

Village of Tarrytown, NY

One Depot Plaza, Tarrytown, NY 10591-3199
ph: (914) 631-1885

Zoning Board of Appeals Minutes 8/11/2014

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
August 11, 2014 8:00 p.m.

PRESENT: Members Maloney, Jolly, Brown, Weisel; Counsel Shumejda; Assistant Village Engineer Pennella;
Secretary Sapienza

ABSENT: Chairwoman Lawrence; Secretary Bellantoni

Mr. Maloney chaired the meeting in Chairwoman Lawrence's absence.

CONTINUATION OF PUBLIC HEARING – Tarrytown Associates LLC - 1-7 Main Street

Leo Napior attorney with Harfenist Kraut & Perlstein went over the details of the application. Mr. Napior explained that his client would like to restore the two third floor rear units that were burned out in a fire in the 1970s. The exterior brick walls still exist and some tenants use the space as an open air patio. His client has owned the building for about 10 years and he would now like to restore those units to their original use as livable space. Mr. Napior said the building is pre-existing non-conforming with respect to minimum lot size and off-street parking. The Village code §305-39(C) requires a minimum lot size of 5,000 square feet for commercial space and 1,000 square feet per residential unit; the existing structure requires a minimum lot size of 21,000 square feet, and the subject property is 15,861 square feet. The addition of two residential apartments will increase the required minimum lot size to 23,000 square feet; therefore the applicant is seeking a variance for the 7,139 square foot deficiency. He said there are six on-site parking spaces. The addition of the two units may require a variance for five additional parking spaces for which they have received Planning Board approval for payment into the Parking Fund for these five spaces.

At the last meeting it was asked what could be done to improve the appearance of the building. Mr. Napior said he spoke with his client and he has agreed to repoint the brick work in the rear of the building. They have agreed to meet the fire department conditions as well as improve the refuse area in the rear of the building.

Mr. Maloney asked how many units are in the building now. Mr. Napior said there are 16 units; and according to articles from the Historical Society, there were 16 units before the fire. It is believed that after the fire some of the remaining 14 units were reconfigured and made into 16 units.

Mr. Maloney asked about the parking spaces. Mr. Napior said there are six spaces and he believes there are two that are unlicensed that are not being used. He said as part of the application, they plan to restructure the parking area.

Ms. Brown asked how many additional spaces they will have to pay for into the Parking Fund. Mr. Napior said five spaces; each unit requires 2½ spaces according to code.

Ms. Brown asked Counsel Shumejda to explain, in light of the Planning Board approval, who has the jurisdiction to approve payment into the Parking Fund, the Planning Board or the Zoning Board. Counsel Shumejda said it has been determined by the Building Inspector that the five spaces that are to be paid into the Parking Fund are no longer an issue before this board; no variance is required for those five spaces. Ms. Brown said so where does that leave us. Counsel Shumejda said there are two parts to this application and the other part remains. He said there is also another issue which has not been raised which Mr. Pennella will explain.

Mr. Pennella explained that there are six parking spaces shown on the plan but spaces 5 & 6 cannot be utilized because stall #6 is blocking the means of egress from the Music Hall and stall #5 blocks the egress for all of the restaurants that have basement exits doors that go to grade. He said a variance application for parking in 2007 was denied and parking right up against a building is not to code; there must be a minimum of 5' from the building.

Ms. Weisel asked if stalls #5 & #6 are the ones that now contain the dumpster or are there other spaces. Mr.

Pennella said there are two other spaces that are parallel to the Music Hall up against the restaurants. Mr. Pennella said the parking spaces will have to be re-evaluated.

Counsel Shumejda said this same application came before the Zoning Board in 2007 and the Zoning Board chose not to grant a variance for the additional five spaces for the two burned out units to be rebuilt. Now we have progressed past that because of the Planning Board's determination that they can pay into the Parking Fund. The six spaces depicted on the plan have to be reconfigured to see if they are viable spaces which are in conformance with the Village Code which include New York State Fire Prevention Building Code. Those six spaces were assumed to be viable; but according to Mr. Pennella's calculation, not all of them are. A determination has to be made by the Architect to see how many viable spaces there actually are. Counsel Shumejda said every space has to conform and they must be shown that way on the plan. Counsel Shumejda said a revised plan should be submitted to this Board and to the Building Inspector to determine the number of spaces; and if the applicant has to request a variance, then so be it.

Mr. Jolly asked if this has anything to do with the Planning Board's determination regarding the Parking Fund. Counsel Shumejda said no; that determination for the five spaces for the two additional units has been made. This is a different issue; same application but different aspect.

Ms. Brown asked how they can know how many spaces they need if they don't know how many they have. Counsel Shumejda said this is a pre-existing non-conforming use; they had six and always showed six. The required five spaces for the two new units were resolved by the Planning Board. The issue is that according to Mr. Pennella, what is shown on the plan does not conform to the code; the plan has to be adjusted or reviewed to see if it does.

