

Village of Tarrytown, NY

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Zoning Board of Appeals Minutes 9/23/2013

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
September 9, 2013; 8:00 p.m.

PRESENT: Chairwoman Lawrence; Members Maloney, Jolly, Weisel; Counsel Shumejda; Village Engineer McGarvey; Secretary Bellantoni

ABSENT: Member Brown

APPROVAL OF THE MINTUES – August 12, 2013

Mr. Maloney moved, seconded by Ms. Weisel, and unanimously carried, that the minutes of July 8, 2013, be approved as submitted. Motion carried.

CONTINUATION OF PUBLIC HEARING–88 Main Street – Checci, Checci & Robinson

Application was adjourned by the Zoning Board for legal clarification.

CONTINUATION OF PUBLIC HEARING – Cunningham/Levin - 121 Neperan Road

David Cooper of Zarin and Steinmetz, attorney for the applicants, introduced himself, David Steinmetz, and Christina Griffin. Mr. Cooper highlighted the legal standards governing this request as stated and expanded upon in the two letters sent to the board (both attached to these minutes). The key question is whether the addition will comport to the scale of the neighborhood. This question is answered by the empirical data and expert opinion before the board and the language of the FAR Ordinance which states that empirical data and expert opinion must guide this review.

Mr. Cooper further stated that the purpose of the FAR Ordinance is to ensure that expansions over the FAR cap are similar or the same as those in the neighborhood. He stated that the ordinance recognizes the need for families to expand but this board determines if the scale is within the neighborhood. Mr. Cooper said the average FAR in the neighborhood, which runs along Neperan Road, is 46%; the Cunningham/Levin application is proposing to extend by 48.7% which will not alter the existing scale. Thirteen letters from neighbors in support of the addition have been submitted.

The benefit to the applicant far outweighs any detriment to health, safety or welfare of the neighborhood. Mr. Cooper stated that this minor addition will not result in an undesirable effect on the character of the neighborhood or a detriment to the nearby properties. It will be consist with the scale. There will be 38' between the end of the addition and the neighbor's property line which is more than ample room from the neighbor. It was stated by the neighbors that it will change their existing view. Their view is not going to change because the vegetation is going to stay.

There is no feasible alternative and it is not a substantial variance. The requested variance is not substantial.

Substantiality is not based on percentage alone but also on the impact on the community. Considering the size of the houses in the community, it is not substantial. The neighbor received a 45% variance, which was not considered substantial.

It is not a self-created hardship due to the constraints of the use of basement. Should this board consider it to be self-created, such a determination does not preclude the granting of the requested variance.

Mr. Cooper feels they have justified the granting of this variances by the information provided.

Christina Griffin, architect for the applicant, gave additional information to support why the variance is justified. She handed out a comparison of surrounding properties on Neperan Road and LeGrande Avenue showing how she

calculated the FAR. She analyzed each photograph to determine what portion of the basement was to be used.

Christina Griffin handed out a detailed comparison of the houses in the neighborhood which consisted of six houses on Neperan Road and others on LeGrande. This analysis showed how she calculated the FAR for the hardship in the basement and views from the street to demonstrate the lack of impact. The Cunningham/Levin house at 121 Neperan Road has less than most if you do not use the basement. The analysis is based on best judgment and assumption. The average FAR of the six houses on Neperan Road is 46% over. The Cunningham/Levins are asking for 48.7%, which they feel is in keeping with other homes in the neighborhood.

Ms. Griffin handed out two estimates of construction costs for the basement; one for a historical match which would cost \$183,635, and for resale which would cost \$152,585.

Mr. McGarvey asked how much will the proposed addition cost. Ms. Griffin said approximately \$280,000. She said when you restore and match existing and hire experts who know how to do the required detail, it is a higher number.

Ms. Griffin showed the plans and said the room is 18' x 17' which is very compact. It is pushed back from the front of the house and still has a setback of 38'. She showed the view from 131 Neperan Road. Ms. Griffin said there are already tall trees for privacy and screening for 131 Neperan Road.

Mr. Cooper said the view is not sacred. If they wanted to plant trees in their yard, they would not need a variance. Mr. Maloney asked if they are planning more plantings. Ms. Cunningham said yes; they already planted 20 trees since they move in. Mr. Cooper said privacy is an issue for his clients.

Ms. Griffin said the octagon shape was chosen because it is an interesting shape and a contrast to the boxy shape of the existing house. It is a very common shape for a room in homes of the era.

Chairwoman Lawrence said she does not see the FAR of the houses across the street and wondered why. Ms. Griffin said she just had to decide on how far to go. Chairwoman Lawrence said they should focus on all the houses in the neighborhood. The houses on LeGrande are very different.

