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

May 19, 2015

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| Present: | Chair | Noel Griffin |
| | Members | Ted Kopczynski |
| | | James Toner, Esq. |
| | | Amy Marion, Esq. |
| | | Andrew Janusas |
| | Alternate Member | Timothy O'Donnell |
| | Village Attorney | Brian S. Stolar, Esq. |

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

The Board opened the public hearing on the application of Marc and Lauren Healy, 9 Highland Place, Sea Cliff, New York to construct a two story addition and front and rear open porches and to renovate a garage, which construction and renovation require variances of the following Village sections: (a) 138-504 in that the lot area is 9,880 square feet, where a minimum of 10,000 square feet is required; (b) 138-506 in that the front property line length is 60 feet, where a minimum of 100 feet is required; (c) 138-509 in that the lot width at the setback line is 60 feet, where a minimum of 100 feet is required; (d) 138-511 in that the existing side yards are 11.69 feet and 5.33 feet, and the proposed side yard setback will be 14.9 feet and the setback to the side entrance will be 10 feet, where a minimum of 15 feet is required; (e) 138-513 in that the existing height is 31.75 feet, where a maximum of 30 feet is permitted; (f) 138-513.1 in that the existing main roof line encroaches, and the proposed two story addition will encroach, into the height-setback ratio plane, where no such encroachment is permitted; (g) 138-514.1 in that the additions will result in a total floor area of 3,196 square feet, where the maximum permitted floor area is 2,646 square feet; (h) 138-516 in that the garage, as

renovated and existing, will be 2.3 feet from the rear property line and 3.2 feet from the side property line, where a minimum of 5 feet and 10 feet is required, respectively; and (i) 138-1102, to permit the enlargement of a non-conforming structure, where no such enlargement is permitted. Architect Maximo Buschfrers presented on behalf of the applicants. Premises are designated as Section 21, Block 48, Lot 42 on the Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

Ms. Marion arrived during the hearing on the Healy application. Mr. O'Donnell participated in the Healy application, and upon the closing of the public hearing, Ms. Marion resumed her position and participated as a member.

The Board opened the public hearing on the application of Vladimir Sushko, 37 Prospect Avenue, to demolish an existing garage and steps in a front yard and in the Village right-of-way and reconstruct a garage and steps in a front yard, which construction requires variances of the following Village sections: (a) 138-404 to maintain a lot area of 5,475 square feet, where a minimum of 7,500 square feet is required; (b) 138-406 to maintain a front property line length of 39.4 feet, where a minimum of 75 feet is required; (c) 138-409 to maintain a lot width at the setback line of 62 feet, where a minimum of 75 feet is required; (d) 138-411 to maintain a side yard setback of 6 feet, where a minimum of 10 feet is required; (e) 138-412 to maintain a rear yard setback of 6 feet, where a minimum of 20 feet is required; (f) 138-416 in that the garage will be located in a front yard, where no such structure is permitted; (g) 138-1007(H) in that the new driveway will be closer than 4 feet to the property line and/or 4 feet to another curb cut, where no driveway may be closer than 4 feet to the property line or another curb cut; and (h) 138-1102, to permit the intensification of a non-conforming structure, where no such enlargement is permitted. Architect Victor Thomas, architect, presented on behalf of the applicant. Premises are designated as Section 21, Block 122, Lot 14 on the

Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

The Board discussed the Healy application. Ms. Marion did not participate in the discussion. Mr. O'Donnell participated in the discussion and the determination. On motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted unanimously, the Board determined that the Healy 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.

Ms. Marion returned to her position, replacing Mr. O'Donnell for the remainder of the meeting. The Board discussed the Sushko application. On motion duly made by Mr. Toner, seconded by the Chair, and adopted unanimously, the Board determined that the Sushko 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.

The Board discussed the Vira application at length. Mr. Janusas stated that he read the hearing minutes, reviewed the application, the property and the evidence, and he is familiar with the issues and the testimony. Mr. Toner moved to grant the application, and Mr. Janusas seconded the motion. The Board discussed the motion, and upon polling the Board only Mr. Toner and Mr. Janusas indicated their intention to vote in favor of approving the application. The motion did not carry, and Mr. Toner withdrew his motion. Ms. Marion moved to grant an approval of a portion of the application that would permit an increased floor area for the porch addition only and to deny the remainder of the application. Upon discussion, there was no second to the motion and Ms. Marion withdrew her motion.

