

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
November 13, 2018 7:30 p.m.

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

ABSENT: Member Weisel; Counsel Addona

Ms. Lawrence moved, seconded by Mr. Maloney, to go into executive session to discuss procedural matters at 7:31 p.m.

Board Members returned to the meeting room at 7:45 p.m. Ms. Lawrence moved, seconded by Mr. Maloney, to come out of executive session. All in favor. Motion carried.

Approval of the Minutes – September 12, 2018 and October 11, 2018

Mr. Jolly moved, seconded by Ms. Rachlin, with Ms. Lawrence abstaining, to approve the September 12, 2018 minutes as submitted. All in favor. Motion carried.

Ms. Lawrence moved, seconded by Ms. Rachlin, with Mr. Jolly and Mr. Maloney abstaining, to approve the October 11, 2018 minutes as submitted. All in favor. Motion carried.

Ms. Lawrence announced the following adjournments:

Michael and Janiki Degen  
86 Crest Drive  
Variance needed for additions and alterations to a two-story single family home.

The Scipioni Group, LLC  
41 John Street  
Variances needed for renovations to a two-family dwelling.

CONTINUATION OF PUBLIC HEARING – Emilio Escaladas – 22 Glenwolde Park

Emilio Escaladas, PE, RA, of Escaladas Associates, appeared before the Board to seek a FAR variance. He presented his plan last month which lowered the roof, punched out the dormers reducing the FAR from 565 s.f. to 468 s.f. The plan he is presenting tonight has re-shaped the basement grade in order to further reduce the FAR. The floor plan has not changed but he has reduced the volume of the house significantly. He reminded the Board that they are also removing the old detached garage and keeping this area green and more attractive to the neighborhood. Ms. Lawrence asked Mr. Escaladas to

explain the changes to the plan in more detail. Mr. Escaladas said that he has lowered the ridge and the interior walls and have added cheek walls to the side so that the grade of the garage is higher, which lowers the FAR. The roof was already dropped by 3 feet in the second plan.

Mr. Pennella asked Mr. Escaladas what the exact FAR variance he is that he is seeking as a result of these changes. Mr. Escaladas said the total FAR he is now requesting is 342 s.f., which is a 39% reduction of his original request of 565 s.f. Mr. Escaladas feels that he has done everything possible to further reduce the FAR and has reduced the volume of the house significantly.

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

Mr. Escaladas said that he has met with some of the neighbors on site and they are anxious to have this property improved. Ms. Lawrence was pleased with the plan revisions and the additional reduction in the FAR.

Mr. Pennella advised the Board that they have previously approved an application in this zone (R 7.5) for a FAR variance of 391 s.f., which is 13.5% over of what is permitted. This FAR variance requested by this applicant is 342 s.f., which is 11.6% over what is permitted in this zone (2,925 S.F.)

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

Mr. Maloney moved, to approve this application for a FAR variance of 342 s.f., based upon the criteria for an area variance and authorize Counsel to prepare a resolution memorializing the discussion this evening to include general standard conditions, seconded by Ms. Lawrence. All in favor. Motion carried.

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

Mark Blanchard, Attorney, of Blanchard & Wilson, LLP, representing Ms. Carole Gelormino, also present, appeared before the Board and explained that this is a unique property and the owner is seeking a use variance to allow for a dwelling unit on the second floor of the building in the rear. They are not changing the character of the neighborhood. This apartment was there when the owner purchased the property and permits have been issued. They are seeking a legalization of this unit through a use variance. There are 4 units being rented now on this property and if this one unit was vacated, it would result in a 25% loss of revenue. Mr. Blanchard referred to the operating expense vs. rent roll sheet that was submitted at the last meeting and said without the revenue from this use, the property goes in the red. He introduced Ms. Carole Gelormino, representing 15 North Washington Street, LLC, who is here this evening and can give direct testimony with regard to the financial impact. Mr. Blanchard said what they are asking for is less intrusive than some of the "as of right" uses and

noted that this space has been there for at least 20 years. They want to legalize what is there.

Ms. Lawrence advised Mr. Blanchard that a 4 family may be permitted in this zone; however, a 4 family plus an industrial use is not permitted in this zone. She asked Mr. Pennella if the space about the retail is a legal unit.

Mr. Pennella noted that Mr. Blanchard referred to permits issued on this unit, and after further review, it was determined that this unit is not legal above the retail use, which is why the applicant is before the Board.

