

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
November 13, 2006 8 p.m.

PRESENT: Chairwoman Lawrence; Members Jolly, Brown, Maloney; Counsel
Shumejda; Building Inspector/Engineer McGarvey; Secretary
D'Eufemia
ABSENT: Ms. James

WELCOME – MS. BROWN

Chairwoman Lawrence welcomed Karen Brown who was recently appointed to the Zoning Board of Appeals.

APPROVAL OF MINUTES

Mr. Maloney moved, seconded by Mr. Jolly, that the minutes of October 10, 2006, be approved as submitted. Messrs. Maloney, Jolly and Ms. Lawrence assented. Ms. Brown abstained. Motion carried.

PUBLIC HEARING – GOTTSCHALL – 80 SUNNYSIDE AVENUE

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, November 13, 2006, in the Municipal Building, 21 Wildey Street, Tarrytown, New York to hear and consider an application by

David Gottschall
80 Sunnyside Avenue
Tarrytown, NY 10591

for a variance from the Zoning Code of the Village of Tarrytown for property located at the above address regarding a rear yard deck addition requiring the following variances:

1. Increase in the degree of non-conformity: (§305-18A(1))
 - (a) Minimum lot size is required to be 7,500 sq. ft. and 5,040 sq. ft. exists.
 - (b) Minimum lot width at building front is required to be 75 ft. and 48 ft. exists
 - (c) Minimum lot front is required to be 75 ft. and 48 ft. exists
 - (d) Minimum front yard setback is required to be 20 ft. and 10 ft. exists
 - (e) Minimum single side yard setback is required to be 10 ft. and 6.8ft. and 0.8 ft. exist
 - (f) Minimum combined yard setbacks are required to be 22 ft. and 7.6 ft. exists

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 14, Block 54, Lot 53 and is located in an R-7.5 (Residential) zone.

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.

The certified mailing receipts were submitted.

Mr. Conrad Cultraro, architectural designer, stated he was originally hired by the Gottschalls for a kitchen renovation. During their review they saw a deck, which was not on the original survey so they are before the Board tonight to obtain the variances necessary to legalize the deck. The deck is not visible from Sunnyside Avenue or Lake Avenue and it is built well. The variances are all due to the fact the property is non-conforming. They have a side yard setback of approximately 6.8 ft. for most of the deck, which is zoning compliant. There is a bay window, which protrudes into the setback; however, as part of the kitchen renovation that will be removed.

Mr. McGarvey stated he will be reviewing the detailed drawings and the footings will have to be exposed so his office can verify the depth of the footings.

Chairwoman Lawrence questioned whether anyone wished to address the Board on this matter. No one appeared.

Chairwoman Lawrence reported receipt of the following memo dated November 13, 2006, from Kathleen D'Eufemia, Designated Environmental Review Officer:

"Gottschall – 80 Sunnyside Avenue – I have reviewed this application for construction of a rear yard deck.

As Environmental Review Officer, I make a recommendation that the Zoning Board of Appeals issue a negative declaration in that there appears to be no adverse environmental impact from the proposed variances, pursuant to the State Environmental Quality Review Law."

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the Board determines there will be no significant adverse environmental impact from the granting of the proposed variances for the deck.

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the hearing be closed and the Board having arrived at the findings required by the ordinance:

1. That the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the neighborhood
2. That the proposed variance will not create an undesirable change to the neighborhood or detriment to the neighborhood
3. That the benefit the applicant seeks to achieve cannot be achieved by any other feasible method
4. That the variance is not substantial in the Board's judgment
5. That the variance would not have an adverse environmental impact on the neighborhood
6. That the variance is the minimum one deemed necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community

grants the requested variances for a deck at 80 Sunnyside Avenue subject to approval of plans and footings verification by the Building Inspector/Village Engineer.

PUBLIC HEARING – TREETOP VISTA PROPERTIES, LLC – 38 SOUTH BROADWAY

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, November 13, 2006, in the Municipal Building, 21 Wildey Street, Tarrytown, New York to hear and consider an application by

Treetop Vista Properties, LLC
232 Lake Street
Pleasantville, New York 10570

For property they own at **38 South Broadway, Tarrytown, New York 10591** for renewal of a variance from the Zoning Code of the Village of Tarrytown to permit the use of two offices requiring two parking spaces for each separate office plus one space per employee, but not less than one space for each 300 square feet of gross floor area. (§305-19) (Currently there are six employees in the two offices, which would require 10 parking spaces and 5 are provided on site.)

