

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
Village Hall – 1 Depot Plaza
April 10, 2023 7:30 p.m.

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

ABSENT: Alternate Member #1 Jolly

Ms. Lawrence opened the meeting at 7:30 pm.

Board Member Changes:

Ms. Lawrence announced the resignation of Victoria Weisel and acknowledged her many years of dedicated service to our village. Ms. Weisel served on the Zoning Board for just over 12 years. Her sense of calmness during the public hearings and her thoughtfulness during the review and deliberation of applications certainly benefited our village. We thank “Tori” for her service and wish her all the best in her future endeavors.

Ms. Lawrence announced that Ms. Barbara Kudla will fill Ms. Weisel’s unexpired term (as a full Board Member), and she welcomed Ms. Tasha Young, as a Second Alternate Board Member, to fill Ms. Kudla’s position.

APPROVAL OF MINUTES – March 13, 2023

Ms. Kaplan moved, seconded by Mr. Abraham, with Ms. Rachlin abstaining, to approve the minutes of the March 13, 2023 meeting as submitted.

The secretary recorded the vote:

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

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

CONTINUATION OF PUBLIC HEARING – Jason Merritt & Myriah Pahl – 26 Hamilton Place
The applicant is seeking a use variance to permit a third dwelling unit in the basement of an existing two-family dwelling where §305-39 A.(5) of the code only permits a maximum of two-family dwellings in the RR zone. If the use variance is granted, associated area variances are requested.

The Zoning Board closed the public hearing on this matter on March 13, 2023. Sam Vieira, R.A., the project architect, and the applicants, Jason Merritt & Myriah Pahl were present.

Counsel Addona read the draft resolution into the record for the Board' consideration:

Application of Jason Merritt & Myriah Pahl ("Applicant")
26 Hamilton Place, Tarrytown, New York 10591 (the "Property")
Section 1.80, Block 41, Lot 10
RR (Restricted Retail) Zoning District

WHEREAS, the Applicant has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector dated September 6, 2022 and revised January 27, 2023 ("Denial Letter") that the Applicant's existing use of the Property as a multi-family (three-family) residence does not comply with Zoning Code § 305-39(A), which only permits residential uses for single-family detached dwellings and two-family dwellings in the RR Zoning District; and

WHEREAS, the Applicant is seeking a use variance to allow the Property to be used as a three-family dwelling where that use is not permitted by the Zoning Code; and

WHEREAS, while this application is a use variance under the State Environmental Quality Review Act, in light of the Board's decision herein, it is not necessary for the Board to make a SEQRA determination; and

WHEREAS, a duly noticed public hearing was opened at the regular meeting of the ZBA on February 13, 2023 and continued to the ZBA's March 13, 2023 meeting, and the Applicant and members of the public having the opportunity to attend and be heard, the public hearing was closed on March 13, 2023, 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, based upon the record before this Board, the Board makes the following findings:

1. Under Village Law § 7-712-b(2)(b), "no such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created." All four criteria must be satisfied by the Applicant to warrant the Zoning Board granting a use variance.¹

¹ *WCC Tank Technology, Inc. v. Zoning Board of Appeals of Town of Newburgh*, 190 A.D.3d 860 (2d Dep't 2021).

2. Here, the Board finds that the application fails to satisfy all of the factors.
3. The first factor requires that “a landowner who seeks a use variance must demonstrate factually, by dollars and cents proof, an inability to realize a reasonable return under existing permissible uses.”² In response to the Zoning Board’s request, the Applicant did present a chart that showed what the Applicant’s costs and revenue would be from having three residential units versus two units. But there was no documentation to support those numbers. In addition, while the Applicant contemplated annual rent increases for the two rental units in calculating its rate of return, the Applicant did not factor into its calculations annual rent increases for the unit that the Applicant is residing in – which would generate rental income at an annually increasing rate (as Applicant contemplated for the other two units) if it was being rented. Further, the Applicant did not contemplate the financial viability of the several other uses permitted in the RR zoning district, which is what State law requires.

But even giving the Applicant the benefit of the fact that the Applicant purchased the Property to reside in one of the units (and thus use at least one of the units for residential purposes), there are other permitted uses in the RR district that could accommodate a residential unit, such as (a) combining the basement and first floor into one larger unit that would generate a greater amount of rental income or (ii) a dwelling unit above other uses permitted in the RR district, such as a variety of retail and commercial uses. The Applicant did not analyze any of these uses or any of the other myriad of uses permitted in the RR district.