Ms. Lawrence said you are asking for a use variance for 4 units plus the use on the first floor for industrial use. Counsel Zalantis asked if they are proposing to abandon this use or if they are proposing 4 units plus a commercial use. Mr. Blanchard said there is no use on the first floor.

David Barbuti, the project architect, came up and said there are 3 units in the front building. In 1975, a use variance was issued for the tailor shop. In 1987, a use variance was received for what was Hanks Alley (retail). This current proposal is to legalize the unit on second floor which has been there for 40 years and to create 2 parking spaces inside the first floor retail and the remainder of this space to be used as retail space.

Ms. Lawrence asked if the owner would consider just proposing the 4 units without the retail. Mr. Blanchard said we are having a difficult time with what the zoning allows due to the standalone structures. Ms. Lawrence said it is unusual to have 2 separate buildings on one lot in addition to retail space and a dwelling on top of the retail. The use of 4 units plus retail is mixed use which is not allowed in this zone.

Mr. Blanchard noted that they are not changing the character of the neighborhood. It is a unique piece of property near the downtown area and the second floor certainly blends in with the area. Mr. Blanchard said the owner is trying to maximize the return on the property so they would rather have parking and the unit above. He thought they met the use on the bottom floor with the variance that was previously approved.

Counsel Zalantis advised that what they are proposing is not permitted in the zone. It is a mixed use proposal. She advised that the use variance must apply to the entire property. An applicant can't just come in for one particular aspect of the property. The use the applicant is seeking is for 4 units plus commercial.

Mr. Blanchard said he feels the property still fits in and the history supports it with the prior uses granted.

Counsel Zalantis said that the Board needs to know what the downstairs will be used for since a use variance runs with the land and a future owner may want to use it for something else. She asked if they would consider just proposing 4 units without the retail.

Mr. Blanchard said we are not here for that use of the first floor. Counsel Zalantis said the Board wants to know what you are proposing for the bottom floor and if you would consider just having the 4 units. Mr. Blanchard said based on the denial letter, we do not wish to abandon the variance that was previously granted; we are only concerned about the second floor. A use variance was already granted for the industrial use in 1975. They are only concerned about legalizing the second floor. Ms. Lawrence said this Board is concerned about the use of the entire property and that the proposed use does not conform to the zone.

Ms. Lawrence asked Mr. Blanchard to talk about the financial hardship to see if the information submitted is sufficient or if they need additional information.

Mr. Blanchard said information was submitted by the owner at the last meeting. They are here to leave the second floor unit in place; it is leased and they are receiving rental revenue. Without this unit, they are reduced by 25% in rental revenue.

Ms. Lawrence referred to and read a section of the criteria for a use variance:

- The property cannot yield a reasonable return if used only for permitted proposes as currently zoned. Applicant must provide “dollars and cents proof” of an inability to realize a reasonable return under existing permissible uses;

Ms. Lawrence is not sure if this criteria has been met with what was submitted by the applicant. Mr. Blanchard said to reduce this revenue by 25% overnight would result in a severe financial burden to his client. The apartment operated for 20 years and to reduce it by demolishing the unit would result in an enormous reduction. It is a second story occupied unit, there is no construction, and the use has existed for decades.

Ms. Lawrence stated that this Board is concerned about granting a use variance for a proposal of 4 units total in two separate buildings under the same ownership with retail which does not conform with the character of the neighborhood. She is not sure the applicant has shown the financial hardship.

Mr. Blanchard said the retail use is already permitted through the variance. Counsel Zalantis said it is permitted as long as the applicant complies with the conditions of the use variance which was for 3 units only. Right now the applicant is in violation of this use variance since the illegal 4<sup>th</sup> unit apartment exists. She added that the Board is being asked to grant a use variance for a mixed use development consisting of 4 units plus an unspecified commercial space which they still do not know what is proposed.

Mr. Blanchard stated that they are here based upon the order of remedy issued which was to remove the second floor apartment or proceed to zoning.

Ms. Lawrence advised Mr. Blanchard that they are changing the use because the existing permitted use is for 3 family and retail.

Mr. Blanchard said they are not asking the Board to install a mixed use development in this zone. With the use variance from the 70's, it is already permitted. Everything that drove this application was just to legalize the unit. The 3 units plus the light industrial is already approved and is "as of right". They are not before the Board for this. He is just asking the Board to approve the use of the second floor apartment by the way of a use variance, the only vehicle they have, which has been occupied for over 40 years.

