

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

April 2, 2014

Present:	Chair	Dina Epstein, Esq.
	Members	Kevin McGilloway
		Noel Griffin
		Ted Kopczynski
	Alternate Member	James Toner, Esq.
	Village Attorney	Brian S. Stolar, Esq.

The meeting was called to order at 8:06 pm.

The Board opened the public hearing on the application of Jackie Nathel, 94 Glenlawn Avenue, Sea Cliff, New York to construct a swimming pool in a front yard, where no such pool is permitted. Premises are designated as Section 21, Block 222, Lot 72 on the Nassau County Land and Tax Map. Mr. McGilloway recused himself from participation in this application and stepped down into the general audience. The Board closed the public hearing, and reserved decision.

Mr. McGilloway resumed his position, and, except as otherwise noted, participated in the remainder of the meeting.

The Board opened the public hearing on the application of Twelfth & Roslyn LLC, 54 Roslyn Avenue, Sea Cliff, New York to convert an existing building to a three unit multiple dwelling, which requires variances of the following Village Code sections: (a) 138-801 in that the proposed use is not permitted; (b) 138-811 in that the existing side yard setback is 4.6 feet, where a minimum of 10 feet is required; (c) 138-812 in that the existing rear yard is 2.9 feet, where a

minimum of 5 feet is required; (d) 138-816 in that the buffer area will be 1 foot, where a minimum of 5 feet is required; and (e) 138-1001 and 1002 in that no parking spaces are proposed, and the proposed use requires 5.5 spaces. Premises are designated as Section 21, Block 136, Lot 282 on the Nassau County Land and Tax Map. The Board continued the hearing to the May 20, 2014 at 8:00pm.

At 8:40pm, on motion duly made by Mr. Toner, seconded by Mr. McGilloway, and adopted unanimously, the Board moved to convene in executive session to discuss pending litigation. At 9:01pm, the Board reconvened in public session.

The Board opened the public hearing on the application of Doug and Karin Barnaby, 404 Littleworth Lane, Sea Cliff, New York to subdivide a lot with an existing non-conforming use into three residential lots and a roadway, which requires variances of the following Village Code sections: (a) 138-501 and 138-1103 to increase an existing non-conformity of a property and use, where no such increase is permitted; (b) 138-506 to permit a front property line of 83.13 feet on one lot (parcel B) and 35.39 feet on another lot (Finch Way eastern terminus), where the minimum required front property line is 100 feet; (c) 138-509 to permit a lot width of 83.13 feet, where a minimum required width of 100 feet is required; (d) 138-511 to permit a side yard setback of 8 feet, where a minimum of 15 feet is required; and (e) 138-1007 in that the proposed subdivision exacerbates an existing non-conforming condition by creating a property line with less than the required 4 foot setback. Applicants also appeal

the determination of the building department that the proposed subdivision increases a pre-existing non-conformity. Premises are designated as Section 21, Block L1, Lot 306 on the Nassau County Land and Tax Map. Kathleen Deegan Dickson, Esq., represented the applicants. Ms. Dickson explained that the plans were modified from the prior application to the Board, as well as the pending application to the Planning Board, to provide for access from Willow Shore Avenue utilizing a 34 foot wide right-of-way and a 24 foot paved roadway, which was being proposed to be dedicated to the Village. Ms. Dickson also explained that the applicant's current proposal addresses the issues and concerns raised by the Board relating to the prior application caused by the narrow front property line on Willow Shore Avenue combined with the locating of the house at the front yard setback line of 25 feet on Parcel B by moving the house back so that it is no closer to Willow Shore Avenue than 30 feet and shifting it sideways so that the narrower portion of the residence would face Willow Shore Avenue. Additionally, to offset the width of the property and the length of the front property line, the majority of unpaved portion of the Finch Way right-of-way would be placed on the south side of Finch Way. In addition, the drainage easement proposal was removed, and the proposed drainage facilities for Finch Way now will be in the right-of-way. By eliminating the drainage easement, and also by modifying the easterly property line of the Willow Shore Avenue parcel (Parcel B), the applicants now are proposing a lot that is not only compliant with lot area requirements, but also eliminating the burden on Parcel B. Ms. Dickson provided the Board with the citations of court cases relating to the applicants' position

concerning the building department's determination as to the expansion of the non-conforming two-family use. Also, the applicants submitted that the following items would be included on the final plat: Finch Way would be dedicated irrevocably to the Village; all utilities will be located underground; there will be no further subdivision of any portion of the Premises; and the residence on Parcel B will be shifted so that the front faces the proposed Finch Way and will be no less than 30 feet from Willow Shore Avenue. The Board closed the public hearing, and reserved decision.

