

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

February 16, 2012

Present:	Chair	Kevin McGilloway
	Members	Dina Epstein
		Noel Griffin
		Ted Kopczynski
		Jamie Weil
	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 Stewart Rodal, 183 Carpenter Avenue, Sea Cliff, New York to install a generator 8.2 feet from a side property line, where Village Code §138-511 requires a minimum setback of 15 feet. Premises are designated as Section 21, Block 114, Lot 8 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board opened the public hearing on the application of Arthur Purcell, 157 Dayton Avenue, Sea Cliff, New York to renovate an existing residence, which requires variances of (a) Village Code §138-504 in that the lot size is 9,977 square feet, where a minimum of 10,000 square feet is required, and (b) Village Code §138-517 in that the roof over the entry will exceed the permitted encroachment by 4.2 feet. Premises are designated on the Nassau County Land and Tax Map as Section 21, Block K, Lot 749. Mr. Griffin recused himself from

participation in the hearing on this matter. The Board closed the public hearing, and reserved decision.

The Board opened the public hearing on the application of Naomi Curtis, 299 Prospect Avenue, Sea Cliff, New York to re-subdivide one building lot into two lots, where the two proposed lots previously were subdivided and have merged by operation of law, which subdivision requires a variance of Village Code §138-506 in that one front property line will be 98.14 feet, where a minimum of 100 feet is required. Premises are designated as Section 21, Block K, Lot 761 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 Arlyn Dimatulac, 69 The Boulevard, Sea Cliff, New York to demolish an existing residence and construct a new dwelling which requires variances of the following provisions of the Village Code: (a) 138-505 to erect a dwelling with lot coverage of approximately 4,414 square feet, where a maximum of 3,288 square feet is permitted; (b) 138-506 to maintain front property lines of 40 feet on Foster Place and 80 feet on The Boulevard, where a minimum of 100 feet is required; (c) 138-507 to maintain a lot that does not comply with minimum lot width requirements; (d) 138-509 to erect a dwelling with less than the required lot width at the setback lines; (e) 138-511 to erect a dwelling with a side yard setback of 0.33 feet, where a minimum of 15 feet is required; (f) 138-513 to permit a dwelling with a height of 47.08 feet, where the maximum permitted height is 30 feet; (g) 138-513.1 to permit an encroachment into the height/setback ratio plane; (h) 138-514.1 to

permit a floor area of 4,684 square feet, where the maximum permitted is 2,959.2 square feet; and (i) 138-516 to permit a sub-grade garage in a front yard that exceeds the allowable square footage for an accessory building. Premises are designated as Section 21, Block 197, Lot 8 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board discussed the environmental impacts of the Rodal application. After such discussion, on motion duly made by Ms. Epstein, seconded by Mr. Weil, and adopted unanimously, the Board determined that the action was a Type II matter under SEQRA, and required no further environmental review. After further discussion of the Rodal application, on motion duly made by Ms. Epstein, seconded by Mr. Weil, and adopted unanimously, the Board granted the application in accordance with the short form decision annexed hereto.

The Board (excluding Mr. Griffin) discussed the environmental impacts of the Purcell application. After such discussion, on motion duly made by the Chair, seconded by Ms. Epstein, and adopted four votes in favor and Mr. Griffin abstaining, the Board determined that the action was a Type II matter under SEQRA, and required no further environmental review. After further discussion of the Purcell application (excluding Mr. Griffin), on motion duly made by the Chair, seconded by Ms. Epstein, and adopted four votes in favor and Mr. Griffin abstaining, the Board granted the application in accordance with the short form decision annexed hereto.

The Board discussed the environmental impacts of the Curtis application. After such discussion, on motion duly made by Mr. Weil, seconded by Mr.

Kopczynski, and adopted unanimously, the Board determined that the action was a Type II matter under SEQRA, and required no further environmental review. After further discussion of the Curtis application, on motion duly made by Mr. Weil, seconded by Mr. Kopczynski, and adopted unanimously, the Board granted the application in accordance with the short form decision annexed hereto.