Ms. Lawrence said we have to consider the entire property. She asked Mr. Blanchard how long the apartment above the retail space has existed. Mr. Blanchard said it has been rented since the 70's; there is evidence of oil deliveries. In terms of usable space, it has been there for 40 years. There have been permits issued over the course of the last 20 years by the village; it was not until Mr. Pennella's office was brought in that the violation was issued to get a use variance or remove the apartment. This is why they are before the Board.

Ms. Lawrence said so there was never a certificate of occupancy for this space. Mr. Blanchard said he does not know if there was a certificate of occupancy.

Mr. Pennella said village records indicate that on June 26, 1987, a certificate of occupancy was issued to convert an existing building, the first floor only, into a retail antique center. That is the last Certificate of Occupancy issued for this building. Ms. Lawrence said the unit above a retail space should not have been used as an apartment since there was no certificate of occupancy for an apartment above this retail.

Mr. Blanchard said what is confusing is that there have been permits issued, it was not hidden, it was in plain sight. Mr. Pennella said the only permits issued for this space were for current permits issued this year which were issued in error. Prior to that, there have been no permits issued for this space. Ms. Lawrence said she is not sure where the historical record is coming from then since there were no permits for this space until this year.

Mrs. Gelormino came up and asked the Board what her alternatives are for this property. Ms. Lawrence said if you go just for the 4 units without the retail space then the criteria for the variance is not as strict; however, the SEQRA process would be required for this action.

Counsel Zalantis asked if the applicant would consider just having 4 units on the property. Mr. Blanchard advised Mrs. Gelormino that the Board is asking her to give up the retail use variance. Mrs. Gelormino said the prospective buyer will not buy it without the retail.

Mr. Blanchard said they have heard the Board's concerns and cannot answer this question now. We can we leave tonight and adjourn to give more financial hardship but we need to clarify the use variance.

Counsel Zalantis advised that this would be an “unlisted action” if the applicant were to pursue the 4 units only, which requires SEQRA review.

Ms. Lawrence again advised that this is one lot owned by one entity with 2 separate buildings and the applicant is asking for a use variance that is not permitted. Mr. Blanchard said the variance runs with the land and 4 units are allowed in the zone. Counsel Zalantis advised that the use variance allowed 2 principal uses on 1 lot subject to 3 dwelling units. Now you are asking for 2 uses in an accessory structure in addition to the 3 dwelling units. The property has to be looked at as a whole. If your client wants to go to 4 units, perhaps there is a way that may work.

Mr. Kim asked Counsel what the threshold is to re-zone one parcel to say the RR zone? Counsel Zalantis said that would require Board of Trustees approval. Mr. Kim explained to Mr. Blanchard that the unit above the retail is not allowed in this zone. It does not allow for mixed use so basically if they were to approve this they would be changing the zoning. You can't separate it out. Mr. Blanchard said but we have already have a use variance. Dave Barbuti, the project architect, came up and said the 1975 variance granted stated that the front building is limited to 3 dwellings but it does not say anything about the total number of units allowed on the property. Counsel Zalantis asked them to submit more information about their interpretation and the Board could review it. A conversation took place about other possible alternatives for the back structure, such as a possible apartment on the first floor, or 2 separate apartments, one on each floor, or combining the first and second floor into one unit with parking. Ms. Lawrence said they would have to have a specific plan in front of them in order to review it and noted parking concerns.

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

#### NEW PUBLIC HEARING – Annie and Ben Cauthren – 105 Tappan Landing 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 Tuesday, November 13, 2018**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Annie and Ben Cauthren  
105 Tappan Landing Road  
Tarrytown, NY 10591

For variances from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for an addition to the second story of a single family dwelling.

The property is located at 105 Tappan Landing Road in the Village of Tarrytown and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.100, Block 65, Lot 55 and is located in the R 7.5 Zone.

**The variances sought are as follows:**

| <b>Code Description<br/>§305-21 – R 7.5 Zone</b>                                  | <b>Required</b>  | <b>Existing</b>      | <b>Proposed</b>      | <b>Variance<br/>Required</b> |
|---|------------------|----------------------|----------------------|------------------------------|
| <b>Attachment 5:1 – Column [12]</b><br>Min. of Each Side Yard :<br>North<br>South | 12 ft.<br>10 ft. | 8.09 ft.<br>4.69 ft. | 8.09 ft.<br>4.69 ft. | 3.91 ft.<br>5.31 ft.         |
| <b>Attachment 5:1 – Column [13]</b><br>Minimum two side yards:                    | 22 ft.           | 12.78 ft.            | 12.78 ft.            | 9.22 ft.                     |
| §305-5 – Light Exposure Plane<br>& 305- Attachment 5:1 (notes<br>section) South   | 12 ft.           | n/a                  | 24 ft. 6 inches.     | 12 ft. 6 inches              |

