

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting via Zoom Video Conference
July 13, 2020 7:30 p.m.

PRESENT: Members Weisel, Rachlin, Kim, Sgammato, Alternate Member #1 Jolly,
Alternate Member #2 Braun, Counsel Addona; Village Engineer
Pennella; Secretary Meszaros

ABSENT: Chairwoman Lawrence

This meeting is being conducted via Zoom video conferencing, which has been authorized by the Governor's Executive Order issued in response to the Covid-19 Pandemic. The orders have been renewed and are in effect*

Ms. Wiesel opened the Zoom meeting at 7:34 pm.

With regard to the meeting process, Ms. Weisel said that applicants will present their applications, followed by Board comments, and then she will turn it over to the audience for public comment. She asked members of the public to try to avoid calling in on matters that have already been addressed. All written comments that have been submitted will become part of the record.

APPROVAL OF MINUTES – June 8, 2020

Mr. Kim moved, seconded by Ms. Sgammato, with Mr. Braun abstaining, to approve the minutes of the June 8, 2020 regular meeting. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING

Theodora Pouloutides
59 North Washington Avenue
Variances needed to legalize a fifth dwelling unit.

Taylor Palmer, Attorney with the law firm of Cuddy & Feder, appeared on behalf of the applicant. He advised that they have reviewed the draft resolution provided by Counsel Addona in advance of the meeting. He asked the Board if they had any questions or comments at this time.

Counsel Addona said that the Board adopted the formal resolution on the interpretation last month and, at that same meeting, directed her to prepare a draft resolution for granting the variances for their consideration at this meeting, pending a Planning Board SEQRA determination. The Planning Board issued a Negative Declaration at their June 22, 2020 meeting. The draft resolution has been circulated to this Board, and to the applicant's attorney, for review, which included a typo of the zoning code section, which will be corrected. The public hearing has been left open should the Board wish to discuss the conditions of the resolution. If not, the Board can close the public hearing and she will read through the findings and the conditions and then the Board can vote on this resolution.

Ms. Weisel was concerned if the granting of the variances would set a precedent for future applications. Counsel Addona advised that this application has unique circumstances in that the property has been used in this manner for several decades and off-street parking is also provided, which is not always the case with this type of application. The Board has set forth a reasoning for the granting of the variances. If another application like this is filed, there are factors that the Board could look out in determining whether or not it is consistent with this application.

Ms. Weisel said the variance is to allow the fifth dwelling to exist which has been there for a while and they have provided parking. So, in this instance, the Board is voting on specific issues relating to the property, which would not set precedent for future applications.

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

Josh Ringel, the meeting host, advised if anyone would like to speak that they should click the “raise your hand” icon or press “*9” on your phone. The Q&A box is only for technical questions. Mr. Ringel advised that no one wishes to speak.

Mr. Jolly asked if the applicant will be getting a certificate of occupancy for this? Mr. Pennella advised that the building permit will be issued and inspections will be made for the fifth unit only. A certificate of occupancy would be issued for the unit, not the entire building.

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

Ms. Weisel asked for a roll call vote for each Board Member as follows:

Alt. Member Jolly: Yes
Member Sgamatto: Yes
Member Kim: Yes
Member Rachlin: Yes
Member Weisel: Yes

Counsel Addona read through portions of the Resolution. The entire resolution is included below:

Application of Theodora Pouloutides (“Applicant”)
59 N. Washington Street, Tarrytown, New York 10591 (the “Property”)
Sheet 1.40, Block 12, Lot 3 (M-1.5 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 November 15, 2019 (“Denial

Letter”) that the Applicant’s existing five-unit residential structure does not comply with the requirements of Chapter 305 of the Village of Tarrytown Zoning Code (“Zoning Code”), and

WHEREAS, as its primary request for relief, the Applicant sought an interpretation from the ZBA from the Denial Letter that determined the Applicant required a use variance for the fifth dwelling unit, which by motion at the ZBA’s January 13, 2020 meeting and resolution adopted at the June 8, 2020 meeting, the ZBA determined the variance for the fifth dwelling unit was an area variance for the reasons set forth in the June 8, 2020 resolution,¹ and

