

MINUTES

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

April 10, 2013

Present: Chair	Bruce Treiber
Members	Laurie Martone
	Nicholas Virgilio
	Timothy Driscoll
	Edward Camiolo
Village Attorney	Brian Stolar

The meeting was called to order at 8:05 pm.

The Board opened the continued public hearing on the application of Arlyn Dimatulac, 69 The Boulevard, Sea Cliff, New York to demolish an existing residence, erect a new residence and construct a driveway, which work requires site plan approval. Premises are designated as Section 21, Block 197, Lots 8, 17, and 233 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Board opened the continued public hearing on the application of Douglas and Karin Barnaby, 404 Littleworth Lane, Sea Cliff, New York to subdivide premises currently containing a two family residence into four lots, consisting of two new lots to be used for single family dwelling purposes, a continuation of the existing two family residence and a roadway projecting eastward from Willow Shore Avenue. The applicants also seek approval to waive provisions of Village Code Chapter A145 with respect to the subdivision and the roadway. Premises are designated as Section 21, Block L01, Lot 306 on

the Nassau County Land and Tax Map. The Board addressed the environmental aspects of the application. The applicants indicated that the cost to conduct certain environmental studies related to the potential of historic/archaeological resources located on the premises was excessive, and requested that the Board render an environmental determination based on existing information and that any approval be conditioned on compliance with federal and state laws regarding the handling of human remains if any were discovered during the construction. The Board continued the public hearing to May 8, 2013.

The Board discussed the environmental aspects of the Barnaby application in relation to SEQRA. The Board noted that the application is an Unlisted Action under SEQRA and that the Board previously had declared itself lead agency and conducted a coordinated review. On motion duly made by the Chair, seconded by Ms. Martone, and adopted unanimously, the Board adopted the attached resolution and conditioned negative declaration.

The Board discussed the Dimatulac application. After such discussion, on motion duly made by the Chair, seconded by Mr. Driscoll, and adopted unanimously, the Board determined that it is the lead agency with respect to environmental review, that the application is a Type II matter under SEQRA, and granted the application in part and denied the application in part in accordance with the decision annexed hereto.

The Board discussed the draft Anray resolution circulated to the Board members by counsel. On motion duly made by the Chair, seconded by Mr. Driscoll, and adopted three votes in favor, Dr. Virgilio opposed and Ms. Martone

not participating, the Board determined that it is the lead agency under SEQRA, the request is a Type II matter under SEQRA, and that no further environmental review under SEQRA is required, and approved that the Anray application in accordance with the resolution annexed hereto.

The Board discussed the March 23, 2013 minutes of the Board. On motion duly made by the Chair, seconded by Dr. Virgilio, and adopted unanimously, the Board approved the March 23, 2013 minutes.

There being no further business, the Chair closed the meeting at 10:40pm.

RESOLUTION

Adoption of Conditioned Negative Declaration

VILLAGE OF SEA CLIFF PLANNING BOARD

WHEREAS, Doug and Karin Barnaby (the “Applicants”) filed an application for approval to subdivide a lot with an existing non-conforming two family residence into three lots to be used for residential purposes, including the non-conforming two family residence, and a fourth lot to be used as a private right-of-way (the “Project”), together with Part I of a full Environmental Assessment Form (“EAF”) and other relevant information; and

WHEREAS, the Project requires subdivision approval from the Planning Board and variances from the Village of Sea Cliff Zoning Board of Appeals; and

WHEREAS, the Planning Board has indicated to other potentially involved agencies its intention to act as lead agency for the purposes of environmental review of the Project as an Unlisted Action pursuant to the New York State Environmental Quality review Act (Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617, collectively “SEQRA”); and

WHEREAS, the other potentially involved agencies concurred with the Planning Board serving as SEQRA lead agency; and

WHEREAS, the Planning Board has reviewed the application and related materials, completed Parts II and III of the EAF, and reviewed the requirements of SEQRA and other information in the record with respect to the Project.