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 Architectural Review Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros  
Secretary to the Zoning Board

Dated: November 2, 2018

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

Sam Vieira, RA, the project architect, representing Annie and Ben Cauthren, the owners of the property also present, appeared before the Board and presented the plan. Ms. Lawrence was pleased to see that a streetscape was presented with the application. Mr. Vieira advised that the applicants were before this Board for a front yard setback variance in 2015 when they converted garage space into a kitchen and created a mud area with parking. They are back before the Board to create an addition to do a full height ceiling and build up over the single story structure to square off the footprint. A gable roof is proposed on top of the structure for architectural appeal. Mr. Vieira explained that the house sits on an odd shaped lot and comes in at an angle so the

setbacks are not conforming; therefore they will need side yard variances on the north and south sides. In addition, there is an encroachment on the light plane. He presented the plan and explained that the house to the south would be the most affected, but the house to the north is far enough away that it would not be affected. There are also large Pine trees on this side that will remain and create yearlong shading.

Ms. Lawrence asked if the neighbors on either side have any concerns with this project.

Ms. Lawrence read letters into the record received from the neighboring properties on each side, from Mr. Robert Kearns, of 109 Tappan Landing Road, and Patricia Looney of 101 Tappan Landing Road, which are attached as "Exhibit A".

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

Mr. Pennella has no comments. Mr. Kim noted that the streetscape is different from the elevation on the drawings. Mr. Vieira advised that from a scale point of view, it has not changed. Originally, a gable was introduced to break off the roof.

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

Ms. Lawrence read through 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 two neighboring properties have submitted letters with no objection to this project and there does not seem to be an undesirable change to the neighborhood.*
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 there is no other method that the applicant can pursue other than the area variances.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that the variances are 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. *Ms. Lawrence stated that the topography of the land lends itself to the fact that the light plane will not affect the neighboring properties.*
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. *Ms. Lawrence stated that although this was self-created it does not preclude the granting of these variances.*



Mr. Jolly moved, seconded by Ms. Lawrence, that the variances be granted and Counsel be directed to draft a resolution memorializing the discussion this evening to include general standard conditions. All in favor. Motion carried.

ADJOURNMENT

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

Liz Meszaros- Secretary

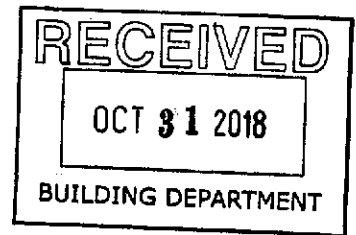
## EXHIBIT A

(Cauthren - 105 Tappan Landing ZBA Application)

Letters submitted from neighboring property owners:

1. Robert Kearns- 109 Tappan Landing Road
2. Patricia Looney- 101 Tappan Landing Road

**Mr. Robert Kearns  
109 Tappan Landing Road  
Tarrytown, NY 10591**



October 30, 2018

To Whom It May Concern:

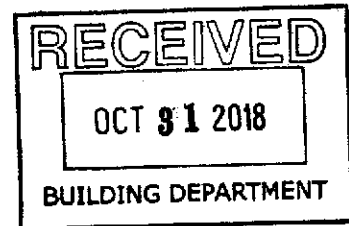
This letter is in support of Annie and Ben Cauthren who reside at 105 Tappan Landing Road in Tarrytown and are seeking approvals from the zoning and architectural review boards. I am their next door neighbor immediately to the South and reside at 109 Tappan Landing Road. I have seen the plans for their second floor addition and I have no objections to the proposal.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bob Kearns".

Bob Kearns

October 15, 2018



To whom it may concern:

This letter is in support for Ben and Annie Cauthren. We reside at 101 Tappan Landing road, Tarrytown, NY our property lines attach in the backyards of both homes.

When the Cauthren's made the decision to erect the outside one room dwelling, they came to us; showed their design/drawings and asked for our permission. Since there is a drop in the property line, the construction does not affect our view nor does it pose any noise nuisance.

We were happy to let them know that we had no objection to their project.

Respectfully submitted,  
Laura Milhaven  
Patricia Looney  
101 Tappan Landing Road  
Tarrytown, NY 10591

Two handwritten signatures in black ink. The first signature is for Laura Milhaven and the second is for Patricia Looney. They are written over the typed names.