WHEREAS, the Applicant now seeks the following area variances:

1. A variance of 1 dwelling unit to allow 5 dwelling units in a structure where Zoning Code § 305-32(A)(3) permits a maximum of 4 dwelling units in a structure, but contemplates the possibility of multiple structures on a site,
2. A variance of 2.5 (rounded up to 3) parking spaces to allow 0 additional parking spaces for the fifth dwelling unit where Zoning Code § 305-63(D)(1) requires 2.5 (rounded up to 3) parking spaces for each residential unit, where there are 5 existing on-site parking spaces on the Property,
3. A variance of 1,500 square feet of lot area to allow 0 additional square feet of lot area for the fifth dwelling unit where Zoning Code § 305-32 and 305 Attachment 6, Column 6 requires 7,500 square feet for the first multi-family dwelling unit and 1,500 square feet of lot area for each additional unit (including the proposed fifth unit), where the existing lot is 6,098 square feet; and

WHEREAS, in connection with the application, the Applicant submitted a plan set prepared by James Ethan Miller, R.A. dated October 17, 2019 consisting of: (1) Basement Floor Plan (Existing Unit 5), Survey (Sheet 1), (2) First Floor Plan, Second Floor Plan (Existing units 14) (Sheet 2), and (3) Site Plan last revised May 20, 2020 (Sheet SK-1) (the plan set is referred to herein as the “Approved Plans”); and

WHEREAS, a duly noticed public hearing was held at the regular meeting of the ZBA on December 9, 2019 and adjourned and continued to the ZBA’s January 13, 2020 meeting, June 8, 2020 meeting and July 13, 2020 meeting,² and members of the public having had the opportunity to speak and be heard, the public hearing was closed on July 13, 2020, and

WHEREAS, at its May 27, 2020 meeting, the Planning Board adopted a Negative Declaration finding that the proposed project will not have any significant adverse environmental impacts concluding the coordinated review pursuant to SEQRA and thus completing the SEQRA review, 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 findings of this Board are as follows:

1. There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variances. There will be no change to the Property from what is currently existing other than improvements to the interior of the structure. The Applicant, through its legal representative, has represented to the Board that the Applicant and her late husband purchased the Property in 1974 and have been using it as a 5-unit residential dwelling since that time. The Applicant is proposing to continue this existing use of the fifth dwelling unit, which is already occupied with a tenant. The Property also has 5 onsite parking spaces – one for each dwelling unit – which although not what is required under the Code will reduce any impacts on parking. The Applicant also presented letters from neighboring property owners stating they have no objection to the application.
2. The benefit to the Applicant in order to retain the existing fifth dwelling unit as rental income cannot be achieved by any feasible means for the Applicant to pursue other than seeking the requested area variances. As the Code only allows 4 units in any one structure, but contemplates multiple structures on a lot, the only way for the Applicant to have the fifth unit in a zoning-compliant manner would be to completely redesign and reconstruct the Property, which would likely require more significant variances with respect to the bulk and area requirements of the Zoning Code. Further, given the size of the lot, the Applicant cannot feasibly provide the required parking spaces or the lot area for the existing 5-unit multi-family dwelling.
3. While the Board finds that the requested variances are cumulatively substantial, due to the fact that the current use has been existing on the Property for several decades and the Applicant is proposing to provide off-street parking for each dwelling unit, the Board does not find this to be a basis to deny the area variances.
4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. There will be no change to the structure from what has been existing for several decades other than minor interior changes. In addition, the Planning Board conducted a coordinated environmental review pursuant to SEQRA and found the proposed continuation of the five-unit residential use will not result in any significant adverse environmental impacts.
5. The Board finds the difficulty is self-created to the extent that the Applicant is proposing to continue the five-unit residential use when it cannot provide evidence that the use is legal, nonconforming. Notwithstanding such, in light of the fact that there will not be an undesirable change in the character of the neighborhood, the benefit cannot be achieved by some other feasible means for the Applicant to pursue and the proposed variances will not result in an adverse impact on the environmental conditions of the neighborhood, the fact that the difficulty is self-created does not preclude the granting of this application.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. The variances are granted solely in connection with the Approved Plans (which are incorporated by reference) and the variances are granted only to the extent that they are necessary to legalize the fifth dwelling unit as set forth on the Approved Plans. If any material changes are made to the Approved Plans, other than those required by the Planning Board as part of its review of this proposed project (if applicable) and so long as the change(s) does not increase the number or degree of variances needed, the Applicant must make an application to the ZBA for amended approval.
2. The variances are granted subject to the Property being used as a multi-family dwelling with no more than 5 dwelling units.
3. There shall be 5 off-street parking spaces provided on the Property with sufficient access and maneuverability as determined by the Planning Board during site plan review.
4. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approvals or permits of any other board, agency or officer as prescribed by law or ordinance with regard to the Approved Plan or construction or any other phase of the project. The granting of this application shall not be deemed to relieve the Applicant of the need to comply with any and all other local, state and federal requirements, including but not limited to compliance with the New York State Uniform Fire Prevention and Building Code and any applicable regulations related to the proposed use, location or construction.
5. These variances are granted subject to the accuracy of the representations made by the Applicant and its representatives to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the ZBA the Applicant shall be required to make an application for an amended approval.
6. The Applicant shall procure a building permit from the Building Department within two (2) years of the date of this Resolution or one (1) year from obtaining the last required land use board approval (i.e. planning board or architectural review board), whichever is later, and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance grant becomes void; and any request to extend the time within which to obtain said building permit or complete said work shall be filed no less than sixty (60) days prior to the expiration of the applicable time period.
7. The failure to observe and perform these conditions shall render this resolution invalid.

