

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

February 9, 2011

Present:	Chair	Kevin McGilloway
	Members	Maureen Angliss Dina Epstein Noel Griffin Ted Kopczynski

The meeting was called to order at 8:00 pm.

The Board opened the public hearing on the application of Gregory Pelts, 26 Laurel Avenue, Sea Cliff, New York to maintain an existing pool dome, which requires variances of the following Village Code sections: (a) 138-505 in that the lot coverage will be 4,189 square feet, where a maximum of 3,750 square feet is permitted; (b) 138-508 in that the front yard setback will be 15.8 feet to the main structure and 1 foot to an accessory structure, where a minimum of 25 feet is required; (c) 138-511 in that then side yard setbacks of the main structure will be 10.15 feet and 10.65 feet at the east end and 3.65 feet and 4.76 feet at the west end, where a minimum setback of 15 feet is required; (d) 138-512 in that the rear yard setback will be 26 feet, where a minimum setback of 30 feet is required; and (e) 138-516 in that there will be 2 accessory buildings, where only 1 such building is permitted, in front yard, where no such structure is permitted, and having a side yard setback of 3.65 feet to the garage and 4.76 feet to the shed, where a minimum of 15 feet is required. Premises are designated as Section 21, Block 195, Lot 12 on the Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

The Board opened the public hearing on the application of Sea Cliff Bagel Cafe, 478 Glen Cove Avenue, Sea Cliff, New York for a special permit to use the premises for

a restaurant where food is prepared on premises, which requires modifications of the June 14, 2005 and October 23, 2007 decisions of the Board of Appeals related to the subject premises. Premises are designated as Section 21, Block 41, Lot 64 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 Douglas and Karin Barnaby, 404 Littleworth Lane, Sea Cliff, New York to subdivide property into 3 new building lots, and retain an existing 2 family residence on one of those lots. The applicants appeal the determination of the Superintendent of Buildings with regard to the following determinations: (a) documentation supplied, and information submitted, are incomplete; (b) calculations utilized in plan are incorrect; (c) proposed streets, frontage and required setbacks are not in conformity with the Village Code; and (d) legal non-conforming two family residence has not been established. Applicants also seek, as alternative relief, variances to permit (a) frontage on private roads; (b) creation of a lot with insufficient street frontage; (c) encroachment into required setbacks; and (d) the continued use of the 2 family dwelling as a 2 family dwelling where no such use is permitted. In addition and alternatively, applicants propose a front line width of 17.32 feet, where a minimum of 100 feet is required. Premises are designated as Section 21, Block L1, Lot 306 on the Nassau County Land and Tax Map and include portions of property now known, or previously known, as Preston and Bryant Avenues. The applicants were represented by Kathleen Deegan Dickson, Esq., and one of the neighbors was represented by John Wagner, Esq. The Board closed the public hearing, but kept the record open for the submission of a letter to be submitted by the applicant to the Village no later than March 11, 2011 responding to the February 9, 2011 letter from Mr. Wagner and the letter submitted to the Board by Ms. Mirabito.

The Board discussed the environmental impacts of the Pelts application. After such discussion, on motion duly made by the Chair, seconded by Mr. Griffin, 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 Pelts application, on motion duly made by the Chair, seconded by Mr. Griffin, and adopted four votes in favor and Ms. Epstein opposed, the Board denied the application in accordance with the decision annexed hereto.

The Board discussed the environmental impacts of the Sea Cliff Bagel Café application. After such discussion, on motion duly made by Ms. Angliss, seconded by Mr. Griffin, 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 Sea Cliff Bagel Café application, on motion duly made by Ms. Angliss, seconded by Mr. Griffin, and adopted unanimously, the Board granted the application in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 10:30 pm.

## PELTS DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on February 9, 2011, on motion of the Chair, seconded by Mr. Griffin, and adopted four votes in favor and Ms. Epstein opposed, 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 determination:

1. Gregory Pelts, 26 Laurel Avenue, Sea Cliff, New York applied to maintain an existing pool dome, which requires variances of the following Village Code sections: (a) 138-505 in that the lot coverage will be 4,189 square feet, where a maximum of 3,750 square feet is permitted; (b) 138-508 in that the front yard setback will be 15.8 feet to the main structure and 1 foot to an accessory structure, where a minimum of 25 feet is required; (c) 138-511 in that the side yard setbacks of the main structure will be 10.15 feet and 10.65 feet at the east end and 3.65 feet and 4.76 feet at the west end, where a minimum setback of 15 feet is required; (d) 138-512 in that the rear yard setback will be 26 feet, where a minimum setback of 30 feet is required; and (e) 138-516 in that there will be 2 accessory buildings, where only 1 such building is permitted, in front yard, where no such structure is permitted, and having a side yard setback of 3.65 feet to the garage and 4.76 feet to the shed, where a minimum of 15 feet is required. Premises are designated as Section 21, Block 195, Lot 12 on the Nassau County Land and Tax Map (the "Subject Premises").
2. The applicant is the record owner of the Subject Premises.
3. The premises are located in the Residence B zoning district. The pool and dome are located in the rear yard of the Subject Premises, with the pool located at a height above the height of the remaining yard. Essentially, it sits uphill from the remainder of the Subject Premises. The dome, which is made of a vinyl material, and extends well above the height of the fence, is visible from neighboring properties and the public streets. The applicant seeks permission to maintain the dome, which was constructed at the Subject Premises prior to submission of appropriate applications to the Village Building Department.
4. At the public hearing, the applicant testified that the purpose of the dome is to serve as a structure on top of the pool that permits the pool to be used year-round. There is a pump utilized that pumps air into the dome, and the pool and area beneath the dome are heated by the pool heater, which, together with the pump providing air to the structure, must be run continuously when the dome is used for its primary purpose of providing shelter for the pool and its occupants. The applicant testified that the dome is only 6 feet in height and that the noise from the pumps cannot be heard beyond 3 feet from the

pool. These representations were contested by the testimony of the neighbors and the pictures submitted by those neighbors.

