

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

June 16, 2015

Present: Chair Noel Griffin  
Members Ted Kopczynski, Amy Marion and  
Andrew Janusas  
Superintendent  
of Buildings Andrew Lawrence  
Village Attorney Brian Stolar

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

The Board opened the public hearing on the application of Jeanne Anselmo, 3 Prospect Terrace, Sea Cliff, New York to construct a second story addition, which construction and renovation requires variances of: (a) Village Code §138-404 in that the lot area is 1,600 square feet, where a minimum of 7,500 square feet is required; (b) Village Code §138-406 in that the front property line lengths each are 40 feet, where a minimum of 100 feet is required; (c) Village Code §138-409 in that the lot width at the setback lines is 40 feet, where a minimum of 100 feet is required; (d) Village Code §138-410 in that a corner lot is required to comply with the front property line length and the minimum lot width on both frontages, and the existing lot does not comply; (e) Village Code §138-405 in that the lot coverage of the residence is 862 square feet (53.9%), where a maximum of 480 square feet (30%) is permitted; (f) Village Code §138-411 in that the side yards are 3.42 feet and 1.6 feet, where a minimum of 10 feet is required; (g) 138-413.1 in that the second story addition will encroach into the

height-setback ratio plane, where no such encroachment is permitted;(h) 138-414.1 in that the addition will result in a total floor area of 1,123 square feet (70%), where the maximum permitted floor area is 800 square feet (50%);(i) 138-1001 in that the construction intensifies a use without providing for the minimum number of off-street parking spaces; and (j) 138-1102, to permit the enlargement of a non-conforming structure, where no such enlargement is permitted. Premises are designated as Section 21, Block 144, Lot 24 on the Nassau County Land and Tax Map. The Board continued the public hearing to July 21, 2015 at 7:30pm.

The Board opened the public hearing on the application of Steven Dunn, 50 Park Way, Sea Cliff, New York to construct a second driveway and curb cut, which requires a variance of Village Code §138-1007(H) in that the curb cut will be located within four (4) feet of the adjoining side property line, where no such curb cut may be located. Premises are designated as Section 21, Block 119, Lot 19 on the Nassau County Land and Tax Map. The Board closed the public hearing and reserved decision.

The Board opened the public hearing on the application of Artaux LLC, 5 Sea Cliff Avenue, Sea Cliff, New York to convert a retail store to a restaurant use, which requires (a) a variance of Village Code §138-1002 in that the premises does not accommodate the minimum required off-street parking, and (b) a special permit pursuant to Village Code §138-902 to permit a restaurant use. Premises are designated as Section 21, Block 96, Lot 220 on the Nassau

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

The Board discussed the Dunn application. After such discussion, on motion duly 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 granted the application in accordance with the short form decision annexed hereto.

The Board discussed the Artaux application. After such discussion, on motion duly made by the Chair, seconded by Ms. Marion, 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 decision annexed hereto.

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

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NOEL GRIFFIN, CHAIR

## **DUNN SHORT FORM DECISION**

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on June 16, 2015, on motion duly made by the Chair, seconded by Mr. Kopczynski, 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. Steven Dunn, 50 Park Way, Sea Cliff, New York applied to construct a second driveway and curb cut, which requires a variance of Village Code §138-1007(H) in that the curb cut will be located within four (4) feet of the adjoining side property line, where no such curb cut may be located. Premises are designated as Section 21, Block 119, Lot 19 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.
5. The relief requested in the application is granted provided that (a) the driveway and curb cut are constructed in the location as depicted in the plans submitted with the application, and the curb cut shall not extend beyond the applicant's side property line; and (b) the work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

ZONING BOARD OF APPEALS  
VILLAGE OF SEA CLIFF

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

**Artaux LLC**

to convert a retail store to a restaurant use,  
which requires (a) a variance of Village Code  
§138-1002 in that the premises does not  
accommodate the minimum required off-street  
parking, and (b) a special permit pursuant to  
Village Code §138-902 to permit a restaurant use.