Ms. Rachlin moved, seconded by Mr. Jolly, to approve the variances.

Ms. Weisel asked for a roll call vote for each Board Member as follows:

Member Kim:	Yes
Alt. Member Jolly:	Yes
Member Sgammato:	Yes
Member Rachlin:	Yes
Member Weisel:	Yes

The variances to legalize the fifth dwelling unit were unanimously approved. Mr. Palmer thanked Counsel and the Board.

CONTINUATION OF PUBLIC HEARING -The Hebrew Congregation of North Tarrytown and Tarrytown, a/k/a Temple Beth Abraham - 25 Leroy Avenue

To seek an interpretation challenging the determination set forth in the Building Department Letter of Permit Denial requiring an off-street parking variance of 45 parking spaces and in the alternative the applicant will seek relief for 45 parking spaces and other variances related to the construction of a 4,895 +/- s.f. two-story addition with renovations to the existing building and other related site improvements.

Ms. Weisel noted that site visit that took place, yesterday, July 12, 2020. She thanked the applicant and the neighbors who were at this visit and said the visit was helpful in understanding the layout of the site and the neighboring streets. With regard to public comments that have been received in advance of the meeting, they have become part of the record and have been passed on the Planning Board since these matters: walking paths, dumpster relocation, landscaping, will all be discussed at site plan. The discussion before this Board this evening will be for the parking variance interpretation.

Sam Vieira, R.A, appeared before the Board representing the applicant and introduced Mark Levin, R.A., the project architect. Mr. Vieira thanked the Board for the site visit and explained that the main purpose of this project is to create a singular security entrance to the building to control who enters for safety purposes. An elevator will be installed in the main lobby area to provide handicapped accessibility to the upper level. The lobby addition will allow the congregants and guests to move comfortably in and out of events without being funneled into a tight space. There are 3 variances associated with this application. The first is for a 1.71% increase in impervious coverage, where 37.25% is allowed and 38.96% is proposed. The second variance is to allow for the elimination of a landscaped island which is required for every 10 parking spaces. Since the east side of the lot is wooded with vegetation, they do not feel the island is critical and are seeking relief. The third variance is for the off-street parking requirements. After several public hearings and a meeting with Village Engineer, Dan Pennella, they provided a parking analysis to the Board which included a breakdown of the parking loads for every occupied space in the Temple. This excludes the bathrooms, hallways, mechanical rooms, elevator, lobby area, etc. Every space has been accounted and the parking has