Mr. Napior said he would be happy to sit down with Mr. Pennella and the architect to go over the plan; however, whether there are six spaces or not, this is still an existing non-conforming situation. My client has always operated under the assumption that there are six spaces; he doesn't know what's on file in the building department. Regarding the 2007 variance request, the issue was the cost to purchase the spaces which at that time was \$15,000 per space, which did not make sense for my client.

Counsel Shumejda said he agrees that it is pre-existing non-conforming but the Planning Board makes their decision on a set of plans presented which we now know are not correct and the Planning Board has to be made aware of that.

Sam Vieira asked if he understands correctly that the Planning Board's acceptance of payment into the Parking Fund in lieu of the five required spaces negates this board's acting on a parking variance. Counsel Shumejda said on those five spaces. Mr. Vieira said it almost seems that this discussion doesn't even have to take place because the only application before this board is the increase of two units. The reality is that there are six spaces but this building would probably require about 90, so what's the difference how many spaces there are in the rear of the building; there will never be enough to meet the code requirement. Why is this parking issue even being discussed with this board? The lot size should be the discussion. Counsel Shumejda said it goes back to the plan that was shown to the Planning Board. The determination has to be made by the Building Inspector, with his consulting with the project architect, as to how many spaces there actually are because the Planning Board made their determination based on the plans submitted to them; that has to be resolved.

The Board decided to adjourn the application until the issue of the parking is resolved.

NEW PUBLIC HEARING – Toth - 33 Main Street

Mr. Maloney read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, August 11, 2014, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

*Scott Toth
196 Riverview Avenue
Tarrytown, NY 10591*

for a ruling sought from the Board for a proposed 17 ft. x 28 ft. two story addition at the rear of the building that will increase the already non-conformity coverage for property located at 33 Main Street, Tarrytown, New York.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.40, Block 17, Lot 17 and is located in the RR (Restricted Retail) zone.

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
Dale Bellantoni, Secretary to the Zoning Board
Dated: August 1, 2014*

The certified mailing receipts were submitted and the sign was posted

Board members visited the property.

Sam Vieira, architect and representative for the applicant explained that they are before this board requesting permission to build a two-story addition to the rear of the existing three-story structure on Main Street. Mr. Vieira said the size of the addition is proposed to be 17' by 28' and it will be on the basement and first floor levels when looking at the rear of the building. The reason the Toth family is proposing this addition because sometime in the near future they will be required to have a kitchen in this establishment in order to serve food to the bar customers. The basement level of the addition will be an extension of the existing basement and will be used for storage. The upper level of the addition will be used at this point for more storage and recycling etc. until the kitchen requirement is enforced. Mr. Vieira said the existing building is grandfathered.

Mr. Maloney asked if there is going to be a bathroom put in down there. Mr. Vieira said he believes there was a bathroom down there at one point in time and they will be putting in a new one for the staff.

Mr. Vieira said the variance they are seeking is for the increase in coverage which is existing non-conforming. He said this building is not a deep in the rear as the other buildings along Main Street and this addition will make it in keeping with those other buildings; and he pointed out that the art gallery addition goes beyond the depth of this new addition.

Ms. Brown asked if a kitchen does go in will it become a restaurant and will it change the parking parameters for which you will have to come back to this board. Mr. Vieira said this will never be a restaurant and it will lessen the number of occupants. By putting tables in, it will lower the density; right now the space can accommodate more people standing than sitting at tables. He said this addition will not increase the area of where the customers are now.

Mr. Maloney asked if they will be putting the kitchen in now. Mr. Vieira said they are doing this addition for a future kitchen in anticipation of the New York State Liquor Licensing requirement that food must be provided in a bar.

Mr. Pennella asked if they are proposing sprinklers. Mr. Vieira said no because they are not proposing an addition which is 50% or greater, which would trigger the sprinkler requirement. Mr. Pennella said you are just going to building a shell right now. Mr. Vieira said yes that is correct. Counsel Shumejda said if it were converted to a restaurant or some use like that, what additional variances/approvals would you need from the Zoning Board? Mr. Vieira said he would not have to come back before the Zoning Board. Counsel Shumejda said if you went to tables and made it a restaurant, would you need to come before the Zoning Board for parking or are you saying because it is pre-existing non-conforming standing room only you will be lessening the number of people so no additional parking will be required. Mr. Vieira said this would be his interpretation; if you are lessening the existing parking and you are not increase the size of the building beyond what is here, I would assume that. He said he does not feel it is a change of use so it would not have to go before the Planning Board.