-----X  
STATEMENT

This is an application by Artaux LLC, 5 Sea Cliff Avenue, Sea Cliff to convert a retail store to a restaurant use and expand its own restaurant use at the premises to include an additional 1,080 square feet, which requires (a) a variance of Village Code §138-1002 in that the premises does not accommodate the minimum required off-street parking, and (b) a special permit pursuant to Village Code §138-902 to permit a restaurant use. The applicant currently has a special permit for a portion of the premises, and seeks to expand the use of the premises to include a full service restaurant in an additional 1,080 square feet to accommodate seating for an additional 14 patrons (currently accommodates seating for 8 patrons). Premises are designated as Section 21, Block 96, Lots 220 and 221 on the Nassau County Land and Tax Map.

On motion duly made by the Chair, seconded by Ms. Marion, 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. Artaux LLC, 5 Sea Cliff Avenue, Sea Cliff, New York applied to permit alterations to the premises and operate the premises as a full service restaurant in conjunction with a catering business for off-site events. Such proposed use requires a special use permit pursuant to Village Code §138-902 in that the premises, which has no on-site parking, does not accommodate the minimum required off-street parking. Premises are designated as Section 21, Block 96, Lots 220 and 221 on the Nassau County Land and Tax Map (the "Subject Premises").

2. The Subject Premises is located in a Business B Zoning District, and is improved with a commercial building. At the hearing and as indicated in the application documents, the applicant submits:

- a. Currently, the building is occupied by a hair salon and Artaux' food preparation facility and tasting room. In June 2012, Artaux obtained a special use permit and variances to permit the food preparation facility and tasting room in the westerly portion of the building containing approximately 1,390 square feet. The Board granted that special permit for a one (1) year period subject to conditions set forth in the grant. In 2013, the Board extended the permit for an additional three (3) year period subject to the same conditions. In the westerly portion of the building, Artaux operates a catering establishment utilized for food preparation associated with the catering business and a tasting room for potential clients. The tasting room includes a table that accommodates no more than 8 people. The tasting room is used only for potential clientele by appointment. The tasting room is utilized only on Thursdays, Fridays and Saturdays from 5pm through 10pm. The food preparation is party/event dependent, and occurs daily from 9am through 6pm, and occasionally until 8pm. Only 2 employees are required for the food preparation. While the business started with only one van, it has expanded and now utilizes 2 vans and other vehicles. The van and those vehicles are parked in the parking lot adjoining the premises when not in use for a catered event.
- b. The Subject Premises has no parking. Parking is available on the street, and also in a parking lot adjoining the Subject Premises. The

owner of the adjoining parking lot, pursuant to a license agreement, provides 6 parking spaces in the lot for use by the applicant. The parking lot contains 19 marked parking stalls and 4-5 parking spaces along the rear of the building that are not marked as parking stalls.

- c. As a food preparation facility, the applicant required only 2 employees.
- d. The applicant obtained a building permit from the Village building department and required approvals from the Department of Health and Fire Marshal for the cooking facilities.
- e. To mitigate the impact caused by an exterior dumpster, the applicant utilizes interior storage of garbage in compliance with any laws applicable to food establishments.
- f. The applicant has an on-premises liquor license for the tasting room operation.

3. In 2012, the Board granted the special use permit and numerous variances to permit the use. Among the variances was a variance for insufficient on-site parking. The applicant demonstrated that it was able to park 4 vehicles in the adjoining lot during the times of operation, and that a variance for an additional 10 parking spaces was required. On the condition that the applicant pay to the Village the required parking fee for the additional 10 parking spaces not available on-site or pursuant to an exclusive use agreement, the Board granted the parking variance.

4. The 2012 approval (and 2013 extension) permitted the applicant to operate the food preparation facility and accessory tasting room, subject to the following conditions:

- a. The special permit was granted to the applicant only or to any business or entity in which the tenant applicant has a controlling interest;
- b. There was to be no use of the premises for a bar, either as a principal use or as an accessory to a restaurant. Absent this limitation, as proposed by the applicant, the Board would not have granted either the parking variance or the special permit. This shall not preclude the applicant from obtaining a license from the New York State liquor authority to permit the service of alcohol to a maximum of 8 patrons utilizing the premises in a manner consistent with the proposed tasting use of the premises. If the applicant intends to utilize the premises for a full service restaurant or a full service bar, not in conjunction with the tasting use, the applicant shall be required to reapply to the Board for

