VILLAGE OF SEA CLIFF, NY
OCT 20 2011
VILLAGE CLERK

MINUTES
BOARD OF APPEALS
VILLAGE OF SEA CLIFF
VILLAGE HALL
300 SEA CLIFF AVENUE
SEA CLIFF, NEW YORK 11579

September 20, 2011

Present:	Chair	Kevin McGilloway
	Members	Dina Epstein
		Noel Griffin
		Ted Kopczynski
	Alternate Member	Matthew Doherty
	Superintendent of Buildings	Andrew Lawrence
	Village Attorney	Brian Stolar

The meeting was called to order at 8:05 pm.

The Board opened the continued public hearing on the application of Pericles Cyprus, 60 Park Place, Sea Cliff, New York to subdivide property into two dwelling lots and erect a new dwelling on one of the lots, which requires variances of the following Village Code sections: (a) 138-404 to create new lots with respective lot areas of 3,200 square feet and 4,600 square feet, where a minimum of 7,500 square feet per lot is required; (b) 138-406 in that one of the lots will have a front property line width of 40 feet, where a minimum of 75 feet is required; (c) 138-408 to maintain a front property line setback of 10.5 and 15.3 feet on one lot and create a front property line setback of 16 feet on the second lot; (d) 138-409 to maintain a lot width at the setback line of 40 feet, where the minimum required width is 75 feet; (e) 138-413.1 to maintain and create encroachments into the height/setback ratio plane; and (f) 138-414.1 to maintain

and create floor areas of each dwelling in excess of the permitted floor area. Premises are designated as Section 21, Block 160, Lot 939 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board opened the continued public hearing on the application of Rockview Corp., 365 Glen Cove Avenue, Sea Cliff, New York to construct one new residential second floor apartments over an existing building, which requires variances of the following sections of the Village Code: (a) 138-905 in that the lot is only 5,500 square feet, where a minimum of 15,000 square feet is required; (b) 138-907 in that the front property line is only 55 feet, where a minimum of 100 feet is required; (c) 138-910 in that the lot width is only 55 feet, where a minimum of 100 feet is required; (d) 138-913 in that the rear yard setback is 2 feet, where a minimum of 20 feet is required; (e) 138-914 in that the height of the building will be 36.5 feet, where the maximum permitted height is 35 feet; (f) 138-917 in that a buffer area of 20 feet is required and the rear yard setback is only 2 feet; and (g) 138-1002 in that there are 6 parking spaces provided, but 11 spaces are required. The proposed mixed use incorporating the new residential dwelling unit requires a special permit from the Board pursuant to Village Code §§138-802 and 902. Premises are designated as Section 21, Block 78, Lot 11 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board opened the continued public hearing on the application of Paradise X Corp. and Jerry Caldari, 304-310 Sea Cliff Avenue, Sea Cliff to use

the first floor of the premises for a restaurant which requires (a) a variance of Village Code §138-815 to permit an accessory structure in a front yard, and (b) a special permit pursuant to Village Code 138-801 and 138-802 to permit a restaurant use. Premises are designated as Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map. The applicant repeated that it intended to utilize the premises in the same manner as used previously by the previous restaurants, including use of the outdoor area. The hearing was commenced on September 6, 2011, but the notice prepared by the Village did not include a reference to the accessory structure. A neighbor of the property appeared to inform the Board that he did not receive notice of this hearing or the hearing on September 6, 2011. It was confirmed that the notice was not sent to the neighbor in the manner provided in the Village Code. While the Code specifically authorizes the Board to render a determination on an application so long as the notice is published, and the neighbor is the only party who was not sent the notice, the Board has jurisdiction to conclude the hearing and render a determination. Notwithstanding that authorization, as a courtesy to the neighbor, the Board decided to continue the hearing to October 4, 2011 at 8:00pm.

The Board recessed at 9:45pm, and reconvened at 9:50pm.

