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

March 22, 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 Joseph and Sandra Collins, 4 Woodridge Lane, Sea Cliff, New York to air conditioner units in a front yard, where no such units are permitted. Premises are designated as Section 21, Block L, Lot 60 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 Marc Mandel, 86 Glenlawn Avenue, Sea Cliff, New York to install an emergency back up generator which requires a variance of Village Code §138-511 in that the generator will be 11 feet from the side property line, where a minimum of 15 feet is required. Premises are designated as Section 21, Block 222, Lot 458 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 Matthew Syracuse, 8 West Avenue, Sea Cliff, New York to construct a two story with basement addition and a new covered entry which requires variances of the following Village Code provisions: (a) 138-604 to maintain a lot size of 6,000 square feet, where a minimum of 15,000 square feet is required; (b) 138-606 to maintain a front property line of 60 feet, where a minimum of 100 feet is required; (c) 138-607 to maintain a lot width of 60 feet,

where a minimum of 90 feet is required; (d) 138-608 to maintain a front yard setback from the principal structure of 21 feet, where a minimum of 30 feet is required: (e) 138-608 to create a front yard setback of 14 feet, where a minimum of 30 feet is required; (f) 138-609 to maintain a lot width of 60 feet, where a minimum of 90 feet is required; (g) 138-611 to maintain a side yard setback of 10 feet, where a minimum of 15 feet is required: (h) 138-611 to create a side yard setback of 10 feet, where a minimum of 15 feet is required; (i) 138-613.1 to increase an existing non-conforming height/setback ratio by encroaching into the height/setback ratio further; and (j) 138-614.1 to expand an existing floor area of 2,041 square feet to 3,123 square feet, where a minimum of 1,980 square feet is permitted. Premises are designated as Section 21, Block 45, Lot 21 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 Angelique Real Estate Holding Corp., by James Chester, President, 229 Glen Cove Avenue, Sea Cliff, New York to construct a one story addition to an existing non-conforming building, which requires variances of the following Village Code provisions: (a) 138-905 in that the size of the existing building will be increased where 2 principal buildings exist on one lot, thus increasing the non-conformity; (b) 138-908 in that the building will be set back from the front property line 7.4 feet, where the requirement is the average of the street or a maximum of 15 feet; and (c) 138-917 in that the buffer area will be 5 feet and 10 feet, where a minimum buffer area of 20 feet is required. Premises are designated as Section 21, Block 100, Lot 8 on the Nassau County Land and Tax Map. The Board closed the public hearing, but kept the record open for submission of documentation from the applicant regarding the use of the premises prior to 1931, which is to be submitted to the Board no later than April 8, 2011.

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

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

The Board discussed the Syracuse application. After such discussion, on motion duly made by Mr. Griffin, seconded by the Chair, and adopted unanimously, the Board determined that the action was a Type II matter under SEQRA, required no further environmental review, and granted the application in accordance with the decision annexed hereto.

The Board discussed a letter request from the owner of property located at 94 14h Avenue seeking an extension of time to obtain a certificate of occupancy. The property owner submitted, and the Superintendent of Buildings confirmed, that the owners had completed all items of construction except for the air conditioning unit. The owner sought an extension of time to now install the air conditioning unit. On motion duly made by Ms. Epstein, seconded by Ms. Angliss, and adopted unanimously, the Board granted an extension of time running 6 months from the date of the filing of this determination with the Village Clerk.

On motion duly made by Ms. Epstein, seconded by Ms. Angliss, and adopted unanimously, the Board voted to go into executive session for the purpose of obtaining legal advice and to discuss proposed litigation issues. At 8:56pm, the Board convened

in executive session, and at 9:24pm, after a motion to return to public session by Mr. Kopczynski, seconded by Ms. Angliss, and adopted unanimously, the Board came out of the executive session and reconvened in public session.

The Board acknowledged the receipt of correspondence from the attorney for Douglas and Karin Barnaby, and deemed the record to be closed. The Board reserved decision on the Barnaby application.

The Board discussed the Barnaby application. On motion duly made by Ms. Angliss, seconded by Mr. Griffin, and adopted four votes in favor and Mr. Kopczynski opposed, the Board denied the application in accordance with the decision annexed hereto.

The Board recognized Ms. Angliss' many years of service and thanked her for her service.

There being no further business, the meeting was adjourned at 10:00 pm.

COLLINS SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on March 22, 2011, on motion duly made by Ms. Angliss, seconded by Ms. Epstein, 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. Joseph and Sandra Collins, 4 Woodridge Lane, Sea Cliff, New York applied to install air conditioner units in a front yard, where o suchunits are permitted. Premises are designated as Section 21, Block L, Lot 60 on the Nassau County Land and Tax Map.

2. The applicants are 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 premises have two front yards and the proposed location of the units is in the most efficient location on the property.

6. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans and with the requirements of the building department; (b) the units are screened for noise attenuation purposes and from visibility from any public way in accordance with any requirements of the Superintendent of Buildings; and (c) within eighteen months after the filing of this decision with the Village Clerk, the applicants, or their successor in interest, shall obtain at applicants' sole cost and expense all certificates of occupancy, completion or compliance that may be required for such work.

MANDEL SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on March 22, 2011, on motion duly made by Mr. Kopczynski, seconded by Ms. Angliss, 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. Marc Mandel, 86 Glenlawn Avenue, Sea Cliff, New York applied to install an emergency back up generator which requires a variance of Village Code §138-511 in that the generator will be 11 feet from the side property line, where a minimum of 15 feet is required. Premises are designated as Section 21, Block 222, Lot 458 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 premises have two narrow side yards, and the applicant submitted that the side yard containing the emergency use generator was wider than the other side, and thus offered a better alternative.

6. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans and with the requirements of the building department; (b) the unit iss screened for noise attenuation purposes and from visibility from any public way in accordance with any requirements of the Superintendent of Buildings; and (c) within eighteen months after the filing of this decision with the Village Clerk, the applicants, or their successor in interest, shall obtain at applicants' sole cost and expense all certificates of occupancy, completion or compliance that may be required for such work.