4. With respect to the second and third factor, the hardship is only unique in that the Property was being used as a three-family home that is not permitted by the Zoning Code and granting this use variance could very well change the character of the neighborhood. While the Board recognizes that this use commenced under the Applicant’s predecessors-in-interest, and the Applicant is making a good-faith effort to legalize the use, if the Board were to grant a use variance for this application to allow a use that is not permitted by the Zoning Code, it would set a very dangerous precedent for uses in the RR (restricted retail) district, as well as the Village in general, and risk completely changing the character of the Village’s retail district. The locations of the RR zoning district are concentrated along the Village’s main thoroughfares – Broadway and Main Street – and in close proximity to the train station for transit-oriented access. While the RR zoning district does allow detached single family and two-family residential uses, the majority of the uses permitted in this zoning district are retail and commercial uses. If the Board were to allow a multi-family home in this application, this could result in other properties in the RR district seeking to convert to strictly residential properties, including potentially larger multi-family homes, and the precedent set by approving this application could potentially preclude the Board from being able to deny those requests.

The Applicant raised at both public hearings that there are multi-family homes in close proximity to the Property and that the zoning map should or could be adjusted. However, the multi-family properties the Applicant referenced are either in a different zoning district or incorporate a retail/commercial component as required in the RR district. The

² *DeFeo v. Zoning Board of Appeals of Town of Bedford*, 137 A.D.3d 1123, 1126 (2d Dep’t 2016).

Zoning Board is bound by the regulations of the zoning district in which the Property is located and Village Law § 7-712-b(2)(b) expressly references the “particular district where the property is located” as the standard for the Zoning Board’s review. If the Applicant’s position is that the Property should be rezoned, this is beyond the Zoning Board’s jurisdiction as only the Village’s legislative board – the Board of Trustees – is authorized to amend the zoning map and zoning districts.

5. With respect to the fourth factor, “even if a hardship is found, a use variance will not be granted if the hardship is self-imposed.”³ That is what happened here. “Even if a prospective purchaser of property does not have the actual knowledge of the applicable provisions of an ordinance, he is bound by them and by the facts and circumstances concerning the use of the property which he may learn by exercising reasonable diligence.”⁴ Here, the Applicant exercised due diligence to learn that the third unit was not legal prior to the closing, but went forward with the closing anyway. Without discounting the challenges that occurred with the timing of the sale, at essence, this is a private contractual dispute between the Applicant and the prior owner as to what was negotiated and agreed to when Applicant purchased the Property. But just as the Applicant had to make the decision that was right for it when deciding to go forward with the purchase with this knowledge, the Zoning Board has to make the decision that is right for it in adhering to the law and protecting the Village.

With respect to the Applicant’s reference to the assessment roll identifying the Property as a three-family home, “the tax map is only for the purpose of identifying the assessed property.”⁵ The State Board of Real Property Services opined when property is utilized without the proper zoning approvals, the tax map should still reflect the actual use as “[t]he accurate description of property being assessed is essential to the validity of the assessment”⁶ But again, despite what was stated in the assessment roll, the Applicant acknowledged knowing the third unit was not permitted by the Village.

6. While the Zoning Board is very sympathetic to the Applicant’s situation, the Board is bound by the applicable and controlling law; and applying that law to the facts of this application, the Board cannot justify granting this application.

BE IT FURTHER RESOLVED, based upon the foregoing findings, the application for a use variance is denied; and

BE IT FURTHER RESOLVED, in light of the Board’s determination to deny the use variance, the area variances associated with legalizing the third unit are moot and the Zoning Board will not consider any other applications related to the use of the Property until the Property is brought into conformity with the Zoning Code.

Dated: April 10, 2023

³ *Courtney v. City of Albany Zoning Bd. of Appeals*, 177 A.D.2d 820, 821 (3d Dep’t 1991).

⁴ *Tharp v. Zoning Board of Appeals of the City of Saratoga Springs*, 138 A.D.2d 906, 907 (3d Dep’t 1988); *see also Khanuja v. Denison*, 203 A.D.2d 670, 680 (3d Dep’t 1994).

⁵ *Carpentier v. Co. of Sullivan*, 123 A.D.3d 1412, 1413 (3d Dep’t 2014).

⁶ 10 Op.Counsel SBRPS No. 17, 2001 WL 34072394, at *2 (N.Y.Bd.Real.Prop.Serv. Sept. 17, 2001).