The Board discussed the Nathel application, at which time Mr. McGilloway did not participate in the discussion. On motion duly made by Mr. Griffin, seconded by Mr. Kopczynski, and adopted four votes in favor and Mr. McGilloway not participating, the Board determined that the Nathel application is a Type II matter under SEQRA which requires no further environmental review and granted the application in accordance with the short form decision annexed hereto.

At 9:34pm, on motion duly made by the Chair, seconded by Mr. Griffin, and adopted unanimously, the Board voted to convene in executive session to discuss pending litigation. Only the Board members and counsel were present during such discussion.

On motion duly made by Mr. Toner, seconded by Mr. McGilloway, and adopted unanimously, the Board agreed to settle the pending litigation between the Barnabys and the Board in accordance with the terms set forth in the

proposed settlement agreement, and authorized the Chair to execute the agreement.

At 9:48pm, the Board reconvened in public. The Board discussed the Barnaby application. On motion duly made by Mr. Toner, seconded by Mr. McGilloway, and adopted unanimously, the Board determined that the environmental review of the Barnaby application was previously processed, with the Planning Board having served as lead agency and having adopted a conditioned negative declaration, and the Board granted the application in accordance with the attached decision and findings.

There being no further business, the meeting was adjourned at 9:51 pm.

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DINA EPSTEIN, CHAIR

**NATHEL SHORT FORM DECISION**  
(as authorized by Village Code §138-1302.1)

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on April 2, 2014, on motion of Mr. Griffin, seconded by Mr. Kopczynski, and adopted four votes in favor and Mr. McGilloway not participating, 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. Jackie Nathel, 94 Glenlawn Avenue, Sea Cliff, New York applied to construct a swimming pool in a front yard, where no such pool is permitted. Premises are designated as Section 21, Block 222, Lot 72 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 application was referred to the Nassau County Planning Commission in accordance with the streamlining agreement between the Village and the Planning Commission, and no response was received from the Planning Commission.
5. The relief requested in the application is granted provided that (a) the construction shall conform substantially with the plans submitted with the application, and (b) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

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Dina Epstein, Chair

Filed in the Office of the Village Clerk  
the     day of May 2014

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Marianne Lennon, Village Clerk

ZONING BOARD OF APPEALS  
VILLAGE OF SEA CLIFF

-----X  
In the Matter of the Application of

**Douglas and Karin Barnaby**

for variances and appealing certain  
determinations of the  
Superintendent of Buildings, to permit  
the subdivision of an existing parcel into  
four parcels

-----X  
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 four lots, which would result in the creation of two new building lots, the maintenance of an existing two-family dwelling on a third building lot and creation of a roadway on a fourth lot to provide access to the two new building lots. The applicants also appeal certain determinations identified in the Notice of Disapproval issued by the Superintendent of Buildings.

On motion duly made by Mr. Toner, seconded by Mr. McGilloway, and adopted unanimously, 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 each of 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 Premises is located in the Residence B zoning district in the Village of Sea Cliff (the “Village”).

2. The Premises fronts on Littleworth Lane and Willow Shore Avenue. The total lot area of the Premises is depicted on the plan to be 77,907 square feet.

3. The owners of the Premises, Douglas and Karin Barnaby (the “Applicants”) filed an application with the Village building department seeking to divide the Premises into four (4) separate parcels as indicated in the partitioning map filed with the application. The partitioning map is entitled “Douglas & Karin Barnaby 404 Littleworth Lane Sea Cliff Nassau County, New York - Alternate Partitioning Map”, prepared by Joseph E. Dioguardi, Jr., Engineer/Land Surveyor, dated 2-5-14 and last revised 3-28-14 (the “Subdivision Map”). The four proposed parcels are:

- a. Parcel A – This parcel contains the existing residence and the applicants seek to retain the residence. The parcel includes along its eastern boundary a 25 foot wide by approximately 224.99 foot portion of property described as Preston Avenue. The applicants own this portion of Preston Avenue, but do not own the eastern portion of Preston Avenue. That eastern portion is not included in this application, and the owner of that portion is not a party to this application. Parcel A is proposed to front on two roadways – Littleworth Lane, a public road, and Finch Way. The applicants propose to retain a two (2) family dwelling thereon. It was noted that the length of Finch Way shown on the Subdivision Map was less than 100 feet, and the applicants confirmed that the Subdivision Map would be amended to extend Finch Way so that there would be a 100 foot length along the northern border of Parcel A;
- b. Parcel B – This parcel is proposed as a corner lot fronting on Willow Shore Avenue and Finch Way. The partitioning map indicates that there will be a front property line of 83.13 feet on Willow Shore Avenue. Vehicular access to Parcel B is

proposed to be via Finch Way and there will be no direct vehicular access from or to Willow Shore Avenue. Parcel B is proposed to contain a single family residence. The applicants propose to shift the residence so that the wider portion faces Finch Way, and also to locate the residence at least 30 feet from Willow Shore Avenue;

- c. Parcel C – This parcel is proposed in the northerly portion of the Premises fronting on Finch Way. It includes the northerly balance of the 25 wide western portion of Preston Avenue not included in Parcel A and the entire 50 foot width of the property denoted as Bryant Avenue along the northern edge of the Premises. The entire eastern portion of Preston Avenue is owned by a different owner and is neither included in this application nor can be considered part of this application absent authorization of that owner. Access to Parcel C is provided via Finch Way and the parcel fronts on the northerly part of Finch Way and 35.39 feet of the easterly terminus of Finch Way;
- d. Finch Way – Applicants propose a roadway to provide access to Parcels B and C. Finch Way will have a 34 foot wide right-of-way with 24 feet of a surface paved in a manner authorized by the Village. The 10 foot wide unpaved portion of the right-of-way will be designed so that the majority of the unpaved area will be located along the southern portion of Finch Way. Also, on both the north and the south sides of Finch Way, if determined to be required by the Village, the applicants will construct a gravel surface or curbing intended to prevent soil from moving from the premises to the roadway bed.

4. As proposed, the application does not comply with the Village zoning requirements, and as set forth in Notice of Disapproval issued by the Superintendent of Buildings, the following variances would be required:

- a. *Village Code §138-501 and 1103* – applicants propose to increase an existing non-conformity of a property and use, where no such increase is permitted;
- b. *Village Code §138-506* – applicants propose parcel B with a front lot line length of 83.13 feet and 35.39 feet on Parcel C at the easterly terminus of Finch Way, where the minimum required is 100 feet;
- c. *Village Code §138-509* – applicants propose a lot width on parcel B of 83.13 feet where the minimum required is 100 feet;

- d. *Village Code §138-511* – applicants propose a side yard setback of 8 feet, where a minimum of 15 feet is required; and
- e. *Village Code §138-1007* - the proposed subdivision exacerbates an existing non-conforming condition by creating a property line with less than the required 4 foot setback of driveway for 386 Littleworth Lane;

5. Previously, in a similar, but substantially different application, the applicants proposed a subdivision with a lot width and front property line of 92.18 feet, a roadway right-of-way of 25 feet, including a 20 foot paved area and a 5 foot unpaved area, a 10 foot wide drainage easement area burdening parcel B, and a house on parcel B that could be located along the front yard setback line of 25 feet. The Board denied that application for the reasons set forth in the Board’s decision on that application. The applicants have submitted plans that the Board finds addresses the reasons supporting the Board’s previous denial, and for the reasons set forth herein, now determines to approve the requested relief on the conditions set forth herein.

6. The application now includes a 34 foot wide right-of-way, with 24 feet of paved area, and will include features to prevent soil intrusion onto the roadway to be approved by the Village Department of Public Works that may include 2 feet (1 on each side) of a gravel surface or curbing. The drainage for the roadway will be under the right-of-way rather than on parcel B. The roadway will be dedicated irrevocably to the Village, and will be built in accordance with standards applied by the Department of Public Works.

7. As to the massing of Parcel B, although the front property line is narrower and the width of the lot is decreased by approximately 9 feet due to the widening of Finch Way, the applicant addresses the Board’s concerns by shifting the residence sideways so that the front portion (the wider portion) of the house faces Finch Way and the house will

be no closer than 30 feet from Willow Shore Avenue. Given these modifications, the Board finds that the massing, and necessarily the impact on the immediate neighborhood, has been reduced sufficiently to warrant approval.