NOW, THEREFORE, BE IT

RESOLVED, that the Planning Board hereby confirms its previous declaration to serve as SEQRA lead agency for the review of the Project; and be it further

RESOLVED, that the Planning Board hereby determines that the Project, with the imposition of the conditions set forth in the SEQRA Conditioned Negative Declaration, annexed hereto and made a part hereof, will not have a significant adverse environmental impact requiring the preparation of a Draft Environmental Impact Statement (“DEIS”); and be it further

RESOLVED, that the Planning Board hereby adopts the annexed SEQRA Conditioned Negative Declaration and directs that it be filed, distributed and published in accordance with applicable provisions of law and SEQRA; and be it further

RESOLVED, that, pursuant to SEQRA, a public comment period on the Conditioned Negative Declaration is hereby established, to run through the close of business on May 24, 2013, and notice thereof shall be published and filed in accordance with applicable provisions of law and SEQRA.

CONDITIONED NEGATIVE DECLARATION

Project Location: 404 Littleworth Lane (Section 21, Block L1, Lot 306 on the Nassau County Land and Tax Map)
Village of Sea Cliff, County of Nassau

Project Title: Subdivision of 404 Littleworth Lane into four lots
Lead Agency: Planning Board, Village of Sea Cliff
300 Sea Cliff Avenue
Sea Cliff, New York 11579
516-671-0080
Contact: Lorraine Baker (lbaker@seacliff-ny.gov)

DEC Region: Region 1

Name, Description and Location of Proposal:

404 Littleworth Lane, Sea Cliff

The applicants, Douglas and Karin Barnaby, are proposing to subdivide property located at 404 Littleworth Lane. Presently, the property, which has frontage on Littleworth Lane and Willow Shore Avenue, is used as a two family residence. The applicants propose to create four new tax lots. One tax lot will include the existing residence as a two-family dwelling. This lot also will include a 25 foot wide portion of Preston Avenue. A second tax lot is proposed to be located on Willow Shore Avenue with a front property line of 92.18 feet and will contain a single family residence. This second lot (Parcel B) also will front on a newly created private roadway with direct access to Willow Shore Avenue. The new private roadway is proposed to be a third tax lot. The fourth tax lot is known as Parcel C, and will be provided with access only along the private roadway. This lot also will incorporate a 25 foot wide portion of Preston Avenue as well as a portion of Bryant Avenue. Neither Bryant Avenue nor Preston Avenue ever were opened or improved as roadways.

The proposed action would create a new roadway providing access to the two newly created parcels. No additional new curb cuts are proposed along Willow Shore Avenue or Littleworth Lane. The applicants propose a drywell system located partially on one of the tax lots to accommodate storm-water runoff from the new roadway. Moreover, in accordance with the Village Code provisions, all storm-water runoff from any new development will be required to be retained on the respective sites. The new roadway is proposed to be 25 feet wide, with a paved width of 20 feet. Information has been submitted by the applicants indicating that fire emergency vehicles will be able to access the new roadway.

During the SEQRA process information was provided to the Planning Board demonstrating that there is a possibility that there exists a Native American burial site or

a site of historical importance at the Project site. According to the available information provided to the Planning Board, that possible burial ground is known as Bryant Avenue Cemetery and is located 100 feet east of the terminus of Bryant Avenue and east of Our Lady of Kazan Church. Our Lady of Kazan Church is located immediately west of one of the proposed lots and immediately north of the proposed private road. Based on this information, it would appear that the burial site may be located on the Project site. In addition to the information provided to the Planning Board regarding the possibility of the existence of a burial site on the Project site, the Board also has been provided with information indicating that the burial site may have been removed or obliterated in the 1960s in connection with a separate residential development project.

In view of the possibility of human remains being located on the Project site as part of a coordinated environmental review process, the Planning Board included the New York State Office of Parks, Recreation and Historic Preservation (“SHPO”) as a potentially interested agency. Applicants have also consulted with SHPO. The Board recognizes the importance of cultural resources, including burial grounds, and determines that a significant environmental impact could result if a burial ground or culturally important artifacts or human remains exist on the Project site are disturbed by the Project.

With the implementation of the below protocol, no significant adverse impacts related to cultural resource protection would occur.

