

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

September 17, 2013

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

The meeting was called to order at 8:05 pm. Mr. Weil was not present at the outset of the meeting. In his place, Alternate Member Toner participated in the hearings.

The Board opened the public hearing on the application of Martin Winkelman, 123 17th Avenue, Sea Cliff to construct an addition to an existing deck in a front yard, which requires a variance of Village Code §138-416 to permit such addition. Premises are designated as Section 21, Block 153, Lot 153 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 Cecilia Wheeler and Dennis Buckley, 25 Bay Avenue, Sea Cliff to maintain an air conditioner condenser unit and install a generator in a side yard, which requires variances of the following Village Code sections to maintain existing conditions: (a) 138-404 to maintain a lot size of 7,200 square feet, where a minimum of 7,500 square feet is

required; (b) 138-406 to maintain a front property line of 60 feet, where a minimum of 75 feet is required; (c) 138-408 to maintain a dwelling with setback of 14.32 feet and 17.10 feet where the minimum required is 20 feet; (d) 138-409 to maintain a lot width at the setback line with less than the required width; (e) 138-410 to maintain a lot that does not conform with the minimum front line width and setbacks; (f) 138-411 to maintain a side yard of 3.13 feet, where the minimum required is 10 feet; (g) 138-412 to maintain a rear yard setback of (a) 138-417 in that the air conditioner unit and the generator encroach into the side yard setback and (b) 138-1103 in that the maintenance of the air conditioner condenser unit and installation of the generator intensify an existing non-conformity. Premises are designated as Section 21, Block 152, Lot 47 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 DM Acquisitions, LLC, 1 Sea Cliff Avenue, Sea Cliff to construct interior renovations, which requires variances of the following Village Code sections to maintain existing conditions: (a) 138-905 to maintain a lot size of 7,850 square feet, where the minimum required is 15,000 square feet; (b) 138-906 to permit lot area of 5,442 square feet, where the maximum permitted lot area is 3,140 square feet; (c) 138-907 to maintain front property line of 50.2 feet, where the minimum required is 100 feet; (d) 138-908 to maintain non-compliant setbacks; and (e) 138-910 to maintain a lot width at the setback line of 50.2 feet, where the minimum required width is 100 feet. The proposed construction also requires a

variance of Village Code §138-1002 in that 16 parking spaces are required for the renovation and none are provided. Premises are designated as Section 21, Block 96, Lot 220 on the Nassau County Land and Tax Map. After a discussion regarding the proposed parking and loading and unloading of vehicles and customers, the Board continued the application to later in the meeting.

The Board opened the public hearing on the application of Joseph Ciampa, 46 Sea Cliff Avenue, Sea Cliff to construct additions which result in floor area of 6,487 square feet, where a maximum floor area of 5,938 square feet is permitted pursuant to Village Code §138-514.1. Premises are designated as Section 21, Block 116, Lot 86 on the Nassau County Land and Tax Map. The applicant was represented by Paul Marchese, Esq. The Board closed the hearing, and reserved decision.

The Board opened the application of Peggy Neice, 36 14th Avenue, Sea Cliff to construct additions to a residence and convert an existing single family residence to a two family residence to be used as a mother/daughter type residence, which requires variances of the following Village Code sections to maintain existing conditions: (a) 138-404 to maintain a lot size of 4,800 square feet, where a minimum of 7,500 square feet is required; (b) 138-406 to maintain front property lines of 40 feet, where a minimum of 75 feet is required; (c) 138-408 to maintain a setback of 6.7 feet, where the minimum required setback is 20 feet; (d) 138-409 to maintain two lot widths at the front yard setbacks of 40 feet, where the minimum required width is 75 feet; and (e) 138-411 to maintain side yard setbacks of 6.5 and 9 feet, where the minimum required setback is 10 feet.

The proposed construction also requires variances of the following Village Code sections: (a) 138-401 and 415 to permit a two family residence where no such use is permitted; (b) 138-411 in that the additions will be located 6.5 feet from the side property line, where a minimum of 10 feet is required; and (c) 138-413.1 in that the additions will encroach further into the existing non-conforming height-setback ratios. Premises are designated as Section 21, Block 134, Lot 1088 on the Nassau County Land and Tax Map. The applicant's representative indicated that he would provide the Village with proposed conditions for the proposed use. The Board continued the public hearing to October 15, 2013 at 8:00pm. Mr. Weil arrived during this public hearing, but did not participate in this application or hearing.