Ms. Rachlin moved, seconded by Mr. Abraham, to approve this Resolution denying the use variance for this property.

The secretary recorded the vote:

Member Kudla : Yes

Member Abraham: Yes

Chairwoman Lawrence: Yes

Member Rachlin: Yes

Member Kaplan: Yes

All in favor. Motion carried. 5 - 0 The use variance was unanimously denied.

NEW PUBLIC HEARING – Seth Feingersh & Jessica Lomasson - 92 MacArthur Lane

The following public hearing notice was made available to the public:

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, April 10, 2023** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Seth Feingersh and Jessica Lomasson
92 MacArthur Lane
Tarrytown, NY 10591

For a variance from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the installation of a condenser unit on the north side of the property.

The property is located at 92 MacArthur Lane and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70, Block 29, Lot 14 and is located in the R 7.5 zone.

The following variance is sought as follows:

Code Section: §305-21 Residential R-7.5 Zone §305 Attachment: 5:1	Permitted (Required)	Existing	Proposed	Variance Required
Column [16] Minimum Side Yard Setback	10 ft	n/a	5.6 ft	4.4 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.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: March 31, 2023

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

Seth Feingersh and Jessica Lomasson, the applicants, appeared before the Board for an area variance to install a condenser on the north side of their property and explained that the ductless heat pump split system will lower their energy costs. With regard to the proposed location of the unit, they chose the north side of the property. Mr. Feingersh referred to the pictures in the application and explained that there is a shared driveway on the south side of the house and a small patio space in the rear, and a dryer vent and a window which could also be partially blocked. For these reasons, they feel that the north side would be the best location. The condenser will be not be seen from the street and will be mostly hidden from their neighbor to the north.

Ms. Lawrence asked if they have spoken to the neighbor to the north. Mr. Feingersh stated that his neighbor has no objection. In fact, his condenser will be back to back with the location of his proposed unit, separated by a fence.

Ms. Lawrence asked if there is anyone in the public who wished to comment. No one in the public wished to comment. Ms. Lawrence asked if the Board or staff had any questions or comments. There were no comments from the Board.

Mr. Pennella commented that there is an alternate location on the south side. The unit will have to meet noise regulations because of the proximity to the neighboring property on the north to ensure that the unit does not cause disturbance to the neighbor and this should be included as a condition in the resolution.

Ms. Kudla asked if the neighbor has concerns. Mr. Feingersh said the unit is quieter than a traditional condenser at 54 Db, which is similar to the noise of a dishwasher.

Ms. Lawrence moved, seconded by Ms. Rachlin, to close the public hearing.

The secretary recorded the vote:

Member Kudla :	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5 - 0

Ms. Lawrence read through and responded to 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 proposed project will not bring an undesirable change since there are other condensers in the neighborhood, but the noise factor will be reviewed by the building department.*
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 the benefit sought by the applicant cannot be achieved by some other method other than the area variance due to the property constraints.

3. That the requested area variance is not substantial. *Ms. Lawrence stated that the requested variances are not substantial.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood since many homes have these outside condensers installed.*
5. That the alleged difficulty was 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 it is self-created but that does not preclude the Board from granting this variance.*

Mr. Abraham moved, seconded by Ms. Rachlin, to approve the variance, subject to compliance with noise regulations confirmed by the Building Inspector, and authorize Counsel Addona to prepare a Resolution memorializing the discussion during the public hearing to also include general conditions of approval.

The secretary recorded the vote:

Member Kudla :	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5- 0

NEW PUBLIC HEARING – Rebecca & Nicholas Galgano – 45 Lincoln Avenue

The following public hearing notice was made available to the public:

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, April 10, 2023** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Rebecca and Nicholas Galgano
45 Lincoln Avenue
Tarrytown, New York 10591

For variances from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the construction of a second story addition, a new covered front porch, an existing detached tool shed, and related site improvements.

The property is located at 45 Lincoln Avenue is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.190, Block 117, Lot 2 and is located in the R 7.5 zone.