Statement of No Significant Effect:

The Planning Board has completed its review of the EAF prepared in connection with the application as well as all documents and testimony related to environmental aspects of the application. The Planning Board has determined that the proposed action will have no significant effect on the quality of the environment, on the condition that the following action be taken by the applicants and their successors and assigns (referred to hereinafter as “Applicants”):

1. Applicants shall retain an archaeologist during any excavation or construction of improvements on the parcel identified in the Project plans as Parcel C and the private roadway identified therein as Finch Way (the “Excavation Area”). The archaeologist shall be required, pursuant to such engagement, to be on site at least once daily during any excavation activity in the Excavation Area and shall be available for consultation during any construction of the Project site.
2. Applicants shall use methods of excavation and construction that are sensitive to the possibility of the discovery of any human remains at the site.
3. During any excavation or construction of improvements on the parcel identified in the Project as Parcel C and the private roadway identified as Finch Way, if any human remains (including bones, ground stains or any other indication of such remains) are encountered, the Applicants shall take the following actions:

- a. Comply with all federal and state laws and regulations regarding notification of federal and state law enforcement authorities, federal and state historic preservation agencies and the appropriate Federally Recognized Tribe as that term is defined in the National Historic Preservation Act.
- b. Comply with all federal and state laws and regulations pertaining to the handling of human remains.
- c. Implement the SHPO Human Remains Discovery Protocol, including, at a minimum, the following:
 - i. Should human remains be encountered, work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
 - ii. Human remains or associated artifacts will be left in place and not disturbed.
 - iii. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
 - iv. The Nassau County coroner and local law enforcement as well as SHPO, the Village of Sea Cliff and the Village of Sea Cliff Planning Board will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archeological. If the remains are archeological in nature, a bioarchaeologist will confirm the identification as human.
 - v. If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their protection or removal can be generated consistent with the Native American Graves Protection and Repatriation Act guidance.
 - vi. If human remains are determined to be Euro-American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated in consultation with SHPO and any other appropriate parties.
- d. Applicants shall undertake a phase IB field investigation, as such investigation is set forth in the "Cultural Resource Standards Handbook", prepared by the New York Archaeological Council Standards Committee (the "Handbook") and the Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State", as adopted by SHPO (the "Standards") for all of Parcel C and the private roadway. If recommended by SHPO, Applicants shall conduct a phase II and/or phase III site evaluation as defined in the Handbook and Standards.
- e. If any plan of preservation results in a modification of any portion of development of the Project, not only shall all construction/excavation

activity immediately cease, but Applicants shall be required to obtain site plan approval for any such change that impacts the development of any improvements on the Project site, including the private roadway, on the Project site.

No other significant adverse effects on the environment that would require an Environmental Impact Statement are foreseeable based on the information provided to the Planning Board.

It is fully agreed and understood that if the forgoing conditions are not fully incorporated into the proposed action, this Conditioned Negative Declaration shall become null and void. In such event, the applicant shall be required to prepare a Draft Environmental Impact Statement before proceeding further with the Project.

This Conditioned Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law and the regulations contained in 6 NYCRR part 617.

Should you have any questions pertaining to this Conditioned Negative Declaration, you may contact Lorraine Baker at (516) 671-0080 or lbaker@seacliff-ny.gov.

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In the Matter of the Application of

Arlyn Dimatulac

To demolish an existing residence,
erect a new residence and construct a
driveway, which work requires site
plan approval pursuant to
Village Code Chapter 107 in connection with
Premises located at 69 The Boulevard, and
designated as Section 21, Block 197, Lots 8, 17
and 233 on the Nassau County Land and Tax Map.

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RESOLVED, upon consideration of the evidence presented at the public hearing held by the Planning Board (the “Board”), all proceedings had herein, all documentation submitted to the Board, following the personal inspection of the subject property by the Board members, and after due deliberation, the Board makes the following findings of fact and decision:

1. This is an application by Arlyn Dimatulac, owner of property located at 69 The Boulevard, Sea Cliff, New York and designated on the Nassau County Land and Tax Map as Section 21, Block 197, Lots 8, 17 and 233 (the “Subject Premises”), to demolish an existing residence, construct a new residence, and construct a driveway (the “Proposal”), which Proposal requires site plan approval pursuant to Village Code chapter 107. The Proposal requires no variances. The applicant also owns property located east of the Subject Premises, separated by a 10 foot right-of-way, designated on the Nassau County Land and Tax Map as Section 21, Block 197, Lot 239.

2. The applicant purchased the Subject Premises and lot 239 in or about September 2010. Applicant originally proposed a residence that required substantial variances. That application was denied by the Zoning Board of Appeals, and the applicant modified the plans. The new plans, which required fewer and more modest variances, were approved by the Zoning Board. As set forth in the current plans, the applicant proposes to demolish the existing residence and replace the residence with a new residence. The applicant also proposes to relocate the curb cut on The Boulevard to provide for access to the residence from The Boulevard. The Proposal includes a parking area for vehicles accessing the premises from The Boulevard. The application also includes an on-site parking pad providing access from Foster Place.

