

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
Village Hall – 1 Depot Plaza  
February 13, 2023 7:30 p.m.

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

ABSENT: Member Abraham, Alternate Member #1 Jolly

Ms. Lawrence opened the meeting at 7:32 pm.

APPROVAL OF MINUTES – January 9, 2023

Ms. Lawrence moved, seconded by Ms. Rachlin, with Ms. Weisel abstaining, to approve the minutes of the January 9, 2023 meeting, as submitted.

The secretary recorded the vote:

Member Kudla :	Yes
Member Rachlin:	Yes
Chairwoman Lawrence:	Yes
Member Kaplan:	Yes
Member Weisel:	Abstain

All in favor. Motion carried. 4 – 1 (abstention)

ADJOURNMENT:

Ms. Lawrence announced the following adjournment:

Michael and Janaki Degen - 86 Crest Drive - Variances to construct a second story over the existing garage and principal dwelling and a one-story rear addition.

NEW PUBLIC HEARING – Jason Merritt and Myriah Pahl – 36 Hamilton Place

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, February 13, 2023** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Jason Merritt and Myriah Pahl  
26 Hamilton Place  
Tarrytown, New York 10591

The applicant is seeking a use variance to permit a third dwelling unit in the basement of an existing two-family dwelling where the Village of Tarrytown ("Zoning Code") §305-39 A.(5) only permits two family dwellings in the RR zone.

The property is located at 26 Hamilton Place and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.80, Block 41, Lot 10 and is located in the RR (Restricted Retail) zone. In the event the Zoning Board grants the Applicant's request for a Use Variance to allow the third dwelling unit, the applicant is further seeking the following area variances:

<b>Code Section: §305-39 Restricted Retail §305 Attachment 10:1</b>	<b>Required (Permitted)</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance Required</b>
<b>§305 Attachment 10: Column 20 Min. Floor Per Dwelling Unit</b>	1500 sq. ft.	n/a	716 sq. ft.	784 sq. ft.
<b>§305-63 D(1) Off Street Parking 2.5 spaces per unit (2.5 x 3 units = 8 spaces)</b>	8 Spaces	1 space	1 space	7 spaces
<b>§305 Attachment: 10: Column 11, Front Yard Setback</b>	30 ft.	28 ft.	22.06 ft.	7.94 ft.
<b>305 Attachment: 10: Column 12, Minimum each side yard</b>	16 ft.	22. ft.	15.50 ft.	0.50 ft.
<b>305 Attachment: 10: Column 13, Minimum two side yards</b>	34 ft.	36.5 ft.	30.00 ft.	4.00 ft.
<b>§305 Attachment: 10: Column 14, Minimum Rear Yard</b>	32 ft	37.0 ft.	31.20 ft.	0.80 ft.

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 and the Architectural Review Board.

Dated: February 3, 2023

Lizabeth Meszaros  
Secretary to the Zoning Board

The mailing receipts were received and the public hearing notice sign was posted.  
Board Members visited the property.

Samuel F. Vieira, RA, the project architect, appeared, representing the applicants, also present. They are before this Board to ask for permission to permit a third dwelling unit in the basement of an existing two-family dwelling where the Village of Tarrytown ("Zoning Code") does not allow for a third dwelling unit in an existing two-family dwelling in the RR zone. The third unit is proposed in the basement and would only require minor alterations to convert it into a habitable unit. He noted that just across the street, multi-family units are permitted and perhaps the zoning map could have been drawn in keeping with the neighboring properties to the east. Mr. Vieira presented the site plan and briefly showed

the minor changes to the home which include adding a set of stairs in the front leading down to access the proposed basement unit. The existing interior staircase will be removed and a window well will be added for egress, to conform with the building code. Both the stair and window well are considered part of the building and must meet the setback regulations which will require variances. The proposed steps encroach on the front yard setback but do not go beyond the existing front of the house. A slight side yard variance of .50 ft. to ensure clearance for the window well is also requested, but may not be needed. An additional 2.5 off-street parking spaces are required by village code for the 3<sup>rd</sup> unit. The site plan shows 2 off-street parking spaces in tandem, but the code does not recognize tandem parking, so a variance for 7 off-street parking spaces is needed.

With regard to permitting the 3<sup>rd</sup> unit, he referenced material submitted in the application and noted that this property is surrounded by multi-family residences. The 14 N. Broadway property at the corner of Hamilton was recently converted into 5 units. Just across the street in the M 1.5 zone, sits the Landmark Building, which was converted into condo units, and up and down Hamilton Avenue there are homes with three families or more. He believes that the 3<sup>rd</sup> unit at this property fits in with the character of the neighborhood. Mr. Vieira advised that a height variance for the basement will be required from NYS for this conversion. The main area of the basement is 7 feet and there are a couple of sections where it drops down to 6' 4" and 6" 8". He noted that height requirements for basements in multi-family structures are ambiguous since basements are not usually converted to habitable space in multi-family buildings. He advised that any NYS approval is contingent upon the village approval of the variances.

Ms. Lawrence asked if anyone in the public wished to comment.

Debra Portnoy, who lives across the street at the Landmark Condominium, is concerned about parking on the street since the applicant cannot provide off-street parking. Ms. Portnoy feels that by approving this they will be making parking that is already tough, tougher. Ms. Portnoy is also concerned about setting a precedent for allowing the conversion of 2 families into 3 families which will create more parking problems.

Ms. Lawrence noted Ms. Portnoy's concerns and advised that the Board is very aware of the parking deficiencies in the village. Most of the applications before this Board come for some type of parking variance and are carefully reviewed.