SYRACUSE SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on March 22, 2011, on motion duly made by Mr. Griffin, seconded by the Chair, 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. Matthew Syracuse, 8 West Avenue, Sea Cliff, New York applied to construct a two story with basement addition and a new covered entry which requires variances of the following Village Code provisions: (a) 138-604 to maintain a lot size of 6,000 square feet, where a minimum of 15,000 square feet is required; (b) 138-606 to maintain a front property line of 60 feet, where a minimum of 100 feet is required; (c) 138-607 to maintain a lot width of 60 feet, where a minimum of 90 feet is required; (d) 138-608 to maintain a front yard setback from the principal structure of 21 feet, where a minimum of 30 feet is required: (e) 138-608 to create a front yard setback of 14 feet, where a minimum of 30 feet is required; (f) 138-609 to maintain a lot width of 60 feet, where a minimum of 90 feet is required; (g) 138-611 to maintain a side yard setback of 10 feet, where a minimum of 15 feet is required: (h) 138-611 to create a side yard setback of 10 feet, where a minimum of 15 feet is required; (i) 138-613.1 to increase an existing non-conforming height/setback ratio by encroaching into the height/setback ratio further; and (j) 138-614.1 to expand an existing floor area of 2,041 square feet to 3,123 square feet, where a minimum of 1,980 square feet is permitted. Premises are designated as Section 21, Block 45, Lot 21 on the Nassau County Land and Tax Map.as Section 21, Block L, Lot 60 on the Nassau County Land and Tax Map.

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 dwelling, including the addition, will not be any closer the front property line than then two adjoining properties and is similar to other houses in the neighborhood.

6. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans and with the requirements of the building department; and (b) within eighteen months after the filing of this decision with the Village Clerk, the applicants, or their successor in interest, shall obtain at applicants' sole cost and expense all certificates of occupancy, completion or compliance that may be required for such work.

ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

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In the Matter of the Application of

Douglas and Karin Barnaby

appealing a determination of the Superintendent of Buildings, or in the alternative, variances, to permit the Subdivision of an existing parcel into three Parcels

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STATEMENT

This is an application by Douglas and Karin Barnaby, owners of property identified as 404 Littleworth Lane, Sea Cliff, to subdivide an existing parcel into three lots, which would result in the creation of two new building lots and the maintenance of an existing two-family dwelling. The applicants appeal the determination of the Superintendent of Buildings dated July 26, 2010, and, in the alternative, seek variances of certain provisions of the Village Code.

On motion duly made by Ms. Angliss, seconded by Mr. Griffin, and adopted four votes in favor and Mr. Kopcyzinski opposed, 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"), and all proceedings had herein, all documentation submitted to the Board, and 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:

FINDINGS OF FACT

1. The subject property is located at 404 Littleworth Lane, Sea Cliff, and is designated as Section 21, Block L1, Lot 306 on the Nassau County Land and Tax Map (the "Premises"). The Subject Property is located in the Residence B zoning district in the Village of Sea Cliff (the "Village").

2. The Premises has frontage of 150.45 feet on Littleworth Lane and 117.32 feet on Willow Shore Avenue. The Premises also fronts on property now or formerly known as Preston Avenue and Bryant Avenue, each of which applicants make certain claims to and each of which were the subject of a discontinuance by the Village in the 1950s.

3. By building permit application dated June 29, 2010, the applicants filed with the Village building department an application to subdivide an existing lot containing a two-family dwelling into three lots to accommodate two new single family dwellings and to maintain the existing two-family dwelling.

4. By letter dated July 26, 2010 (the "Notice of Disapproval"), the Superintendent of Buildings denied the application for the following reasons:

a. The Building Department can find no proof of ownership of the applicants for the unopened portions of Bryant and Preston Avenues.

b. Lot areas of the lands known as Bryant and Preston Avenues have been included in the application, but until such time as the lands have been transferred and been provided with a tax lot

identification, the relevant portions of Bryant and Preston Avenues remain in ownership by the Village.

c. Until submission of proper documentation demonstrating applicant's ownership rights in Bryant and Preston Avenues, the Building Department will not entertain an application as presented.

d. Improper math (calculations) on the submitted plans.

e. Village Code §48-19(F) – documentation submitted is not complete.

f. Village Code §112-5 – Planning Board review required (as this review is subsequent to any approvals by the Board, this item is not relevant to the proceeding before the Board).

g. Village Code §A145-2A – site plan review required (as the actual review also is performed by the Planning Board subsequent to any approvals by the Board, this item is not relevant to the proceeding before the Board).

h. Village Code §A145-8 – information submitted is not complete.

i. Village Code §A145-9 – plans are generally not in conformance with requirements; specifically, applicants propose frontage for an unimproved street and insufficient frontage on an improved street.

j. Village Code §A145-10 – information as required by this section has not been supplied, but is anticipated to be supplied upon application to other Boards (as this relates to other Board review and the plans are expected to incorporate this information upon

those submission(s), this item is not relevant to the proceeding before the Board).

k. Village Code §138-501 – applicants failed to demonstrate the existence of a legal non-conforming use to maintain a two family dwelling.

l. Village Code §138-506 – insufficient front property line in that only 17.32 feet is provided on Willow Shore Avenue for one of the proposed new lots, where a minimum of 100 feet is required. Applicants' proposal to permit 100 feet of a line along Preston would not be adequate for that portion of the proposed lot as Preston Avenue is not improved as a road.

m. Village Code §138-511 – absent demonstration that Bryant and Preston Avenues are owned privately by applicants, the proposed building envelope encroaches into the required minimum side yard setback.

n. Village Code §138-512 – absent demonstration that Bryant and Preston Avenues are owned privately by applicants, the proposed building envelope encroaches into the required minimum rear yard setback.