On motion duly made by the Chair, seconded by Ms. Marion, and adopted three votes in favor and Mr. Toner and Mr. Janusas opposed, the Board determined that the

Vira application is a Type II matter under SEQRA which requires no further environmental review and denied the application in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 9:00 pm.

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NOEL GRIFFIN, CHAIR

**HEALY 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 May 19, 2015, on motion of Mr. Kopczynski, seconded by the Chair, and adopted three votes in favor and Mr. O'Donnell abstaining, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the Board's consideration and discussed the application, rendered the following findings and determination:

1. Marc and Lauren Healy, 9 Highland Place, Sea Cliff, New York applied to construct a two story addition and front and rear open porches and to renovate a garage, which construction and renovation require variances of the following Village sections: (a) 138-504 in that the lot area is 9,880 square feet, where a minimum of 10,000 square feet is required; (b) 138-506 in that the front property line length is 60 feet, where a minimum of 100 feet is required; (c) 138-509 in that the lot width at the setback line is 60 feet, where a minimum of 100 feet is required; (d) 138-511 in that the existing side yards are 11.69 feet and 5.33 feet, and the proposed side yard setback will be 14.9 feet and the setback to the side entrance will be 10 feet, where a minimum of 15 feet is required; (e) 138-513 in that the existing height is 31.75 feet, where a maximum of 30 feet is permitted; (f) 138-513.1 in that the existing main roof line encroaches, and the proposed two story addition will encroach, into the height-setback ratio plane, where no such encroachment is permitted; (g) 138-514.1 in that the additions will result in a total floor area of 3,196 square feet, where the maximum permitted floor area is 2,646 square feet; (h) 138-516 in that the garage, as renovated and existing, will be 2.3 feet from the rear property line and 3.2 feet from the side property line, where a minimum of 5 feet and 10 feet is required, respectively; and (i) 138-1102, to permit the enlargement of a non-conforming structure, where no such enlargement is permitted. Premises are designated as Section 21, Block 48, Lot 42 on the Nassau County Land and Tax Map.

2. The applicants are the owners of the subject premises.

3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.

4. Notice of the application was provided 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 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) applicants shall comply with all requirements of the Village Code and the Building Department, including compliance with the requirements related

to storm water runoff, and (c) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

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Noel Griffin, Chair

Filed in the Office of the Village Clerk
the day of _____ 2015

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Marianne Lennon, Village Clerk

**SUSHKO 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 May 19, 2015, on motion of Mr. Toner, seconded by the Chair, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Vladimir Sushko, 37 Prospect Avenue, applied to demolish an existing garage and steps in a front yard and in the Village right-of-way and reconstruct a garage and steps in a front yard, which construction requires variances of the following Village sections: (a) 138-404 to maintain a lot area of 5,475 square feet, where a minimum of 7,500 square feet is required; (b) 138-406 to maintain a front property line length of 39.4 feet, where a minimum of 75 feet is required; (c) 138-409 to maintain a lot width at the setback line of 62 feet, where a minimum of 75 feet is required; (d) 138-411 to maintain a side yard setback of 6 feet, where a minimum of 10 feet is required; (e) 138-412 to maintain a rear yard setback of 6 feet, where a minimum of 20 feet is required; (f) 138-416 in that the garage will be located in a front yard, where no such structure is permitted; (g) 138-1007(H) in that the new driveway will be closer than 4 feet to the property line and/or 4 feet to another curb cut, where no driveway may be closer than 4 feet to the property line or another curb cut; and (h) 138-1102, to permit the intensification of a non-conforming structure, where no such enlargement is permitted. Premises are designated as Section 21, Block 122, Lot 14 on the Nassau County Land and Tax Map.

2. The applicant is the owner of the subject premises.

3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.

4. Notice of the application was provided 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) applicants shall comply with all requirements of the Village Code and the Building Department, including compliance with the requirements related to storm water runoff, and (c) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

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Noel Griffin, Chair

Filed in the Office of the Village Clerk
the day of _____ 2015

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Marianne Lennon, Village Clerk

ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF
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In the Matter of the Application of

**Manish and Pooja Vira**

for variances to permit the construction of
a 12 foot deep front porch and an addition
connecting the residence to the existing
garage
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STATEMENT

This is an application by Manish and Pooja Vira, 328 Carpenter Avenue, Sea Cliff, New York to construct a 12 foot deep front porch and an addition connecting the residence to the existing garage, which construction requires variances of the following Village Code sections: (a) 138-511 to create a side yard setback of 12.85 feet, where a minimum setback of 15 feet is required; (b) 138-513.1 to maintain an existing dwelling with a ridge height of 38.9 feet, where the maximum permitted height is 30 feet; and (c) 138-514.1 to increase the floor area to 5,688 square feet, where a maximum of 4,389 square feet is permitted and a prior approval permits a floor area of 5,134 square feet. Premises are designated as Section 21, Block 60, Lot 256 on the Nassau County Land and Tax Map.