The Board opened the public hearing on the application of Barbara Topalian, Christian Berntsen and Andrew Lapinski for subdivision approval to subdivide property into two (2) residential dwelling lots, one to be located on Sixteenth Avenue (Parcel A) and one to be located on Seventeenth Avenue (Parcel B), which requires variances of the following Village Code sections: (a)

138-404 to permit two parcels with 4,800 square feet of lot area each, where a minimum lot area of 7,500 square feet per lot is required; (b) 138-408 to (i) maintain an accessory structure with a setback of 9.7 feet (Parcel B), and (ii) construct a dwelling with a setback of 13.3 feet (Parcel B), where the minimum required setback is 20 feet; (c) 138-411 to maintain a side yard setback of (i) 3.2 feet (Parcel A) and (ii) 3.3 feet (Parcel B), where the minimum required setback is 10 feet; (d) 138-412 to create a rear yard setback of 10 feet, where a minimum of 20 feet is required (Parcel A); (e) 138-413.1 to (i) maintain a structure (Parcel A) and (ii) construct a dwelling (Parcel B), which encroach into the height/setback ratio plane; (f) 138-416 to maintain an accessory structure in a front yard (Parcel B); and (g) A153-2 to maintain curb cuts on Parcel A greater than permitted percentages. Premises are designated as Section 21, Block 154, Lots 561 and 562 and 579 and 580 on the Nassau County Land and Tax Map. The Board stated that the application was an Unlisted Action under SEQRA, that the Planning Board had deferred lead agency status, that the Board intended to be the lead agency and that the application could be referred to the Nassau County Planning Commission only after the Board rendered an environmental determination. The Board then continued the public hearing on the application to October 18, 2011.

The Board discussed the environmental significance of the Topalian/Berntsen/Lapinski application. After such discussion, on motion duly made by the Chair, seconded by Mr. Griffin, and adopted unanimously, the Board adopted the following resolution:

RESOLVED, that the Board hereby finds and concludes:

a. the proposed action is an Unlisted action under the State Environmental Quality Review Act and its regulations;

b. the Planning Board has deferred lead agency status to the Board and the Board determines itself to be the lead agency with respect to environmental review of this proposed action;

c. the Board has considered the following factors in respect to its review of the environmental impacts of the proposed action:

   i. whether the proposed action would result in any substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels, or any substantial increase in solid waste production, or create a substantial increase in the potential for erosion, flooding, leaching or drainage problems;

   ii. whether the proposed action would result in the removal or destruction of large quantities of vegetation or fauna, substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on a significant habitat area, substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species, or other significant adverse impacts to natural resources;

   iii. whether the proposed action would impair the environmental characteristics of any Critical Environmental Area;

   iv. whether the proposed action would conflict with the community's current plans or goals as officially approved or adopted;

   v. whether the proposed action would impair the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character;

   vi. whether the proposed action would resulting in a major change in the use of either the quantity or type of energy;

   vii. whether the proposed action would create a hazard to human health;

   viii. whether the proposed action would create a substantial change in the use, or intensity of use, of land, including agricultural, open space or recreational resources, or its capacity to support existing uses;

   ix. whether the proposed action would encourage or attract large numbers of persons to any place for more than a few

days, compared to the number who would come to such place without such action;

x. whether the proposed action would create changes in two or more elements of the environment, no one of which would have a significant impact on the environment, but when considered together would result in a substantial adverse impact on the environment;

xi. whether the proposed action would create substantial adverse impacts when considered cumulatively with any other actions, proposed or in process;

xii. whether the proposed action would result in substantial adverse impact with respect to any relevant environmental consideration, including noise, aesthetics, traffic, air quality, water quality or adequacy of water supply, drainage, soil conditions, or quality of life in the community in general and the immediate neighborhood in particular;

d. the proposed action would not have a significant adverse environmental impact; and

e. no further environmental review is required with respect to the proposed action.

The Board discussed the Cyprus application, and on motion by Ms. Epstein, seconded by Mr. Kopczynski, and adopted four votes in favor and Mr. Doherty abstaining and not participating in the discussion, the Board denied the variances in accordance with the decision annexed hereto.