At 9:30pm the Board took a recess, and returned to public session at 9:32pm.

The Board continued the public hearing on the application of DM Acquisitions. Mr. Weil also did not participate in this continued hearing. The Board closed the public hearing, and reserved decision.

The Board discussed the Winkelman application. On motion duly made by the Chair, seconded by Mr. McGilloway, and adopted four votes in favor with Mr. Weil not participating and Mr. Toner having stepped away from the meeting, the Board determined that the Winkelman application is a Type II matter under SEQRA which requires no further environmental review and that the application for a variance is granted in accordance with the short form decision annexed hereto.

The Board discussed the Wheeler/Buckley application. On motion duly made by Mr. Kopczynski, seconded by Mr. Griffin, and adopted unanimously with Mr. Weill not participating, the Board determined that the Wheeler/Buckley application is a Type II matter under SEQRA that requires no further environmental review and that the application for variances is granted in accordance with the short form decision annexed hereto.

The Board discussed the Ciampa application. On motion duly made by Mr. Toner, seconded by Mr. McGilloway, and adopted unanimously with Mr. Weil not participating, the Board determined that the Ciampa application is a Type II matter under SEQRA which requires no further environmental review and that the application for a variance is granted in accordance with the short form decision annexed hereto.

The Board discussed the DM Acquisitions application. On motion duly made by Mr. Kopczynski, seconded by Mr. McGilloway, and unanimously with Mr. Weil not participating, the Board determined that the DM Acquisitions application is a Type II matter under SEQRA which requires no further environmental review and that the application for a variance is granted in accordance with the short form decision annexed hereto.

Mr. Weil returned and participated in the remainder of the meeting whereupon Mr. Toner did not participate in the remainder of the meeting.

The Board continued its discussion of the Barnaby application. After such discussion on motion duly made by the Chair, seconded by Mr. Griffin, and adopted three votes in favor, with Mr. Kopczynski and Mr. McGilloway opposed,

the Board denied the application in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 10:40 pm.

WINKELMAN SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on September 17, 2013, on motion of the Chair, seconded by Mr. Weil, and adopted four votes in favor, Mr. Toner not present and Mr. Weil 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. Martin Winkelman, 123 17th Avenue, Sea Cliff applied to construct an addition to an existing deck in a front yard, which requires a variance of Village Code §138-416 to permit such addition. Premises are designated as Section 21, Block 153, Lot 153 on the Nassau County Land and Tax Map.
2. The applicant is the record owners of the subject premises. The applicant stated that no new lighting would be proposed for the additional portion of the deck and that all lighting is aimed in a downward position.
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, (b) the hot tub has an approved safety cover and otherwise complies with all applicable safety codes; and (c) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

WHEELER/BUCKLEY SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on September 17, 2013, on motion of Mr. Kopczynski, seconded by Mr. Griffin, and adopted unanimously with Mr. Weil 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. Cecilia Wheeler and Dennis Buckley, 25 Bay Avenue, Sea Cliff applied to maintain an air conditioner condenser unit and install a generator in a side yard, which requires variances of the following Village Code sections to maintain existing conditions: (a) 138-404 to maintain a lot size of 7,200 square feet, where a minimum of 7,500 square feet is required; (b) 138-406 to maintain a front property line of 60 feet, where a minimum of 75 feet is required; (c) 138-408 to maintain a dwelling with setback of 14.32 feet and 17.10 feet where the minimum required is 20 feet; (d) 138-409 to maintain a lot width at the setback line with less than the required width; (e) 138-410 to maintain a lot that does not conform with the minimum front line width and setbacks; (f) 138-411 to maintain a side yard of 3.13 feet, where the minimum required is 10 feet; (g) 138-412 to maintain a rear yard setback of (a) 138-417 in that the air conditioner unit and the generator encroach into the side yard setback and (b) 138-1103 in that the maintenance of the air conditioner condenser unit and installation of the generator intensify an existing non-conformity. Premises are designated as Section 21, Block 152, Lot 47 on the Nassau County Land and Tax Map.
2. The applicants are the record owners of the subject premises. The applicants stated that large Leyland cypress trees surround the air conditioning unit and baffle the sound, that a row of 6 leyland cypress will be planted to baffle the sound of the emergency generator and that the adjoining property is separated by an 8 foot high stone wall and sits higher than the applicants' property.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review. 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.
4. The relief requested in the application is granted provided that (a) the construction shall conform substantially with the plans submitted with the application, (b) the proposed plantings shall be installed and maintained by the applicants and any subsequent property owner; (c) the generator shall be used only as an emergency generator and shall be installed and

comply with all applicable safety codes; and (d) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