Mr. McGarvey said looking at S-1, zoning code compliance sheet, the bottom box with floor area ratio reads 1109.5 for existing basement; 1541 sf. total. Is that the total of the basement? You are allowed to have 25% of the footprint, not livable area, which makes it 385 not 410, correct. Also it states that on the first floor the porch is excluded, why. Ms. Griffin said we don't include the porches for floor area only for footprint.

Mr. McGarvey asked the square footage of the first floor. Ms. Griffin said 1329. Mr. McGarvey said that excludes the porch, correct. Ms. Griffin said she feels he is confused because the basement is large because it goes beyond the building. We took off the porch. Mr. McGarvey said if the porch is covered, it counts. Mr. McGarvey read the code regarding the FAR for porches and found that it applies to enclosed porches.

Chairwoman Lawrence said she appreciated all of the work and how well it was presented. She noticed that the five houses on Neperan Road all exceed the FAR but the others are even or below.

Mr. Jolly said the cost of building the addition is quite a bit more than to build-out the basement. You gave two reasons for choosing the addition over the basement, what is the actual reason.

Mr. Levin said the cost differential is very expensive but it doesn't serve the same purpose. A family room off the kitchen is very common and for our family it is more functional. We want a family room not a basement rec room. This adds more to our home and is nice looking.

Chairwoman Lawrence asked if there is a reason why they have not considered putting the addition in the back of the house. Ms. Cunningham said because of the setback and the slope.

Chairwoman Lawrence asked if anyone had any questions.

Ms. Weisel asked for a definition of hardship. Counsel Shumejda said that's one of the reasons for granting a variance but it is not a sole reason. You can't deny an application solely on that reason.

Mr. Jolly asked how far the addition comes out from the house. Ms. Griffin said about 18'.

Chairwoman Lawrence said they received letters from Mr. Benjamin Sands dated August 9, 2013, a letter from Zarin & Steinmetz dated August 19, 2013 and a letter from the applicants dated August 19, 2013; all three letters are attached to these minutes.

Chairwoman Lawrence asked if anyone else would like to speak.

Benjamin Sands, 131 Neperan Road, said that he and his wife are very upset about this process. He asked that the Village Code be put into effect to protect his house and property and the rest of the Village at large. Rules are to provide orderly development and to protect all residents. Some decisions may be beneficial to one resident but have a negative effect on others.

He is only trying to protect what he has and to protect the Village. He stated that there are two issues before us: What type of Village development do we want; one that maintains the historical patterns of the Village or one that individuals can change the layout and look of historical houses because they can.

Secondly, it sets a huge precedence.

Patterns of development are to protect everyone including the "four grand dames" on Neperan Road. This decision will either endorse that protection or establish a new pattern of development for the Village.

His reply to points made by the applicant: He stated that although the attorney's response letter used large legal words in an attempt to discredit him, he used Ms. Griffin's numbers and drawings to make his case, and not once was it stated that his numbers were wrong.

He said, although his deck needed a variance, a deck does not add to the footprint of the house and it can be easily removed. Decks do not increase the FAR of the house.

In his calculations he purposely left off decks and porches because they are not structural parts of the house. Ms. Griffin used decks and porches to mislead how large the house is.

They did not include 121 Neperan Road in the analysis and it should have been. They disputed that 121 is historical; the house is 120 years old which to him means it historical.

He stated that FAR was established in order to protect the general uniformity of scale of houses on single lots and against building large additions to existing houses which threaten Tarrytown's neighborhoods.

Mr. Sands distributed a hand-out to the board members (attached) which he proceeded to read and explain.

He said he went to an architect and had Ms. Griffin's drawings put into a CADD file to be sure that the numbers are correct; he got different numbers, and Mr. McGarvey's numbers were different as well. There were not huge differences but the difference does impact the percentage increase of the foundation, footprint and affect the FAR.

He said he does not think the bay windows were included in the floor area. Mr. McGarvey said the floor area is determined by the perimeter of the outside walls.

He concluded by saying there are five points that must be addressed:

- This addition is way out of scale.
- The views are going to be damaged.
- Can it be done in a different way; yes.
- Is the difficult self-created; yes.
- Will it have any impact; certainly on the environment.

Dana Sands, 131 Neperan Road, said they would like to have a compromise. Can't they go out the back? Please don't cut the pine trees down; it would change the environment and neighborhood.

David Steinmetz of Zarin and Steinmetz stated that this application is not all that complicated. There is nothing outrageous in applying for a variance in Tarrytown anymore than there is in any other community. There is nothing outrageous about my clients applying for a variance, any more than there was when the Sands were granted a 45% area variance for their deck. This case is not simply about a mathematical analysis. This is a legal standard of benefit versus detriment. The benefit to his client is clear; they are trying to improve their home, which was built a long time ago, to make better use of their property. They are not asking for anything more than what most of us have; a family room.