The Board discussed the Rockview application, and on motion by Mr. Griffin, seconded by the Chair, and adopted four votes in favor and Ms. Epstein and Mr. Doherty abstaining and not participating in the discussion, the Board denied the Rockview application in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 11:10 pm.

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CYPRUS DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York on September 20, 2011, on motion of Ms. Epstein, seconded by Mr. Kopczynski, and adopted four votes in favor and Mr. Doherty abstaining, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Pericles Cyprus, 60 Park Place, Sea Cliff, New York applied to subdivide property into two dwelling lots and erect a new dwelling on one of the lots, which requires variances of the following Village Code sections: (a) 138-404 to create new lots with respective lot areas of 3,200 square feet and 4,600 square feet, where a minimum of 7,500 square feet per lot is required; (b) 138-406 in that one of the lots will have a front property line width of 40 feet, where a minimum of 75 feet is required; (c) 138-408 to maintain a front property line setback of 10.5 and 15.3 feet on one lot and create a front property line setback of 16 feet on the second lot; (d) 138-409 to maintain a lot width at the setback line of 40 feet, where the minimum required width is 75 feet; (e) 138-413.1 to maintain and create encroachments into the height/setback ratio plane; and (f) 138-414.1 to maintain and create floor areas of each dwelling in excess of the permitted floor area. Premises are designated as Section 21, Block 160, Lot 939, 945 and 947 on the Nassau County Land and Tax Map.

2. The applicant is the record owner of the subject premises.

3. The premises are located in the Residence A zoning district. The premises are located on a corner lot, with frontage on Park Place and 18th Avenue. The premises contains a total of 7,800 square feet, where a minimum of 7,500 square feet is required. The premises has 40 feet of frontage on Park Place, where a minimum of 75 feet is required. The premises consists of 3 tax lots – 939, 945 and 947. Presently, there is a residence and a 5 car garage located on the premises. The applicant proposes to retain the residence on tax lot 945 and to demolish the garage and replace it with a new residence on tax lots 939 and 947.

4. If the application is approved, there will be 2 building lots, one with only 3,200 square feet (Parcel A) and the other will be 4,600 square feet (Parcel B). The existing residence will be located on Parcel A, and Parcel B will contain the new residence. Parcel A will be deficient not only due to the new lot area and the proposed excessive floor area, but also due to existing front yard setbacks, front property line length, lot width, and encroachments into the height/setback ratio. Proposed Parcel B would result in variances of lot area, front yard setback, floor area ratio, and height/setback.

5. With the exception of one tax lot, all of the lots in the immediate vicinity are larger than the proposed parcels. In reviewing the maps and observing the area, the Board deems the relevant community to be shown by the properties located on 18th Avenue, between Prospect and Park Place. Those lots vary in size, but only one lot has less lot area (2640 square feet) than either Parcel A or B. One lot is 4,108 square feet, which is smaller than Parcel B, but larger than Parcel A. The remaining 6 lots all are larger than 4,600 square feet. While there are 2 lots immediately south of Parcel A that have only 3,200 square feet, the 2 lots directly across the street from Parcel A on Park Place are more than 10,000 square feet each.

6. The variances requested by the applicant are in direct contravention of the language and intent of the Zoning Code in creating 7,500 square foot lot requirements as well as bulk and setback requirements, as those provisions are intended to prevent over-development and congestion.

7. The applicant testified that the proposed subdivision would eliminate the 5 car garage located on the premises. The applicant did not consider an alternative proposal to place a new garage as an accessory to the existing residence, which would be on a lot compliant with lot area.

8. One of the charms of living in the Village of Sea Cliff is enjoyment of different and varying aesthetics.

9. The variances sought are area variances. In determining whether to grant area variances, the Board shall take into consideration of the benefit to the applicant if the variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board is required to consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the area variance. In granting a variance, the Board shall grant only the minimum variance that it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

10. For the reasons set forth herein, the Board finds and concludes that the variances should be denied. In reaching this conclusion, the Board has considered each of the relevant statutory factors.