Mr. Pennella noted that as you go up Hamilton, the zone becomes M-1, which allows for a 3<sup>rd</sup> unit, but this property is located in the RR zone. He advised that the 14 N. Broadway application added 2 street parking spaces Hamilton Place so, from time to time, these projects can have a positive impact. There was also a retail requirement for the 14 N. Broadway application.

Mrs. Portnoy referred to the ADU law passed by the BOT on February 8, 2023 and noted that, at that meeting, the Mayor said that multi-family buildings in a single-family zone could not be converted into ADU's. Ms. Lawrence agreed and advised Ms. Portnoy that this application is not for an ADU since the property is not in the residential

zone and it is not a single-family house. This property is in the RR zone and the applicant is asking for a use variance to convert the basement into a 3<sup>rd</sup> unit. Counsel Zalantis added that ADU's are not permitted in this zone, they are only allowed in residential zones and have to be owner occupied. Ms. Portnoy noted that this Board realizes that parking is problematic all over Tarrytown but that doesn't lessen the fact that they will have a bigger problem on Hamilton Place with cars parking on the street and questioned if the Board cares. Counsel Zalantis advised that this Board first has to first consider granting the use variance before considering the area variances, which includes the parking variance. Ms. Lawrence advised Ms. Portnoy that this Board does care; they live here and they put their time in for meetings and site visits. This is the beginning of the hearing and if people attended more meetings, they would understand how much this Board cares.

Jason Merritt, the applicant, thanked the Board for their service. He noted that they are first time homeowners who are very happy living in Tarrytown, having found their perfect home. In the process of buying the property, they learned that there was a problem with an open permit for the 3<sup>rd</sup> unit building in the basement that needed to be closed. They were hopeful that they could correct this after the purchase and overcome that hurdle and use the rental income from this unit to help pay the mortgage and keep up the property maintenance. Two weeks before the closing, they received a letter saying that the basement was not habitable. Throughout this process, there was a tenant living in the basement unit. The prior owner made the tenant vacate and then he tore out the kitchen. Mr. Merritt advised that they made the decision to go forward with buying the home and promptly looked for an architect to help legalize the 3<sup>rd</sup> unit basement apartment which brings them here to request a use variance.

Ms. Lawrence asked Mr. Merritt if they went through a broker and if they knew the unit was illegal. Mr. Merritt said they did go through a broker and there was a discrepancy between the Town of Greenburgh and Village of Tarrytown records which needed to be addressed. It was their understanding that the owner was trying to rectify the situation. The prior owner cleaned up the open permit and then it was on them to take it from there. Ms. Pahl said the prior owner took out the kitchen but left the appliances for them to put back in. It was not clear to them, but it was 2 weeks away from the closing and they needed to move.

Ms. Lawrence expressed her concern about the need to document the financial hardship in the application. The Board would like to see more detailed financial information that indicates that the applicant needs the \$18,000 for the 3<sup>rd</sup> unit in order to sustain the upkeep of the home, etc. The applicant will need to show documentation in dollars and cents proving that there is a financial hardship and that this revenue for the 3<sup>rd</sup> unit is necessary. Counsel Zalantis said they need actual dollars and cents figures to show their inability to realize a reasonable return on the property, with strong financials to support it. A brief discussion took place and Ms. Lawrence recalled very few use variances that were granted by this Board over the years but the applicants were required to satisfactorily demonstrate the financial hardship through financial documentation as part of the criteria. She noted that all applications are not the same.

There are other multi-family buildings in this area, but converting a school into condos is not the same as converting a two family into a three family. The 14 N. Broadway application also included a retail component which is not the case here. The reality is that the property is located in the RR zone where the 3<sup>rd</sup> unit is not allowed by code. The issue of limited parking on Hamilton Place is also a concern since Hamilton Place is a narrow street with a 5-story cooperative, and parking is tough. She did note that this property has a wide driveway which may be favorable to the applicant.

Ms. Lawrence asked if the Board had any comments or questions.

Ms. Weisel confirmed with Mr. Vieira that the proposed unit is 760 s.f. Mr. Merritt confirmed that they will indeed have to go outside to get to the laundry area since the interior staircase is being removed.

Ms. Lawrence advised that they will not be voting this evening to give the applicant the opportunity to submit additional information.

Ms. Pahl commented that this is a small space. While they acknowledge the parking code requirements, there is no way that the tenant will have 2.5 vehicles. A single person will occupy the unit and only one car would be needed. They just want to meet the same income that the previous owner had by renting out the unit. They also want to make sure it is safe and to code, and to honor the neighbors, do it the right way. Mr. Merritt noted that the prior tenant lived in this unit for 10 years and did not have a car.

Ms. Kudla asked how much the last tenant paid. Mr. Merritt said it was \$1,300 plus utilities and they plan on charging \$1,500.00 plus utilities.

Ms. Lawrence noted correspondence from the OCA about the proximity of the property to the aqueduct which seems to have been resolved. Mr. Vieira advised that he will comment on this matter at the next meeting for the record.

Ms. Weisel moved, seconded by Ms. Rachlin, to continue the public hearing.

The secretary recorded the vote:

Member Kudla :	Yes
Member Rachlin:	Yes
Chairwoman Lawrence:	Yes
Member Kaplan:	Yes
Member Weisel:	Yes
All in favor. Motion carried.	5-0

ADJOURNMENT:

Ms. Lawrence moved, seconded by Ms. Rachlin, to adjourn the meeting at 8:10 p.m.  
All in favor. Motion carried. 5-0

Liz Meszaros- Secretary