- relief, both with regard to the parking variance and the special use permit;
- c. The parking of vehicles by patrons of the premises, employees or suppliers shall not interfere with the normal flow of traffic on the adjoining streets;
  - d. There shall be no outside storage of supplies, equipment, materials, garbage, rubbish or any other items used in connection with the restaurant;
  - e. Exterior lighting of the premises shall be designed so as to minimize any impact on the adjoining properties through shielding, directional lighting and reduction of glare and reflection. Any new exterior lighting or building lighting shall be mounted at a height and in a location such that no light spillage of 0.1 foot-candle or higher shall extend beyond the property lines of any nearby residential property. There shall be no additional lighting for outdoor usage, except for table candlelight;
  - f. The applicant shall comply with the conditions imposed in connection with the granting of the parking variance application, including submitting the required letter and paying the fee required for all 10 spaces;
  - g. Seating shall be limited to prospective clientele only. The catering business shall not be advertised as a restaurant and shall not be open to the general public (except by appointment in connection with the tasting of food by prospective clientele of the catering business). Such seating shall be limited to 8 total seats;
  - h. The cooking equipment shall be limited to the equipment proposed by the applicant, and the exhaust system for the cooking facilities shall be identical to the exhaust system proposed by the applicant. Any change to the system shall require the approval of the Superintendent of Buildings. The exhaust system shall be in conformity with any requirements imposed by the Fire Marshal and/or Nassau County Department of Health;
  - i. No noise, fumes, or similar sources of nuisance are to emanate in a manner as to be unreasonably annoying to surrounding property owners;
  - j. There shall not be any outside seating on the Subject Premises without additional application to this Board;
  - k. The hours of operation for the tasting of food by prospective or existing clientele shall be Thursdays, Fridays and Saturdays from 5pm through 10pm. The hours of operation for the preparation of food may commence daily at 9am and conclude no later than 8pm (except during tastings, in which case the food preparation may continue to 10pm). Any extension of hours beyond the hours proposed by the applicant, and conditioned herein,

requires a reapplication to this Board, as the Board has granted the application based on the limited hours;

- l. Any music provided shall be background music only, provided through non-amplification methods, and shall be played at a volume so as not to be audible outside of the premises or in any adjoining tenant space;
- m. The Subject Premises shall not be used for any use that intensifies or increases the usage or the parking requirements or the potential impacts of the premises without further application to the Board;
- n. The applicant may obtain a liquor license in accordance with the applicant's representation that such license would be used for off-site catered functions and on-site tasting functions only;
- o. Loitering outside of the premises is prohibited;
- p. Cooking equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, parking area, alleys, sidewalks, neighboring properties or storm sewers;
- q. Prior to issuance of a certificate of occupancy, the applicant shall obtain full approval, if necessary, from the Nassau County Department of Health and all other agencies for the preparation of food and any required modifications to the septic or water systems;
- r. Any fire sprinkler system and use of the premises for cooking purposes shall conform to applicable NFPA requirements, as determined by the Building Superintendent or any municipal agency with jurisdiction;
- s. No trash or debris from the restaurant shall be stored outside;
- t. No employees or customers shall be permitted to smoke on the premises or outside the premises, either on the Subject Premises or in the public right-of-way;
- u. The applicant shall provide the Village with a license agreement demonstrating the availability of four parking spaces on the adjoining property, and such agreement shall be subject to review and approval as to form of the Village Attorney; and
- v. applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all special use permit conditions and requirements contained in the decision.

5. The applicant now seeks to expand the restaurant operation. In the westerly portion of the building, the applicant will continue to operate his cooking facilities, food preparation area associated with a catering business for off-site events, and a seating area to serve 8 patrons. The applicant also will utilize a 1,080 square foot portion of the building as a full service restaurant use, including bar service and a bar area, with seating for 14 patrons. The 2 areas will be connected by an interior hallway in the rear portion of the building.

6. The applicant does not propose any modifications to the kitchen area and will use the existing kitchen for food preparation associated with the restaurant use.

7. The applicant stated that the restaurant use now will have 3 employees during the maximum shift. There are at least 3 vehicles utilized by the restaurant business, which will be located on site at times that they are not being used for an off-site catering event.

8. The applicant proposes to expand the operation to begin food service at 11:30am daily, and close at 10pm on Sundays through Thursdays, and 11:30pm on Fridays and Saturdays.

9. The applicant does not intend to seek a cabaret license, and only will permit ambient music on site.

10. The applicant does not propose to use the outdoor patio area for the service of food or for additional seats for patrons.

