

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

June 21, 2016

Present: Chair	Noel Griffin
Members	Ted Kopczynski, Tim O'Donnell and Andrew Janusas
Alternate Member	Alexander Ivanovic
Village Attorney	Brian Stolar

The meeting was called to order at 7:30 pm.

The Chair announced that the applications of Richard LaSalle, 168 Prospect Avenue, John Kle, 223 Glen Cove Avenue, and Philip Huntington and The Sports Car Garage LTD, 77 Roslyn Avenue are adjourned at the respective applicants' requests to July 19, 2016 at 7:30pm.

The Board opened the public hearing on the application of Maria Papasevastos, 80 Downing Avenue, Sea Cliff, New York to construct a dormer and install air conditioner units, which requires variances of the following Village Code sections: (a) 138-514.1 to permit a floor area of 3,213 square feet, where a maximum of 3,050 square feet is permitted; and (b) 138-516 in that the air conditioner units will be located in the front yard, where no units are permitted. Premises are designated as Section 21, Block 103, Lot 31 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 Andrew Frank, 45-47 Cromwell Place, Sea Cliff, New York to renovate a dwelling, including a basement, and construct a dormer and deck, which requires variances of the following Village Code sections to (a) maintain existing lot conditions, as follows: (i) 138-504 in that the lot size is 5,000 square feet, where a minimum of 10,000 square feet is required, (ii) 138-506 in

that the front property line length is 50 feet, where a minimum of 100 feet is required, (iii) 138-507 in that the lot width is 50 feet, where a minimum of 100 feet is required, (iv) 138-509 to maintain a lot width of 50 feet at the setback line, where a minimum of 100 feet is required, and (v) Village Code §138-510 to maintain a lot width on a corner lot of 50.27 feet, where a minimum of 100 feet is required; (b) maintain the existing residence, as follows: (i) 138-508 in that the front yard setback is 14.4 feet, where a minimum of 25 feet is required, and (ii) 138-513.1 to maintain encroachments into the height-setback ratio plane; (c) 138-505 to increase lot coverage to 1,640 square feet, where a maximum of 1,500 square feet is permitted; (d) 138-511 to permit the basement emergency egress window to be located 9 feet from the side property line, where a minimum of 15 feet is required; (e) 138-511 to permit the air conditioner units and deck to encroach into the side yards setback by 3 feet on both sides of the premises; (f) 138-512 to permit a rear yard setback of 20 feet, where a minimum of 30 feet is required; and (g) 138-1102 to permit the deck to encroach into the rear yard, which encroachment increases a non-conformity, where no such increase is permitted. Premises are designated as Section 21, Block 112, Lot 9 on the Nassau County Land and Tax Map. James Carballal, architect, represented the applicant. The Board closed the hearing, and reserved decision.

The Board opened the public hearing on the application of Yuriy Bogutskiy, 369 Carpenter Avenue, Sea Cliff, New York to renovate a dwelling, and construct a new detached garage, rear patio, deck and in ground pool, which requires variances to (a) maintain the existing residence, as follows: (i) Village Code §138-511 in that the side yard setback is 12.66 feet, where a minimum of 15 feet is required; (ii) Village Code §138-513 in that the height is 36.75 feet, where a maximum of 30 feet is permitted; and (iii) Village Code §138-513.1 in that the dwelling encroaches into the height setback ratio, where no such encroachment is permitted; (b) to construct the proposed

improvements, which increases the floor area to 7,277 square feet, where the maximum floor area permitted pursuant to Village Code §138-514.1 is 4,025 square feet; (c) construct a 625 square foot garage with a side yard setback of 8 feet, where Village Code §138-516 provides for a maximum of 500 square feet and a minimum setback of 10 feet; and (d) construct a garage that increases a non-conformity where no such increase is permitted pursuant to Village Code §138-1102. Premises are designated as Section 21, Block 88, Lot 58 on the Nassau County Land and Tax Map. James Carballal, architect, represented the applicant. The Board closed the hearing, and reserved decision.

The Board discussed the Bogutskiy application. After such discussion, on motion made by the Chair, seconded by Mr. Kopczynski, and adopted unanimously, the Board determined that it is the lead agency with respect to environmental review, the action is a Type II matter under SEQRA that requires no further environmental review, and denied the application in accordance with the annexed decision.

The Board discussed the Papasevastos application. After such discussion, on motion duly made by Mr. O'Donnell, seconded by Mr. Janusas, and adopted unanimously, the Board determined that it is the lead agency with respect to environmental review, the action is a Type II matter under SEQRA that requires no further environmental review, and granted the application in accordance with the short form decision annexed hereto.

