

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
November 8, 2021 7:30 p.m.

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

ABSENT: Member Song

APPROVAL OF MINUTES – October 12, 2021

Mr. Jolly moved, seconded by Ms. Rachlin, to approve the minutes of the October 12, 2021 meeting. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING –Matthew Cardone Architect PLLC – 88 Main St.

Matthew Cordone, RA, the project architect, briefly showed pictures of the views of the proposed terrace from various locations along Main Street that were provided to the Board prior to the meeting. He noted that he has added a stucco skirt around the structural frame of the deck to match the rest of the building and to compliment the urban area, as well as a glass railing system to maintain transparency. He showed alternate views of the proposed deck from directly across the street and looking up from the south side of Main to the corner of White and Main Streets. He advised that they are requesting a variance to allow for the side staircase and noted that the side yard area is already paved and they are not increasing any impervious surface on this property. The side yard will be used for circulation and they are proposing to put stairs on top of that side yard to maintain that circulation. He showed an example of the staircase with the glass railing system on it. He feels that they have sufficient ambient lighting already coming from the street and from the buildings but, if it is not sufficient, they will install very modest LED strips on the steps themselves.

Ms. Lawrence asked if the Board had any more additional questions.

Mr. Jolly confirmed that the garbage will be stored in the garage area and accessed through the garage side door.

There were no further questions from the Board Members.

Ms. Lawrence asked if anyone in the public would like to speak.

John Hughes, ESQ., representing Mr. and Mrs. Simao, who own the property adjacent to 88 Main Street, at 3 Windle Park, appeared before the Board. He stated their opposition to this proposal is as follows: First, this property, as it has been noticed, is a non-conforming use. The Zoning Board has the power to grant variances for area and dimensional requirements of the code, but when you get into non-conforming uses,

there is a special prohibition which affects these uses. This particular prohibition is found in §305-62 of the Village Code which states that no such land use, building or structure which is nonconforming with respect to height, percentage of area of lot occupied, or the minimum yard sizes, shall be enlarged or altered in such a manner as to increase any such nonconformity. The statute is very specific that it may not be enlarged or altered in such a manner to increase the habitable area, including the alteration of a roof area or floor levels, or the addition of habitable or other usable area above or below the non-conforming structure. To conclude, it is hard for him and his clients to get past this section of code which they believe prohibits the enlargement of non-conforming uses.

Secondly, the variance requested is substantial. Presently, his clients enjoy a 3.8 foot requirement which will be reduced to 1 foot with a staircase, should this application be approved. This amounts to a 95% variance. He noted that non-conforming properties can be improved, they just can't be enlarged or extended, which is the purpose of the Zoning Code. This property is very non-conforming and the variance is substantial, and, although subjective, his clients also do not like the unusual appearance of the deck, which is placed on a pitched roof, rather than a flat roof.

There was no additional public comment.

Ms. Weisel moved, seconded by Ms. Rachlin, to close the public hearing. All in favor. Motion carried. 4-0

Counsel Zalantis read the entire draft resolution into the record.

### **ZONING BOARD OF APPEALS RESOLUTION**

Application of Alicia Love ("Owner")  
88 Main Street, Tarrytown, New York 10591 (the "Property")  
Sheet 1.70, Block 32, Lot 8  
M-1 (Multifamily Residence) Zoning District

WHEREAS, the Owner of the Property through its authorized representative, Matthew Cordone, R.A. ("Applicant"), has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector dated May 20, 2021 that the Applicant's proposed construction of a roof deck and related improvements, including stair access and railings, on its legal, nonconforming 3-family residential property does not comply with the requirements of Chapter 305 of the Village of Tarrytown Zoning Code ("Zoning Code"), and

WHEREAS, the Applicant made an application seeking the following area variances from Zoning Code § 305-21 and 305 Attachment 6:2:

- Variance of 19 feet to allow a side yard setback of 1 foot where the Code requires a side yard setback of 20 feet,

- Variance of 35.2 feet to allow a two-side yard setback of 4.8 feet where the Code requires a minimum two side yard setback of 40 feet, and
- Variance of 32.5 feet to allow a rear yard setback of 12.5 feet where the Code requires a minimum rear yard setback of 45 feet; and

WHEREAS, a duly noticed public hearing was held at the regular meeting of the ZBA on June 14, 2021<sup>1</sup> and continued to the Board's July 12, 2021, August 9, 2021 and October 12, 2021 meetings, and members of the public having had an opportunity to attend and be heard, the public hearing was closed on October 12, 2021;<sup>2</sup> and

WHEREAS, the Property is located on Main Street and is in close proximity (approximately 130 feet) to Tarrytown's Main Street Historic District, which ends at Windle Park that is separated from the Property by one parcel (see Village Code Chapter 191 Attachment 1 and the map prepared by the Village Engineer/Building Inspector attached hereto); 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, the application is denied based upon the findings of this Board in accordance with NY Village Law § 7-712(B)(3)(b) as follows:

1. There will be an undesirable change produced in the character of the neighborhood and a detriment to nearby properties as a result of the variances. The Property is a legal, nonconforming parcel with respect to setbacks as it is constructed very close to the side and rear property lines. It is also in an area where Main Street is on a downward slope toward the Hudson River. The Applicant is proposing to construct a roof deck above the ridge of the existing roof within the existing nonconforming setbacks, which will accentuate the nonconformity of the building upward within those setbacks, as well as exterior stair access that will further increase the east side yard setback nonconformity (from an existing 3.8 feet to 1 foot). In addition, there will have to be railings for safety purposes that will be approximately 5-6 feet higher than the roof deck itself. Many of the parcels in the area are also legal, nonconforming as to setbacks. If the Board were to allow a roof deck on the Applicant's property, it would set a precedent for other property owners to seek to install roof decks as well. This would not be consistent with the character of Main Street. There are no roof decks on similar parcels in the area and such would not be consistent with the character of the neighborhood. While other properties with roof decks were raised before this Board, those properties and roof decks are easily distinguishable. One is 1-3 Main Street, which is further from the water than the Property and is in a more level area. In addition, the roof deck is not visible from the street, unlike the Applicant's proposal will be. The second is the redevelopment of the YMCA property at 62 Main Street. This is an existing four-story building that is proposed to be redeveloped with affordable housing and will include a park area located on the second floor that will be confined on three sides and only visible from the Village's South Washington Street parking lot. In addition, the

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<sup>1</sup> Due to the COVID-19 pandemic, the June 14, 2021 public hearing was duly held via videoconferencing in accordance with the Governor's Executive Orders 202.1 and 202.15, as subsequently extended.

<sup>2</sup> The public hearing was scheduled to be heard at the Board's September 13, 2021 meeting but was adjourned on the day of the meeting at the Applicant's request.

- proposed YMCA redevelopment did not require variances from the ZBA. Accordingly, these are easily distinguishable from what the Applicant is proposing, which is a roof top deck that extends above the existing building roof line and an external staircase that will increase what is already a considerable nonconformity as to the side yard setbacks.
2. The benefit sought by the Applicant cannot be achieved by any feasible means for the Applicant to pursue other than seeking the requested area variances with respect to setbacks. The Applicant's benefit is to have private views of the Hudson River for the residents of the Property. Given the existing nonconformities with respect to setbacks, the Applicant cannot construct the roof top deck and stair access without encroaching in the setbacks. That being said, private river views are not a benefit that every property owner is entitled to, especially those who purchased or rented the Property in this area of Main Street where the structures are nonconforming and no open space is available, and it is in close proximity to the Main Street Historic District. The Property and other similarly situated properties are in close proximity to the Hudson River and the Village's Riverwalk. Like all other Village residents, this Property's residents are welcomed and encouraged to utilize these public assets. But just because the Applicant has no feasible means to construct a roof top deck other than seeking the variances does not mean they are entitled to the variances where the other criteria for a variance have not been satisfied as set forth herein.
  3. The variances are substantial. The Applicant is proposing to extend the existing setback nonconformities, which are substantial, to the roof top deck. Further, the side yard variance to construct the external stairway will increase the nonconformity from a 3.8-foot setback to a 1-foot setback where 20 feet is required (a 95% deviation from what the Code allows and a 74% increase in the variance over what is existing).
  4. The proposed variances will have an adverse effect and impact on the physical or environmental conditions in the neighborhood. The Board finds that there will be adverse visual impacts from allowing the roof top deck and external staircase for access. While the Applicant has attempted to reduce those impacts based upon the location of the deck, because of the location and configuration of the Property there will be visual impacts regardless of where the roof top deck is constructed. Further, the owners of 3 Windle Park, on their own behalf and through their attorney, attended the public hearings to express their concern and objection to the proposed roof deck and external staircase, which staircase also does not comply with the State Uniform Fire Prevention Building Code and would require a variance from the State. The staircase will create only one foot of clearance from the shared property line. And given how close the properties already are to each other, allowing an expansion of the nonconformity through the roof deck will have adverse visual and privacy impacts. There is also the risk of adverse noise impacts from allowing individuals to congregate on the roof of the building in a social setting. The Village is also very protective of its historic districts, including the Main Street Historic District that is in close proximity to the Property. Chapter 191 of the Code (entitled "Historic Districts and Landmarks") is intended to, among other things, "provide for the protection and enhancement of structures which are illustrative of the growth and development of our nation, our state and our village and which are of particular historic or aesthetic value to Tarrytown."

(Village Code § 191-1(A)). Given the close proximity of the Property to the Main Street Historic District, the Board must be particularly cognizant of the potential impacts on the District of granting the variances and the potential that other properties in close proximity of the Main Street Historic District may seek similar relief in the future.

5. The hardship is self-created. The Applicant knew, or is presumed to know, the Property was nonconforming as to setbacks when it was purchased. There is no right to a roof deck, especially when the Property is already nonconforming. Therefore, the Applicant's desire for a roof deck where one does not exist and would not conform with the Code is a self-created hardship.

Counsel Zalantis noted revisions to reflect the proper public hearing dates on page 1 and Chair Lawrence noted changes to the word usage of "close proximity" in the resolution.

Ms. Weisel moved, seconded by Ms. Rachlin, to adopt this resolution, as modified, denying the variances requested.

Ms. Lawrence asked for a roll call vote:

Member Rachlin:	Yes
Member Weisel:	Yes
Chair Lawrence:	Yes
Alt. Member Jolly:	Yes
Member Abraham:	Abstained

All in favor. Motion carried. 4-0

The Resolution denying the variances for the 88 Main Street application was approved.

#### ADJOURNMENT:

Ms. Rachlin moved, seconded by Ms. Lawrence, to adjourn the meeting at 7:48 p.m.  
All in favor. Motion carried.

Liz Meszaros  
Secretary