Mr. Jolly asked when you are required to put a kitchen in, would you have to run it like a restaurant with a menus, etc. Mr. Toth said they have no intention of running it as a restaurant; they only intend to do the absolute minimum to meet the requirement; nothing major we just need to have some food.

Mr. Vieira said they will be reinforcing the existing fire ladder and adding a door and new stairway from the residential levels above; they will also have exits from the bar and basement areas. They are increasing the safety because the tenants will have the ability to exist from the front of the building as well as from the back of the building.

At the Planning Board request, we are providing a gate to exit the back yard.

Mr. Maloney read the following environment review from Michael Blau, Environmental Review Officer dated August 11, 2014:

I have reviewed this application for variances for proposed addition which will add to the existing non-conformity and coverage and find the proposed variances appear to pose no significant adverse environmental impacts.

Mr. Jolly moved, seconded by Ms. Weisel, and unanimously carried, that the Board determines there will be no significant adverse environmental impact as a result of granting the requested variances for 33 Main Street.

Mr. Jolly moved, seconded by Ms. Brown, and unanimously carried, that the hearing be closed and the Board having arrived at the Findings required by the ordinance:

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;
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;
3. That the requested area variance is not substantial;
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
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 area variance.

grants the above-referenced variances for 33 Main Street.

NEW PUBLIC HEARING – Clary - 131 Rosehill Avenue

Mr. Maloney read the following public hearing notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, August 11, 2014, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

*Greg and Emily Clary
131 Rose Hill Avenue
Tarrytown, NY 10591*

For variances needed for the extension of the existing covered front porch for property located at 131 Rose Hill Avenue, Tarrytown, New York. The following variances are being requested:

- *Adding to a non-conforming structure.*
- *Proposed front yard setback is 15.04 ft. where 20 ft. is required.*
- *Proposed single side yard is 7.46 ft. where 10 ft. is required.*
- *Proposed impervious surface area is 42.87% where 40.75% is allowed.*

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.80, Block 55, Lot 3 and is located in the R7.5 Zoning District.

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
Dale Bellantoni, Secretary to the Zoning Board*

Dated: August 1, 2014

Sam Vieira, Architect and representative for the applicant, introduced himself. Mr. Vieira explained that the application is to increase the size of an existing covered porch. Mrs. Clary is now confined to a wheel chair and she would be able to make more use of her front porch by enlarging it. The plan calls for the porch to be extended in the front and wrapped around toward the rear of the house; almost "L" shaped. They will maintain the same line in the front of the existing porch and they stop in line with the house on the south side. Mr. Vieira showed the board the elevations and a rendering of what the porch will look like. The last part of the porch on the side of the house will be screened in so that the owners can sit out on warm evenings.

Mr. Vieira said they variances they are requesting are the setback because of the existing non-conformity and the impervious surface which was discussed yesterday at the site visit. He said their northern property line goes into Sarven Court which is covered in gravel and they have included that in their calculations for impervious surface; so they are sort of victims of not creating this condition themselves because they are sharing that driveway with all of the homeowner in the cul-de-sac. It's only a 2%-3% increase over what is allowed. Mr. Maloney asked if they have drainage now. Mr. Vieira said the entire house drains into their yard. Ms. Weisel asked where the additional run-off will go. Mr. Vieira said all of the run-off doesn't have to go to the same place; it can go somewhere else on the property. He said he will work that out with the Building Department.

Ms. Weisel asked about the tree that they want to remove. Mr. Vieira said there are other things that have to be considered with that tree; the cost of taking it down, the proximity to the foundation, and the applicant's desire to take it down or keep it. He asked if the board could approve this application as shown; and if the applicant decides not to take it down, he will just shorten that plan by about one foot to avoid the tree which will still achieve what they want to do. Mr. Clary said they are leaning toward leaving the tree; they prefer to not take it down.

Mr. Maloney read the following environment review from Michael Blau, Environmental Review Officer dated August 11, 2014:

I have reviewed this application for variances for proposed addition to existing covered porch which will add to the existing non-conformity and find the proposed variances appear to pose no significant adverse environmental impacts.

Mr. Jolly moved, seconded by Ms. Weisel, and unanimously carried, that the Board determines there will be no significant adverse environmental impact as a result of granting the requested variances for 131 Rosehill Avenue.

Mr. Jolly moved, seconded by Ms. Brown, and unanimously carried, that the hearing be closed and the Board having arrived at the Findings required by the ordinance:

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;
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;
3. That the requested area variance is not substantial;
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
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 area variance.

grants the above-referenced variances for 131 Rosehill Avenue with a condition that the applicant hire the services of a landscape architect for the protection of the tree that is within the area of construction before a building permit is issued.

ADJOURNMENT

Mr. Jolly moved, seconded by Ms. Brown, and unanimously carried, that the meeting be adjourned – 9:00 p.m.

Dale Bellantoni
Secretary