5. On September 27, 2010, applicants submitted an application to the Board appealing the aforesaid determination that the proposed streets and frontage and required setbacks are not in conformance with the Village Code, or in the alternative, variances to permit frontage on private roads or to permit the

creation of a lot with insufficient street frontage and required setbacks, and appealing the aforesaid determination that a legal pre-existing nonconforming two-family use has not been established, or in the alternative, a variance to permit continued use of the two-family dwelling. Subsequently, applicants submitted correspondence indicating that they also appealed the determination that the application did not contain adequate information. Thus, as presented, the applicants appeal Notice of Disapproval items a, b, c, d, e, h, i, k, l, m and n of paragraph 4 above, and in the alternative seek variances of Notice of Disapproval items k, l, m and n of paragraph 4 above.

6. The following provisions of the Village Code are pertinent to the issues raised by the above application:

§48-19. Issuance of permit.

F. If the application, together with plans, specifications and other documents filed therewith, describes proposed work which does not conform to all requirements of the applicable building or zoning regulations, the Building Inspector shall disapprove the same in writing and shall return the plans and specifications to the applicant, together with the written disapproval.

§A145-9. Requirements.

B. Streets.

(1) Streets shall be provided for and installed on all subdivisions unless all the building plots in such subdivision front on an existing public street.

(2) The street layout shall be designed in such a way that will be advantageous to the whole area, with special attention directed to the following items:

...

(b) Dead-end streets shall not be allowed except where a continuing street arrangement is

impractical. Such streets, if allowed, shall have a cul-de-sac at the end having a minimum radius of 60 feet and shall not be longer than 500 feet, unless this provision is waived by the Planning Board.

...

1. Streets installed in subdivisions and existing streets on land to be subdivided shall meet the specifications for the construction of roads and curbs as established by the Nassau County Department of Public Works and such other specifications as may be promulgated from time to time in these regulations by the Planning Board.
2. Streets offered to the Village for dedication shall comply with the standards and conditions for the dedication of streets as approved by the Board of Trustees.

b. Blocks and lots.

...

(2) Through lots fronting on two streets shall not be allowed unless topographical conditions or existing streets permit no other form of development. The street proposed for the actual front of through lots shall be indicated on the plat.

§138-501. Permitted uses.

No structures shall be erected or used and no premises shall be used except for one of the permitted uses for which property may be used in the Residence A District, subject to such site plan and special permit approval as may be provided for therein.

§138-506. Minimum front property line requirements.

No building shall be erected on any lot having a front property line of less than 100 feet.

§138-201. Definitions.

FRONT PROPERTY LINE – The dividing line between a lot and the street to which it is adjacent, as shown on the Official Zoning District Map.

...

C. A double front lot shall have two front property lines, each being the dividing line between the lot and the streets to which it is adjacent.

STREET – A thoroughfare dedicated and accepted by a municipality for public use, or legally existing on any map of a subdivision filed in a manner provided by law.

SUBDIVISION – The division of a lot, tract or parcel of land, whether improved or not, into two or more lots, plots, sites or other divisions of land for the purpose, whether immediate or future, of sale or of building development. "Development" shall have the same meaning as "subdivision."

§138-511. Minimum side yard requirements.

No building shall be erected on any lot containing a side yard less than 15 feet in width.

§138-512. Minimum rear yard requirements.

No principal building shall be erected on any lot containing a rear yard less than 30 feet in depth....

7. The Board held public hearings on the application commencing at its monthly meeting on December 14, 2010 and continued until the final submissions were deemed accepted at its meeting on March 22, 2011.

8. Numerous documents were submitted to the Board, including the following written submissions:

a. *Applicants' Statement in Support of Application* – this statement provides the applicants' position as to some of the details concerning the proposal, including (i) the lot area and purported frontage of the three proposed lots; (ii) all of the streets are identified on the Map of W.I. Preston dated December 17, 1890;

(iii) that the proposed lots will conform to the lot area and frontage requirements of the Village Code; (iv) parcel C has sufficient frontage on Preston Avenue; (v) applicants are prepared and entitled to improve Preston Avenue to Village road specifications if required to provide access to parcel C; and (vi) applicants' propose to provide access to parcel C by means of a driveway running from Willow Shore Avenue.

b. *Applicants' Memorandum of Law* – The Memorandum contains various statements of facts as presented by the applicants and applicants' position regarding their appeal and/or variance requests. The Memorandum of Law contains the following presentation of facts: (i) parcel A is 31,329 square feet and has frontage along Littleworth Lane and a portion of Preston Avenue; (ii) parcel A will contain the existing two family dwelling, which dwelling will be maintained; (iii) parcel B is 10,134 square feet with frontage along Willow Shore Avenue and will contain a new one family dwelling; (iv) parcel C is 27,317 square feet, which incorporates a portion of unopened Bryant Avenue and has frontage along Preston Avenue and a driveway providing access to and from Willow Shore Avenue; (v) parcel C will be improved with a new single family residence; (vi) applicants propose to open Preston Avenue and improve it to Village road specifications; (vii) applicants propose to formally abandon the

portion of Bryant Avenue that abuts their property; (viii) all four mentioned roadways are identified on the Map of W.I. Preston dated December 17, 1890 (the "Preston Map"), which map has been filed with the Nassau County Clerk's office; (ix) if Preston Avenue is improved and Bryant Avenue is abandoned, all lots will conform to lot area requirements; (x) parcel C has the minimum street frontage of 100 feet on Preston Avenue; (xi) the use of the two family dwelling on parcel A will remain unchanged as it has existed since prior to January 24, 1952 and as confirmed by a December 5, 1995 letter from the Village of Sea Cliff building department; and (xii) no physical change is proposed to the two family dwelling and no change of use is proposed. The Memorandum also contains various arguments put forth by the applicants, including: (i) the applicants have the right to open and improve Preston Avenue notwithstanding the Village's discontinuance of the road as a public street; (ii) the applicants hold fee title to the entire bed of Bryant Avenue and the westerly one-half of Preston Avenue; (iii) the applicants have the right to maintain the legally pre-existing two family dwelling on the premises; and (iv) in the alternative, the applicants are entitled to area variances from the setback and frontage requirements.