The issue here based on case law is whether there is going to be an undesirable affect on the neighborhood.

Twelve neighbors signed letters in support of the addition and many of them even stayed until midnight at the last

meeting to state their support in person.

He stated that there is no feasible alternative to use the basement the way this family would like to use the basement; and despite the fact that the addition would cost more than renovating the basement, it does not yield the benefit.

There is no evidence in front of this board that there is an adverse environment impact as a result of this addition.

Mr. Steinmetz said regarding a self-created hardship, in and of itself, a self-created hardship does not provide a basis for denial of an area variance. The hardship is created by the configuration of this old house as it was designed, and the FAR law came into effect many years later.

Christina Griffin demonstrated that numerous homes average over 46% over the FAR.

The code reads that FAR responds to the desire of residents to enlarge homes to meet the needs of their families and to preserve the neighborhood character by requiring homes to appear to be of the same or similar scale of those in the neighborhood. The code also says to look at the elevations of the houses on both sides of the subject house, photographs of houses within 200' of the subject house, the floor area ratio of neighboring houses in either side of the subject house; and it is his understanding that the houses on either side make their case very simply and straightforward. There are big magnificent homes on either side. This very tasteful addition would not be destroying the scale or impact to the immediate neighborhood.

We believe that we have satisfied the legal standard to grant this variance. We have provided this board with more than enough data, argument, information and community support.

Chairwoman Lawrence asked if anyone else would like to speak.

Ben Sands, 131 Neperan Avenue, said he did present the five points in depth at last month's meeting.

Isaac Kommenidites, owner of 27 LeGrande Avenue said that he does not live there any more; it is a rental property that he takes good care of it. He said he saw the plans and said he finds it to be one of the best architectural plans he has ever seen and he does not find it distasteful at all. He feels that it is in line with houses built in that period.

Mr. Maloney moved, seconded by Ms. Weisel, and unanimously carried, that the hearing be closed.

Counsel Shumejda said he would draw up a resolution for a vote at the next meeting and asked the board if the resolution should state that are in favor or against the variance. He reminded the board that tonight they are only deciding on how the resolution should read, not on how they feel. No matter what they say tonight, they can vote however the wish at the next month's meeting.

Chairwoman Lawrence said after considering all of the information and all of the data and all of presentations shown, she is calling for a consensus by the board regarding the wording of the resolution, and they will vote at the next meeting.

Ms. Weisel voted for a denial
Mr. Maloney voted for an approval
Chairwoman Lawrence voted for a denial
Mr. Jolly voted for an approval

Counsel Shumejda said to Chairwoman Lawrence that he feels it is appropriate that he not prepare anything at this point so we should wait until next month for Ms. Brown and we can have another discussion as to how you wish me to proceed.

Chairwoman Lawrence said they will have to wait for Ms. Brown at the next meeting. She asked Counsel Shumejda to draw up a resolution for the October 15, 2013 meeting and the board will vote then.

Mr. Maloney moved, seconded by Ms. Weisel, and all in favor to adjourned this application to the October 15, 2013 meeting. All in favor; motion carried.

CONTINUATION OF A PUBLIC HEARING--99 N. Broadway Associates-99 N. Broadway

Counsel Shumejda rescued himself from this application.

Frank Tancredi, Architect, introduced himself, John Manuele of Manuele Management Group who manages the building.

Mr. Tancredi said nothing has changed since the August meeting. They would like to convert the current first floor office space into two 2-bedroom apartments. Mr. Tancredi said the building is on the outskirts of the business district which was probably 100% residential at one time. It is surrounded by residences and some businesses to the north. The building is very residential in looks; it has a green front lawn. The exterior will not change. He stated that they have submitted more detailed financials. Chairwoman Lawrence asked at the last meeting why the insurance will be lower if it is converted into residential. Mr. Tancredi explained the reason for the lower insurance is because the rate of residential is decreased.

Dr. Lawrence Mendelowitz said he prefers to rent has commercial space but just is not able to do so.

Mr. Maloney asked if the dollar amount of the loss was prorated.

Kevin Fay, CPA, said the numbers are actual. He maintains their books and records. He said it will still maintain a loss until it's rented. The projected taxes are \$38,000.

Mr. Jolly said the demand for this kind of space is not there. He asked if they have pursued all avenues and asked how long the commercial space was occupied by the last tenant. Mr. Manuelle said about three years of the five year least.

Chairwoman Lawrence how long it has been vacant. Dr. Mendelowitz said over a year.

