

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



October 18, 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 8:00 pm.

The Board opened the public hearing on the application of Steven Grapstein, 290 8<sup>th</sup> Avenue, Sea Cliff to remove an existing rear yard pool and install a new pool, deck and terrace, which requires variances of the following Village Code provisions: : (a) 138-404 to maintain a lot size of 7,100 square feet where the minimum lot size required is 7,500 square feet; (b) 138-405 to increase lot coverage from 3,262.67 square feet to 3,990.97 square feet, where the maximum is 2,130 square feet; (c) 138-408 to maintain a setback of 8.5 feet, where the minimum required setback is 20 feet; and (d) 138-416(D) to install a pool deck and terrace which is 833 square feet, where the maximum permitted floor area for the pool deck and terrace is 500 square feet. Premises are designated as Section 21, Block 123, Lot 1557 on the Nassau County Land and Tax Map. The applicant and one of the neighbors indicated that an elevational

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drawing would be provided by the applicant. The Board continued the hearing to November 15, 2011 at 8:00pm.

The Board opened the public hearing on the application of Michael Napoli, as tenant, and Samiano Realty Corp., as owner, 243 Glen Cove Avenue, Sea Cliff to operate a restaurant at the premises, which use requires (a) a special permit pursuant to Village Code §§138-902 and 903 to permit a restaurant use and (b) a variance of Village Code §§138-1001 and 1002 to not provide the required number of off-street parking spaces (30 required). Premises are designated as Section 21, Block 192, Lot 180 on the Nassau County Land and Tax Map. The applicants indicated that the interior cooking facilities, with the exception of a new brick oven, would remain as it currently exists. The Board noted that the application is an Unlisted Action under SEQRA, and that it must be referred to the Nassau County Planning Commission. The Board continued the hearing to November 15, 2011 at 8:00pm.

The Board opened the continued 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 noted that it received a resolution from the Nassau County Planning Commission recommending local determination of the application. The applicant submitted a revised drawing depicting some changes to the proposed residence on Parcel B. The changes included the reduction of the height-setback ratio plan encroachment and reduced the front yard setback on Parcel B to 14.8 feet. The Board closed the public hearing, and reserved decision.

The Board acknowledged the receipt of a letter from the operators of Metropolitan Bistro concerning the extension of a previously approved special permit and variance. The Board decided to take the request under advisement.

The Board acknowledged receipt of a letter request to extend time limitations set forth in the variances granted to 85 Cliff Way. On motion duly made by the Chair, seconded by Mr. Griffin, and adopted unanimously, the Board denied the request for additional time.

The Board acknowledged receipt of a letter request to extend the timeframes in the Board's determination granting variances to 12 The Drive. On motion duly made by the Chair, seconded by Mr. Griffin, and adopted unanimously, the Board approved the request and granted a one year extension of all timeframes in the decision, with the one year period commencing on the date that the minutes reflecting this approval are filed with the Village Clerk.

The Board opened the public hearing on the application of 76 Summit Avenue Corporation appealing a Notice of Disapproval issued by the Superintendent of Buildings dated August 8, 2011 in connection with premises located at 304-310 Sea Cliff Avenue (Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map) and requesting a revised Notice of Disapproval to reflect additional Village Code sections as identified in the appeal. Appellant is the owner of property adjoining the premises that are the subject of the Notice of Disapproval. James Dunne, Esq., appeared on behalf of the appellant. The appellant acknowledged that many of the appealed items were now set forth in a revised denial letter, but still requested that the Board determine that the denial letter, as revised, does not contain all required variances. The Board noted that the request is an Unlisted Action under SEQRA, and that it would provide a copy of the application to the Nassau County Planning Commission for its review and recommendation. The Board continued the public hearing to November 15, 2011 at 8:00pm.