The following variances are sought as follows:

Code Section: §305 Attachment 5:1	<u>Required</u> (Permitted)	Existing	Proposed	Variance Required
Column 8 - Principal Building Coverage	(24%)	27.1%	28.8%	4.80%*
Column 10 - Total Building Coverage	(30%)	29.8%	31.4%	1.4%*
§305-47 E. (2) Accessory Building Column 11 - Front Yard Setback (High St)	20 ft.	5 ft.	11.5 ft.	8.5 ft.*
Column 12 Min. Side Yard Setback (West)	10 ft.	1.6 ft.	1.6 ft.	8.4 ft.*
Column 12 Min. Side Yard Setback (South)	10 ft.	0	0	10 ft.*
305-63 C. (3)(a) Off Street Parking Driveway encroachment to side lot line	5 ft.	-	3.5 ft	1.5 ft.
§305-63 C. (3)(b) Off Street Parking Column 11 - Front Yard Setback (Lincoln)	20 ft.	-	12 ft.	8 ft.
305-63 C. (3)(b) Off Street Parking Column 11- Side Yard Setback (South)	10 ft.	-	5 ft.	5 ft.
§305-5 Light Exposure Plane - West	10 ft.	-	10 ft.	10 ft.
(*) Non-conforming - Additional increase of existing non-conformity.				
Code Section: §305 Attachment 5:1	<u>Required</u> (Permitted)	Existing	Proposed	Variance Required
§305-5 Light Exposure Plane – South	10 ft.	-	10 ft.	10 ft

§305-25 Maximum Floor Area Table 1 - Zone R7.5 Lot – 7,553 SF	(2,925 sf.) 38.75%	2,327 sf. 30.8%	3,819 sf. 50.6%	894 sf. 11.8%
§305-49 Impervious Coverage	(40.75%) 3,077 sf	44.3% 3,343 sf	45.5% 3,435 sf	4.7% 358 sf

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 approvals will be required by the Planning Board, the Architectural Review Board and the Board of Trustees.

By Order of the Zoning Board of Appeals.

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: March 31, 2023

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

Sam Viera, RA, appeared before the Board, representing the applicant and presented the site plan and briefly went through the existing conditions. He noted that the small home was built on the property line years ago. He showed the portion of the home which the prior owner used as a greenhouse that was eventually converted into livable space. They are proposing to add a second story addition above the building. He showed the patio area with a plexiglass covering, a covered porch with a separate entryway, and a detached shed in disrepair located at the corner of High Street and Lincoln Avenue.

They are also proposing to clean out the unsightly structures in front of the house. Take the existing entry to the main house and create a main entrance with a covered porch. The new entry to the house will allow them to have a small deck they can use for outside dining. They are asking for permission to demolish the existing detached shed and rebuild one slightly smaller, pushing it away from High Street so that it aligns with the existing house. The main part of the renovation will add a second story addition over the existing one and a half stories. The 20 ft. section will be left as is.

Mr. Vieira showed the streetscape and outline of how the addition will look superimposed onto the existing. He noted that they tried to incorporate the architecture to accommodate the slope of the property.

He showed the building plans interior. They will create a mud area and great room and gym area in the existing space. They will add over the main footprint, a primary suite with a bathroom and walk in closet and laundry room and hallway bath. He showed a picture of what the home will look like when finished.

With regard to the variance requests, Mr. Vieira noted that a good number of variances listed are due to the fact of existing non-conforming conditions of the property. He noted the two off-street parking areas that will be removed. The existing driveway on the Lincoln Avenue side will be widened to fit 2 cars parked side by side, which requires a variance. This driveway will be adjacent to the neighbor's driveway. Ms. Rachlin confirmed that there will only be one driveway.

The light plane variance is due the existing siting of the home which is on the property line. There is a FAR variance request of 894 s.f. and adding the roof to the porch increases the impervious surface.

Ms. Lawrence is concerned about the FAR variance which is very large.

Mr. Vieira explained the FAR is due to the proposed steep roof to accommodate storage since there is no basement. There is a shed but that will be used for lawn mowers, bikes, canoes, etc. His clients were hoping to be able to have a larger attic for storage but they could lower the attic to under 7 feet, which would decrease the FAR by 272 s.f. reducing the variance to 622 s.f.

Mr. Vieira noted that the FAR of the older existing section that will remain is 526 s.f. This section is acting as a retaining wall to the property to the west. If they removed it, they would have to rebuild the retaining wall.

Ms. Rachlin asked if they considered removing the shed. Mr. Vieira said the shed does not count toward the FAR. Ms. Lawrence asked about the need for the shed. Mr. Vieira said his clients really would like to keep the shed. They are making it smaller and pulling it away from the corner. Counsel Addona noted that this is a corner lot and the applicants have the added burden of 2 front yards.