11. With regard to whether the proposed variances would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, the evidence demonstrates that the proposed variances would create an undesirable change in the neighborhood character and a detriment to nearby properties. The requested relief will produce an undesirable change in the character of the neighborhood by shoe-horning a residence on a lot substantially smaller than required by the Village Code and also creating a substantial non-conformity for the existing house by eliminating its current yard area. It is clear from the radius map submitted by the applicant and the Board's review and observation of the neighborhood along 18th Avenue between Prospect and Park Place that other than one out-of-the-ordinary property, one of the proposed lots will contain much less lot area than all of the other lots in the neighborhood and the new dwelling would be located on a lot smaller than 75% (6 out of 8) of the lots in the neighborhood.

12. It is clear that the subdivision of the premises to produce two substandard lots, each requiring front yard setback, height-setback and other variances would be antagonistic to, and therefore out of character with and detrimental to the existing neighborhood, which, in the main, is developed with larger parcels.

13. The Board finds that the creation of the proposed substandard lots would not be in harmony with the purpose and intent of the Village zoning laws, and that the proposed substandard lots would have lot areas which would be inconsistent with, and adverse to, the character of the neighborhood.

14. This Board specifically finds that an undesirable, adverse change would be produced in the character of the neighborhood to the detriment of nearby properties by the granting of relief which would create two substandard lots which would vary substantially from the lot area requirements of the Residence A district. The construction of a new 2 story residence on a substandard lot would result in an adverse impact on the aesthetic appearances and immediate attractiveness of the surrounding homes in a special community.

15. The benefit which would accrue to applicant would be primarily monetary, in that the variance would permit the applicant to build or sell as second house to make a windfall profit. The applicant submitted that a benefit to the applicant was the removal of the existing 5 car garage. However, rather than seeking a new house in its place on a deficient lot with the need for additional variances, the applicant could have pursued a

compliant garage or modifications to the existing residence or even have left the garage in place, all of which alternatives remain available to the applicant. Accordingly, applicant failed to pursue any feasible alternatives.

16. The Board finds that the requested variances are substantial. In reaching this conclusion, the Board is mindful that the combined variances must be considered as they represent the full nature of the proposed changes. As the Board is required to look at the totality of the circumstances, adding the additional variances to the mix, it is readily apparent that the variances are exceptionally substantial.

17. As to whether the proposed variances will have an adverse impact on the physical or environmental conditions in the neighborhood, the Board finds that there will be such an adverse impact. The rationale of the Village's zoning plan is to create conformance with standards relevant to the Village and the zoning districts within the Village. The proposed variances are completely at odds with those requirements.

18. The Board also finds that the alleged difficulty is self-created, as it is derived solely from the applicant's efforts to construct a new house. Notwithstanding such finding, the Board would deny the variances based on its consideration of the other factors set forth above.

19. For the foregoing reasons, the relief requested in this application is denied in its entirety.

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ROCKVIEW DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on September 20, 2011, on motion of Mr. Griffin, seconded by the Chair, and adopted three votes in favor and Ms. Epstein and Mr. Doherty abstaining, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Rockview Corp., 365 Glen Cove Avenue, Sea Cliff, New York applied to construct one new residential second floor apartments over an existing building, which requires variances of the following sections of the Village Code: (a) 138-905 in that the lot is only 5,500 square feet, where a minimum of 15,000 square feet is required; (b) 138-907 in that the front property line is only 55 feet, where a minimum of 100 feet is required; (c) 138-910 in that the lot width is only 55 feet, where a minimum of 100 feet is required; (d) 138-913 in that the rear yard setback is 2 feet, where a minimum of 20 feet is required; (e) 138-914 in that the height of the building will be 36.5 feet, where the maximum permitted height is 35 feet; (f) 138-917 in that a buffer area of 20 feet is required and the rear yard setback is only 2 feet; and (g) 138-1002 in that there are 6 parking spaces provided, but 11 spaces are required. The proposed mixed use incorporating the new residential dwelling unit requires a special permit from the Board pursuant to Village Code §§138-802 and 902. Premises are designated as Section 21, Block 78, Lot 11 on the Nassau County Land and Tax Map.