CIAMPA SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on September 17, 2013, on motion of Mr. Toner, seconded by Mr. McGilloway, and adopted unanimously with Mr. Weil 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. Joseph Ciampa, 46 Sea Cliff Avenue, Sea Cliff applied to construct additions which result in floor area of 6,487 square feet, where a maximum floor area of 5,938 square feet is permitted pursuant to Village Code §138-514.1. Premises are designated as Section 21, Block 116, Lot 86 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises. The applicant's representative stated that the house is setback substantially from Sea Cliff Avenue limiting the view of the house and the proposed additions, that the proposed additions include a second story master bath, garage addition, that the garage would not house more than four (4) vehicles.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review. 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.
4. The relief requested in the application is granted provided that (a) the construction shall conform substantially with the plans submitted with the application, (b) the garage shall house no more than four (4) vehicles at any one time; and (c) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

DM ACQUISITIONS SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on September 17, 2013, on motion of Mr. Kopczynski, seconded by Mr. McGilloway, and adopted unanimously with Mr. Weil 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. DM Acquisitions, LLC, 1 Sea Cliff Avenue, Sea Cliff applied to construct interior renovations in connection with a proposed dance studio, which requires variances of the following Village Code sections to maintain existing conditions: (a) 138-905 to maintain a lot size of 7,850 square feet, where the minimum required is 15,000 square feet; (b) 138-906 to permit lot area of 5,442 square feet, where the maximum permitted lot area is 3,140 square feet; (c) 138-907 to maintain front property line of 50.2 feet, where the minimum required is 100 feet; (d) 138-908 to maintain non-compliant setbacks; and (e) 138-910 to maintain a lot width at the setback line of 50.2 feet, where the minimum required width is 100 feet. The proposed construction also requires a variance of Village Code §138-1002 in that 16 parking spaces are required for the renovation and none are provided. Premises are designated as Section 21, Block 96, Lot 220 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises. The applicant, together with the operators of the proposed dance studio, informed the Board that the dance studio presently is in operation on Glen Head Road, that the proposed entry for the studio would be on Sea Cliff Avenue, that there are 4 available parking spaces on Sea Cliff Avenue, and that all children being picked up or dropped off at the dance studio shall be accompanied by a responsible adult associated with the studio.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review. 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.
4. The relief requested in the application is granted on the following conditions: (a) the construction shall conform substantially with the plans submitted with the application, (b) all students and other children being transported to or from the dance studio by motor vehicle and being dropped off at or picked up from the dance studio shall be escorted to a vehicle by a member of the dance studio's staff (c) mindful of the Board's limited ability to control the parking of the parents picking up and dropping of their children and the location of the facility near the intersection of Sea Cliff Avenue and Glen Cove Avenue, the approval granted herein will be for a period of two (2) years. Prior to the expiration of two (2) years from the date this decision is filed with the Village Clerk, but in no event sooner than nine months from said date, the

applicant, if he wishes to continue the use of the premises proposed by this application, shall reapply to the Board of Appeals for a renewal of the variances. The application shall be made in a timely manner so as to permit this Board to render its decision prior to the expiration of the aforesaid three (3) year period; (d) payment of all fees required by the Village Code §138-1008 for the 12 (16 required and 4 on-street available) parking spaces not available to the applicant; and (e) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

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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

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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 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 private 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 dated December 21, 2012 and revised on January 2, 2013.