3. The Subject Premises contain 80 feet of frontage along The Boulevard and 40 feet on Foster Place. Additionally, the Subject Premises abuts a 10 foot wide private right-of-way that runs along the entire easterly portion of the Subject Premises. The applicant also owns a portion of land immediately east of the right-of-way. The Subject Premises are located on a cliff. The southerly frontage along Foster Place begins at a height above sea level of approximately 72 feet and progresses downward to The Boulevard where the height is approximately 16 feet. The entire length of the property (between Foster Place and The Boulevard) is 180 feet.

4. As part of the application, the applicant submitted a landscape plan, test boring results and construction sequencing and staging details and a work plan.

5. After reviewing the application documents, receiving and considering testimony, and inspecting the Subject Premises and the surrounding neighborhood, the Board hereby declares itself to be the lead agency with respect to this application under the State Environmental Quality Review Act (SEQRA) and determines that the proposed action requested under this application is a Type II Action under SEQRA and requires no further environmental review. The Board notified the Nassau County Planning Commission in accordance with the streamlining agreement with the Village, and no response has been received from the Planning Commission. Accordingly, the Board may take such action on this application as the Board deems appropriate.

6. In rendering its determination, the Board has considered the testimony and the documentary evidence submitted with the application and at the public hearing, and has observed the neighborhood where the residence is proposed. The Board has reviewed the site plan application in accordance with the provisions of Chapter 107, including Section 107-5, and finds that the proposed Plan, subject to the conditions herein, complies with the criteria set forth therein (with the exception of the parking pad on Foster Place). Accordingly, with the exception of the Foster Place curb cut and parking pad, the Board grants site plan approval, subject to the following conditions:

- a. The demolition of the existing residence and construction of the new residence shall conform to the Site Plan and related plans (sheets 1 of 5, 2 of 5, 3 of 5, 4 of 5, and 5 of 5, all dated 3-13-2013, prepared by James Carballal Architect:

- b. The site preparation, staging, tree removal, house demolition, beam installation, shoring, excavation, site safety and foundation installation shall conform substantially to the March 6, 2013 Work Plan and Health and Safety Plan prepared by PISA Contracting;
- c. The proposed retaining walls shall be placed in the locations, at the heights, and utilizing the construction materials indicated in the aforesaid plans. The construction of the retaining walls and foundations shall further substantially conform with the January 11, 2013 Preliminary Recommendations prepared by Carlin-Simpson & Associates. Notwithstanding the approval of the retaining walls in the locations depicted on the plans, should the engineer for the applicant, during construction or demolition, certify in writing that the retaining walls depicted on the plans must be modified to provide for a secure foundation for the residence, then subject to written authorization from the Superintendent of Buildings, the applicant shall exclude the walls from the plans and replace with walls approved by the Superintendent of Buildings. Any such replacement walls shall be of the same material proposed in the plans;
- d. Notwithstanding that applicant shall conform all construction related activities to the plans as indicated in the aforesaid

conditions, should applicant make any modifications to those plans, the modifications shall be permitted only if approved by the building department. In this regard, the building department may utilize the services of an independent engineer retained by the Village to review the modifications and applicant shall bear the cost of any such service. All costs and expenses incurred by the Village in connection with work performed by the independent engineer shall be borne by applicant and shall be assessed by the Board of Trustees upon the subject premises. Applicant, upon being provided with written notice of the costs and expenses so incurred shall make payment to the Village. If applicant shall fail to pay such costs and expenses within 15 days of the giving of such notice, the Village Clerk shall thereupon notify the Village Assessor, who shall immediately fix and determine a special assessment against the subject premises in the amount of such costs and expenses, and present such assessment to the Board of Trustees for confirmation. A lien shall attach to the subject premises as of the time such assessment is confirmed, which lien shall have the same priority as a Village tax. Collection and cancellation of such special assessment shall be in accordance with the provisions of Village Law. In addition,

except as necessitated by emergency circumstances (as determined by the Superintendent of Buildings) no inspections may take place or permits or certificates may issue until all such costs and expenses are paid;