2. The premises are located in the Business B zoning district. The premises are located on the west side of Glen Cove Avenue, north of Glenola Avenue and south of Downing Avenue. The premises contains a one story commercial building with six parking stalls on site. The premises border a commercial property to the north that contains a commercial building, which is separated from the building on the premises by less than 2 feet. The premises also is separated by only 2 feet from the property adjoining the premises' westerly property line, which also contains only a 1 story building. The buildings on the 3 premises are very close together. The applicant proposes to build a second story on top of the existing building, which story will be used as an apartment.

3. The Village Code permits the construction of a dwelling unit on a commercial property as an accessory use to the principal commercial use. A special permit is required for such construction. In considering whether to grant a special permit for such use, the Board is to consider the effect of the principal use upon the habitability of the accessory use.

4. In addition to the special permit, the applicant also requires variances for rear yard setback, height, buffer area and parking stalls. These variances must be considered in reviewing the special permit application as without the variances, the special permit cannot be granted.

5. The three buildings referred to herein, each are only 1 story in the location where the applicant seeks to add a second story. The second story would overwhelm the existing nature of the development in this location. It is within 2 feet of each property line. It is proposed to be built over the full length and width of the existing building. Given the limited setback and the nature of the buildings in the area, it is clear to the Board that the proposed special permit and variances that would permit this second story at a height in excess of the permitted height and substantially higher than the surrounding buildings, as well as the proximity of the building to the adjoining property lines and buildings (as well as rooftop building mechanicals) shows that the proposal would create a substantial change in the neighborhood that would negatively impact the neighboring properties and the neighborhood streetscape.

6. The variances sought are area variances. In determining whether to grant an area variance, the Board shall take into consideration of the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board is required to consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby propertie3s will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the area variance. In granting a variance, the Board shall grant only the minimum variance that it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

7. For the reasons set forth hereinbelow and above, the Board finds and concludes that the variances should be denied and the special permit

cannot issue without those variances. In reaching this conclusion, the Board has considered each of the relevant statutory factors.

8. With regard to whether the proposed variances would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, the evidence demonstrates that the proposed variances would create an undesirable change in the neighborhood character and a detriment to nearby properties. The proposed full second story in excess of 35 feet in height is too close to the adjoining premises and buildings, each of which is only 1 story in height. The proposed use and construction of a second story is completely antagonistic to the existing development in the immediate vicinity. Thus, the proposed variances would create a detriment to nearby properties and the neighborhood.

9. The Board finds that the requested variances are substantial. In reaching this conclusion, the Board is mindful that the combined variances must be considered as they represent the full nature of the proposed changes. The impact to the neighborhood by squeezing in an additional second story in an area dominated by one story buildings, where buildings are located so close together would be substantial.

10. The applicant failed to pursue any feasible alternative that would comply with the Village zoning regulations. In this regard, the Board notes that the applicant does not appear to have an alternative available to it that would comply with the zoning regulations without eliminating a portion of the existing principal use.

11. As to whether the proposed variances will have an adverse impact on the physical or environmental conditions in the neighborhood, the Board finds that there will be such an adverse impact. The rationale of the Village's zoning plan is to create conformance with standards relevant to the Village and the zoning districts within the Village. The proposed variances are completely at odds with those requirements and would further introduce commercial vehicular traffic at the entrance to a residential neighborhood.

12. As to the self-created hardship, the Board finds that the proposed variances are self-created. Notwithstanding such finding, the Board would deny the variances based on its consideration of the other factors set forth above.

13. For the foregoing reasons, the relief requested in this application is denied in its entirety.