On motion duly made by the Chair, seconded by Mr. Griffin, and adopted three votes in favor and Mr. Kopczynski and Mr. McGilloway 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 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 Subject Property 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 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 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, a road proposed by the applicants as a private road. The partitioning map indicates that there is lot frontage of 175.57 feet on Littleworth Lane and 100.24 feet on Finch Way. Parcel A is proposed to have a lot area of 26,370 square feet and the applicants propose to retain a two (2) family dwelling thereon;
- 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 lot frontage of 92.18 feet on Willow Shore Avenue and 108 feet on Finch Way. The parcel also is burdened by a 10 foot wide drainage easement that incorporates numerous drywells and a drainage system to accommodate Finch Way storm-water runoff. The 10 foot wide easement runs along the southerly edge of Finch Way from Willow Shore Avenue all the way to the easterly end of Parcel B where Parcel

B intersects with Parcel A. While the partitioning map indicates that Parcel B has lot area of 10,020 square feet, in effect and due directly to the easement proposed by the applicants, the lot area (which by definition in the Village Code excludes the easement area) is approximately 8,940 square feet. Vehicular access to Parcel B is proposed to be via Finch Way. Parcel B is proposed to contain a single family residence;

- c. Parcel C – This parcel is proposed in the northerly portion of the Premises ~~fronting on~~ ^{square foot} Finch Way. It includes the northerly balance of the 25' wide western portion of Preston Avenue not included in Parcel A and the entire width of the property denoted as Bryant Avenue along the northern edge of the Premises. While a question was raised regarding title to a 25 foot triangular portion of land excluded from lands previously deeded to a prior owner of the Premises, applicants provided the Village with information demonstrating that the triangular portion lies in the eastern portion of Preston Avenue. 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 100 feet of the northerly part of Finch Way and 25 feet of the easterly terminus of Finch Way;
- d. Finch Way – Applicants propose a private street to provide access to Parcels B and C. Finch Way will be 25.14 feet in width at the westerly edge where it meets Willow Shore Avenue and 25.02 feet at its easterly terminus. The length of the proposed right-of-way is approximately 235.2 feet with a paved width of 20 feet.

4. As proposed, the application does not comply with the Village zoning requirements and by letter dated December 21, 2012 and revised January 2, 2013 (the “Notice of Disapproval”), the Superintendent of Buildings denied the application for the following reasons:

- a. *Village Code §138-501* – applicants propose to change property as to increase the non-conformity of the property and its use (Parcel A);
- b. *Village Code §138-506* – applicants propose parcel B with a front width of 92.18 feet and one line of parcel C with a front width of 25.02 feet where the minimum required is 100 feet;

- c. *Village Code §138-509* – applicants propose a lot width on parcel B of 92.18 feet where the minimum required is 100 feet;
- d. *Village Code §138-511* – applicants propose to increase a non-conforming structure on parcel A with a setback of 11 feet where the minimum required is 15 feet;
- e. *Village Code §138-512* – applicants propose a rear yard setback on parcel B of 20 feet (north to south) where the minimum required is 30 feet;
- f. *Village Code §138-1001(A)* – applicants propose to intensify the use of the property by subdivision and does not provide for the required parking;
- g. *Village Code §138-1002* - applicants propose no parking for parcel A where the minimum required is 4 spaces;
- h. *Village Code §138-1103* – applicants propose to increase a non-conformity (parcel A) where no increase in non-conformity is permitted;
- i. *Village Code §138-1007*
 - i. 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; and
 - ii. the driveway depicted on parcel B exceeds the permitted width of 25 feet.

5. During the proceedings before the Board, the applicants submitted information demonstrating the ability to comply with Village Code sections 138-1001(A) and 1002. Applicants also indicated that the driveway width on Parcel B would be reduced to comply with section 138-1007 (25 foot driveway width only) and advised the Board that the Board can make any decision on the variance of section 138-512, thus indicating that this provision would not be an issue once the actual building is proposed for Parcel B. Thus, none of these variances (138-512, 1001(A), 1002 and 1007) has been considered by the Board in this determination. As to section 138-1007, only the issue of the driveway width on Parcel B is moot. The variance relating to the 4 foot setback is considered herein.

6. Applicants initially applied only for variances, but after the Board informed the applicants that there was no pending appeal of the determinations relating to the non-conforming 2 family use (Village Code sections 138-501 and 138-1103) and the Board could not consider any such appeal absent an application for such relief, the applicants submitted an appeal of those determinations.