- e. The plantings indicated in the landscape plan, with the exception of plantings immediately east and west of the proposed parking pad on Foster Place shall be planted, and continuously maintained, utilizing the plantings depicted in the landscape plan entitled "Landscaping Plan", Dimatulac Residence 69 The Boulevard, Sea Cliff, NY, prepared by James T. Carballal Architect, dated 9-25-11, revised 7-10-12 and 8-29-12. The applicant shall provide for appropriate irrigation for such plantings, and the on-site retention of any such water produced by the irrigation system. Plantings proposed along the parking pad are not required as the pad is not approved;
- f. Removal of construction materials shall comply with all requirements of the building department, including the timing of such removal and the use of dumpsters and dump trucks. No such dumpsters or dump trucks shall be placed off-site;
- g. Construction equipment and materials shall be stored on-site as provided in the aforesaid plans;

- h. Except as indicated in the approved plans, the applicant shall make no changes to the topography of the property;
- i. All lighting shall be placed in a location, and shielded as necessary, so as not to encroach onto adjoining properties or public roadways;
- j. The drainage system shall comply with all applicable laws and regulations and shall contain all storm-water on-site. Such system must be approved by the Superintendent of Buildings;
- k. The septic system shall comply with all applicable laws and regulations. Such system must be approved by the Superintendent of Buildings;
- l. Applicant shall obtain and submit to the Superintendent of Buildings certification from a qualified engineer confirming that (i) the method of demolition, (ii) the construction of the foundation for the residence or the retaining walls, and (iii) the construction and utilization of any staging areas will not create a hazard to any neighboring property or the public right-of-way. In addition, a qualified engineer shall remain on-site during the demolition of the existing residence and construction of the proposed foundation and other building support systems to assure that there will not be any damage to adjoining properties or the public roadways and that the

land will remain stabilized during and after completion of the demolition and construction. Applicant shall be responsible to obtain such engineer at applicant's sole cost and expense;

- m. Applicant shall install erosion protections on the site to assure that there is no erosion of any materials onto neighboring properties or the public roadways. As this site has the potential for erosion due to topography and the potential for any such eroded materials to enter the waterway due to the proximity of the site to the shore, applicant shall be responsible to assure that such erosion protections shall remain working and functional throughout the construction and demolition period;
- n. As provided in the work plan, applicant shall install a natural gravel staging area for the purpose of reducing any soil or sediment from being tracked from the premises. Any soil or sediment tracked off the premises and onto the public right-of-way shall be cleaned the same day as such tracking occurs;
- o. No curb cut on Foster Place shall be created to accommodate any vehicles accessing the premises from Foster Place;

- p. Applicant shall be responsible for assuring on-site traffic control during construction and demolition;
- q. All construction or other on-site debris shall be contained in a covered container to assure that no such debris is blown or otherwise removed unintentionally from the site;
- r. Any air conditioner condenser units shall be baffled so that the dbA level at the adjoining property line shall not exceed 65 dbA between the hours of 7am and 10pm and 50 dbA between the hours of 10pm and 7am;
- s. The private right-of way shall not be obstructed during construction;
- t. Unless required due to an emergency situation, no construction or demolition work shall take place on Saturdays between Memorial Day weekend and Labor Day weekend. Any work performed on Saturdays at any other time of year shall be limited to 8:00am to 12:00pm. No work is permitted on Sundays;
- u. Prior to the issuance of a certificate of occupancy for the residence, applicant shall be required to repair any damage to curbing or roadways, if such damage is determined by the Village building department to have occurred to any construction activity relating to the construction and demolition of the site;

- v. Parking of vehicles for all on-site workers shall be approved by the Superintendent of Buildings and applicant shall comply with such requirements;

7. The two car parking pad providing for vehicular access via a curb cut on Foster Place is denied. The proposed parking pad appears to be just a small parking lot not associated with any property. As a stand-alone parking area for two vehicles, it appears to be out of sync and harmony with the neighboring properties.