On motion duly made by the Chair, seconded by Ms. Marion, and adopted three votes in favor and Mr. Toner and Mr. Janusas opposed, 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 328 Carpenter Avenue, Sea Cliff, and is designated as Section 21, Block 60, Lot 256 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. The Premises is 23,100 square feet. The existing height of the residence is 38.6 feet, which exceeds the maximum permitted height by 8.6 feet (30 feet permitted). The Property is 110 feet wide and has a depth of 210 feet. The Property contains a principal dwelling and a 2 car garage detached from the existing dwelling. The garage is located only 12.9 feet from the side property line, where a minimum of 15 feet is required.

3. In 2014, the applicants submitted a request to the building department to construct various additions to the residence and to construct a connection between the dwelling and the garage. Among the modifications sought were the construction of a covered front porch 12 feet deep and approximately 38 feet long, a 1 story and a partial 2 story addition in the rear of the house and extending to the rear of the property and towards the rear of the existing detached garage, a 1 story addition, approximately 20 feet in height, connecting the dwelling to the garage, and a bay window style addition on the south side of the residence. That application required identical relief from the Board. On September 16, 2014, the Board denied that application.

4. Thereafter, the applicants submitted a revised application eliminating the addition connecting the residence to the garage and reducing the depth of the proposed front porch to a more reasonable 8 feet. The revisions primarily related to construction in the rear portion of the property. On October 30, 2014, the Board granted that application.

5. The applicants now come to the Board seeking identical relief as sought in the first application. As represented by the applicant's architect, the only distinction is the modification of the roofline of the addition connecting the residence to the garage. The porch will be identical in configuration to the porch in the application denied by the Board.

6. The proposed porch will result in additional floor area of 38 square feet (the first 8 feet of depth is not calculated as part of floor area), and the approximately 20 foot long connection, with a width of nearly 4 feet, will add almost 97 square feet to the already substantial square footage of the house, resulting in a total floor area of 5,688.4 square feet. As a result of the proposed modifications, the floor area would be 1,299.4 square feet in excess of the permitted square footage. Once the proposed square footage is added to the already existing substantial square footage, the excess is approximately 30% more than the permitted square footage.

7. The applicants did not provide the Board with any documentation or testimony of any properties in the neighborhood with a similar variation.

8. The Premises has a width of 110 feet, which is consistent with the required minimum linear footage. The depth of the property is 210 feet, which is deeper than many of the properties in the neighborhood. However, as discussed

further herein, the proposed changes impact the mass and bulk of the dwelling from the perspective of the public along Carpenter Avenue and the neighboring properties along Carpenter Avenue. None of the proposed revisions result in an encroachment into the rear yard setback area so the excessive depth of the property has no practical impact on the substantiality of the proposed building modifications.

9. The applicants submitted a letter drafted by a member of the Village Landmarks Preservation Commission. The Commission is a board that is created by the Village, and has limited jurisdiction. The Commission's primary jurisdiction is to determine whether to recommend to the Village Board of Trustees the landmarking of properties, structures or buildings. The dwelling is not a landmarked structure, and the Commission has no authority or jurisdiction to provide recommendations to the Board of Appeals regarding the premises. The Board accepted the letter from the Commission's Secretary and views it as the opinions of individuals in the same manner as opinions of any individual providing comment to the Board. Other individuals testified as to their general opinions.

10. 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.

11. The variances 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.

12. For the reasons set forth herein, the Board finds and concludes that the area variances are denied. In reaching this conclusion, the Board has considered the relevant statutory factors in relation to the variances.