8. The elimination of the drainage easement takes away the burden from Parcel B, and together with the modification of the lot line along the eastern portion of Parcel B increases the lot size of Parcel B to a zoning compliant 10,020 square feet. The Board notes that the setback of the 1 story portion of the residence on Parcel A has been reduced from 11 feet to 8 feet, but that such reduction results only from a lot line realignment and should have only minimal impact.

9. In the prior decision the Board granted the variance for a front property length of 25 feet at the easterly terminus of Finch Way. As the applicant now has increased that length to 34 feet, the Board finds that a variance for this proposed length is warranted.

10. Also, the applicants provided the Board with caselaw concerning the expansion of the use of Parcel A. That caselaw was not previously provided by the applicants to the Board for consideration in the prior application. This caselaw provides some support for the applicants' contention that the reduction in the lot size and the addition of additional homes and a roadway on the remaining portion of the premises does not necessarily result in an increase in the existing non-conformity, and the Board so finds.

11. The applicants have shown that Parcel A can accommodate 4 parking spaces, and so long as those parking spaces are provided, no variance of the Village parking requirements are required for Parcel A.

12. As to environmental review, the Board participated in a coordinated environmental review. In accordance with SEQRA, the Board agreed to a request by the Village Planning Board that the Planning Board serve as lead agency with respect to environmental review. That review was completed in June upon the Planning Board's adoption of a conditioned negative declaration. Thereafter, the application was referred to the Nassau County Planning Commission, as required by law. The Planning Commission made a recommendation of local determination, thereby enabling the Board to take such action on the application as it deems appropriate.

13. As indicated in the analysis herein, the Board, which is very familiar with the area surrounding the premises, finds that the neighborhood for consideration under the balancing test required by Village Law is the area along Willow Shore Avenue. Orchard Lane and Woodridge Lane are cul-de-sacs that are located topographically higher than the Premises, are not accessible by Willow Shore Avenue, Bryant Avenue or Prospect Avenue, are part of a subdivision development approved and developed in the 1950s when the Village Code did not require the current lot area or lot frontage for Residence B parcels, were built on lots that did not require variances and are in a neighborhood completely separate and distinct from the Premises. Thus, while five of these homes fall within the 200 foot radius of the Premises, they have no relation to the Premises or the neighborhood in which the Premises is located. Accordingly, the lot area, front property line lengths and lot widths of these lots have no bearing on this application.

14. The relevant neighborhood also does not include the south side of Littleworth Lane. These properties are located in a different zoning district (Residence

C), and while their lot frontages vary from approximately 74+ feet to 100 feet according to the applicants, the applicants, who specifically referenced variances for other parcels distant from the Premises, did not indicate that these properties received variances from the Board. No evidence was submitted to indicate that any of these lots were not compliant at the time of their creation. Thus, the Board concludes that these homes were built before 1979 when the Village Code was amended to provide for a minimum required 100 foot frontage in the Residence C district, and are thus are located on non-conforming lots. The Village Code also provided for an increase in the required lot size of properties in the Residence B district from 7,500 square feet to 10,000 square feet and the required front property width from 75 feet to 100 feet. As the properties on the south side of Littleworth Lane are in a different zoning district, developed at a time when the lots were compliant, and are located south of Littleworth Lane with no connection to the Willow Shore Avenue/Bryant Avenue area these properties also are not relevant to the neighborhood in which the new parcels are proposed.

15. The Board finds that the relevant neighborhood as relates to the variances runs along Bryant Avenue and Willow Shore Avenue between Prospect Avenue and Littleworth Lane. That area includes 2 apartment buildings, a catering facility, a church, a private cemetery, residentially developed parcels, including single family residences and 2 family residentially developed parcels, and 2 undeveloped building lots. Parcel B, which requires a front property line length and lot width variance fronts on Willow Shore Avenue. Also, the newly created setback variance of a northwesterly side and rear portion of the existing residence relates to the property line shared with Parcel B.