The Board discussed the environmental impacts of the Dimatulac application. After such discussion, on motion duly made by the Chair, seconded by Ms. Epstein, and adopted four votes in favor and Mr. Griffin abstaining (as he was not present during the January public hearing), the Board determined that the action was a Type II matter under SEQRA, and required no further environmental review. After further discussion of the Dimatulac application, on motion duly made by the Chair, seconded by Ms. Epstein, and adopted four votes in favor and Mr. Griffin abstaining(as he was not present during the January public hearing), the Board denied the application in accordance with the decision annexed hereto.

The Board discussed the draft determination on the Topalian and Berntsen application, and on motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted three votes in favor, with one vote against (Mr. Griffin) and Ms. Epstein (who was not present during a portion of the public hearing) abstaining, the Board denied the application in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 9:50 pm.

RODAL SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on February 16, 2012, on motion duly made by Ms. Epstein, seconded by Mr. Weil, and adopted unanimously, 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. Stewart Rodal, 183 Carpenter Avenue, Sea Cliff, New York to install a generator 8.2 feet from a side property line, where Village Code §138-511 requires a minimum setback of 15 feet. Premises are designated as Section 21, Block 114, Lot 8 on the Nassau County Land and Tax Map
2. The applicant is the record owner of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.
5. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans submitted with the application and all requirements of the building department; and (b) the work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

CURTIS SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on February 16, 2012, on motion duly made by Mr. Weil, seconded by Mr. Kopczynski, and adopted unanimously, 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. Naomi Curtis, 299 Prospect Avenue, Sea Cliff, New York to re-subdivide one building lot into two lots, where the two proposed lots previously were subdivided and have merged by operation of law, which subdivision requires a variance of Village Code §138-506 in that one front property line will be 98.14 feet, where a minimum of 100 feet is required. Premises are designated as Section 21, Block K, Lot 761 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.
5. The relief requested in the application is granted provided that (a) the division of the property is in compliance with the plans submitted with the application and all requirements of the building department; and (b) such division of property complies with all conditions imposed by the Village Planning Board.

PURCELL SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on February 16, 2012, on motion duly made by the Chair, seconded by Ms. Epstein, and adopted with four votes in favor and Mr. Griffin 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. Arthur Purcell, 157 Dayton Avenue, Sea Cliff, New York to renovate an existing residence, which requires variances of (a) Village Code §138-504 in that the lot size is 9,977 square feet, where a minimum of 10,000 square feet is required, and (b) Village Code §138-517 in that the roof over the entry will exceed the permitted encroachment by 2.2 feet. Premises are designated on the Nassau County Land and Tax Map as Section 21, Block K, Lot 749.
2. The applicant is the record owners of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.
5. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans submitted with the application and all requirements of the building department; and (b) the work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

-----x

In the Matter of the Application of

Arlyn Dimatulac

for variances in connection with
premises designated as Section 21,
Block 197, Lots 8, 17 and 233
on the Nassau County Land and Tax Map.

-----x

RESOLVED, upon consideration of the evidence presented at the public hearing 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. This is an application by Arlyn Dimatulac, owner of property located at 69 The Boulevard, Sea Cliff, New York and designated on the Nassau County Land and Tax Map as Section 21, Block 197, Lots 8, 17 and 233 (the “Subject Premises”), to construct a new residence, which requires variances of the following Village Code sections: (a) 138-505 to erect a dwelling with lot coverage of approximately 4,414 square feet, where a maximum of 3,288 square feet is permitted; (b) 138-506 to maintain front property lines of 40 feet on Foster Place and 80 feet on The Boulevard, where a minimum of 100 feet is required; (c) 138-507 to maintain a lot that does not comply with minimum lot width requirements; (d) 138-509 to erect a dwelling with less than the required lot width at the setback lines; (e) 138-511 to erect a dwelling with a side yard setback of 0.33 feet, where a minimum of 15 feet is required; (f) 138-513 to permit a dwelling with a height of 47.08 feet, where the maximum permitted height is 30 feet; (g) 138-

Arlyn Dimatulac

for variances in connection with
premises designated as Section 21,
Block 197, Lots 8, 17 and 233
on the Nassau County Land and Tax Map.