been calculated using the methodology written in the code. The chart shows two different ways that the parking can be interpreted. One way, is the cumulative effect of space being occupied at the same time. Using this method, the existing parking requirements for this site are 147 spaces. The parking requirements with the proposed addition are 149 spaces, so the proposed parking with the new addition would require a variance of 2 spaces. The second way would be to calculate the need based upon the worship and school use. These uses do not occur at the same time. The chart indicates that they are able to provide for this parking for both uses since they are proposing 59 spaces on site. They are asking the Board which interpretation is appropriate, if a variance is needed, and if so, to what degree.

Counsel Addona said, that breaking the parking requirement down by each use seemed appropriate and permissible last month, however, after further review, there is a provision in the code that allows the applicant to go to the Planning Board for a 20% reduction in the case of multiple uses. She feels that since the code is clear that the Board should look at all of the uses in aggregate, however, it is the Board's decision.

Mr. Vieira asked Counsel to confirm by using the aggregate, they are looking at 147 vs. 149 spaces and that the new addition increases the parking by 2 spaces. So, the existing building and parking lot are pre-existing and a variance of two spaces is required.

Counsel Addona said that is not up to me to decide. It is up to the Board. She is not sure if it has been established that the uses predate the zoning code.

Mr. Vieira confirmed that the main temple predates the zoning code. He referred to a recent application for 25 South Broadway, when the Board determined that the applicant would be required to get a variance for the new proposed apartment but the other required parking spaces were grandfathered in.

Counsel Addona said she does not remember that application as well as Mr. Vieira and if he would like to submit something to argue that precedent, it is fine. She suggested that Mr. Vieira make a presentation to the Board instead of trying to convince her.

Ms. Weisel asked Mr. Pennella how he arrived at 45 spaces in the denial letter. Mr. Pennella said it was calculated based upon the square footage of the new addition of 4,500 s.f. calculated at 1 space per 100 s.f. in accordance with the code. The applicant has since provided the chart with square footage for each space and the different uses. Had this analysis been submitted with the building permit, his denial letter may have been different. The Temple was built before the zoning regulations were in place. The school and day care came sometime after. He does not know exactly when, but the bottom line is the analysis submitted gives an overall picture of the uses and space requirements. If you apply the code, with the changes and addition, the parking requirement would amount to an increase of 2 required parking spaces. With regard to the 2 uses, the applicant has shown that they are able to provide for parking on site since the worship and school uses do not take place simultaneously.

Counsel Addona clarified for Member Jolly and the Board that the applicant has argued that because the code was ambiguous with how to treat parking for multiple uses, the Board had the discretion to look at it this way, however, the code clearly has a provision where this can be addressed at Planning. She feels that the aggregate way is the best way, however, the Board may want more information about what uses existed and when.

Mr. Levin said on the chart, the primary focus of the building is for worship and the school is the secondary use. During the week, the school has only 36 students and uses the lower level of the Building. Sunday school is for 3 hours and all the classroom space is used, but not the worship space. It is not the primary use of the building, so as an illustration, in the same section of the code, the school parking requirement is 1 space per hundred s.f. If you had an elementary school of 600 students, this would generate a 12,000 s.f. space and you would need 120 spaces just for the classroom. So, if you were doing a cumulative, and adding in the cafeteria, auditorium, etc., the square footage would be close to 30,000 and would require 300 spaces. He does not believe this is the intent of the code. For a religious building, they usually do not look at the cumulative. He thinks it should be by the student load since they are not providing full time day school.

In terms of the interpretation, Ms. Weisel understands the purpose of showing the square footage of each use, but she is concerned about how the code is written and setting a precedent with regard to splitting up the parking requirements according to use. Counsel Addona advised that any decision of this Board could set a precedent. She asked Mr. Pennella if he recalls ever having a variance request like this.