The Board discussed the Frank application. After such discussion, on motion duly made by the Chair, seconded by Mr. O'Donnell, and adopted unanimously, the Board determined that it is the lead agency with respect to environmental review, the action is a Type II matter under SEQRA that requires no further environmental review, and approved the application in part, and denied the application in part, in accordance with the annexed decision.

There being no further business, the meeting was adjourned at 9:15 pm.

NOEL GRIFFIN, CHAIR

ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

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In the Matter of the Application of

Yuri Bogutskiy

for variances to renovate a dwelling,
construct a new detached garage,
rear patio, deck and in ground pool,
at premises located at
369 Carpenter Avenue, Sea Cliff

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STATEMENT

This is an application by Yuri Bogutskiy, 369 Carpenter Avenue, to renovate a dwelling, and construct a new detached garage, rear patio, deck and in ground pool, which requires variances to (a) maintain the existing residence, as follows: (i) Village Code §138-511 in that the side yard setback is 12.66 feet, where a minimum of 15 feet is required; (ii) Village Code §138-513 in that the height is 36.75 feet, where a maximum of 30 feet is permitted; and (iii) Village Code §138-513.1 in that the dwelling encroaches into the height setback ratio, where no such encroachment is permitted; (b) to construct the proposed improvements, which increases the floor area to 7,277 square feet, where the maximum floor area permitted pursuant to Village Code §138-514.1 is 4,025 square feet; (c) construct a 625 square foot garage with a side yard setback of 8 feet, where Village Code §138-516 provides for a maximum of 500 square feet and a minimum setback of 10 feet; and (d) construct a garage that increases a non-conformity where no such increase is permitted pursuant to Village Code §138-1102. Premises are designated as Section 21, Block 88, Lot 58 on the Nassau County Land and Tax Map.

On motion duly made by the Chair, seconded by Mr. Kopczynski, and adopted unanimously, the Board made the following determination:

RESOLVED, upon consideration of the evidence presented at the public hearing 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 369 Carpenter Avenue, Sea Cliff, and is designated as Section 21, Block 58, Lot 28 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 is an interior lot with frontage on Carpenter Avenue. It is 100 feet wide at the front property line and 81.52 feet wide at the rear property line. The premises is 197.4 deep.

3. The Premises contains an existing one family residence, and as described by the applicant’s representative contains eight bedrooms and nine baths.

4. The existing floor area of 6,192 square feet is non-conforming as the maximum permitted floor area is 4,025 square feet. The existing residence does not conform to the Zoning Code in that the residence (a) is located only 12.66 feet from the side property line, where a minimum of 15 feet is required, (b) 36.75 feet in height, where the maximum permitted height is 30 feet, and (c) encroaches into the height-setback ratio.

5. The applicant proposes to demolish an existing 170 square foot structure identified in the plans as a detached garage and construct a new 625 square foot garage within 8 feet of the side property line (where a minimum of 10

feet is required). The proposed garage also exceeds the permitted maximum garage floor area of 500 square feet.

6. The applicant proposes to construct a patio, raised 3 feet above the ground, within only 12.5 feet of the side property line.

7. Incredibly, the applicant also seeks to increase the floor area from 6,192 square feet to 7,277 square feet. The existing floor area is 54% greater than the permitted floor area. The applicant proposes to increase that nonconformance to 81% above the permitted floor area.

8. Applicant contends that the reason the variances are required for the garage location and size is to match the garage dimensions to the house dimensions. This contention is incredulous, given the excessive size of the existing residence.

9. Applicant also contends that a portion of the existing floor area relates to the heights of the interior spaces and thus, the floor area is realistically a lesser number than it appears on the plans.

10. Residents expressed their opinions regarding the neighborhood character and the impact the proposed residence would have on the character and charm of the neighborhood.

11. 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.

12. The variances sought by the applicant 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.

13. For the reasons set forth herein, the Board finds and concludes that the area variances would result in a detriment to the neighborhood greater than any benefit obtained by the applicant and are therefore denied. In reaching this conclusion, the Board has considered the relevant statutory factors in relation to the variances.