-----x

RESOLVED, upon consideration of the evidence presented at the public hearing 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. This is an application by Arlyn Dimatulac, owner of property located at 69 The Boulevard, Sea Cliff, New York and designated on the Nassau County Land and Tax Map as Section 21, Block 197, Lots 8, 17 and 233 (the “Subject Premises”), to construct a new residence, which requires variances of the following Village Code sections: (a) 138-505 to erect a dwelling with lot coverage of approximately 4,414 square feet, where a maximum of 3,288 square feet is permitted; (b) 138-506 to maintain front property lines of 40 feet on Foster Place and 80 feet on The Boulevard, where a minimum of 100 feet is required; (c) 138-507 to maintain a lot that does not comply with minimum lot width requirements; (d) 138-509 to erect a dwelling with less than the required lot width at the setback lines; (e) 138-511 to erect a dwelling with a side yard setback of 0.33 feet, where a minimum of 15 feet is required; (f) 138-513 to permit a dwelling with a height of 47.08 feet, where the maximum permitted height is 30 feet; (g) 138-513.1 to permit an encroachment into the height/setback ratio plane; (h) 138-514.1 to permit a floor area of 4,684 square feet, where the maximum permitted is 2,959.2 square feet; and (i) 138-516 to permit a sub-grade garage in a front yard that exceeds the allowable square footage for an

accessory building. The applicant also owns property located east of the Subject Premises, separated by a 10 foot right-of-way, designated on the Nassau County Land and Tax Map as Section 21, Block 197, Lot 239.

2. The applicant purchased the Subject Premises and lot 239 in or about September 2010. Applicant submits that upon acquiring the Subject Premises, applicant believed that she purchased a larger contiguous parcel that encompassed the right-of-way and lot 239. With that knowledge, the applicant then sought to demolish the existing residence on the Subject Premises and construct a new residence. The applicant utilized the land area in the right-of-way and in lot 239 in attempting to plan and design a residence at the Subject Premises. After filing an application with the Village building department, she learned that neither the area in the right-of-way nor lot 239 (a non-contiguous lot) could be utilized for the development of a new residence on the Subject Premises. As became evident from the documentary evidence, the right-of-way was part of a subdivision approval whereby ownership was reserved to the subdivider, and at no time was owned by the applicant. As the right-of-way extends along the entire eastern boundary of the Subject Premises and lot 239 is separated from the Subject Premises by the right-of-way, without title to the right-of-way or any land contiguous with both the Subject Premises and lot 239, lot 239 is a separate parcel for zoning purposes. Thus, no part of lot 239 may be considered to be used for the area and setback calculations applicable to the Subject Premises.

3. The Board held a public hearing on January 17, 2012 and February 16, 2012.

4. In addition to the application documents submitted to the Village, the applicant submitted documentation pertaining to the property and nearby properties. Numerous residents testified about various aspects of the application, including the character of the community and

the potential impacts the variances would have on the character of the community. The residents also submitted documentary support.

5. After reviewing the application documents, receiving and considering testimony, and inspecting the Subject Premises and the surrounding neighborhood, the Board hereby declares itself to be the lead agency with respect to this application under the State Environmental Quality Review Act (SEQRA) and determines that the proposed action requested under this application is a Type II Action under SEQRA and requires no further environmental review. Prior to the public hearing, the Board notified the Nassau County Planning Commission in accordance with the streamlining agreement with the Village, and no response has been received from the Planning Commission. Accordingly, the Board may take such action on this application as the Board deems appropriate.

6. In rendering its determination, the Board has considered the testimony and the documentary evidence submitted with the application and at the public hearing, and has observed the neighborhood where the residence is proposed. The Board considered these items in relation to the considerations required in Village Law §7-712-b(3).

7. 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.