16. In rendering its determination, the Board notes that the majority of the 1-2 family residential parcels in the relevant neighborhood appear to comply with front property line and lot area requirements, but may not comply with specific setback or other zoning requirements. 408 Littleworth Lane, which will immediately abut Parcel B, as shown on the radius map, complies with lot frontage and lot area. To the extent this lot does not comply with current zoning (and applicant cited no variances for this property), it appears to relate to setbacks only. Similarly, the church property, immediately north of proposed Finch Way complies with front property line length and appears to comply with lot area (but may not comply with setback requirements).

17. The residential property to the north of the Church on the north side of Bryant Avenue (Section 21, Block L, Lot 76) also complies with lot area and appears to have nearly 30,000 square foot of lot area (but may not comply with setback requirements). The adjoining residence (tax lot 82) is identified by the applicants as zoning compliant.

18. Only 2 of the single or 2 family residential properties in this neighborhood appear to contain insufficient in front property line length, each of which appears to be non-conforming. These include Section 21, Block 193, Lot 12 (“Lot 12”), which is located on the southwest corner of Bryant Avenue and Willow Shore Avenue with a house setback all the way to the west side of the property facing Bryant Avenue and Section 21, Block 193, Lot 11 (“Lot 11”), which has a house facing Willow Shore Avenue setback substantially from Willow Shore Avenue and a substantial depth. Lot 12 has a sufficient front property line length on Bryant Avenue, but not on Willow Shore Avenue and has sufficient lot area. Lot 11 also has deficient frontage, but sufficient lot

area. Unlike the house originally proposed on Parcel B, the houses on both of these properties are set back substantially from the front line of the property. Such a setback offsets the impact of the deficient front property line length. The catering facility, apartment buildings with large open spaces and parking areas adjoining Willow Shore Avenue and substantial building setbacks from Willow Shore Avenue are not deemed by the Board to impact the frontages in the neighborhood.

19. Thus, even excluding the currently compliant front property line width of the Premises in the neighborhood consideration, there are 3 properties, and the adjoining church property containing homes on lots compliant with front property line width, and only 2 pre-existing non-conforming homes on lots compliant with current lot area requirements, but not front property line widths. And, as stated previously, the substantial setbacks of these homes from Willow Shore Avenue and the openness created thereby ameliorates their lack of compliant front property line and lot widths. Thus, 4 of the 6 developed lots have compliant front property line and lot widths. The other 2 lots (as well as all remaining parcels in the neighborhood) were not approved by this Board and thus would appear to have been created prior to the 1979 zoning restrictions relating to Residence B properties. By shifting and turning the house on Parcel B, the newly proposed setback and house alignment on Parcel B is more consistent with the homes in the relevant neighborhood.

20. Interested residents also testified. That testimony included comments relating to the impact of the proposed development and roadway on the neighborhood.

21. In reaching the findings and conclusions herein, the Board has considered the testimony, both written and oral, and applied its observations and knowledge of the community and the Premises to the submitted testimony.

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

23. The variances of front property line (138-506), lot width (138-509) and side yard setback (138-511) 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.

24. The variances of section 138-501 and 1103 (enlarge and increase non-conformity) and 138-1007 (exacerbate non-conformity relating to the 4 foot driveway setback) are use variances. Applicants also appeal the determinations as to sections 138-501 and 1103.

25. For the reasons set forth herein, the Board finds and concludes that the appeal and the area variances are granted. Thus, whether the applicants are entitled to use variances is moot. In reaching this conclusion, the Board has considered the relevant statutory factors in relation to the variances and has reviewed the appeal *ab initio*.

#### *Area Variances*

26. With regard to whether the proposed area 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 not create an undesirable change in the neighborhood character and a detriment to nearby properties. Applicants have addressed the concerns raised in the prior Board determination and have reduced the mass, the substantiality and the impact on the neighborhood by moving the house back from Willow Shore at least 5 additional feet and turning the house so that the narrower portion faces Willow Shore Avenue, eliminating the burden of a 1,000 square foot drainage easement on parcel B, providing a roadway compliant with standards applied by the Village in the construction of roadways, and placing the majority of the unpaved right-of-way on the Parcel B side to provide a visual impression that the lot is a little wider than it is proposed. In this particular neighborhood, the homes on the

western side of Willow Shore Avenue, even though deficient in lot frontage, further that balance by being set back substantially, thus utilizing the depth of the properties in a way that the Board considers to be consistent with the rationale for the density restrictions in the Village Code. Applicants address this neighborhood characteristic through the application changes described herein.