7. The Board also 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.

8. In addition, as discussed further in this decision, the Village Code definition of lot area specifically excludes land over which an easement exists. In this case, an easement area on Parcel B, which is 10 feet wide, and runs along the entire northerly portion of Parcel B, would reduce the lot area of Parcel B by approximately 1,080 feet. Thus, Parcel B as proposed by the applicants would have a lot area of only approximately 8, 940 square feet.

9. Mr. Barnaby, identifying himself as a president of a development company and a former Zoning Board member, indicated that the application is similar to the application proposed previously and denied by the Board with the exception that the applicants now propose a 20 foot wide paved roadway instead of a driveway extending

over 200 feet into the Premises. Mr. Barnaby explained that the applicants could accomplish their development proposal by proposing 2 new fully zoning compliant building lots. In support of the application, applicants submitted a copy of the transcript of the testimony of a real estate appraiser relating to the prior project that did not include an additional roadway to be maintained privately. The Board finds that that testimony was given by an appraiser who never was qualified by the Board as an expert witness, was given in connection with a different application, and involved neither a 235 foot long roadway with private maintenance responsibilities nor a drainage easement on private property to accommodate the runoff from the roadway, and based on these circumstances would not apply to this application.

10. In further support of the application, applicants submitted a model reflecting properties or buildings in the general area that were purported to be zoning compliant or non-compliant. The model provided no indications as to the specifics of non-compliance for the properties in the model.

11. Included in the model are houses to the north on Orchard Lane and Woodridge Lane. 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.

12. The model also includes properties located on 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.

13. 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.

14. 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).

15. 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.

16. 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 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.

17. 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.

18. Interested residents also testified. That testimony included comments relating to the impact of the proposed development on the neighborhood, the history of

the residential developments in the area and the impact of the church use on Willow Shore Avenue on Sundays.

19. In connection with the appeal of the Superintendent's determination relating to sections 138-501 and 1103, applicants submitted a letter from their counsel contending that the determination was not correct. The principal basis for that contention is twofold. First, applicants contend that the non-conforming use has been established as a pre-existing legal non-conforming use that may be continued in accordance with the Village Code. The Board concurs with this representation, and based on the same information submitted during the previous application, concludes that the applicants have the right to continue the use of the premises as a pre-existing legal non-conforming use subject to compliance with the Village Code. The second aspect of the contention is that there is no enlargement or extension of the 2 family use. This issue was first raised by the Superintendent in the Notice of Disapproval that is the subject of this matter, and was not addressed previously. As set forth herein, the Board concludes that the proposed diminishment of the lot on which the use is located enlarges the non-conforming use. Accordingly, the appeal is denied and the applicants would require a use variance to use proposed Parcel A as a 2 family residence.

20. Another point raised by the applicants during the hearing is the applicability of section 138-507. That section refers to the flag type lots and the restriction of flag lots and new houses on lots that narrow towards the rear. The section does not modify or impact the front property line requirements of the Village Code.

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 only may obtain a use variance if the applicants demonstrate that the applicable zoning regulations cause an unnecessary hardship. To prove an unnecessary hardship, the applicants must show that for each and every permitted use in the particular zoning district (1) the applicants cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence, (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the zoning district or neighborhood, (3) the requested use variance, if granted, will not alter the essential character of the neighborhood, **and** (4) the alleged hardship has not been self-created.

25. For the reasons set forth herein, the Board finds and concludes that the appeal, area variances (as listed in paragraph 23 and except as indicated hereing) and use variances (except as indicated herein) are denied. 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 create an undesirable change in the neighborhood character and a detriment to nearby properties.

Applicants have a clean sheet with which to work. They can prepare a plan for 2 new homes that has the least impact on the neighborhood character with no detriment to nearby properties. Instead, they propose a lot along a public street, only 92 feet wide with a 10 foot wide drainage easement further restricting the lot area so that the lot would be less than 9,000 square feet, a private roadway and a house that will be 25 feet from Willow Shore Avenue in the exact area where there is reduced width. None of the properties in the relevant neighborhood suffer from such deficiencies even though they were created prior to the current zoning requirements. In fact, the only 2 non-apartment residential properties located in the neighborhood with deficient width on Willow Shore Avenue contain houses set back substantially from Willow Shore Avenue. The setback of these homes from Willow Shore Avenue creates an openness that mitigates against the potential impact that the deficient front property line width would have on the neighborhood. The Board views the purpose of the 100 foot frontage and 10,000 square foot lot area minimum as seeking to achieve an aesthetically planned balance. Thus, the zoning provisions seek to accomplish this objective by regulating the density of the land use, and thus impose a minimum lot area on which construction is to be permitted. Undoubtedly, these requirements seek to effect the spacious character of the neighborhood. 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. Despite knowledge of these requirements, applicants seek to reduce the frontage and lot area on Parcel B while also proposing to build a house utilizing only the standard

setback requirement on a lot that will have the additional burden of a drainage easement to accommodate off-site stormwater runoff.