c. *January 11, 2011 letter from the attorneys for the applicants.* The expressed purpose of the letter was to highlight the issues that the applicants submit are pertinent to the issues to be considered by the Board. As set forth in this letter, the applicants restate their position that the applicants are challenging the Superintendent's determination that parcel C does not conform to the front property line requirements of the Village Code, and that the proposed new lot (parcel C) does comply with the front property line requirements (relevant Village Code definitions and terms are identified above and discussed hereinafter). As set forth, that lot complies with the development and subdivision regulations of the Village Code. In furtherance of this argument, the applicants restate their position as to the definitions of the terms "front property line" and "street". In connection with this contention, the applicants contend that the portion of Preston Avenue abutting new proposed parcel C measures 166.02 feet and that it fits the definition of street. As the argument is presented, under such circumstance, new parcel C has more than the required 100 feet of front property line length, and thus is compliant with Village Code §138-506. The next main point in this letter states that lot C is compliant with the subdivision regulations in that the lot has frontage on Willow Shore Avenue, an existing public street. Accordingly, as

contended by applicants, since there is no requirement that the primary frontage of the lot be on a public street or that the front property line be on a public street, in that there is sufficient front property line length on Preston Avenue, the 17.32 foot of frontage on Willow Shore Avenue is adequate to demonstrate that all proposed lots front on an existing public street, as required by Village Code §A145-9(b)(1). In further support of this contention, applicants refer to a purported New York State law that finds that frontage of at least 15 feet is sufficient for emergency access (as set forth below this reference later was acknowledged to apply to New York State Town Law, but there is no corresponding provision in New York State Village Law or any case law applicable to a village). Applicants conclude this letter with the point that questions as to ownership, control and right to improve Preston Avenue are not relevant to the Board's analysis as to whether parcel C constitutes a legally subdividable building lot.

d. *January 21, 2011 letter from the Superintendent of Buildings explaining and clarifying the Building Department's position as the rationale for the determinations contained in the Notice of Disapproval.* This letter contains a historical perspective relating to the property. The first point relates to the Preston Map. As indicated by the Superintendent, the Preston Map appears to

have been produced in 1890 for W.I. Preston, and was subsequently revised in 1892 with "tracings" performed in 1939. The Preston Map identifies lands of W.I. Preston and depicts proposed lot lines and streets within those lands. The Superintendent points out that there is no written information or documentation that has been submitted that would support that the Preston Map was a document identifying an approved subdivision, but due to the fact that certain aspects of the Preston Map reflect current conditions, there has been an oral submission by the applicants that the proposed subdivision was a lawfully approved subdivision. This letter also points to the Village Board of Trustees minutes for a Board of Trustees meeting held on October 7, 1896, in which the Village scribed into the minutes a letter written to the Village by W.I. Preston, with a margin reference identifying the inscription as "streets dedicated to Village". That letter referenced in the minutes specifically identifies certain named streets within the Village as being dedicated to the Village and assumes that such roads then are to be maintained by the Village for use as public thoroughfares. Among these roads was Preston Avenue, which was proposed to run southerly from Laurel Avenue through the development known as Meadow Woods to Littleworth Lane as per the Preston Map. Likewise, Bryant Avenue was depicted as

a road running easterly from Prospect Avenue and terminating at Preston Avenue. Other roadways, including a portion of Willow Shore Avenue, extending north of its present location, also were shown on the Preston Map, but never were completed. Nor was a substantial portion of the Preston Map ever completed as shown on the Preston Map. In or around October 1952, Meadow Woods Corp. filed for a subdivision of the bulk of the lands shown on the Preston Map. After that subdivision was completed, in 1953 and 1954, respectively, the Board of Trustees formally discontinued the unimproved sections of Bryant Avenue and Preston Avenue. The Superintendent has no record of any indication that those portions of Bryant or Preston Avenue ever were improved or used by the public as public ways. After setting forth this historical context, the Superintendent than proceeds to discuss the issues that relate to the applicants' request for relief. The first question (and issue) he identifies is whether the unimproved portions of Bryant and Preston Avenues were public streets and accepted as such by the Village. He refers to the definition of "street" in the Village Code. The letter then makes various references to how Preston, Bryant and Willow Shore Avenues are reflected on various maps of the Village in the Village. Included in this discussion is the Official Map of the

Village dated December 28, 1937 in which Bryant and Preston Avenues are shown as Village streets. The amended Official Map dated January 3, 1955, which is dated after the 1953 and 1954 discontinuances, excludes the relevant portions of Bryant and Preston Avenues. These points then lead to the conclusion of the Superintendent that Preston Avenue cannot be deemed to be considered as frontage constituting a front property line. In reaching this conclusion, the Superintendent relies on the portion of the definition of the term street that requires a street to legally exist. The Superintendent concludes that to be "legally existing" a street needs to not just be "shown", but also must now exist or is proposed to exist as part of the subdivision. As put forth by the Superintendent, if a street does not legally exist there is no way it can be considered to be a street for front property line purposes. The Superintendent also notes that if the Board accepts the applicants' position that Preston is a legally existing street then the use of Preston Avenue would satisfy the front property line requirements related to Preston Avenue. [Subsequent to this letter and during the hearing process, the applicants attempted to use this last reference to try to demonstrate that if Preston Avenue were deemed to be a street that no front property line variance would be required for the portion of lot C fronting on Willow Shore Avenue. The