PLANNING BOARD
VILLAGE OF SEA CLIFF

In the Matter of the Application of

ANRAY CUSTOM BUILDERS INC.

to construct a new dwelling which requires site plan approval pursuant to Village Code chapter 107 and a special permit pursuant to Village Code chapter 64 to permit retaining walls to be constructed at a height of 5 feet and within 4 feet of the nearest wall at premises designated as Section 21, Block 154, Lots 561 and 562 on the Nassau County Land and Tax Map

RESOLUTION

WHEREAS, Anray Custom Builders Inc. applied to the Planning Board of the Village of Sea Cliff for site plan approval pursuant to Village Code Chapter 107 and Chapter 64 to permit retaining walls to be constructed at an overall height of 5 feet and within 4 feet of the nearest wall at premises located at 90 17th Avenue and designated as Section 21, Block 154, Lots 561 and 562 on the Nassau County Lane and Tax Map (the "Subject Premises"); and

WHEREAS, the applicant submitted plans entitled "Proposed Residence 17th Avenue, Sea Cliff, NY", prepared by James T. Carballal Architect, including drawings A-1, A-2, A-3, A-4, each dated 5-10-12 (with drawing A-2 having a revision date of 5-21-12) and a Tree Preservation/Removal Plan and Landscape Plan prepared by Gibney Design, dated 7.31.12 (together, the "Plans"); and

WHEREAS, the Premises are located in a Residence A Zoning District in the Village of Sea Cliff which provides for a minimum lot area of 7,500 square

feet, maximum lot coverage of 30%, minimum front property line length of 75 feet, a minimum front yard and rear yard depth of 20 feet, and minimum side yard of 10 feet; and

WHEREAS, the subject parcel is located on the north side of 17th Avenue, and is located on a lot that is 60 feet deep and 80 feet wide that was approved previously as a buildable lot; and

WHEREAS, the applicant proposes to construct a new dwelling that complies with the zoning requirements in the Residence A Zoning District;

WHEREAS, the term “applicant” herein refers to the applicant, the current owner and their successors and/or assigns; and

WHEREAS, the Planning Board held public hearings on June 13, July 11, August 7, September 12 and October 10, 2012; and

WHEREAS, the proposed development is classified as a Type II action under SEQRA which requires no further environmental review under SEQRA; and

WHEREAS, notice of the application was provided to the Nassau County Planning Commission; and

WHEREAS, the Board has fully considered all of the evidence at the public hearings, and all of the proceedings had herein.

NOW, THEREFORE, BE IT RESOLVED, that the application of Anray Custom Builders Inc. for site plan approval pursuant to Village Code Chapter 107 and special permit approval pursuant to Village Code Chapter 64 is granted in

accordance with the following findings and determination and subject to the conditions herein:

FINDINGS

1. The Premises presently contains a garage with a small driveway providing access to the garage. The Premises also contains an existing wood tie wall in the front yard that is used as a secondary parking area. Other than the garage, garage driveway and tie wall, the Premises are vacant.

2. The Premises are located in the Residence A Zoning District, which requires, *inter alia*, a minimum lot area of 7,500 square feet, a front property line and property width of 75 feet, maximum lot coverage of 30%, minimum setbacks of 20 feet for the front and rear yards and 10 feet for the side yards, and a maximum building height of 30 feet. Except for the lot area and the location of the existing garage in relation to the front and side yard setbacks, for which the applicant previously obtained variances, the proposed residence will comply with the aforesaid zoning requirements. The proposed residence will be less than 28 feet in height, and the lot coverage (including the detached garage) will be 23%. Additionally, the applicant proposes an unenclosed one story front porch on the east side of the residence, and that porch will also comply with the side property line requirements and will include steps to the rear, but not to the side.

3. The height of the proposed individual retaining walls ranges from 2 feet to 4 feet, but due to the proximity of the walls to one another in the northwest portion of the Premises, the height of the walls was determined by the Superintendent of Buildings to include the combined height of any walls that are

closer than five feet to the nearest wall. The applicant has submitted a landscape plan that depicts plantings around the retaining walls that will offset the appearance that the walls in the northwest portion of the Premises exceed the four (4) foot height limitation.

4. The Board has reviewed the site plan application in accordance with the provisions of Chapter 107, including Section 107-5, and finds that the proposed Plan, subject to the conditions herein, complies with the criteria set forth therein. The Premises is an approved building lot and the proposed residence does not require any variances that could depreciate the neighboring properties or be incompatible with the existing residential uses in the neighborhood. Off-street parking is provided on the Premises and 17th Avenue already provides access for other properties. Stormwater runoff will be provided for in the conditions imposed herein. Preservation techniques relating to the existing environment, including the preservation of a 66 inch diameter oak tree are addressed as conditions herein.

5. The Board has reviewed the request for special permit approval pursuant to Village Code Chapter 64, including section 64-3.1, and finds that the retaining walls, in their proposed locations are necessary to help stabilize the earth on the rear portions of the property and will neither create an adverse visual or aesthetic impact on the neighborhood nor impact traffic, privacy or safety of Village residents.