Mr. Pennella does not recall a variance like this with split uses but he could do some research. It is unique but could apply to other churches in town during holy days; the code does not take into consideration with regard to maximum peak load, it is just a basic load for the average day when there are holy days.

Ms. Weisel asked if any Board Members have any questions. The Board had no more questions.

Mr. Vieira said this is the 3rd or 4th meeting before this Board; the SEQRA issues have been looked at, and this Board's concerns have been forwarded to the Planning Board. They have submitted the parking numbers to the Board and Mr. Pennella seems to agree with the methodology. Mr. Vieira thinks that both of these scenarios can be applied but he feels that they have been able to show the Board what the impact of the addition is with the cumulative calculation of 147 vs. 149, with a need for a variance of 2 spaces. He believes, based on precedent, they would be requesting a 2-parking space variance, once SEQRA is closed by the Planning Board. He also believes that the breakdown by use gives the Board comfort that they are able to provide the required 59 spaces. So, regardless of which direction the Board chooses, 59 spaces will accommodate both uses at different times.

Mr. Vieira said looking at it cumulatively, the variance is for 2 spaces. He referred to past planning board minutes for this property where parking was never even mentioned. The nursery school was an accessory use for the Temple and then a child care center was added later on, and there were no parking concerns. They are now proposing a 4,500 s.f. addition which increases the parking requirement by 2 spaces.

Mr. Pennella added that he has done extensive research and he has given the applicant all of the prior minutes and there was no mention of parking. In this instance, they are applying the current code to something that was already there. He asked for the detailed parking analysis to solidify the uses and needs so that should this application come before the Board again, there would be a base to work from.

Ms. Weisel asked the Board if they have comments or questions.

Ms. Rachlin agrees with the methodology of the granting of a 2-space variance. The code provides for a remedy for multiple uses so she feels that the Board should follow the code and avoid setting a precedent by separating things out.

Mr. Jolly noted that there are many churches in the village that have no parking and the Temple has a substantial amount.

Mr. Pennella commented that most of these churches are not in a residential district like the Temple. Most of the churches are along Broadway or in the restricted retail zone.

Ms. Weisel opened up the meeting for public comment.

Mr. Ringel announced Mr. O'Sullivan to address the Board.

Fergus O'Sullivan, of 153 Grove Street, would like to see the chart referencing the 147 spaces made available to the public. It is hard to comment on it unless he can see it. The secretary will forward this to Mr. O'Sullivan. Regarding the document that was forwarded, he would like to know why the assembly space in the existing building is not included in the calculation.

Mr. Levin said the auditorium use in this building is not accessory space. The worshipers are worshiping, and then if they're celebrating, they move into that space. So, it is not counted twice. However, in the chart that they have been discussing, each of the spaces are noted and there is a cumulative total, which is how you get from what would be a worship cycle of 58 to a cumulative total of 147, with the school and all the other potential spaces, so it is accounted for.

Lisette Mendez Boyer, of 159 Grove Street, thanked the Board for the site visit. She does not disagree with the parking chart, but she does want a real number for the main

sanctuary because she knows there is going to be overflow, not only on the high holy days, but also for other events. She understands that the Temple has reached out to others to ask for use of their parking lots and she appreciates their effort.

She is also glad to see that the Zoning Board is looking at the aggregate for the parking instead of looking at the uses separately since it could set a precedent. She does not think that anyone in the area would like to see 147 spaces. They would like a real number so that they can understand why they have a parking problem. She also added that the parking problem is not only with the Temple, it is also as a result of the multifamily housing around the area and she lives on the dead end. So, it is a bigger picture. They do not want to stop the Temple from doing the work they need for the security, but they want everyone to know that their street is disproportionately affected. She looks forward to working with the temple, not against them.

Stuart Skolnick, Executive Director of the Temple, appreciates the comments from the neighbors and hears their concerns. They are taking steps to remind congregants not to park on Grove Street and they are looking for options to allow people to park in other places rather than Grove Street during the high holy days and other events. They are working with the Medical Arts building, Transfiguration Church and the Washington Irving Middle School, especially for the high holy days. They will do whatever they can to mitigate the parking concerns of the neighbors on Grove Street. This particular year, they do not expect large crowds for the high holy days due to the coronavirus.