Chairwoman Lawrence asked if it is still on the market. Mr. Manuelle said yes with a realtor, Coldwell Banker since April of 2013. He said it is set up for a medical practice, but more doctors are going into groups. Dr. Mendelowitz said we have not restricted it to medical or dental.

Mr. Manuelle said we will subdivide it. He stated that we get calls at least three times a week for residential space. He feels it will rent immediately because it is a good location and it does look like a home. It does not have a commercial front at all.

Chairwoman Lawrence read the following Environmental report from Michael Blau, Environment Review Officer dated August 12, 2013:

I have reviewed this application to allow conversion of ground floor medical offices to two two-bedroom apartments. Since this application requires a use variance, the Board will need to determine that the applicant can fulfill the requirements of a use variance before they can determine whether there are environmental impacts and act on the application.

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the Board determines there will be no significant adverse environmental impact as a result of renewing the requested variance for 99 North Broadway.

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the hearing be closed.

Mr. Jolly moved, seconded by Ms. Weisel, and unanimously carried that having arrived at the following 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 variance for 99 North Broadway. All in favor; motion carried.

NEW PUBLIC HEARING – Kapica 29 West Franklin Street

The Secretary 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, September 9, 2013 in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

*Leo Kapica
29 West Franklin Street
Tarrytown, NY 10591*

for the following variances from the Zoning Code of the Village of Tarrytown § 305-47 B, Yards; setbacks, to allow one off-street parking space within the front and side yard setbacks:

	<u>Permitted</u>	<u>Existing</u>	<u>Proposed</u>
<i>Minimum Front Yard:</i>	<i>25'</i>	<i>6.45'</i>	<i>6.45'</i>
<i>Minimum Each Side Yard:</i>	<i>12'</i>	<i>1'-2" ±</i>	<i>1'-2" ±</i>
<i>Minimum 2 Side Yards:</i>	<i>26'</i>	<i>2'-6" ±</i>	<i>2'-6" ±</i>

The property is located at 29 West Franklin Street and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70, Block 36, Lot: 23 and is located in an M-2 (Multi-Family) 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

The mailing receipt for submitted.
The sign was posted.
The Board members visited the site.

William Simeoforides, architect, explained that his clients are proposing a 9' x 18' parking space in the front and side of their property which is now paved with bluestone. They will be doing screening from the neighbors with landscaping. Mr. Simeoforides said they will be taking one space off the street and putting one on their property. Mr. Simeoforides said along that strip of West Franklin, there is only parking between John St and Washington Street.

Mr. McGarvey asked if they did a sketch of how many cars can park between John and Washington. Mr. Simeoforides said 5 or 6 depending upon the size of the cars.

Counsel Shumejda reminded the board that two previous applications went before this board for the same issue and were denied.

Mr. Simeoforides said one of the previous application would have had cars parking directly on both side of the driveway. In this case there is a driveway right next to this one which makes it more open which allows for easier and safer for existing. He said there are three others along that street already. He feels that taking cars off the street improves it, and it does not take away any revenue from the Village because there are no meters on the street.

Chairwoman Lawrence said there are two issues that apply: 1) it is a very busy street for pulling out of a driveway onto West Franklin; 2) taking a spot off the street.

Mr. Simeoforides said the neighbor two doors down is taking almost two spaces off the street because the opening is at least 9'; but in the Kapica's case, there is already a driveway next door so they would only need to take about $\frac{3}{4}$ of a parking space.

Chairwoman Lawrence asked the applicant where they park now. Mr. Kapica said on the street, even on Miller Avenue.

Chairwoman Lawrence asked if they can park in the school lot. Mr. Kapica said only in the summer.

Chairwoman Lawrence said there are some differences in this application then the others, but they are not significant. She said we have a history of looking very carefully about taking parking off the street. She hesitates to take more off the street, especially when it seems very dangerous to back out onto West Franklin. She does not feel it is for the public good.

Counsel Shumejda said there are safety issues, taking a space off the street and there is the other issue of parking in the front yard so close to the house. He said that the others that are already there whether they are legal or not is not an argument; it is up to the board to decide if you meet the criteria for a variance.

Mr. Kapica brought up the recent approval of the house on John Street. Counsel Shumejda said that was not a whole space because there was already a partial curb cut. That applicant proved that by increasing the partial curb cut to allow for a full curb cut there would be no loss in parking spaces on the street. Mr. Kapica said there are many driveways in the Village that are similar to what he would like to do.

Chairwoman Lawrence moved, seconded by Mr. Maloney, to deny the variance based on taking parking off the street and parking would be very close to the house. All in favor; application denied.

ADJOURNMENT

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the meeting be adjourned – 10:45 a.m.

Dale Bellantoni
Secretary