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

9. The Board finds that the proposed residence, and the variances required to develop the proposed residence, would create an undesirable change in the neighborhood character, a detriment to nearby properties and a detriment to the Village in general. The residence requires variances to permit a height of 47.08 feet, where a maximum of 30 feet is permitted, a floor area of 4,684 square feet, where a maximum of 2,959.2 square feet is permitted, a height setback plane encroachment, a side yard setback of 0.33 feet, where a minimum of 15 feet is required, a sub-grade garage in a front yard that exceeds the permissible square footage for an accessory building, and a lot coverage of 4,414 square feet, where a maximum of 3,288 square feet is permitted. Each of these variances, standing alone, has the potential to have a great impact, but combined, have a tremendous impact on the neighborhood. During the public hearing, the applicant's representative, as confirmed by the Village Superintendent of Buildings, indicated that constructing the driveway and walkways in a certain manner would reduce the lot coverage and thus reduce or eliminate the need for a lot coverage variance. However, the Board had to consider the application in the form as presented, which

required a variance for lot coverage purposes. The Board notes that the findings herein would not differ even if the lot coverage variance was not required. The applicant submitted elevational drawings from the perspective of the rear yard, front yard and side yards. The applicant also provided the Board with on-site markings, as further shown in a written depiction, indicating the height of the proposed dwelling at certain locations. It was plainly evident from the Board's observations of the Subject Premises and its review of the documentation that the proposed dwelling would be imposing. From the perspective of The Boulevard, the house appears to have 5 stories in addition to a garage built into the cliff. Even if the substantial tower, which appears to be a full story itself, is removed, there still appears to be 4 full stories. With the tower, the house exceeds the permitted height by more than 17 feet. Even without the tower, the house, is more than 4 feet above the permitted height level. This impact not only applies from the perspective of The Boulevard, but as is evident from the elevation drawings, also applies from the side elevations. Moreover, because of the height of the house, which is built partly into the cliff, it appears from the upland area that the house comes up above the cliff. The Board recognizes that the residents on Foster Place and other upland areas are not entitled to a vista or visual easement to see the water, but the Board finds that the impact upland is tremendous, as not only will the viewpoints of the Foster Place residents be obstructed, but it also will have an impact on others who use the upland areas for pedestrian purposes and to observe the water from very unique perspectives. This is part of the charm of Sea Cliff. Building a house above the height threshold, and encroaching into the height-setback plane, in this area of the Village not only creates an imposing structure from the perspectives of The Boulevard and the side property lines, but also negatively impacts the visual charm from the upland areas.

10. Further exacerbating the massiveness of the house due to its height (and as discussed herein, the floor area), is that the house to the west is only 4.5 feet from the property line. Thus, while the proposed residence complies with the side yard setback requirements in relation to this property line, the combined open area is less than 26 feet. This is 4 feet less than provided for under the Code. When combined with the bulk of the residence, this limitation on the visual openness (from the waterfront and The Boulevard) further deteriorates the loss of open space vistas and views of the cliff created and by the proposed residence.

11. While the Board has considered the neighborhood and the impact the height variation would have on the neighborhood, the Board also is cognizant of the detrimental impact the other variances would have on the neighborhood. The floor area is proposed to be 60% more than permitted. The applicant did not submit any evidence that demonstrated that such a variation is consistent in the neighborhood. However, even if consistent, the potential impact that the proposed variation would have on the neighborhood would be great. In an attempt to soften this impact, the applicant submitted documentation that incorporated the lot area of lot 239 and part of the right-of-way. The applicant also offered to permanently restrict development on lot 239. The Board finds that neither the proposed restriction nor the consideration of that area for purposes of calculating floor area would eliminate the impact resulting from the floor area variation, which would still exist even if the proposed additional areas were added to the denominator in the lot coverage calculation. There still would be a need for a floor area variance, and the Board finds that such variance also would negatively impact the neighborhood.

12. The Board does recognize that the side yard setback variance would involve the setback from the right-of-way, an area that likely never will have a house built on and for all intents and purposes creates an additional 10 foot setback area. However, to the extent that the

area may at some point include stairs or some other means of pedestrian access, the Board has considered the impacts that such development could have. Thus, even if lot 239 never could be developed, there remains a chance that the right-of-way could be put to use for its originally intended purpose – access from Foster Place to The Boulevard. The applicant proposes a building that will be located only 4 inches from this access way, and appears to have portions of a roof that extend over the right-of-way. Being so proximate to the right-of-way imposes onto that right-of-way in a manner that is detrimental to the users of that right-of-way, and thus detrimental to the neighborhood.

13. As to the lot coverage variance, the Board finds that it would have a detrimental impact on the neighborhood, as the sheer differential of more than 30% above the permitted coverage is excessive. Had the applicant proposed to reduce the lot coverage by modifying the manner of construction, the Board would have been less concerned about the lot coverage variation and the actual impact of such variation on the neighborhood. However, the Board had to consider the application as presented.