27. Moreover, the proposed deficiency on a newly created lot, is completely inconsistent with the neighborhood. The house immediately to the south of Parcel B is located on a lot compliant with lot frontage (on both streets) and lot area. So too is the church property immediately north of Parcel B and the 2 houses on the north side of Bryant Avenue. The only 2 single or 2 family residential parcels with deficient frontage (as discussed above) are deep properties with buildings set back substantially from Willow Shore Avenue. Similarly, the apartment buildings located on the west side of Willow Shore Avenue are set back substantially from Willow Shore Avenue and have large open areas fronting on Willow Shore Avenue. Thus, given the existing circumstances in the neighborhood, the proposed front property line length and the property width are an anomaly in the neighborhood. This is readily apparent not just from numbers (4 of the 6 single or 2 family residentially developed properties), but from the difference in depth, openness and setback when viewing Parcel B and comparing it to the non-compliant lot frontage parcels on the west side of Willow Shore Avenue. Further, when combined with the need for a setback variance for a structure existing on Parcel A, neither Parcel B nor the dwelling thereon will be in conformity with any portion of the relevant neighborhood. When additionally combined with the private roadway, which is proposed at only 50% of the required minimum publicly dedicated roadway width required by the Village Code, Parcel C becomes effectively a flag lot. The Board and the Village Code discourage the creation of flag lots in the Village so this

concept further exacerbates the deleterious planning impact this proposed development has on the character of the Bryant Avenue/Willow Shore Avenue neighborhood.

28. The Board finds that the requested variances, individually and combined, 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. Both the proposed width and the front property line of Parcel B will be approximately 8 feet short of the required width and length. Additionally, Parcel A now will have a structure only 4 feet from the shared property line with Parcel B. As also indicated above, the lot area of Parcel B that results from the applicants' choice to use a portion of Parcel B for the drainage structures benefitting Finch Way creates a lot area deficiency of nearly 1,100 square feet.

29. While these combined figures alone create a fairly substantial impact, that impact is further intensified by the existing situation in the neighborhood. The proposed depth of Parcel B will be only 100 at its southern border and only slightly longer at its northern edge. The residence immediately south of Parcel B is non-conforming and is very close to the eastern side of Willow Shore Avenue. Similarly, the church property to the north of Parcel B and Finch Way has 2 side by side buildings on a lot approximately 105 feet wide with one of the buildings (a 2 story building) located very close to the proposed roadway and another structure in front of the buildings also located close to the proposed roadway. Both of these parcels (the property immediately south of Parcel B and the church property) are on front property line compliant properties. On the west side of Willow Shore Avenue, while the properties suffer from front property line

deficiencies, the lots are deeper and able, and in fact have been developed, to accommodate buildings further back from the streetscape.

30. In addition, despite a Village Code required roadway paved width of 26 feet with additional width necessary for the adjoining right-of-way, the applicants seek to squeeze in a narrower roadway extending more than 200 feet. This narrow private roadway, which is not just 25% deficient in paved width but also 50% deficient in overall right-of-way width, provides an aesthetic appearance of a driveway leading ultimately to Parcel C and creating in effect a flag lot, which even further creates a compactness of Parcel B.

31. Moreover, to try to pigeonhole this roadway in this location, Parcel B is proposed to be burdened by a nearly 1,100 square foot and 10 foot wide easement area for stormwater runoff unrelated to Parcel B. This attempt adds to the impact of the proposal, and further increase the substantiality.

32. Each of these items in and of itself results in the variances being substantial, and when combined creates a tremendous substantiality.

33. As to whether there are any feasible alternatives for the applicants to pursue, the applicants repeatedly stated that they could build two zoning compliant new building lots. The applicants have a clean sheet to propose a subdivision, have indicated that there are alternatives, but have refused to make such an application. Instead, they have proposed their preferred plan based on what they view to be the least impactful proposal. As represented by the applicants, there clearly are feasible alternatives that the applicants should consider.