Mr. Pennella suggested raising the grade of the basement to eliminate the square footage of the basement into the FAR calculation. The basement area has 309 s.f. which has to be calculated as part of the FAR. If they raise the basement grade (309 s.f.), and lower the attic (272 s.f.), the FAR could be reduced by 581 s.f. and the variance request would be reduced to 313 s.f.

Mr. Vieira advised that the light plane will not be affected by lowering the roof since the house is at the property line.

Ms. Lawrence asked if anyone in the public wished to comment. No one appeared.

Mr. Vieira agreed that these changes could be made and will revise the plans. Mr. Pennella commented that there would only be a 4.1% increase over the FAR when it is reduced to 313 s.f., which is a significant decrease.

Ms. Lawrence asked about the impervious coverage variance request. Mr. Vieira advised that they are covering the porch which adds to the impervious coverage.

Ms. Lawrence noted that across the street there is a relatively new larger home. There are also many renovated homes in this area with new additions. Mr. Vieira commented that this home will still be average in size compared to the other homes in the area.

Ms. Rachlin moved, seconded by Abraham, to close the public hearing.

The secretary recorded the vote:

Member Kudla :	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5 – 0

Ms. Lawrence read through and responded to the criteria for the area variances:

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 proposed project will not create a desirable change in the neighborhood. The changes will improve the area and she believes the neighbors will be pleased with the renovation project.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than the area variances. *Ms. Lawrence stated that the benefit sought by the applicant cannot be achieved by some other method other than the area variances due to the way the home is sited.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that the requested variances are not substantial due to the way the home is sited and the size of the property. The applicant has also reduced the FAR considerably.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variances will not have an adverse effect or impact, but will improve the physical and environmental conditions in the neighborhood.*

5. That the alleged difficulty was 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 it is self-created but this does not preclude this Board granting the variances.*

Ms. Rachlin moved, seconded by Abraham, to approve the variances with the condition that the plans be revised to reduce the FAR calculation for the basement from 309 s.f. to zero (0) and to lower the height of the attic to reduce the FAR by another 272 s.f., The original FAR request of 894 s.f. is therefore reduced by a total of 581 s.f., resulting in a variance request of 313 s.f. (which is 4.1% over the permitted FAR), and to authorize Counsel Addona to prepare a Resolution memorializing the discussion during the public hearing to include general conditions of approval.

The secretary recorded the vote:

Member Kudla :	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5 – 0

NEW PUBLIC HEARING – Dave A. Barbuti Architect, PC – 37 Main Street

The following public hearing notice was made available to the public:

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, April 10, 2023** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Dave A Barbuti, Architect PC
150 White Plains Road - Ste103
Tarrytown, New York 10591

For variances from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the change of use from existing vacant retail space to a take-out food establishment.

The property is located at 37 Main Street and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.40, Block 17, Lot 15 and is located in the RR zone.

The following variances are sought as follows:

Code Section: §305-63 Schedule of off-street parking requirements.	Required	Proposed	Existing	Variance Required
§305-63 D. (1) Off Street Parking	1sp/100sf + 1sp/employee + 2sp/office	767sq.sf (1 st fl) = 8 sp 1 employee = 1 sp office (basement) = 2 sp Total = 11 spaces	1 offices + 1 retail space = 4 spaces	7 spaces
§305-63 F.(2)(a) Off- street loading requirements	1sp/6,000 sf	0	0	1 Space

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.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: March 31, 2023

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

Dave A Barbuti, RA, appeared and presented the site plan. They are proposing to change the use of vacant retail space on the first floor to a take-out restaurant, similar to a smoothie bar type establishment, rather than a restaurant. It will be a “grab and go” with no cooking on site. They will only have pre-packaged mixers, blenders, ice cubes and water. He is here to request variances for parking and loading spaces that they are unable to provide on-site. Ms. Kudla asked about the parking. Mr. Barbuti noted that there is a municipal parking lot right across the street. They hope to attract the foot traffic on Main Street. In addition, product deliveries will take place in the morning before 9 a.m. with a small sprinter van. Trash collection will also take place early morning. This application will also require Planning Board and ARB approval.

Ms. Lawrence confirmed that it will all be take-out. Ms. Rachlin asked if they have to pay into the parking fund. Ms. Pennella said the applicant will be required to pay \$9,000 into the parking fund.