13. 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 has an existing height of 38.6 feet, which is imposing even before the proposed modifications. While the house peaks at a height of 38.6 feet, the majority of the top of the roof line, which

runs parallel to Carpenter Avenue, is more than 35 feet high. Presently, there is open space between the dwelling and the garage. That open space has been reduced by the additions to the residence constructed by the applicants, but remains an important feature in retaining the natural beauty and openness of the property. There is no roof line above the existing front concrete patio running the width of the residence, and the proposal will add a roof line. The proposal would eliminate the open space between the house and garage and replace it with a closed structure with a height of more than 10 feet. The proposal also would create a residence that is only 12.9 feet from the side property line. As a stand-alone, detached garage, that setback variation is minimal, but the proposal, in creating a connection, presents as a much larger residence and thus creates a more substantial, impactful and undesirable encroachment. The addition of a 12 foot deep covered porch with a roof line running across the entire width of the residence, and for approximately one-third of its width extending up to the sill of the windows on the second level, also adds to the mass of the proposal. As proposed, the Board finds that these changes would produce an undesirable change in the character of the neighborhood. No testimony was presented showing any residence to have similar impacts or circumstances. While there has been recent construction in the neighborhood, there was no presentation by the applicants that any of those properties contain a mass similar to the proposal with a floor area increase of nearly 30%, a residence on a 110 foot wide property that now has an effective width of more than 60 feet with a new addition completely eliminating open space, and a 12 foot deep roofed porch. As proposed at the premises, the residence would be completely out of

character with the neighborhood. None of the properties along Carpenter Avenue in the vicinity of the Premises suffers from the same multiple zoning deficiencies. The zoning restrictions applicable to properties in the Residence B zoning district seek to effectuate the spacious character of the neighborhood. The proposal, on the other hand, would create a massive structure not consistent with the rationale for the density restrictions in the Village Code. The Board notes that the reduction in height of the addition connecting the garage to the house does nothing to change the overall loss of open space. A structure is a structure, and while the new proposed structure is not as high as a 20 foot high structure, it still creates an aesthetic massing that, given the existing house, the location of the house in relation to the overall site, the connection of the house to the garage, and the porch addition, overwhelms the site in a way that negatively impacts the neighborhood.

14. 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 height of the existing residence creates a massive structure. That massiveness is exacerbated by the addition of a closed structure connecting the garage to the house, at a height of approximately 10 feet. The mass becomes even more substantial as the house would create a visual perspective that reduces the side property line width to 12.9 feet, where 15 feet is required. As a detached garage with space between the garage and the

residence, the side yard setback of the garage is acceptable, although not ideal. However, given that the new addition will completely close off the space, and result in a house with a width in excess of 60 feet, the setback becomes substantial. Thus, in addition to creating a floor area that is 30% greater than permitted (a substantial variation by itself), the visual appearance of the changes would create an enormous impact. The Board is cognizant that the total increase in square footage resulting from the change of an 8 foot porch to a 12 foot deep porch and the connection of the house to the garage is approximately 145 square feet. Given the existing size and mass of the house in relation to this property and the existing excessive floor area, even a modest numerical increase in floor area or modification to floor area calculations that result from the proposed construction, is likely to be substantial. The proposed additions are in fact grossly substantial.

15. Further exacerbating the excessive bulk, the applicants propose a 12 foot deep roofed porch, 38 feet in width with a roof height of approximately 17 feet. While the Board views an addition of a front porch as an aesthetically pleasing modification, the depth is substantial. An 8 foot deep front porch, which would be excluded from floor area, would provide the applicants with the benefit that they seek and would not be counted towards floor area.

16. For the reasons stated in the preceding paragraphs, the combined impact of the variances on the applicants' Premises combined with the existing height of the dwelling creates a tremendous substantiality. The existing and approved floor area is large, and the proposed additions increase the overall impact in an overpowering way.

17. Given that the house already is substantially in excess of the permitted floor area, the Board finds that it is not likely that the applicants would be able to achieve their benefit and modify the house in a way that would render it compliant with the Village's floor area requirements. Thus, it does not appear that the applicants could achieve the benefit that they seek without requiring a variance of the floor area provisions. If the applicants modified the garage location to comply with the side yard setback, there would be no need for a variance to create a side yard setback from the house to the side property line. Thus, while there does not appear to be a feasible alternative to pursue to eliminate the floor area variance (short of removing certain elements that create the existing excess floor area), there does appear to be an alternative that will eliminate the side yard setback variance from the house to the side property line.

18. 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.

19. As to the self-created hardship, the Board finds that the proposed variances are self-created. The applicants purchased the property with actual or constructive knowledge of the existing zoning limitations and that any addition to the floor area would result in a need to apply for a variance. Despite this knowledge, the applicants decided to propose additions to the residence. Moreover, one of the claimed benefits is to eliminate a "wind tunnel" between the

garage and the house. This very situation was created by the applicants in constructing a rear yard addition parallel to the existing detached garage with an approximate 4 foot separation. 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.

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

Filed in the Office of the Village Clerk
the day of May 2015

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Marianne Lennon, Village Clerk