The Board opened the 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. Applicant appeals the determination of the Superintendent of Buildings dated October 5, 2011, and, in the alternative seeks (i) a special use permit pursuant to Village Code §§138-801 and 802, and (ii) variances of the following Village Code provisions: (a)138-808 to maintain structures (building and fence) with less than the required setback of 3 feet; (b) 138-813 to maintain a structure with a height greater than permitted; (c) 138-815 to permit an accessory structure in a front yard; (d) 138-1001 and 138-1002 to not provide the required off street parking of 15 stalls, where no off-street parking is available and a variance was obtained previously for 9 stalls; (e) 138-1004 to not provide an off-street loading space; and (f) 138-1102 to increase a non-conformity on an already non-conforming parcel by intensifying parking requirements. Premises are designated as Section 21, Block 127, Lot 4 on the Nassau County Land and Tax Map. The Board noted that the variances sought include additional variances that were not included previously, but were subsequently determined to be necessary by the Superintendent of Buildings after the submission of an appeal by 76 Summit Avenue Corporation. The Board noted that the amendment should be referred to the Nassau County Planning Commission. The Board continued the public hearing to November 15, 2011 at 8:00pm.

At 10:35pm, on motion duly made by the Chair, seconded by Ms. Epstein, and adopted unanimously, the Board decided to convene in executive session to obtain privileged legal advice. At 10:50pm, the Board reconvened in public session.

The Board discussed the environmental significance of the 76 Summit Avenue Corporation appeal. After such discussion, on motion duly made by Mr. Griffin, seconded by Mr. Doherty, 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 Board is 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 result 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 its prior determination of environmental significance with respect to the Paradise X application, as well as the current revised application. After such discussion, on motion duly made by Mr. Griffin, seconded by Mr. Doherty, and adopted unanimously, the Board adopted the following resolution with respect to the revised application:

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 Board is 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 result 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;
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- 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 environmental significance of the Napoli/Samiano application. After such discussion, on motion duly made by Mr. Griffin, seconded by Mr. Doherty, 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 Board is 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 result 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 Topalian/Lapinsky application, and on motion by Ms. Epstein, seconded by Mr. Doherty, and adopted three votes in favor and the Chair and Mr. Griffin opposed (but indicating that they may not have denied an application related to the variances for the new residence), the

Board approved certain variances and denied other variances in accordance with the decision annexed hereto.

The Board discussed the minutes of the September 20, 2011 and October 4, 2011 meeting. On motion duly made by Mr. McGilloway, seconded by Mr. Kopczynski, and adopted unanimously, the Board approved the minutes of the September 20, 2011 and October 4, 2011 meetings.

There being no further business, the meeting was adjourned at 11:25pm.

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ZONING BOARD OF APPEALS  
VILLAGE OF SEA CLIFF

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In the Matter of the Application of

**Barbara Topalian, Christian Berntsen and  
Andrew Lapinsky**

applying for variances in connection with  
premises designated as Section 21,  
Block 154, Lots 561, 562, 579 and 580  
on the Nassau County Land and Tax Map.  
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STATEMENT

This is an application by Barbara Topalian, Christian Berntsen and Andrew Lapinsky, owners of property designated on the Nassau County Land and Tax Map as Section 21, Block 154, Lots 561 and 562 (Topalian and Berntsen) and 579 and 580 (Lapinsky), to subdivide an existing parcel into two lots, which would result in the creation of one building lot and the maintenance of an existing two-family dwelling.

On motion duly made by Ms. Epstein, seconded by Mr. Doherty, and adopted three votes in favor, and the Chair and Mr. Griffin opposed, but indicating that they would not have outright denied the variances related to the proposed residence, the Board made the following determination:

**RESOLVED**, upon consideration of the evidence presented at the public hearings held by the Zoning Board of Appeals (the "Board"), all proceedings had herein, all documentation submitted to the Board, following the personal inspection of the subject property by the Board members, and after due deliberation, the Board makes the following findings of fact and decision:

1. The subject property is located on 16<sup>th</sup> Avenue and 17<sup>th</sup> Avenue, between Prospect Avenue and Park Place, and is designated as Section 21, Block 154, Lots 561, 562, 579 and 580 on the Nassau County Land and Tax Map (the "Premises"). The Premises is located in the Residence A zoning district in the Village of Sea Cliff (the "Village").