Superintendent clarified that the intent of the statement of the letter related solely to any front property line issues on Preston Avenue, and that the 17.32 feet of frontage along Willow Shore Avenue would still not satisfy the front property line requirements in the Village Code.] The Superintendent proceeds to discuss Code compliance issues related to each of the proposed three lots. Proposed lot 1 (identified as parcel B on the proposed subdivision map) would comply with all zoning requirements. Proposed lot 2 (identified as parcel A on the proposed subdivision map) includes a use (2 family dwelling) that is deemed to be a non-conforming pre-existing use (thus making moot the applicants' appeal as to the non-conforming use and eliminating the need for a variance from item k of paragraph 4 above), and, with the exception of the need to finalize ownership rights related to Preston Avenue, complies with the Village zoning regulations. As to lot 3 (parcel C), this lot constitutes a flag lot due to the portion of the lot creating access onto Willow Shore Avenue. The Superintendent also provided that the lot width for the portion of parcel C running to the easterly end of the adjoining northerly property (identified as land owned by Russian Church of Our Lady of Kazan Inc.) does not comply with the Village Code minimum lot width requirements. The last portion of the Superintendent's letter

identifies his rationale for determining that there are various portions of the application that lack information sufficient for him to proceed with the application, including demonstration of ownership and lot and setback calculations.

e. *January 24, 2011 letter from Jerry Simpson and Wendy Rosow, who claim to own the property to the east of the lands that are the subject of this application.* This letter memorializes the neighbors' objection to the creation of proposed parcel C as it would create a flag lot in violation of the size, width or front property line requirements of the Village. They also claim that Preston Avenue does not constitute a street for front property line purposes. They contend that Preston Avenue no longer exists on a Village Map, is not a public thoroughfare, has been formally closed, does not exist, was never opened, and is not shown on a subdivision map filed in a manner provided by law. The letter further contends that the assertion promoting Preston Avenue for road frontage, but showing no actual intention for using it for access, is disingenuous. The neighbors also express their concern that the variance requested is substantial, would produce an undesirable change in the character of the neighborhood and a detriment to nearby properties and destroy the area character. Additionally, the neighbors express concern about the Board's consideration of the application prior to the

ownership of Bryant Avenue being clarified, that a use variance is necessary to maintain the existing two family dwelling, that the newly created private road providing access to parcel C is substandard, and that there presently exists a serious safety issue on Willow Shore Avenue during church services as the street is narrow, vehicles park on both sides of the street, and parking will be eliminated to accommodate two additional driveways.

f. *February 2, 2011 letter from John M. Wagner, Esq., an attorney representing Ms. Rosow and Mr. Simpson.* Mr. Wagner submits that "unopened" Preston Avenue does not constitute a "street" as defined in the Village Code, and therefore proposed parcel C cannot have its required front property line on such unopened road. Mr. Wagner points to the definition of street and the operative word "thoroughfare" as that term is identified in the definition of "street". Mr. Wagner presented numerous definitions of the term thoroughfare from various sources, including Webster's Dictionary. According to Mr. Wagner, a thoroughfare, as commonly understood, must be an existing passageway permitting the public to travel from one place to another, but does not include a paper road such as Preston Avenue. Preston Avenue has never been opened, but remains impassable woods and naturally steep grades, was officially

terminated as a Village street by action of the Village, was formally removed from the Village's Official Map, and the Zoning Map of the Village also shows Preston Avenue as a dashed line with a reference that it is not opened. Mr. Wagner acknowledges a position that was clearly put forth by the applicants that they do not contend that Preston Avenue was dedicated and accepted by a municipality for public use, which requirement relates to the definition of street and is discussed herein in the analysis of the various positions. Mr. Wagner points to the applicants' contention that Preston Avenue is a "street" solely because it is allegedly "legally existing on any map of a subdivision filed in a manner provided by law", and contends that this argument is untenable because (i) Preston Avenue is not "legally existing" but is just an impassable wooded strip of land adjacent to the proposed parcel C, and (ii) there is no indication in the record that the Subdivision Map is a "subdivision" map or was "filed in a manner provided by law". For these reasons, Mr. Wagner contends that the lot line of parcel C abutting Preston Avenue cannot serve as a front property line. Mr. Wagner also points to the substantiality of the front property line variance along Willow Shore Avenue. The Wagner letter also challenges the argument put forth by the applicants that they have a right to open Preston Avenue as a

street. Various rationales are included in the letter to support this challenge.

g. *February 7, 2011 letter from Kathleen Deegan Dickson, Esq., on behalf of the applicants.* This letter expands on some of the positions taken by the applicants in connection with the application. Copies of the deeds for the subject premises are included and are discussed and identified in the letter. Ms. Dickson posits that by conveying the lots by certain descriptions and indicating that the described lots are bounded by the streets in question that the respective conveyances created an easement in the streets bounding the property that can be extinguished only by the united action of all lot owners for whose benefit the easement was created. Ms. Dickson states that the Official Zoning District Map is the map to be used to determine whether a roadway constitutes a street for the purposes of establishing a minimum front property line. According to Ms. Dickson, no other map should be considered nor should the issue of the public dedication be relevant to whether or not the applicants are entitled to open the streets. Ms. Dickson also challenges the neighbors' interpretation of the term thoroughfare as that term is used in the Village Code, as such interpretation would preclude the creation of cul-de-sacs or dead-end streets. The letter also posits that the contention that

Preston Avenue must be improved, passable and used in order to legally exist, cannot be accepted. Ms. Dickson also avers that no front property line variance is required for the Willow Shore Avenue frontage. In making this argument, Ms. Dickson points to language in the Superintendent's January 21st letter in support. (However, the language in that letter was later clarified by the Superintendent who confirmed that front property lines are required along any frontage). The balance of the letter addresses some of the legal points made in the February 2nd letter.

h. *February 8, 2011 letter from Mary Mirabito* – Ms. Mirabito resides on Orchard Lane in a development to the immediate north or parcel C. She points out that neither Preston Avenue nor Bryant Avenue exist as streets and that both were closed by the Village as documented in the 1953 and 1954 resolutions of the Board of Trustees, which resolutions are attached to the letter. Ms. Mirabito further posits that the front property line variance is substantial and that reopening any portions of the streets that were closed over 50 years ago would be detrimental to nearby property owners.

i. *February 9, 2011 letter from John Wagner, Esq.* – This letter contains two primary arguments. First, Mr. Wagner further argues that all the materials submitted to date, including the

deeds and related documents submitted with the February 7th letter from Ms. Dickson actually provides further proof that Preston Avenue is not a street and thus cannot serve as a front property line for parcel C. The second contention is that there is no private right to open Preston Avenue based on a private easement.