5. Neighbors testified about their concerns with the dome. Among those concerns was the height of the dome, which was testified to be at least 12-16 feet in height based on the raised nature of the pool, the visibility of the dome from adjoining properties, bedroom windows, other areas from within the neighboring homes and the public streets, and the noise emanating from the pumps all day and night, which is exacerbated in this neighborhood due to the topography and the configuration of the surrounding properties and locations of the homes. Neighbors submitted photographs in support of their contentions.
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 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.
7. 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.
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 dome structure is highly visible from many areas of the neighborhood, the public streets, and private homes. The use of the pump filter during the portions of the season when the leaves are not on the trees, the nature of the neighborhood and the height of the dome create an eyesore in the neighborhood and a noise impact that is a substantial detriment to the nearby properties. The proposal is an anomaly in the neighborhood and the Village. The dome is not in conformity with any portion of 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 proximity of the dome to the encroaching yards, combined with the height of that structure, creates a substantial encroachment.
10. The applicant failed to pursue any feasible alternative. The Board is mindful of the fact that the pool is located in its current location, and that the pool would have to be moved to bring the dome into greater compliance with the Zoning Code, but the applicant made no such proposal.
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. As they relate to the proposed dome structure, the proposed variances are completely at odds with those requirements.
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.

## SEA CLIFF BAGEL CAFE DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on February 9, 2011, on motion of Ms. Angliss, seconded by Mr. Griffin, 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 after discussing the subject application, rendered the following determination:

1. Sea Cliff Bagel Café, 478 Glen Cove Avenue, Sea Cliff (Section 21, Block 41, Lot 64 on the Nassau County Land and Tax Map) has applied for approval to renew a special permit to operate the premises as a restaurant with outdoor seating. The Board granted approvals top permit a restaurant use on June 14, 2005 and outdoor seating on October 23, 2007. The 2007 decision contained various conditions, including a provision that the special permit would terminate after 3 years. As the permit has expired, applicant now seeks to renew that permit without any changes to the conditions imposed in those prior decisions.
2. The premises are located in the Business B zoning district.
3. The applicant seeks again to provide for 12 seats outside of the building, in connection with a bagel café with counter service.
4. The proposal requires a renewal and modification of the terms of the Board's decisions on June 14, 2005 and October 23, 2007.
5. At the public hearing, the applicant's representative testified that there have been no change in circumstances, nor does the applicant seek to change the existing operation as it relates to seating. At the hearing preceding the 2007 determination, the applicant testified that the seating was an accommodation for existing customers, and was not intended to increase the number of customers arriving at the site. Customers who would otherwise leave the premises with their purchase now would have the opportunity, on a seasonal basis, to eat on the premises. As a result, the required parking demand would not increase. The applicant also testified that it is permitted to utilize spaces of a property across the street on off hours and weekends, when the neighboring property is not typically used by its occupants. The applicant does not have any intent to provide food servers for this area, as service is provided only at the indoor counter. Nor does the applicant intend to provide or permit outdoor entertainment. Further, as reflected in the plans, applicant does not intend to enclose the food area, nor does the applicant intend to make the area available for year round service. Lastly, the applicant indicated that the three tables and twelve chairs are brought inside on a daily basis, at the end of the business day.

6. The applicant testified that the proposals would not change the current operation of the restaurant, as the restaurant would operate in accordance with the representations at the public hearings in connection with the June 14, 2005 and October 23, 2007 approvals.
7. For the reasons set forth herein, the Board grants the special permit modification, modification of the June 14, 2005 and October 23, 2007 decision, on the following conditions:
  - i. Applicant comply with all conditions contained in paragraph 22 of the June 14, 2005 determination, and all of the conditions of the October 23, 2007 determination, as if those conditions are set forth herein;
  - ii. An outdoor garbage container shall be made available to customers utilizing the outdoor seating area, which container shall not overflow in a manner that permits garbage to be seen from outside the receptacle, and shall be emptied after the last customer utilizes the seating area and as many times as necessary on a daily basis to assure that no garbage will overflow in a manner that permits garbage to not be retained in the receptacle or be seen from outside the receptacle;
  - iii. The seating area shall not be lit;
  - iv. The seating area shall not be heated or air conditioned;
  - v. The applicant shall not provide food service to the seating area, as such service shall be limited to interior counter service;
  - vi. The area shall not be enclosed, either temporarily or permanently, or partially with an awning or similar structure; and
  - vii. The seating shall be limited to the area depicted on the plans submitted with the application.
9. In order to further determine that the special permit granted by this decision will not have a deleterious impact on the neighborhood, the special permit granted by this decision shall expire and terminate 5 years after the date this decision is filed with the Village Clerk. At least ninety days prior thereto, but not more than 150 days prior thereto, applicant, may apply for an extension of the variances and special permit, including a permanent grant thereof.