27. The Board finds that the requested variances, individually and combined, no longer are substantial. In reaching this conclusion, the Board is mindful that substantiality cannot be viewed solely in the abstract based on the numerical variation, but rather must encompass the entire proposal. For the reasons set forth above, the Board finds that the requested variances, while having an impact on the neighborhood, are not substantial.

28. As to whether there are any feasible alternatives for the applicants to pursue, the applicants have submitted alternatives, but the Board finds that the proposal represents a more balanced approach to the concerns of the neighborhood and the impacts required to be addressed by the Board.

29. As to whether the proposed variances will have an adverse impact on the physical or environmental conditions in the neighborhood, the Board finds that the modified variances will not result in such an adverse impact.

30. As to the self-created hardship, the Board finds that the proposed variances are self-created. Mr. Barnaby is the president of a development company and previously served as a Zoning Board member. Neither the process nor the limitations of zoning are new to the applicants. Despite this knowledge and despite representing that there are zoning compliant alternatives, the applicants decided to propose a non-zoning

compliant plan. It is evident that the hardship is self-created. Notwithstanding such finding, the Board finds that the remaining considerations warrant approval of the application.

*Appeal*

31. Applicants appeal the Superintendent's determination that variances of Village Code §§138-501 and 1103 are required. As indicated previously, this contention is based on two theories. The first is that the Board already has determined that the use of the residence as a 2 family residence may continue. The Board agrees that the records of the Village so indicate that the use has been acknowledged by the building department as a non-conforming use and may continue to exist as a non-conforming use (as long as the legal non-conformity is not lost in a manner provided by the Village Code). The Board reached this same conclusion in a previous application brought by the applicants.

32. The second contention is that the non-conforming 2 family use is not being increased or enlarged. The Village Code provides that a nonconforming land use may not be "enlarged or increased" or "extended" to occupy a greater area of land and a non-conforming building use may not be "enlarged or extended". In the prior application, the applicants submitted a letter from an attorney as well as statements at the public hearing contending that the Superintendent's determination is not correct. At no time during that time did the applicants submit any caselaw supporting, or tending to support, their contention. In this application, the applicants cited the caselaw that may apply to their situation. Given that newly submitted information, the Board determines that the addition of a roadway and 2 new residences on the existing lot does not in and of itself result in an increase of the non-conforming use of parcel A.

*Use Variances*

33. Given the findings above, it is not necessary for the Board to address the use variances that would have been required had the Board not granted the applicants' appeal.

34. For the foregoing reasons, the Board grants the application for area variances as well as the appeal, on the following conditions:

- a. The residence on parcel B will be located no less than 30 feet from Willow Shore Avenue;
- b. The residence on parcel B will be constructed with the narrower portion facing Willow Shore Avenue and the front portion facing Finch Way;
- c. The majority of the unpaved/gravel area of Finch Way will be located on the south side of Finch Way;
- d. The Driveway access for parcel B shall be via Finch Way;
- e. Applicants shall irrevocably dedicate Finch Way to the Village;
- f. Drainage for Finch Way shall not be located on any of the residential parcels;
- g. The variances granted herein are limited to the proposal set forth in the Subdivision Map and based on the conditions set forth herein and the conditions represented by applicants to be incorporated into an amended map;
- h. The variances are granted on the condition that applicants offer to dedicate Finch Way to the Village;

- i. The variances are granted on the condition that there be no further subdivision of any portion of the Premises, and that all transfers of any portion of the Premises shall include a provision that subsequent transfers be subject to this condition and also subject to any other restrictions, limitations or obligations set forth in the amended subdivision map and/or required by the Village Code, including the location of all new utilities underground; and
- j. The variances granted herein shall expire unless a building permit is sought for the construction of a residence on parcel B within 2 years, and a certificate of occupancy obtained within 3 years, of the filing of the subdivision map with the County Clerk. If a building permit is timely obtained, but the building permit applicant requires additional time to obtain a certificate of occupancy, a request may be made in writing to the Board for not more than a one year extension of time to obtain the certificate of occupancy, and the Board may consider that request, if timely filed before the expiration of the time to obtain a certificate of occupancy, without holding a public hearing. Any subsequent requests for additional time shall be considered by the Board utilizing the same process as a new application.

Filed in the Office of the Village Clerk  
the    day of \_\_\_\_\_ 2014

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Marianne Lennon, Village Clerk