14. 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. The dwelling already is 12.66 from the side property line, a variation of 16% from that which is permitted, is 36.75 feet high and encroaches into the height

setback ratio plane. Without even considering the impact of these existing nonconformities, the applicant now proposes to create a floor area in excess of 80% of the permitted floor area, a garage, at a height of 15 feet and 625 square feet, within only 8 feet of a neighboring property and a raised patio within 12.5 feet of the side property line. The applicant demonstrated no similar situation in the neighborhood, and the Board finds that the existing lot deficiencies, existing building encroachments and proposed attempt to increase the floor area and oversized garage within a side yard required setback results in an undesirable change. This is a detriment not just to the neighboring residences, but also to the overall neighborhood in the immediate vicinity of the Premises.

15. Presently, there is limited open space between the neighboring properties. Restricting that space with a house with a raised patio on one side and an oversized garage on the other side, resulting in excessive floor area further limits that open space. The zoning restrictions applicable to properties in the Residence B zoning district seek to effectuate the spacious character of the neighborhood. In contradiction, the proposal would create a visual impingement not consistent with the rationale for the density restrictions in the Village Code.

16. The Board finds that the requested variances, when considered in relation to the existing conditions, 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 and the impact on the neighborhood, the neighboring properties, and the public. As discussed previously, the proposal will create a floor area greater than 80% of the permitted floor area, a garage 25% larger than would be permitted (where no floor area variance also would result), and a raised patio with an encroaching setback of

16.7%. Combined with the existing encroachments, including the height of the residence, where there are no similar situations, is significant.

17. For the reasons stated in the preceding paragraph, the combined impact of the variances on the applicant's Premises and the neighboring property and the neighborhood setting combined with the existing deficiencies creates a tremendous substantiality.

18. As to whether there are any feasible alternatives for the applicants to pursue, the Board notes that the floor area already exceeds the permitted floor area and the applicant would not be able to further increase the floor area without a variance. The applicant can reduce the size of the garage and move the garage to place the garage in a location and a size that would comply with the zoning requirements. The Board has considered the feasible alternatives, including that there is no known alternative for the applicant to pursue to achieve the desired benefits, and finds that this factor alone would not be significant enough to provide support for granting the variances.

19. 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.

20. As to the self-created hardship, the Board finds that the proposed variances are self-created. The applicant purchased the property with actual or constructive knowledge of the existing zoning limitations and that any increase in floor area or any encroachments relating to the garage would result in a need to

apply for a variance. Despite this knowledge, the applicants decided to propose additions to the residence. 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.

21. For the foregoing reasons, the Board denies the area variances.

PAPASEVASTOS SHORT FORM DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on June 21, 2016, on motion duly made by Mr. O'Donnell, seconded by Mr. Janusas, 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. Maria Papasevastos, 80 Downing Avenue, Sea Cliff, New York applied to construct a dormer and install air conditioner units, which requires variances of the following Village Code sections: (a) 138-514.1 to permit a floor area of 3,213 square feet, where a maximum of 3,050 square feet is permitted; and (b) 138-516 in that the air conditioner units will be located in the front yard, where no units are permitted. Premises are designated as Section 21, Block 103, Lot 31 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 relief requested in the application is granted provided that (a) the construction shall conform substantially with the plans submitted with the application, (b) applicant shall comply with all requirements of the Village Code and the Building Department, and (c) 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

Andrew Frank

for variances to renovate a dwelling,
including a basement, and construct
a dormer and deck,
at premises located at
45-47 Cromwell Place, Sea Cliff

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STATEMENT

This is an application by Andrew Frank, 45-47 Cromwell Place, Sea Cliff, New York to renovate a dwelling, including a basement, and construct a dormer and deck, which requires variances of the following Village Code sections to (a) maintain existing lot conditions, as follows: (i) 138-504 in that the lot size is 5,000 square feet, where a minimum of 10,000 square feet is required, (ii) 138-506 in that the front property line length is 50 feet, where a minimum of 100 feet is required, (iii) 138-507 in that the lot width is 50 feet, where a minimum of 100 feet is required, (iv) 138-509 to maintain a lot width of 50 feet at the setback line, where a minimum of 100 feet is required, and (v) Village Code §138-510 to maintain a lot width on a corner lot of 50.27 feet, where a minimum of 100 feet is required; (b) maintain the existing residence, as follows: (i) 138-508 in that the front yard setback is 14.4 feet, where a minimum of 25 feet is required, and (ii) 138-513.1 to maintain encroachments into the height-setback ratio plane; (c) 138-505 to increase lot coverage to 1,640 square feet, where a maximum of 1,500 square feet is permitted; (d) 138-511 to permit the basement emergency egress window to be located 9 feet from the side property line, where a minimum of 15 feet is required; (e) 138-511 to permit the air conditioner units and deck to encroach into the side yards setback by 3 feet on both sides of the premises; (f) 138-512 to permit a rear yard

setback of 20 feet, where a minimum of 30 feet is required; and (g) 138-1102 to permit the deck to encroach into the rear yard, which encroachment increases a non-conformity, where no such increase is permitted. Premises are designated as Section 21, Block 112, Lot 9 on the Nassau County Land and Tax Map.