14. The Board also finds that the requested variances, individually and when considered in relation to the neighborhood, 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. For the reasons discussed above, when considered in view of the neighborhood setting, the variances to permit a height variation, side yard setback variation and front yard setback variation, loom large. There will be a substantial visual impact that impacts neighbors who live below the Subject Premises, as well as neighbors who live upland. This same impact will affect pedestrian enjoyment of this part of the Village, which the Board recognizes as being a huge part of the advantageous quality

of life in Sea Cliff. The variations are not only substantial based on numerical variations, but also based on the actual impact on the community.

15. As to whether there are any feasible alternatives for the applicant to pursue, the Board finds that the applicant could have submitted plans that depict a residence either compliant with zoning regulations or with the extent of the variances required even further reduced. Rather than pursue those alternatives, the applicant has submitted an application that seeks to take full advantage of the water views at the expense of the community. The Board finds that the applicants have an opportunity to pursue such water views if they are to submit a compliant plan.

16. 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 residence is completely at odds with the Village's zoning plans and the Village's intentions to utilize its zoning authority to assure that the Village quality of life does not deteriorate.

17. As to the self-created hardship, the Board finds that the proposed variances are self-created. The applicant has chosen to submit plans that show a house non-compliant with the zoning requirements. That is her choice. Notwithstanding that the Board finds the hardship to be self-created, the Board would deny the variances based on its consideration of the other factors set forth above.

18. For the foregoing reasons, the Board finds that the detriment to the neighborhood outweighs the benefit to the applicant, and denies the application in its entirety.

ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

-----x
In the Matter of the Application of

Barbara Topalian and Christian Berntsen

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

RESOLVED, upon consideration of the evidence presented at the public hearing 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. This is an application by Barbara Topalian and Christian Berntsen, owners of property designated on the Nassau County Land and Tax Map as Section 21, Block 154, Lots 561 and 562 (the “Subject Premises”), to construct a new residence, which requires variances of the following Village Code sections: (a) 138-404 to maintain a lot area of 4,800 square feet of lot area each, where a minimum lot area of 7,500 square feet is required; (b) 138-408 to (i) maintain an accessory structure (garage) with a setback of 9.7 feet, and (ii) construct a dwelling with a setback of 16 feet, where the minimum required setback is 20 feet; (c) 138-411 to maintain a side yard setback of 3.3 feet, where the minimum required setback is 10 feet; (d) 138-413.1 to construct a dwelling which encroaches into the height/setback ratio plane; and (e) 138-416 to maintain an accessory structure in a front yard where no such accessory structure is permitted.

2. By a decision filed with the Village Clerk on November 15, 2011, the Board previously granted the applicants permission to divide the Subject Premises from a larger parcel for the reasons described in that determination. As set forth in that determination, four lots (tax lots 561, 562, 579 and 580) were one parcel (prior to the determination). The history of the four lots, their transfer and merger, and subsequent actions were discussed in detail in that determination. Such history is summarily described as follows. In 1937, tax lot 580 was acquired by Margaret DeRancy. In 1953, Ms. DeRancy acquired the Subject Premises (lots 561 and 562). No house then (or now) was located on the Subject Premises. In 1983, Ms. DeRancy acquired tax lot 579. While each of the four tax lots were acquired on 3 separate dates 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, the Subject Premises became one parcel together with tax lot 580. And in 1983, upon the joinder of tax lot 579 with the other three tax lots, by operation of law all four lots became one parcel. 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, the Subject Premises (lots 561 and 562) was bequeathed to the applicants and tax lots 579 and 580 were bequeathed to Joan Berntsen. Thereafter, in 1994, Joan Berntsen sold tax lots 579 and 580 to Andrew and Lisa Lapinsky. The applicants have retained ownership of lots 561 and 562.