j. *March 11, 2011 letter from Kathleen Deegan Dickson* – This letter restates applicants' position that no variances should be required, but if so, the applicants would be entitled to the variances under the balancing test utilized by the Board. Ms. Dickson contends that while Preston Avenue may not now be a thoroughfare, it would be a thoroughfare if improved and opened. Ms. Dickson further proffers that the certification of the filing of the subdivision map demonstrates presumptively that the particular map was legally filed, and the fact that it was filed is *prima facie* evidence that it was filed in a manner provided by law. The letter also discusses the issue raised during the hearings about the Village Code requirement for a curb cut to be located at least 4 feet from any property line, and contends that the provision does not relate to residential properties. Alternatively, Ms. Dickson seeks a variance for the curb cut at this location. [The Board would be unable to grant any such variance, as it was not included in the notice of the application.

Such variance, if considered, would have to be the subject of a separate hearing.]

9. Among other documents submitted to the Board are the following:
    a. October 7, 1896 minutes of the Board of Trustees identifying a letter received from W.I. Preston regarding the intent of Mr. Preston's dedication of various roadways, including Preston and Bryant Avenues;
    b. Official Map of the Village of Sea Cliff dated December 28, 1937, including thereon relevant portions of Preston and Bryant Avenues;
    c. July 6, 1953 Board of Trustees minutes and resolution ordering "that the portion of the road or street known as 'Bryant Avenue' hereinabove described be and the same hereby is discontinued as a Village Street; that proper notation be made on the Village Map; and that the same be amended accordingly";
    d. January 4, 1954 Board of Trustees minutes and resolution ordering "that the portion of the road or street known as 'Preston Avenue' hereinabove described be and the same hereby is discontinued as a Village Street; that proper notation be made on the Village Map; and that the same be amended accordingly";

e. Official Map of the Village of Sea Cliff dated January 3, 1955, which does not show thereon the applicable portions of Preston or Bryant Avenue; and

f. Zoning Map of the Incorporated Village of Sea Cliff dated July 27, 1979, which shows the areas that were designated in the Official Map as Preston and Bryant Avenues in a location east of Willow Shore Avenue and north of Littleworth Lane as dashed lines, and indicating the area that would correspond with the former location of Preston Avenue as "not open".

10. After reviewing the application documents and receiving testimony concerning the environmental aspects of the application, on December 14, 2010, 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.

11. Thereafter, the application was referred to the Nassau County Planning Commission, as required by law. By resolution dated January 20, 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.

12. While there was a substantial amount of materials submitted to the Board and testimony given, in considering whether the requested relief should be granted, the Board has limited its review and determination to aspects of the presented and submitted information that applies to that relief. Boiled down to its essence, the (appeal) relief seeks, at the outset, a determination that (a) Preston Avenue is a "street" for "front property line" purposes and setback purposes (b) the existing two-family dwelling is permitted to continue as a legally existing non-conforming dwelling, and (c) the underlying building permit application contains sufficient information (in light of the Superintendent's determination that there is inadequate information concerning various aspects of the submission). The applicant also seeks alternative relief, including variances that would permit a front property line on Willow Shore Avenue of 17.32 feet and rear and side yard setback variances, as well as a variance to permit the continuation of the two family use. During the hearing, the applicants also contended that Willow Shore Avenue does not require the minimum front property line length.

13. To the extent that portions of the application seek to appeal the written Notice of Disapproval, the Board has reviewed the information *ab initio* to determine whether the determination is correct. As to the variances sought, the Board has applied the balancing test under Village Law §7-712-b.

14. During the public hearing process and based on submissions by the applicants, the Superintendent of Buildings confirmed that the additional information demonstrated that the applicants are entitled to continue to use the existing residence as a two-family dwelling, subject to any limitations in the

Village Code as to such dwellings. Thus, the request for such relief is deemed by the Board to be unnecessary, as the request has been made moot.

15. Parcels A and parcel B are demonstrated to be in compliance with the Village Code, and no variances are required for those parcels.

16. Parcel C, as set forth in the Notice of Disapproval, does not comply with Village Code §138-506 in that only 17.32 feet is provided on Willow Shore Avenue, where a minimum of 100 feet is required, Village Code §138-511 in that the proposed building envelope encroaches into the required minimum side yard setback, and §138-512 in that the proposed building envelope encroaches into the required minimum rear year setback.

17. As to the front property line, applicants submit that Preston Avenue should be considered a street as that term is defined in the Village Code, that the then Preston Avenue front property line length would be more than the minimum requirement, and that under such circumstances, the portion of parcel C that abuts Willow Shore Avenue does not need to meet the minimum front property line requirements. Applicants further submit that if the Board determines that Preston Avenue is not a street and/or that the applicants require the minimum 100 foot front property line on Willow Shore Avenue, that the Board should grant a variance to the applicants to permit a front property line length of 17.32 feet on Willow Shore Avenue.

18. To be considered a front property line, the line considered is the "dividing line between a lot and the street to which it is adjacent, as shown on the Official Zoning District Map". There has been no dispute, nor any challenge, as

to the meaning of the term "dividing line". The Superintendent contends that Preston Avenue is not a street, and therefore, where Parcel C abuts Preston Avenue, that line cannot be considered a front property line. The applicants contend that Preston Avenue is a street, and therefore, the dividing line between parcel C and Preston Avenue is deemed to be a front property line.

19. Based on the information and testimony submitted to the Board in connection with the application, the Board finds that applicants' contention as to (a) the nature of Preston Avenue as a street and (b) the lack of a need for a 100 foot front property line on Willow Shore Avenue, are both incorrect. In making this determination, the Board has considered only the information provided to it, as well as its review of the meaning of various terms in the Village Code.