2. The applicants propose to subdivide the Premises into two separate lots. Parcel A will consist of tax lots 579 and 580. It will have 80 feet of frontage on 16<sup>th</sup> Avenue and a lot area of 4,800 square feet. In connection with the subdivision, variances are required for the following proposed non-conformities: lot area (4,800 square feet, where a minimum of 7,500 square feet is required) and rear yard setback (10 feet, where a minimum of 20 feet is required). In addition, the proposal would require the maintenance of (a) a side yard setback of 3.2 feet, where the minimum required setback is 10 feet, (b) an encroachment into the height/setback ratio plane and (c) curb cuts not in compliance with the Village Code. The existing two-family residence is located entirely on Parcel A, and is proposed to remain.

3. Parcel B will consist of tax lots 561 and 562. It also will have 80 feet of frontage and a lot area of 4,800 square feet. It will be located on 17<sup>th</sup> Avenue. Tax lot 561 adjoins tax lot 580 along the proposed rear lot lines. Tax lot 579 only adjoins the northwest corner of tax lot 561 and tax lot 562 only adjoins the southeast corner of tax lot 579. The configuration of the four tax lots is essentially a "z". To effectuate the subdivision, Parcel B requires a variance to

permit lot area of 4,800 square feet, where a minimum of 7,500 square feet is permitted. In addition, the applicant proposes to retain the garage existing presently on tax lot 561, and such garage requires variances of the side yard setback requirements (3.3 feet, where a minimum of 10 feet is required), front yard setback requirements (9.7 feet, where a minimum of 20 feet is required), and maintenance of an accessory structure in a front yard, where no such accessory structure is permitted.

4. In addition, the applicants propose a residence to be located on Parcel B. That residence will require variances to permit a front yard setback of 13.3 feet, where a minimum of 20 feet is required and an encroachment into the height setback ratio plane. During the public hearing, the applicants reduced the front yard encroachment to 14.8 feet and also reduced the extent of the height setback ratio plane encroachment.

5. As set forth in the determination herein, the Board grants the variances to permit the creation of two separate lots, but denies the variances that relate to the proposed new residence on Parcel B.

6. The Board held public hearings on the application commencing at its monthly meeting on September 20, 2011 and concluding on October 18, 2011.

7. In addition to the application documents submitted to the Village, the applicants submitted an addendum to the application dated August 29, 2011 and a letter from Lisa Lapinsky dated September 20, 2011. The addendum contained information relative to the title of the various tax lots, and the Lapinsky

letter confirmed that Lisa Lapinsky, a co-owner of tax lots 579 and 580 consented to the application.

8. On September 20, 2011 and thereafter, numerous documents were submitted to the Board, including the following written submissions:

- a. *Objection letter dated September 7, 2011* – this letter was signed by numerous residents and set forth a generalized objection to the application for subdivision, and in particular to the erection of a new dwelling. The Board accepted this letter (Objectants' Exhibit A), but was unable to consider it in their deliberations as it merely contained generalized community objections.
- b. *September 20, 2011 letter from Karen B. Martin* – this letter expressed a concern that the cramming of houses on “tiny lots” would change the historic value, “esthetics”, and financial worth of the surrounding homes. This letter was accepted as Objectants' Exhibit B.
- c. *September 20, 2011 letter from Diane and Michael Biolsi* – expressing an opinion that 17<sup>th</sup> Avenue is a beautiful street full of wonderful old trees and homes that blend into the landscape much like a country lane.
- d. *Summary of Neighborhood and Radius Map (highlighted)* -- this exhibit (Applicants' Exhibit 1) indicates the square footage of the parcels within a 200 foot radius of the premises. There were

some errors on the exhibit, and these errors were discussed during the hearing.