3. Based in large part on the history of the lots, the Board granted variances to permit the two parcels to be separated such that lots 579 and 580 became one parcel (fronting on 16th Avenue) and lots 561 and 562 became the Subject Premises (fronting on

17th Avenue). As a result of that approval, the Subject Premises was authorized to exist with a lot area of 4,800 square feet, where a minimum of 7,500 square feet is required. Additionally, the garage on the Subject Premises was permitted to remain as the Board granted variances to permit a side yard setback of 3.3 feet, where a minimum of 10 feet is required, a front yard setback of 9.7 feet, where a minimum of 20 feet is required, and an accessory structure in a front yard, where no such structure is permitted.

4. As part of that prior application, the applicants also proposed to construct a residence that required a variance to permit a front yard setback of 13.3 feet, where a minimum of 20 feet is required and a variance to permit an encroachment into the height setback ratio plane. During the public hearings, the applicants reduced the front yard encroachment to 14.8 feet and also reduced the extent of the height setback ratio plane encroachment. The Board denied the modified front yard setback variance and height setback ratio plane encroachment.

5. The current application seeks approval to construct a residence that requires variances that would permit the dwelling to be located 16 feet from the front property line, where a minimum of 20 feet is required and to encroach into the height setback ratio plane where no such encroachment is permitted. The applicants also seek to maintain the variances relating to the lot area (4,800 square feet) and garage location (front yard setback of 9.7 feet, side yard setback of 3.3 feet and accessory building in a front yard).

6. As to the variances to maintain the existing approvals for the lot and the garage, the Board confirms that those variances were approved previously and that the maintenance of those variances requires no additional approval were those variances

standing alone. However, as to the new variances needed, for the reasons set forth herein, the Board denies those variances.

7. The Board held a public hearing on December 19, 2011.

8. In addition to the application documents submitted to the Village, the applicants submitted documentation pertaining to three properties, including the two properties immediately adjoining the side property line of the Subject Premises and the property directly across the street from the proposed residence. Applicants also submitted, by way of reference to documents already on file with the Village, three documents from the prior hearing, including: (a) summary of neighborhood and Radius Map (highlighted), prepared by My Nassau Radius Map on April 29, 2011 (exhibit 1 in the prior application); (b) affidavit report of Michael Lynch dated September 20, 2011 (exhibit 2 in the prior application); and (c) listing of neighborhood houses fronting on 16th and 17th Avenues depicting lot size, front yard setback, property description and year built and year remodeled dated as of September 20, 2011 (exhibit 4 in the prior application).

9. Numerous residents testified about various aspects of the application, including the character of the community and the potential impacts the variances would have on the character of the community. The residents also submitted documentary support.

10. After reviewing the application documents, receiving and considering testimony, and inspecting the Subject Premises and the surrounding neighborhood, the Board hereby declares itself to be the lead agency with respect to this application under the State Environmental Quality Review Act (SEQRA) and determines that the proposed

action requested under this application is a Type II Action under SEQRA and requires no further environmental review. Prior to the public hearing, the Board notified the Nassau County Planning Commission in accordance with the streamlining agreement with the Village, and no response has been received from the Planning Commission. Accordingly, the Board may take such action on this application as the Board deems appropriate.

11. In rendering its determination, the Board has considered the testimony and the documentary evidence submitted with the application and at the public hearing, and has observed the neighborhood where the residence is proposed. The Board considered these items 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 denies the proposed variances for a new residence. In reaching this conclusion, the Board has considered each of the factors set forth in Village Law §7-712-b-3.

14. 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 16 feet from the front property line, where a minimum of 20 feet is required. The Board has considered the neighborhood, which is deemed primarily to be 17th Avenue, between Prospect Avenue and Park Place, and the impact that the proposed residence would have on the character of 17th Avenue. Including the houses that are positioned towards Prospect Avenue (on the north and south-easterly corners of Prospect Avenue and 17th Avenue) and houses that face other blocks (including 18th Avenue and Park Place), there are 9 residences that have frontage on 17th Avenue in the relevant neighborhood. There also are three homes on the south side of 16th Avenue whose property boundary touches the Subject Premises. Those homes, and their relationship to the Subject Premises, also have been considered by the Board in reviewing the impact on the neighborhood character.