20. First, regardless of whether Preston Avenue is deemed a street, parcel C would require a 100 foot front property line on Willow Shore Avenue. If Preston Avenue is not a street, then the only street frontage would be located on Willow Shore Avenue. Thus, Willow Shore Avenue would be considered the abutting street for purposes of the minimum front property line requirement. As the application seeks approval for a front property line only 17.32 feet in length, it does not comply with the minimum requirement. Assuming arguendo that Preston Avenue was determined to be a street, the Board still finds that the applicants would require a minimum 100 foot long front property line on Willow Shore Avenue. Willow Shore Avenue is clearly depicted on the 1937 and 1955 Official Village Maps and on the Zoning Map referenced hereinabove, and its nature as a street has not been challenged. As a front property line is the

dividing line between a lot and a street, the portion of parcel C that abuts Willow Shore Avenue clearly is a front property line. The applicants have submitted an argument that Willow Shore Avenue should not be deemed a front property line if Preston Avenue is to be deemed a street. This argument lacks any viability. It is evident from subsections B and C of the definition of "front property line" that any and all dividing lines between a lot and a street are front property lines. For a "corner lot", each of the streets to which the property is adjacent is considered front property lines. Likewise, for a "double front lot", there are two front property lines. Reference to any other portions of the Code would not change this determination, as the definition is unambiguous. Moreover, no such other references change the position of the Board. Accordingly, as set forth herein, to the extent the applicants' appeal seeks to overrule or modify the Superintendent's determination as to Willow Shore Avenue being a front property line for parcel C, the application is denied.

21. The Board also agrees with the Superintendent's conclusion that where parcel C abuts Preston Avenue cannot be deemed to represent a front property line because Preston Avenue is not a "street", as that term is defined in the Village Code. A review of the term "front property line" is the starting point for the Board's review. As stated above, there is no difference of opinion as to a "dividing line". The difference, as postulated by the applicants, begins with the latter portion of the term "front property line", which provides that the line applies to a "street to which a [lot] is adjacent, as shown on the Official Zoning District Map".

22. While applicants' primary presentation related to the term "street", a necessary starting point is the term "Official Zoning District Map". This term is defined in section 138-201 as "'[t]he Official Zoning District Map of the Incorporated Village of Sea Cliff, Town of Oyster Bay, Nassau County, New York". While there was no document with such title presented to the Board, there is a document entitled "Zoning Map of the Incorporated Village of Sea Cliff". The Board finds that this document, rather than either the 1937 or 1955 Official Map represents the "Official Zoning District Map", as the "Official Zoning District Map" contains elements that are intended to be depicted in such map. In addition to showing zoning districts and the locations of parks, the map also depicts roadways in the Village. Where those roadways exist and are opened to the public, they are bordered by straight lines. Where the roadways do not currently exist, except perhaps on a filed map, those roadways are named and include a "not opened" notation. The two roadways identified by the applicants as Preston Avenue and Bryant Avenue do not fall within either category. Rather, those areas do not contain any name reference, but only dashed lines, one of which (Preston) is marked "not open" and the other (Bryant) which has no marking whatsoever.

23. It is at this point, before the Board even considers the divergent arguments concerning the term "street", that the applicants' argument fails. To be a street for purposes of a front property line, the street has to be shown on the Official Zoning District Map. As neither Bryant Avenue nor Preston Avenue is shown on the Official Zoning District Map as streets they are not streets eligible for inclusion for front property line purposes. All that is shown on the aforesaid

map are dashed lines, one of which states "not open". Clearly, neither is shown on the Zoning Map as a street, which also is consistent with the Village's discontinuance and the exclusion of those streets from the 1955 Official Map. Similarly, if the 1955 Official Map of the Village was deemed to be the applicable map, neither roadway is shown.

24. Notwithstanding the fact that Preston Avenue could not be considered a "street" because it is not shown on the applicable map, the Board also has reviewed the arguments made by applicants concerning the meaning of "street". There are two distinct types of "streets" in the Village Code, both of which are identified in the definition of "street" in section 138-201. A street is either (a) a thoroughfare dedicated and accepted by a municipality for public use or (b) a thoroughfare legally existing on any map of a subdivision filed in a manner provided by law. The applicants contend only that the latter definition of street would apply to Preston Avenue. They make no claim that Preston Avenue was dedicated and accepted by the Village (and there remain open factual issues as to whether there may have been a dedication).

25. To be correct, applicants would have to demonstrate that Preston Avenue meets each of four required elements under the latter portion of the definition: (a) a thoroughfare; (b) legally existing; (c) on any map of a subdivision; and (d) such map was filed in a manner provided by law. The Board finds that the information submitted fails to demonstrate that Preston Avenue meets all four elements, and therefore it cannot be deemed a street.

26. First, whether it is a thoroughfare was subject to substantial debate. As depicted in the plans, Preston Avenue is not a thoroughfare. In common parlance, a "thoroughfare" consists of a roadway that leads one from one place to another. As Preston Avenue does not lead to another street or place, it is not a thoroughfare. The Board notes that such an interpretation could preclude the use of a cul-de-sac in a development and that there are a number of cul-de-sacs in the Village. However, the Village Board of Trustees has recognized that such circumstance could result in a situation that would preclude the use of a cul-de-sac. To address this issue, while still holding steadfast to the need for a street to be a through passageway, the Board of Trustees provides for an exception to permit cul-de-sacs so long as the street leading in to the cul-de-sac is not longer than 500 feet and has a radius of at least 60 feet (Village Code §A145-9(B)(2)(b)). The applicants do not depict a cul-de-sac on their plans, but rather show a straight run into a dead end. As the Village does not contemplate any such dead end and the plans do not depict a compliant cul-de-sac, Preston Avenue cannot be deemed a thoroughfare. In this regard, the Board also considered that the deeds submitted by the applicants could preclude the construction of a cul-de-sac at the end of Preston Avenue, as a portion of the land approximately incorporating the southeastern end of the land formerly identified as Bryant Avenue, bordering on the property identified in the plans as Preston Avenue, appears to be specifically excluded from the subject premises, and that area appears to be necessary for the creation of a cul-de-sac at the end of Preston Avenue.

