishing, assembling. These uses relate to things that cause odor, noise or truck traffic and would negatively impact residents living nearby, which is why these uses are restricted to this zone and the reason it is called, "Restricted Retail".

Mr. Hughes referenced section 305-39.A(7 and 8), which lists permitted uses such as service oriented businesses such as banks, retail, law or medical offices, restaurants.

Mr. Hughes concludes that when you read the entire statute, it is not excluding service related business; these businesses are in fact an integral part of the retail district. If these businesses did not exist, the retail district would be disastrous because there are so many existing stores that would not be able to operate, such as barber shops, skin care, nail salons, yoga studios, pilates. He feels they were intended to exist because they do not create, odor noise or traffic.

Ms. Lawrence said as far as the code goes, an example of a permitted business would be a jewelry store that repairs watches which would be incidental to the sale of the watches. Mr. Pennella said that Mr. Hughes has broken up the 2 categories in 305-39A(6). He interprets the second part of this section of code differently. It says, "Or the performance of customary personal services clearly incidental to retail sales". Mr. Pennella interprets the code that if you are selling nail polish and other nail care items and also doing nails, it could be interpreted as incidental to retail sales, but this particular application is just for a personal service with no incidental sales.

Ms. Lawrence stated that there are a lot of nail salons in this area. Mr. Hughes said that is an economic decision. Ms. Lawrence asked about the use next to the nail salon. Mr. Hughes said it is a hair salon which is exactly the same type of use as a nail spa.

Mr. Hughes said he would agree with Mr. Pennella's interpretation if it said something like, "fully enclosed structure for the sale of retail goods, ONLY, but there is an "OR, after this, which is critical to his interpretation. It says, "Or the performance of customary personal services clearly incidental to retail sales". It does not say retail sales of goods; He feels that this is an awkward way of saying retail services.

Ms. Lawrence said they would typically identify retail as the sales of goods, not services and it is difficult because quite honestly she does not want to put anyone out of

business. She knows a nail salon had been there before and even a tattoo parlor at one time.

Ms. Rachlin asked if there is a threshold of how much the sales have to be. Mr. Pennella said you have to assume that if you are selling 51% percent, it is incidental. Mr. Hughes advised the Board that there is no percentage indicated in the statute. It does not say, 50% or 10%, or 1%. The code does not say any percentage at all. There is no 50% rule there. If the purpose of this zone is to restrict noxious types of uses, then why would you prohibit a barber shop, a nail salon, or a shoemaker, if you are allowing lawyers, and business and restaurants to exist. In Mr. Pennella's interpretation, you would have to sell 51% of shoes in order to be in the shoe repair business.

Counsel Addona asked Mr. Hughes what the point is of enumerating these services that can be there if it wasn't to restrict what types can't. Mr. Hughes believes that the performance of customary sales is an awkward way of saying "retail services". If the service businesses in the RR zone were not permitted, the district would have many vacancies. This is the fabric of the existing downtown area. Ms. Lawrence stated that in the past, someone interpreted the code differently, since nail salons have been permitted along the way.

Mr. Hughes advised the Board that there is currently a hair salon operating in the same building and he does not see any difference between a hair or nail salon. It is a personal service that has no harmful effect on the residential tenant or owner. The code is only restricting enumerated problematic uses. For example, who would want to live next to a store with barking dogs all night long?

Ms. Lawrence agrees and feels that the code was intended to prohibit businesses that would have noxious uses. Ms. Weisel asked if nail or hair salons have any regulations with regard to fumes or emissions. Mr. Pennella said there are emission permits for hair salons with regard to the chemicals they use. These types of uses are regulated by the health department. He noted that when the tattoo parlor was approved, the applicant had to go to the Board of Trustees to allow for this use and part of the agreement was that a sanitarian would inspect the site on a regular basis.

Mr. Kim asked Mr. Pennella since there are already existing nail spas and hair salons in the district already, how did this happen? Mr. Pennella said he couldn't say but Rose Nail on Main Street has been there for a very long time, long before he began his employment. Ms. Lawrence said she knows of two other nail salons on Main Street and another one on Broadway as well.

Mr. Kim feels that the code is poorly written and ambiguous and it makes it very difficult to interpret. Mr. Hughes agreed and feels that a common sense interpretation is the way it has to be.

Ms. Lawrence asked Mr. Hughes what other uses he thought would not be permitted in this zone. Mr. Hughes said a store that finishes furniture would be an example of a prohibited use since it could be offensive to tenants.

Mr. Hughes contends that that whether it be a personal service or the sale of goods, either way, this use is retail and, unless it is a prohibited use, it should be permitted in this zone.

Ms. Lawrence asked if any Board Members or staff had any additional questions or comment. There was no one in the public to comment except the applicant.

Mr. Pennella referred to section 305-63 - Off-Street Parking requirements and noted that the parking requirements are the same for the nail salon as they are for a retail use. Ms. Lawrence thanked Mr. Pennella and said they will take that into consideration.

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

Mr. Lawrence moved, seconded by Ms. Weisel, to close the public hearing. All in favor. Motion carried.

Ms. Lawrence moved, seconded by Ms. Weisel, that after careful review of the sections of code relating to permitted uses in the RR Zone, that the Board determines that a nail salon is a permitted use under 305-39 A (6) in the RR zone. All in favor. Motion carried.

ADJOURNMENT

Ms. Weisel moved, seconded by Mr. Kim, and unanimously carried, that the meeting be adjourned – 8:50 p.m.

Liz Meszaros- Secretary