15. The documentation submitted by the applicants with respect to three of the properties on 17th Avenue, the testimony provided by the applicants' representative and the residents in the neighborhood, and the observation and knowledge of the

neighborhood provided the Board with a full understanding of the neighborhood conditions and the impact of the proposed residence on those conditions. As many of the lots in the area do not comply with the minimum lot area, including the Subject Premises, the lot immediately east of the Subject Premises and on the south side of 17th Avenue directly across the street from the residence on the Subject Premises, a front yard and height-setback ratio encroachment at the Subject Premises has the potential to cause a greater impact on the neighborhood and 17th Avenue. The neighborhood is crowded with homes, spaced fairly close together. It is a charming, quaint neighborhood. The neighborhood is defined by this quaintness, and any change to this quaintness has the potential to damage the charm of the neighborhood. In considering the placement and size of a residence on the Subject Premises, the Board must take into account the potential to further crowd the neighborhood. With the house directly across the street from the Subject Premises being located only 12.46 feet from the front property line on a very narrow lot in an area where there is minimal open space between that house and the 2 homes adjoining that house, on a narrow street, any further encroachment on the north side of the street beyond the 20 foot front setback line would deteriorate an already crowded situation. Such a proposal would create, as one resident stated, a visual chokepoint. This chokepoint is further exacerbated by the proximity of the house to the east of the Subject Premises to the front property line and the westerly side property line, and also is worsened because of the proximity of the homes immediately to the north of the Subject Premises, which homes (125, 131 and 133 16th Avenue) are squeezed together. Attempting to shoehorn a house with a front yard setback encroachment and height-setback encroachment results in a clear oversaturation of the neighborhood. This

is evident from the documentation alone, but also is clear upon inspection of the neighborhood.

16. As a result, the addition of the proposed two-story residence within the front yard setback, which encroaches into the front height-setback ratio, would produce an undesirable impact on, and change to, the existing neighborhood. Adding a house which aggravates an existing crowding situation would be a detriment to the neighborhood.

17. The Board notes that a real estate appraiser retained by the applicants has concluded that a new home would help raise the average market value in the neighborhood. However, such a change would impact the character of the community; one that is quaint and charming now would be marred permanently by the introduction of another house that encroaches on the front property line and into the height-setback ratio plane. Whether or not the real estate appraiser is correct with respect to the market value increase has limited impact on the community's value, which is not just a function of its monetary value, but also of its character and the ability to retain that character. While the real estate appraiser and the applicants would appear to feel differently, a home in Sea Cliff, and in this particular neighborhood, is not just a monetary investment. It is an investment in a charming, quaint neighborhood and the peace, serenity and value that are not measured solely in market value of a home. In fact, while the appraiser may have knowledge in property market 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. The proposed development would create an undesirable and detrimental change to the community.

18. The Board also finds that the requested variances, individually and when considered in relation to the neighborhood, 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, on a narrow street, with many other encroaching homes, creates a substantial variation from the zoning requirements. Moreover, while the applicants submit that the encroachment is minimal in view of the neighboring parcels, the opposite is true. Not only is the variation from the front yard setback requirements a 20% variation, but the existence of such variation at the previously described visual chokepoint, creates an excessively substantial variation.

19. 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 even further reduced. While the applicants expressed that a compliant house would not be marketable, the applicants submitted no proof to support this position. The applicants also submitted information stating that the proposed location of the house would serve to protect a substantial tree on the Subject Premises. A neighbor submitted a letter to the Board from a person purporting to have knowledge about trees that the application and the proposed residence location did not provide a sure tree protection.

After considering this information, the Board also finds there clearly may be feasible alternatives that the applicants should consider.

20. 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 fact that there already are homes in the immediate vicinity with encroachments that would make the proposed encroachment appear much larger, is completely at odds with the Village's zoning plans and with the development of the homes in the immediate neighborhood.

21. As to the self-created hardship, the Board finds that the proposed variances are self-created. The applicants have chosen to submit plans that show a house non-compliant with the zoning requirements. That is their choice. Notwithstanding that the Board finds the hardship to be self-created, the Board would deny the variances based on its consideration of the other factors set forth above.

22. For the foregoing reasons, the Board finds that the detriment to the neighborhood outweighs the benefit to the applicant, and denies the variances of Village Code §§138-408 (16 foot front yard setback where 20 feet is required) and 138-413.1.