Ms. Lawrence said that this Board has had many applications for parking variances along Main Street.

Mr. Pennella asked if there will be seating will be on the outside. Mr. Barbuti said not at this time. Mr. Pennella said they could have café seating on the sidewalk which would require a permit.

Alejandra Badillo, who will be operating the proposed Herb- a-Life store, came up and explained that the nature of their operation is to attract foot traffic with a healthy choice alternative. Patrons can buy the mixes and cannisters, but the intent is to have the drinks mixed on site. She noted that Herb-a-life has been around for 40 years and there is a similar nutritional club located in Sleepy Hollow.

The Board had no additional questions. There were no comments from the public.

Mr. Rachlin moved, seconded by Ms. Lawrence, to close the public hearing.

The secretary recorded the vote:

Member Kudla :	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5 -0

Ms. Lawrence read through and responded to 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 proposed project will not produce an undesirable change in the character of the neighborhood nor will it be a detriment to nearby properties.*
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 the benefit sought by the applicant cannot be achieved by some other method other than the area variance due to the fact that there is no parking on site.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that the requested variances are not substantial due to the fact that there is no parking on site.*

4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*
5. That the alleged difficulty was 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 it is not self-created due to the site limitations.*

Ms. Abraham moved, seconded by Ms. Lawrence, to approve the parking and loading variances and authorize Counsel Addona to prepare a Resolution memorializing the discussion during the public hearing to include general conditions of approval and specific conditions for payment into the parking fund and deliveries to be made in small sprinter trucks between 7 a.m. and 9 a.m.

The secretary recorded the vote:

Member Kudla :	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5 – 0

NEW PUBLIC HEARING – Dave A Barbuti, Architect, PC – 53 LeGrande Avenue

The following public hearing notice was made available to the public:

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, April 10, 2023** in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Dave A Barbuti, Architect PC
150 White Plains Road – Ste 103
Tarrytown, New York 10591

For variances from Chapter 305 of the Village of Tarrytown (“Zoning Code”) for the reconstruction of an unenclosed porch into habitable space.

The property is located at 53 LeGrande Avenue and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.50, Block 23, Lot 11 and is located in the R-5 zone.

The following variances are sought as follows:

Code Section: §305-22 Residential R-5 Zone §305 Attachment 5:1	Required/ (Permitted)	Existing	Proposed	Variance Required
Column 11, Minimum Front Yard Setback	20 ft.	9.7 ft.	9.7 ft.	10.3 ft.
Column 12, Minimum for Each Side Yard Setback (West side)	8 ft.	4.6 ft.	4.6 ft.	3.4 ft.
Column 13, Minimum Setback, 2 Side Yards	18 ft.	12.7 ft.	12.7 ft.	5.3 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 Architectural Review Board.

By Order of the Zoning Board of Appeals

Dated: March 31, 2023

Lizabeth Meszaros
Secretary to the Zoning Board

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

Dave A. Barbuti, R.A., appeared before the Board for front and side yard variances for the reconstruction of an unenclosed porch into livable space with the addition of half a bath. He showed the site plan and noted that the porch will be constructed on the same existing footprint. He will also be required to get ARB approval after this approval.

Ms. Lawrence asked if anyone had any questions. The Board had no questions.

There was no one in the public to comment.

Mr. Rachlin moved, seconded by Ms. Lawrence, to close the public hearing.

The secretary recorded the vote:

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

Ms. Lawrence read through and responded to 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 proposed project will not have any undesirable change in the character of the neighborhood. The porch will be improved and is being built on existing footprint.*
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 the benefit sought by the applicant cannot be achieved by some other method other than the area variance due to the lot size.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that the requested variances are not substantial due to the size of the lot.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*
5. That the alleged difficulty was 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 it is self-created but that does prevent the Board from granting the variances.*

Ms. Rachlin moved, seconded by Abraham, to approve the variances and authorize Counsel Addona to prepare a Resolution memorializing the discussion during the public hearing to include general conditions of approval.

The secretary recorded the vote:

Member Kudla:	Yes
Member Abraham:	Yes
Chairwoman Lawrence:	Yes
Member Rachlin:	Yes
Member Kaplan:	Yes

All in favor. Motion carried. 5 – 0

ADJOURNMENT:

Ms. Lawrence moved, seconded by Ms. Rachlin, to adjourn the meeting at 8:40 p.m.

All in favor. Motion carried. 5-0

Liz Meszaros- Secretary