On motion duly made by the Chair, seconded by Mr. O'Donnell, and adopted unanimously, the Board made the following determination:

RESOLVED, upon consideration of the evidence presented at the public hearing 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 45-47 Cromwell Place, Sea Cliff, and is designated as Section 21, Block 112, Lot 9 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 is an interior lot with frontage on Cromwell Place. It contains a two family dwelling on a lot that is only 50 feet wide.

3. The existing residence encroaches into the height setback ratio plane and also into the front yard setback, with only a 14.4 foot setback where 25 feet is required. The proposed dormer and deck encroach into the rear yard setback creating a 20 foot setback, where a minimum of 30 feet is required and create lot coverage of 1,640 square feet, where a maximum of 1,500 square feet is permitted. The deck also is located within the side yard setback area. The proposed side yard basement egress will be 9 feet from the side property line, where a minimum of 15

feet is required. The air conditioner units are proposed to encroach into the side yard setback area. Lastly, the deck further increases an existing non-conformity where no increase is permitted.

4. The applicant submits that the benefit would be the use of additional area on the premises.

5. 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.

6. The variances sought by the applicant 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.

7. For the reasons set forth herein, the Board finds and concludes that the area variances resulting from the deck and basement egress are denied and the variances resulting from the air conditioner condenser units and the dormer are approved. As to the deck and basement egress, the Board finds that the detriment to the community is greater than the benefit to the applicant. In reaching these conclusions, the Board has considered the relevant statutory factors in relation to the variances.

8. 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 setback (both rear and side) and lot coverage variances created by the rear deck and the basement egress would create an undesirable change in the neighborhood character and a detriment to nearby properties. The deck would result in a 33% encroachment into rear yard setback and 20% into the side yard setback. The lot coverage would be more than 9% permitted on a lot with only 50% of the required lot area and width. Additionally, the egress would result in a 40% encroachment into the side yard setback. There was no evidence provided to the Board showing that these combined variances are consistent with the character of the neighborhood. The combination of the proposed setback and lot coverage variances is a detriment not just to the neighboring residences, but also to the overall neighborhood in the immediate vicinity of the Premises. The air conditioner units, if shielded appropriately, would not have a similar impact. The dormer addition is insignificant and only fills in an area of the house that does not create a detriment to neighboring properties.

9. Presently, there is limited open space between the neighboring properties. Restricting that space with rear and side yard setback variances for

structures and also increasing the lot coverage in these areas, further limits that open space. The zoning restrictions applicable to properties in the Residence B zoning district seek to effectuate the spacious character of the neighborhood. In contradiction, the proposal would create a visual impingement not consistent with the rationale for the density restrictions in the Village Code. Neither the air conditioner units nor the dormer create this visual impact.

10. The Board finds that the requested variances, when considered in relation to the existing conditions, 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 and the impact on the neighborhood, the neighboring properties, and the public. As discussed previously, the proposal will create a rear yard setback only 67% of the permitted setback, and a side yard setback of only 80% the permitted setback in relation to the deck and 60% in relation to the egress window. Combined with the existing encroachments, where there are no similar situations, is significant.

11. For the reasons stated in the preceding paragraph, the combined impact of the variances for the deck and the egress window on the applicant's Premises and the neighboring property and the neighborhood setting combined with the existing deficiencies creates a tremendous substantiality.

12. As to whether there are any feasible alternatives for the applicants to pursue, the Board notes that the deck could be modified without requiring a variance from the side yard setback requirements and can be reduced in size so that it does not encroach above the lot coverage limits and that the egress window could be relocated.

13. 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.

14. As to the self-created hardship, the Board finds that the proposed variances are self-created. The applicant purchased the property with actual or constructive knowledge of the existing zoning limitations. Despite this knowledge, the applicants decided to propose additions to the residence. 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.

For the foregoing reasons, the Board denies the area variances relating to the deck and the egress window (rear yard setback, side yard setback (except as it relates to the air conditioner units), lot coverage and increase of an existing non-conformity), but approves the variances related only to the air conditioner units and the dormer.