34. 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. For the reasons identified above, the proposed variances are completely at odds with those requirements.

35. 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 would deny the variances based on its consideration of the other factors set forth above.

36. Lastly, the variances of Village Code §138-1107 and 138-506 (for Parcel C only) are decided as follows. To the extent that the Littleworth Lane driveway access provides access to the applicants' existing residence, the Board views this as a continuation of an existing situation. As the access is the only current access to the existing residence, the Board would grant the variance. However, to the extent that the access would be used to provide access to Parcel B, this proposal is new and would create a deficient driveway setback situation for Parcel A. As the access is proposed only to remain as is for access to the existing residence, the Board addresses this issue based only on that proposal and would grant the variance. As to the 25 foot front property line

width on Finch Way, the Board recognizes that the total uninterrupted length on Finch Way is approximately 125 feet. The 25 foot area is the dead end of Finch Way. AS the northerly edge of Finch Way also provides frontage on Finch Way, the additional 25 feet has no real impact on the frontage, which is otherwise sufficient.

Appeal

37. Applicants appeal the Superintendent's determination that variances of Village Code §§138-501 and 1103 are required. As indicated above, 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.

38. 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". The issue here is whether the reduction in the lot size of the property on which the non-conforming 2 family use exists results in an enlargement, increase or extension of the non-conformity. Presently, and at the time that the use became a legal, pre-existing non-conformity, the use is on the entire 77,907 square feet. Now, the applicant proposes to provide for the use on a parcel (Parcel A) approximately one-third the size of the parcel at the time that the use became non-conforming and also to create two new single family building lots on

a private roadway. As a result of the proposal, the property will go from a 77,907 square foot property containing a 2 family use to 4 separate parcels, including the 2 family use on one parcel, two new single family lots and a private roadway.

39. The common meaning of the term “increase” is to become progressively greater in size, amount, number or intensity. Similarly, “enlarged” is to make something larger or give greater scope to. The proposal calls for the elimination of a 2 family residence on one parcel and the creation of 4 separate parcels, one continuing to contain the 2 family use and the others created for the purpose of adding 2 new single family dwellings. To the extent that the applicants seek to maintain the non-conforming use on the property, there can be no increase or enlargement. In proposing the plan to continue the non-conforming use, it is clear that the use will result in an increase in intensity of the use. The use became grandfathered when it impacted the entire parcel. Now, the applicants seek to intensify that use by limiting it to only one-third of the land and adding more residences on the additional land, thus, intensifying the non-conformity.

40. Accordingly, the Board views the proposal as increasing and enlarging the non-conformity, and the appeal is denied. As a result, applicants require variances to continue the use as proposed.

Use Variances

41. To prove an unnecessary hardship, the applicants must show that for each and every permitted use in the particular zoning district (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence, (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the zoning district or

neighborhood, (3) the requested use variance, if granted, will not alter the essential character of the neighborhood, **and** (4) the alleged hardship has not been self-created.

42. Applicants submitted no testimony or evidence that would support the granting of a use variance. Thus, there is no proof to demonstrate unnecessary hardship and the use variances are denied.

43. For the foregoing reasons, the Board denies the area variances (except as to section 138-1107 and 138-506 for the dead end part of Finch Way only), which the Board would grant) and use variances. The Board also denies the appeals for the reasons set forth herein.

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

November 12, 2013

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

The meeting was called to order at 7:35 pm.

On motion duly made by the Chair, seconded by Mr. McGilloway, and adopted unanimously, the Board approved the minutes of the October 15, 2013 meeting of the Board.

On motion duly made by the Chair, seconded by Mr. Griffin, and adopted unanimously, the Board approved the minutes of the September 17, 2013 meeting of the Board.

Ms. Epstein noted that the word "foot" was missing from paragraph 3(c) of the Barnaby decision. On motion duly made by the Chair, seconded by Mr. Kopczynski, and adopted unanimously, the Board approved an amendment to the September 17, 2013 minutes to include the word "foot" in paragraph 3(c) of the Barnaby decision after the number "25".

There being no further business, the meeting was adjourned at 7:55 pm.