11. The applicant proposes to seek a modification and/or endorsement from the New York State Liquor Authority to permit on-premises sale of alcohol associated with the restaurant use.

12. The applicant indicated that the building has exterior lighting, and that the applicant will neither add exterior lighting nor request that the parking lot owner will add any additional lighting to the parking lot.

13. With regard to parking, the applicant submits that the license agreement between the applicant and the owner of the adjoining parking lot remains in full force and effect. The owner of the parking lot submitted a letter confirming the continuation of the agreement. While the agreement provides for 6 parking spaces, the Board views only 4 parking spaces as parking spaces eligible for consideration as parking spaces. The other 2 spaces are in the loading area, and cannot be deemed parking spaces. The owner of the parking lot also submitted that the adjoining lot has additional spaces available to the applicant during evening hours. However, no agreement was provided and the authorization to utilize the parking lot is not in the form of a written agreement. As such, the Board does not consider any additional parking spaces to be available exclusively to the applicant's use during the applicant's hours of operation. In fact, the applicant's proposed use now includes daytime, evening and night hours, some of which conflict with the use of the parking lot by other parking lot tenants, as observed by the Board.

14. In addition to the variance for parking spaces, the proposed use requires a special permit. As a matter of law, special permits allow specific uses in a given district, provided that the applicant can demonstrate that it meets or complies with certain standards set forth in the zoning regulations related to such use and that the proposed use will not be a detriment to the neighborhood.

15. In connection with the granting of a special permit, the Board has the power to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and which are not inconsistent with the provisions of the zoning regulations.

16. With regard to the parking, Village Code §138-1008 provides that where the required off-street parking spaces cannot be located on the same lot with the use served, a variance may be granted by the Board to the extent that the applicant can provide the required number of spaces within 500 feet of the premises or the applicant can lease the required number of spaces from other property owners within 500 feet of the lot (as long as those spaces are available to the applicant during the times of operation of the use). A variance still may be granted even if the applicant is unable to demonstrate either of the above so long as the applicant agrees to pay to the Village an amount of money equal to the cost of construction of the number of spaces the applicant is required to provide. This cost is to be computed in accordance with the amounts most recently set by resolution of the Board of Trustees.

17. The proposed use of the 1,080 square foot portion of the premises for the restaurant use results in a net increase of 4 additional parking spaces required. As these spaces are neither available on-site and the applicant has not been able to demonstrate that these spaces may be available on an adjoining site, to obtain a parking variance for the total of 4 additional parking spaces required for the use, the applicant may obtain the variance for the 4 additional parking spaces if the applicant pays to the Village the required parking fee for the 4 parking spaces.

18. The Board hereby grants the parking variance as the Board finds that the use requires the parking of three vehicles at all times (catering vehicles), the operational hours where clientele utilize the premises and the parking area are not in substantial conflict with other uses in the area given the availability of on-street parking spaces in the immediate vicinity of the restaurant, the nature of the restaurant business providing only 22 seats and 3 employees, and that 4 parking spaces are being made available to the applicant in an adjoining parking lot. Under such circumstances, the proposed use of the space at the Subject Premises mitigates the potential parking issues that normally would be associated with a retail or commercial use of the Subject Premises.

19. The authority of this Board to grant the variance for parking is limited by law and the provisions of the Zoning Code. Since the applicant is

unable to satisfy the provisions of section 138-1008(A)(1) or (2), the authority of this Board to grant a variance is conditioned upon the applicant complying with the provisions of section 138-1008(A)(3). Accordingly, subject to compliance with section 138-1008(A)(3), including payment of the required fee for 4 spaces, and the conditions set forth below, the Board grants a variance of Village Code §§138-918 and 1002. The sums due are to be paid no later than 30 days after this decision is filed with the Village Clerk. To fully satisfy this requirement, the applicant must file a letter with the Village Clerk acknowledging its consent to this condition and agreeing to pay the required sum for 4 parking spaces. In addition, this approval is subject to the applicants' maintaining the license agreement with the adjoining parking lot owner for the unrestricted use of at least 4 parking spaces during the hours proposed and for the period of the special permit granted herein.