There were no other public comments.

Ms. Weisel said, in terms of voting on interpretation, we would like to move this application along, and at the same time, respect the code. She is not sure she is ready to vote yet since they are still mulling over the numbers.

Counsel Addona said it seems that the Board is more inclined to the applicant's proposal which would be interpreting the parking based upon what is existing which would require a 2-space variance. If this is the direction, then she can coordinate with Dan Pennella, but she is not sure if the Board is even there yet.

Mr. Kim feels in terms of the parking, he would like to move this along whichever way is the most expedient. He has his child at the Day Care and he has never seen the parking reach its maximum. He feels that the applicant should continue to manage the parking at high peak times so that it does not impact the neighbors. Whichever process gets this Board to the end, he is in favor of.

Counsel Addona said the Board can consider the interpretation but the Board can't rule on the variances until the Planning Board makes a SEQRA determination.

Ms. Rachlin would like to know if it is possible to vote on the interpretation and the variances at the next meeting should the Planning Board make a SEQRA

determination. She would like to move the application along but if it can wait to the next meeting that is fine. Counsel Addona said she could prepare two separate resolutions that can be considered at the next meeting. The Board can vote on the interpretation this evening since it is a Type II action, but it is not mandatory.

Mr. Jolly asked Counsel to work on language for the several uses which could be a possible solution. Counsel Addona said she could prepare 2 resolutions for both scenarios, but would like guidance from the Board. She would be inclined to recommend the pre-existing, 2 space variance interpretation since it is more consistent with the way the code is written. The Board could then consider the interpretation and the variances at the next meeting.

Ms. Sgammato has recused herself from this application.

Counsel Addona advised that voting on the variances could only go forward pending a SEQRA determination by the Planning Board at their July meeting.

Member Braun said he would look at what is pre-existing since the only negative feedback has been related to traffic overflow for events, so the day to day parking is not a problem. It appears that the Temple is trying to mitigate the parking problem on the high holy days. As he looks to the uses in the code, the pre-existing condition is more reflective of the reality they are dealing with.

Mr. Vieira said it is important to understand the chronological events of the application. When Mr. Pennella reviewed the building permit, there was no parking chart, so the denial letter was issued for a variance of 45 spaces. If Mr. Pennella had this chart information initially, the denial letter would have been for a variance of 2 parking spaces and there would not have been this long interpretation process. He hopes that the chart has given the Board some direction.

Ms. Weisel said she thinks everyone feels comfortable in terms of the variance but asked Counsel Addona how to approach the interpretation.

Counsel Addona said the Board could direct her to prepare a resolution in terms of the 2-space variance. In that way, we can move forward to approve the variances upon the completion of SEQRA.

Mr. Vieira asked Counsel if it was possible to withdraw their interpretation request and just request the 2-space variance?

Counsel Addona said that you would need a new denial letter from Mr. Pennella, so at this point, she feels the appropriate remedy is for the Board to make their decision based upon their interpretation. The Board is the appellate body and it is up to them to make their findings. The rationale for the approving the variances should be consistent with the code.

Ms. Weisel thanked Mr. Vieira and said that they will continue the public hearing and will wait in terms of SEQRA. Counsel Addona suggested that the applicant come back once SEQRA is determined by the Planning Board.

Mr. Vieira said he thinks that they are close to getting a SEQRA determination at Planning. They have nothing further to add, but will take that into consideration.

Ms. Weisel directed Counsel Addona to prepare a draft interpretation resolution and a draft variance resolution for consideration at the next meeting. If SEQRA is closed, then the Board can act on the variances in addition to the interpretation. If not, the applicant may wish to adjourn.

Ms. Weisel moved, seconded by Mr. Kim, to continue the Public Hearing to the August meeting. All in favor. Motion carried.

ADJOURNMENT:

Ms. Sgammato moved, seconded by Mr. Kim, to adjourn the meeting at 8:55 p.m. All in favor. Motion carried.

Liz Meszaros, Secretary