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 11, Block 41, Lots 22 and 24A and is located in an RR (Restricted Retail) zone.

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.

The certified mailing receipts were submitted.

Mr. Larry Bellom, attorney for the applicant, stated this property is on the corner of South Broadway and East Elizabeth Street. His clients purchased the property on May 25, 2006, and they purchased subject to two existing tenancies. On the second floor the office has one employee. On the first floor is an engineering office with five employees. Tonight they are asking the variance be renewed. Since the last renewal in 2001 a new municipal parking lot has been constructed across the street on South Broadway. If the variance is not renewed, it would result in a severe hardship to the applicant since there are two tenants and those rents are the income for this investment property. When the property was purchased the applicant assumed the two leases for the tenants. The variance does not alter the character of the neighborhood. The property is in a Restricted Retail zone. Mr. Bellom requested the Board renew the variance for this property.

Chairwoman Lawrence questioned whether anyone wished to address the Board on this matter. No one appeared.

Upon Board inquiries, Mr. Bellom stated there are five existing parking spaces on the property. They did not know about this variance when they purchased the property since there was no Certificate of Occupancy – just a pre-date letter. Mr. Bellom stated he was aware that the previous owner had a parking arrangement for a number of spaces with the church across the street; however, his client does not need those spaces. The previous offices were a doctor's office and a dentist's office with patients in and out all day. In the present situation, there are very few visitors to the property and the engineering office is a satellite office so not all five employees are there at the same time. Mr. Bellom noted since his client purchased the property there has been extensive cleanup – painting and electrical upgrades.

Upon inquiry, Mr. Bellom stated the current leases still have about two years before expiring.

Ms. Lawrence reported receipt of the following memo dated November 13, 2006, from Kathleen D'Eufemia, Designated Environmental Review Officer:

“Treetop Vista Properties, LLC – 38 South Broadway - I have reviewed this application for renewal of a variance to allow the operation of two offices requiring ten parking spaces where five exist. This variance has existed since 1970 but the property is under a different ownership from the last application. The Village has not received any complaints relative to this property.

As Environmental Review Officer, I make a recommendation that the Zoning Board of Appeals issue a negative declaration in that there appears to be no adverse environmental impact from the proposed variance, pursuant to the State Environmental Quality Review Law.”

Upon inquiry from Ms. Brown, Mr. McGarvey stated if either of the tenancies change and a new tenant has a higher parking requirement, the applicant must return to the Board.

Mr. Jolly moved, seconded by Mr. Maloney, and unanimously carried, that the Board determines there will be no significant adverse environmental impact from the granting of the proposed variance renewal.

Mr. Jolly moved, seconded by Mr. Maloney, and unanimously carried, that the hearing be closed and the Board having arrived at the findings required by the ordinance:

1. That the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the neighborhood
2. That the proposed variance will not create an undesirable change to the neighborhood or detriment to the neighborhood
3. That the benefit the applicant seeks to achieve cannot be achieved by any other feasible method
4. That the variance is not substantial in the Board's judgment
5. That the variance would not have an adverse environmental impact on the neighborhood
6. That the variance is the minimum one deemed necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community

Renews the variance permitting the use of two offices at 38 South Broadway with five parking spaces where ten are required for a period of five years.

PUBLIC HEARING – PUTNAM AVENUE HOMES, INC. – HILLSIDE STREET

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, November 13, 2006, in the Municipal Building, 21 Wildey Street, Tarrytown, New York to hear and consider an application by

Putnam Avenue Homes, Inc.
Hillside Street
Tarrytown, NY 10591

For an interpretation from Section 305-22.A of the Tarrytown Zoning Ordinance, which prohibits new construction and vegetation removal on areas containing steep slopes as defined in the Zoning Ordinance.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 21, Block 71, Part of Lots 1, 3, 4, 5 & 6 – Filed Map Lot 3 and Lot 7 and Part of Lot 6 – Filed Map Lot 4 and is located in an R-10 (Residential) zone.

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.

The certified mailing receipts were submitted.

Ms. Karen Wagner, an attorney with the firm of Shambert Marwell Davis & Hollis, stated the property is two lots on Hillside Street both of which contain steep slopes. This evening they have applied for an interpretation particularly with regard to Section 305-22.A of the Zoning Ordinance. They respectfully request the ZBA interpret this provision is not applicable to these lots. Specifically, the Planning Board approved these as building lots, which was then known as the Logan subdivision. The Tarrytown Planning Board made a specific finding there was no environmental impact with respect to steep slopes. How can it be that now years later there would be an environmental impact? The curb cuts exist and there are utilities in place for both these properties. In the late 1980s there was a disturbance to these steep slopes with the establishment of Hillside Street. An interpretation would be limited to these properties because of the prior approved subdivision and these being building lots. “We urge the interpretation should be this provision does not apply to these lots as they were grandfathered in.”