- e. *Affidavit Report of Michael Lynch* – this exhibit (Applicants' Exhibit 2) sets forth information relative to the square footage of properties in the general neighborhood and the author's opinion that the subdivision and construction of a new residence will not produce any undesirable changes to the character of the neighborhood.
- f. *Assessor's Card and photograph of lots 561 and 562* – this document was accepted by the Board as Applicants' Exhibit 3.
- g. *Listing of Neighborhood houses fronting on 16<sup>th</sup> and 17<sup>th</sup> Avenues depicting lot size, front yard setback, property description and year built and year remodeled ( as applicable)* – this document was accepted by the Board as Applicants' Exhibit 4.
- h. *1987 Board determination regarding 86 17<sup>th</sup> Avenue (property adjoining lots 561 and 562)* – as reflected in the determination, the Board granted the easterly neighboring property variances to permit a one story addition that encroached into the westerly side yard setback. At the time of this approval, the encroachment was on the side of the currently vacant tax lot 562. This document was accepted by the Board as part of Applicants' Exhibit 5.

- i. *1991 Board determination regarding 86 17<sup>th</sup> Avenue (property adjoining tax lots 561 and 562)* – as reflected in the determination, the property owner received variances in connection with the construction of additions, a rear yard covered patio, and a front yard covered porch. This document was accepted by the Board as part of Applicants' Exhibit 5.
- j. *Aerial Map* -- this document was accepted as Applicants' Exhibit 6.
- k. *Summary of Neighborhood* – this document (Applicants' Exhibit 7) was submitted by the applicants to correct the errors in the original summary of neighborhood submission (Applicants' Exhibit 1). It shows that the properties within the 200 foot radius of the Premises include 3 parcels that conform to the 7,500 square foot lot area, 9 parcels are 4,800 square feet, 10 parcels with less than 4,800 square feet of lot area, and 8 parcels are more than 4,800 square feet, but less than 7,500 square feet. As set forth in the exhibit, 63% of the parcels are the same size or smaller than the Premises.
- l. *Proposed Site Plan, South and East Elevation, First Floor Plan, and Second Floor Plan, each dated 10-18, 2011 prepared by James T. Carballal, Architect* – the proposed plans show a revised proposed new residence on Parcel B. The proposed residence is shown to be 14.8 feet from the front property line,

and 20 feet from the rear property line along the entire length of the residence. The amended plans were accepted by the Board as Applicants' Exhibit 8.

m. *Neighborhood FAR Comparison* -- this document compares the floor area of the existing residence on proposed Parcel A and the new residence on proposed Parcel B to other properties in the neighborhood. It was pointed out that at least 2 of the lot sizes used in the document contained incorrect information. Those lot size numbers were marked with the correct lot size. The document was accepted by the Board as Applicants' Exhibit 9.

n. *October 13, 2011 letter from Carol Alagna* -- the letter states that the lot size would be too small for a new residence, which will ruin the character of the surrounding area and reduce property values.

o. *October 13, 2011 letter from Nancy Nicholson* -- the letters states that a new residence would add to property congestion and car congestion, and also destroy the ambiance of the neighborhood.

9. After reviewing the application documents and receiving testimony concerning the environmental aspects of the application, on September 20, 2011, the Board declared itself to be the lead agency with respect to this application under the State Environmental Quality Review Act (SEQRA) and determined that

the proposed actions requested under this application are Unlisted Actions under SEQRA and adopted a negative declaration with respect to the environmental significance of the application. The Board had coordinated the SEQRA review with the Planning Board and the Planning Board had deferred lead agency status to the Zoning Board.

10. Thereafter, the application was referred to the Nassau County Planning Commission, as required by law. By resolution number 9799-11, adopted on October 13, 2011, the Nassau County Planning Commission determined that the Board could take such action on this application as the Board deems appropriate, the Planning Commission having no objections or modifications.

11. In rendering its determination, the Board has considered the history of the Premises, and utilized the history and the current status of the Premises in relation to the considerations required in Village Law §7-712-b(3).

12. The variances sought are area variances. In determining whether to grant an area variance, as required by Village Law §7-712-b(3), 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 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.

13. The Board has reviewed this application in two distinct parts. First, whether variances should be granted that would permit the subdivision of the Premises into two lots. The second is whether variances should be granted to permit the construction of the residence proposed on Parcel B. The two parts of the application will be addressed separately.