27. Preston Avenue also would have to legally exist. This term requires more than just a showing of a street on a map. It has to exist. The land area that is shown as Preston Avenue consists of substantial foliage and a portion of a driveway for an adjoining residence, and never has been used or improved as a public road. Absent its actual existence, it does not legally exist. In reaching this conclusion, the Board agrees with applicants that the term legally existing would not preclude the creation of a proposed street, and that such a proposed street could result in the future existence of a street. Not only is Preston Avenue not existing (and not on any current official Village map), but there also has been no clear probative evidence demonstrating that it is "legally" existing or could exist (as discussed in the subsequent paragraph).

28. As to whether Preston Avenue is shown on any map of a subdivision, applicants point to the Preston Map and various future deeds referring back to the Preston Map. At first glance, it would appear that the Preston Map is a "map of a subdivision". However, to the extent that it could be a map of a subdivision for purposes of Preston Avenue, there remain open issues that have not been resolved. Applicants' own submissions (including the September 1977 deed) show their property boundaries to vary from the boundaries shown on the Preston Map and their title report does not match the language of the deeds or the land shown on the application plans. Also, there have been some apparent revisions or notations to the Preston Map since it was filed (as certified by the Nassau County Clerk). The Preston Map also shows various roadways and lots that do not currently exist and have since been

discontinued. Thus, at best, the Preston Map reflects a map depicting lots and streets. However, there remain substantial open issues as to whether this map was filed properly, timely and what elements of that map were shown on the map at the time of its filing in 1892.

29. For the same reasons, it remains unclear whether the map was filed in a manner provided by law. The evidence clearly shows that some version of the Preston Map was filed with a recording clerk. Whether the Preston Map represents what was filed in 1892 remains open for debate.

30. For the reasons set forth above, the Board finds that Preston Avenue is not a street and denies applicants' appeal of the Superintendent's determination as to Preston Avenue.

31. As discussed above, a portion of land depicted as part of the subject premises has been specifically excluded from the subject premises by way of a conveyance. That conveyance, dated March 2, 1954, purports to convey title of Bryant Avenue to the applicants' predecessor in title, but excludes the "most easterly 25 feet [of Bryant Avenue]". As Bryant Avenue would have terminated at the westerly edge of Preston Avenue (which previously thereto extended north of Bryant Avenue, as depicted on the Preston Map which served as the reference point), a portion of the applicants' property appears to be excluded from their premises. With this information and without any further actions taken by the applicants, the Board can conclude only that, at this time and based on the information presented, there appears to be a lack of clear title with respect to the excluded portion of Bryant Avenue. For this reason, the

Board also finds that the Superintendent's position that the applicants failed to submit adequate information is correct and denies applicants' appeal in this regard.

32. Also, the applicants failed to demonstrate to the Board that they have ownership of Preston Avenue or a portion of Preston Avenue. Despite the Village's formal discontinuance of Preston Avenue, no action ever was taken by either of the adjoining owners to acquire title to Preston Avenue. The Superintendent posits that absent such transfer, Preston Avenue remains in ownership by the Village, and without different information the building department will take no further action on the application. Applicants submit that Preston Avenue is a roadway (or has rights of access) under private ownership. Essentially, the applicants, by appealing the Superintendent's determination in this regard, seek for the Board to determine the legal consequences of a discontinuance of a roadway where no title transfer document has been recorded to effectuate a formal transfer. Under the circumstances, the Board deems that it has inadequate information to make such a determination or to overturn the Superintendent's determination that there was inadequate documentation submitted regarding the title to Preston and Bryant Avenues. To reach such a determination, the current ownership of the premises, which also includes lands that have been improved by the neighbor, and to which the neighbor makes certain ownership or claims of right, must be demonstrated so that the Board does not trample on the rights of others in trying to make a zoning determination. Accordingly, the Board denies applicants' appeal of the Superintendent's

determination relating to the submission of inadequate information, as well as the appeal that no side or rear yard setback is required, which requirement flows necessarily from the Preston/Bryant Avenue determination.

33. As to the calculations, the Board also finds that, while it understands the applicants' contentions, the calculations need to be finalized with the Superintendent of Buildings so that the application properly reflects all calculations, including proposed lot areas and setbacks.

34. Lastly, having considered the applicants' appeals and making the above determinations, the Board turns now to the variances requested by the applicants as alternative relief.

35. The variances (front property line, side and rear yard setbacks) sought are area variances. In determining whether to grant an area variance, the Board shall take into consideration 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.

36. 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.

37. 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 Board is not aware of, and the applicant failed to present, any homes or properties with a front property line of only 17.32 feet. The proposed property line length is an anomaly in the neighborhood. Combined with the possibility of the need for setback variances related to the proposed dwelling's location and the length of the access driveway running between two properties as created by the proposed development, neither the property nor the dwelling will be in conformity with any portion of the neighborhood. Standing alone, the creation of a front property line of only 17.32 feet in a location that creates an form of a flag lot, where no such lots of such front property length exist, creates a substantial detriment to nearby properties and the neighborhood. Combined with

the setback variances to fit the dwelling into the newly created parcel, the detriment is exacerbated.

38. 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 property line length of only 17.32 is an 82.68% reduction of the minimum length. This is the essence of substantial. Combine this variance with the intent to construct a 100 foot driveway along a narrow access to the property before it opens up to the balance of the property and the substantiality increases incrementally. Likewise, the setback variances needed to build a house on parcel C further increase the request to a degree that is exponentially beyond reasonableness.

39. As to whether there are any feasible alternatives for the applicants to pursue, the applicants submitted certain plans that they presented to be in compliance with the Village Code. Thus, there clearly are feasible alternatives that the applicants should consider.

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

41. 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.

42. For the foregoing reasons, the Board denies the variances. The Board also denies the appeals for the reasons set forth above. Accordingly, with the exception of the non-conforming use being deemed a moot request, the Board denies the application in its entirety.