20. The applicant's request for a special permit also is granted on the conditions set forth below. To balance the potential adverse impacts the proposed use may have on nearby properties and traffic in the area with the obligation of this Board to issue a special permit where adequate, reasonable, and appropriate conditions and restrictions can be imposed to minimize the adverse effects, the special permit is granted to operate the portion of the Subject Premises depicted in the plans submitted with the application as a restaurant subject to the following conditions:

- a. The special permit is granted to the applicants only or to any business or entity in which the tenant applicant has a controlling interest;
- b. The parking of vehicles by patrons of the premises, employees or suppliers shall not interfere with the normal flow of traffic on the adjoining streets;
- c. There shall be no outside storage of supplies, equipment, materials, garbage, rubbish or any other items used in connection with the restaurant;
- d. Exterior lighting of the premises shall be designed so as to minimize any impact on the adjoining properties through shielding, directional lighting and reduction of glare and reflection. Any new exterior lighting or building lighting shall be mounted at a height and in a location such that no light spillage of 0.1 foot-candle or higher shall extend beyond the property lines of any nearby residential property. There shall be no additional lighting for outdoor usage, except for table candlelight;
- e. The applicant shall comply with the conditions imposed in connection with the granting of the parking variance application, including submitting the required letter and paying the fee required for all 4 additional required spaces;
- f. Seating shall be limited to 22 seats, as proposed by the applicant;

- g. No noise, fumes, or similar sources of nuisance are to emanate in a manner as to be unreasonably annoying to surrounding property owners;
- h. There shall not be any outside seating on the Subject Premises without additional application to this Board;
- i. The hours of operation for food service shall be Sundays, Mondays, Tuesdays, Wednesdays and Thursdays from 11:30am through 10pm, and on Fridays and Saturdays shall be 11:30am through 11:30pm. Any extension of hours beyond the hours proposed by the applicant, and conditioned herein, requires a reapplication to this Board, as the Board has granted the application based on the limited hours;
- j. Any music provided shall be background ambient music only, provided through non-amplification methods, and shall be played at a volume so as not to be audible outside of the premises or in any adjoining tenant space;
- k. The Subject Premises shall not be used for any use that intensifies or increases the usage or the parking requirements or the potential impacts of the premises without further application to the Board;
- l. Loitering outside of the premises is prohibited;
- m. Cooking equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, parking area, alleys, sidewalks, neighboring properties or storm sewers;
- n. Prior to issuance of a certificate of occupancy, the applicant shall obtain full approval, if necessary, from the Nassau County Department of Health and all other agencies for the preparation of food and any required modifications to the septic or water systems;
- o. Any fire sprinkler system and use of the premises for cooking purposes shall conform to applicable NFPA requirements, as determined by the Building Superintendent or any municipal agency with jurisdiction;
- p. No trash or debris from the restaurant shall be stored outside;
- q. No employees or customers shall be permitted to smoke on the premises or outside the premises, either on the Subject Premises or in the public right-of-way
- r. The applicant shall, at all times, be provided with 4 parking spaces in accordance with a license agreement with the owner of the adjoining parking lot;
- s. The applicant shall not permit patrons, employees or other persons visiting the restaurant to park, stop or stand their vehicles on the south side of Sea Cliff Avenue in areas where parking, standing and/or stopping is not permitted;
- t. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to

discuss all special use permit conditions and requirements contained herein; and

- u. Because of the potential of abuse which the proposed special permit use presents if not supervised correctly and the resultant adverse impacts on the surrounding property owners and the Village and its residents that could result, this Board, mindful of its responsibilities to protect nearby residents from over commercialization of the area and other potential adverse impacts and the limited ability of the applicant and/or operator to completely control the adverse impact which the business may generate, will grant the special permit to operate as proposed for a period of three (3) years commencing on the date that this decision is filed with the Village Clerk. The special permit shall be limited to the operation of a restaurant by the applicant, and any change in ownership shall require a new application to this Board for a special permit. To extend the special permit, prior to the expiration of the three (3) year period, but in no event sooner than four months prior to said date, the applicant, if it desires to continue the use of the premises in the manner proposed by the application, shall reapply to the Board having jurisdiction for a renewal of the special permit. 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 one (1) year time period. The provisions of this paragraph shall constitute a condition of this decision.

21. If one or more of the aforesaid conditions of this decision are violated, the Village shall have the right to suspend or revoke the special permit in accordance with the procedures set forth in the Village Code.

Respectfully submitted,

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Noel Griffin, Chairman

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