**Variances Related to Proposed Subdivision**

14. As to the variances required for the subdivision of the premises, the Board grants the variances for the reasons set forth herein. In 1937, tax lot 580, which contains the two family residence, was acquired by Margaret DeRancy. In 1953, Ms. DeRancy acquired tax lots 561 and 562. No house then was located on the either tax lot. In 1983, Ms. DeRancy acquired tax lot 579. While each of the four tax lots were acquired at 3 separate times through 3 separate deeds, because Ms. DeRancy acquired title to each lot in her own name only, the lots became merged as one lot for zoning purposes by operation

of law. Thus, in 1953, tax lots 561 and 562 became one parcel together with tax lot 580. In 1983, tax lot 579 joined with the other tax lots to create one parcel consisting of all 4 tax lots.

15. Upon Ms. DeRancy's death in 1993, apparently without realizing that the tax lots had been merged by operation of law, in accordance with Ms. DeRancy's intent upon her death, tax lots 561 and 562 were bequeathed to Christian Berntsen and Barbara Topalian and tax lots 579 and 580 were bequeathed to Joan Berntsen. Thereafter, in 1994, Joan Berntsen sold tax lots 579 and 580 to the Lapinskys. Christian Berntsen and Barbara Topalian have retained ownership of lots 561 and 562.

16. Although the applicants submitted information concerning all 30 properties within 200 feet of the premises, the Board views the relevant neighborhood as 16<sup>th</sup> Avenue and 17<sup>th</sup> Avenue between Prospect Avenue and Park Place. The lot sizes in the neighborhood are consistent with the proposed development, as there are 6 lots that are less than 4,800 square feet, 7 lots that are greater than 4,800 square feet and 6 lots that are 4,800 square feet. Accordingly, 12 of the 19 lots (63%) in the neighborhood are the same size or smaller than the proposed lots. The Board also considered that the lots adjoining the subject premises are 2,400 square feet, 4,800 square feet, 2,700 square feet and 6,000 square feet. The latter two lots are located on a corner, and but for their configuration related to the angle of Prospect Avenue, those lots would be 2,400 and 4,800 square feet respectively.

17. For the reasons set forth herein, the Board finds and concludes that the variances necessary to effectuate the subdivision are granted. In reaching this conclusion, the Board has considered each of the relevant statutory factors.

18. 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 result in the development of the property in a manner consistent with the history of the premises and with the surrounding properties and neighborhood. As set forth above, the property consists of 4 tax lots, each 2,400 square feet in size – 2 with frontage on 16<sup>th</sup> Avenue and 2 with frontage on 17<sup>th</sup> Avenue. The 4 tax lots do not run back to back. Rather, only 1 tax lot on each street backs a combined tax lot on the other street (tax lots 561 and 580). The other 2 tax lots (579 and 562) are on the opposite sides of the back to back lots. Accordingly, the 4 tax lots create a “z” shape. The lots became joined by operation of law upon the acquisition of each lot by a predecessor in title. Thereafter, and apparently without knowledge of the legal implications of acquiring unrelated properties in one name, the predecessor in title, upon her death, transferred the tax lots to separate owners – the 2 tax lots on 16<sup>th</sup> Avenue to one owner and the 2 tax lots on 17<sup>th</sup> Avenue to a different owner. Subsequently, and again without apparent knowledge of the prior merger, the 2 tax lots on 16<sup>th</sup> Avenue were transferred to the current owners.

19. Prior to the transfers of the property as described above, the lots had been acquired separately. Initially, lot 580, with the house located thereon,

was its own 2,400 square foot parcel. At that time (in 1953), lots 561 and 562, on which was located only a garage, were a separate 4,800 square foot parcel. Ms. DeRancy acquired those parcels but never built any additional structures on those lots related to the house on lot 580. In 1983, Ms. DeRancy acquired title to the lot adjoining lot 580. This lot (579) adjoins lot 580, contains a driveway and appears to the Board to be directly associated with tax lot 580. As lot 579 contains a driveway, it also has been providing for off-street parking for the occupants of the two-family residence on lot 580. In effect, the applicants now seek to re-create what once existed, but was undone by the operation of law.