Counsel Shumejda stated the application submitted was for an interpretation that this Board can grant a variance and in the alternative grant a variance. What is being proposed tonight is that the steep slopes law does not apply to the property because of a prior subdivision. That is a different issue from what was submitted in the application.

Ms. Wagner stated the percentage variance was not specified and until the Planning Board was satisfied with a particular locale for each of the houses, the variance percentage could not be specified. Looking at how the application was filed, if a variance is actually needed, that would be specified at a later date.

Counsel Shumejda stated the way Ms. Wagner phrased her presentation tonight, she said Section 305-22.A does not apply to these lots. Then, an interpretation would not be needed. “You are entitled to make that argument but that is different from what was submitted in the application.”

Ms. Brown questioned whether there was a previously approved site plan.

Counsel Shumejda stated in 2001 Mr. Logan received subdivision approval as well as site plan approval for these two lots. The subdivision was not filed with the County within the required 90 days so the subdivision and site plan approval was no longer valid. Mr. Logan came back in 2003 and requested the subdivision be re-approved, which was done but no site plan approval was requested at that time. Therefore, there is no approved site plan.

Upon inquiry from Mr. Jolly, Counsel Shumejda stated the curb cuts and utilities were put in before this subdivision request was made to the Village.

Ms. Brown questioned whether approving a subdivision means a building can go there. Counsel Shumejda stated it does not – you need a site plan.

Counsel Shumejda stated he had sent a letter to Mr. Blancato, the attorney who filed this application, and asked that the applicant specify the minimum variance required. “Is it your position until the Planning Board settles on a plan that you won’t be able to give us the variances that are needed?” Ms. Wagner replied, “Yes.”

Ms. Brown questioned whether a variance from steep slopes can be granted. Counsel Shumejda stated that is a matter of interpretation that the Zoning Board can make but tonight they are saying that the steep slopes don’t apply.

Chairwoman Lawrence stated the Board was prepared tonight to discuss the memorandum as presented by Mr. Blancato; however, this is now different. Ms. Wagner stated she would submit a memorandum documenting why this section does not apply.

Ms. Brown stated the steep slopes ordinance has existed since 1990. Ms. Wagner stated the law was changed and the word restrict was changed to prohibit which is much more onerous.

Chairwoman Lawrence stated she had been unable to visit the property yesterday and she requested another site visit be scheduled for next month so she could visit with someone involved with the project.

Ms. Wagner stated her client would like a ruling tonight on the interpretation. Chairwoman Lawrence stated she would first like to review the memorandum Ms. Wagner will submit.

Counsel Shumejda stated the issue should be clearly addressed to the Zoning Board and one aspect was not even mentioned to this Board before tonight. “My suggestion is that counsel submit a memorandum on the three issues and then you will have a full brief and I will respond as well and at the next meeting you will be informed.”

Mr. Chuck Pateman stated he is a property owner in Tarrytown and a friend of Mr. Racanelli, owner of these lots. He stated the request for an interpretation is clear. That is something the ZBA can and should do tonight. Mr. Racanelli has been before the Planning Board for about a year on this property. "I am here as an interested representative for our agency (BRI – Builders and Realty Institute.) With this type of law, our industry will not continue. There is now a law that prohibits development on these lots and he came in for an interpretation as to whether this Board can hear an application. We would request tonight that we withdraw any other points raised tonight that make it unclear and that you give the interpretation." Counsel Shumejda stated it is his recommendation the Board wait until they have current counsel's input as to what the issues are so they know exactly what the Board is being asked.

Mr. Pateman stated the application was clear. It asked whether the Board could grant a variance and that they grant the variance if permitted to. Counsel Shumejda's memorandum to Mr. Blancato was clear that without the minimum variance, they could not grant a variance. The issue then is whether the ZBA can grant a variance from the steep slopes ordinance. That is all the applicant is asking for tonight. "Any other comments made tonight are withdrawn." Mr. Racanelli stated he agreed with this statement.

Chairwoman Lawrence stated she felt the Board should not make the interpretation this evening but wait until next month under advice of counsel. Board members agreed.

The Board unanimously agreed to continue the hearing at their next meeting.

MEETING ADJOURNED – 9 p.m.

Kathleen D'Eufemia
Secretary