20. When combined with the history of the property, the specific relationship of these properties and property sizes to the neighborhood and the adjoining properties, it becomes apparent to the Board that the character of the neighborhood will not be adversely impacted by creating two separate parcels, one of which already contains its own distinct residence.

21. In considering whether the variances are substantial, the Board takes into account the totality of the circumstances in connection with the application, the variances sought and the nature of the neighborhood. For the reasons set forth above, while the variances are certainly not de minimus and they are significant, they are not deemed to be substantial.

22. As to whether there are feasible alternatives for the applicants to pursue, the Board finds that there could be an alternative should the current owners of lots 561 and 562 sell their interest in those lots to the owners of lots 579 and 580 (or vice versa). The applicants did not submit any information as to

whether such alternative would be feasible. Under such circumstances, the Board is unable to reach a conclusion as to the feasibility of this alternative. Notwithstanding such limitation, even if the transfer could occur, on the application presented to the Board, this finding would not preclude the Board from finding that the other factors were demonstrated sufficiently to support a finding that the benefit to the applicants outweighs any detriment to the community.

23. 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 not be such an adverse impact. The history of the configuration of the lots, combined with the current character of the neighborhood and the general appearance of the lots being unrelated due to the topography and uniqueness of the property, render the proposed variances necessary for the subdivision to be consistent with the physical conditions in the neighborhood. Moreover, there was no demonstration that there are any environmental conditions in the neighborhood that would be impacted adversely if the variances for the subdivision are granted.

24. As to the self-created hardship, the Board finds that the proposed variances are self-created. Notwithstanding such finding, the Board finds that this determination is not sufficient to warrant a denial of the variances necessary to effectuate the subdivision.

25. Accordingly, the Board finds that the benefit to the applicants outweighs the detriment to the neighborhood, and grants the variances of Village

Code §§138-404, 138-408 (with regard to the accessory structure (garage) only), 138-411, 138-412, 138-413.1(for Parcel A only) 138-416 and A153-2.

**Variances Related to the Proposed Residence on Parcel B**

26. The Board denies the proposed variances for a new residence, as amended, on Parcel B. In reaching this conclusion, the Board has considered each of the factors set forth in Village Law §7-712-b-3.

27. The Board finds that the proposed residence would create an undesirable change in the neighborhood character and a detriment to nearby properties. The residence is a two story residence located 14.8 feet from the front property line, where a minimum of 20 feet is required. The residence also encroaches into the front height-setback ratio. The applicants did not submit any information to the Board depicting a residence with such encroachments on a 4,800 square foot lot. Absent such demonstration, this proposed new dwelling on a 4,800 square foot lot, is out of character with the neighborhood.

28. The Board notes that a real estate appraiser retained by the applicants concludes that the variances would not produce an undesirable change to the area character. While the Board does not disagree with this conclusion as to the subdivision, it does disagree with the conclusion relative to the new residence. As set forth in the appraiser's analysis, his conclusion is based primarily on property valuation. While the appraiser may have knowledge in property valuation, there is nothing in his report that would demonstrate that the appraiser has any special knowledge or experience that would provide the Board with a proper opinion regarding the potential for an undesirable change to

the neighborhood, as such desirability is not reflected solely in monetary value. The Board, which is more attuned to the community, can render more valuable opinions in regard to undesirable community changes and detrimental development.

29. The Board finds that the requested variances, individually and combined, 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, but also has reviewed them individually. The front yard setback encroachment and front height-setback ratio encroachment on a 4,800 square foot property located on a sloped property creates a substantial variation from the zoning requirements.

30. As to whether there are any feasible alternatives for the applicants to pursue, the Board finds that the applicants could have submitted plans that depict a residence either compliant with zoning regulations or with the extent of the variances required reduced. Thus, there clearly are feasible alternatives that the applicants should consider.

31. 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 at odds with those requirements and with the development of the homes in the immediate neighborhood.

32. 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.

33. For the foregoing reasons, the Board denies the variances of Village Code §§138-408 (for parcel B only) and 138-413.1.

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