6. The Board determines that the application is a Type II Action under SEQRA, which requires no further environmental review under SEQRA. Notice of the application was provided to the Nassau County Planning Commission.

CONDITIONS

7. The construction of the residence shall be in conformance with the Plans, subject to minor field modifications approved by the Superintendent of Buildings.

8. The proposed retaining walls shall be placed in the locations, at the heights, and utilizing the construction material indicated in the Plans, subject to minor field modifications approved by the Superintendent of Buildings.

9. Except as otherwise provided herein in relation to the preservation of the approximate 66 inch diameter Oak tree, the plantings depicted in the Plans shall be planted, and continuously maintained.

10. If, during construction, the applicant shall determine that there are any utilities or subgrade structures on the Premises, applicant shall immediately notify the Superintendent of Buildings and any known utility owners, and devise a plan, to be approved by the Superintendent of Buildings, to address those utilities.

11. Construction staging and construction equipment and materials location and deliveries shall comply with all of the requirements of the building department, including the timing of such removal and deliveries and the use of dumpsters and dump trucks. No vehicles or construction equipment shall be permitted to remain on 17th Avenue, or any public street, in a manner that

obstructs vehicular access or prevents emergency vehicles from accessing any properties using 17th Avenue. Construction shall be performed and materials and equipment delivered and removed from the Premises only during the hours and days indicated in the building permit.

12. Except as indicated in the approved Plan, the applicant shall make no changes to the topography of the Premises;

13. All lighting shall be placed in a location, and shielded as necessary, so as not to encroach onto adjoining properties or public roadways;

14. The drainage system and the location of all drainage facilities shall comply with all applicable laws and regulations and shall contain all storm-water on-site. Such system must be approved in advance by the Superintendent of Buildings.

15. The septic system and the location of all septic facilities shall comply with all applicable laws and regulations. Such system must be approved in advance by the Superintendent of Buildings.

16. The provision of utilities shall comply with all applicable laws and regulations. The locations of the utility systems shall be provided to the Superintendent of Buildings for his review and advance approval.

17. Applicant shall install erosion protections on the site to assure that there is no erosion of any materials onto neighboring properties or the public roadways. Such erosion protection measures shall conform with all requirements of the building department and shall remain in place throughout the construction period.

18. All construction or other on-site debris during construction shall be contained in a covered container to assure that no such debris is blown or otherwise removed unintentionally from the site.

19. Any air conditioner condenser units shall be placed entirely to the rear of the dwelling (and not to the east of the easterly building line or west of the westerly building line), and shall include visual and noise buffering that will prevent the units from being seen from any adjoining property and so that the dbA level at the adjoining property line shall not exceed 65 dbA between the hours of 7am and 10pm and 50 dbA between the hours of 10pm and 7am.

20. In 2010, the Village modified its Tree Preservation and Protection law to require that all trees with a caliper of 6 inches or more be subject to the regulations provided therein. The removal of any such tree located on a site proposed for development is subject to Planning Board review. The Board has jurisdiction to consider the impact of the loss of any tree on a site proposed for site plan approval in relation to the factors identified in Village Code §107-5. In this regard, the Board has jurisdiction to address the preservation and retention of trees as beneficial to the environment (or as potentially adverse to the local environment). Consistent with this jurisdiction, various reports and testimony were submitted to the Board from the applicant and interested neighbors. The Board also obtained a report from Lehman Plant Care. While those reports differ in their conclusions, the Board has considered and reviewed the information in those reports and has determined that the tree addressed in those reports – the 66 inch diameter oak tree (the “Tree”) – remains viable, at least in the near term,

and that efforts should be made by the applicant to preserve the tree both during construction and after completion of that construction. To that end, the Board finds that the applicant must take the following measures:

- a. Retain a landscape arborist or landscape architect (the "Retained Expert") to devise a specific written tree preservation retention and management plan during construction and after completion of construction to provide for the best available known methods for tree preservation retention and management for the Tree, and said methods shall be based on the American National Standard, ANSI A300 (Part 5)-2012 "Tree, Shrub, and Other Woody Plant Management – Standards Practices (Management of Trees and Shrubs during Site Planning, Site Development, and Construction) and ANSI A300 (Part 9) – 2011 Tree Risk Assessment "Tree, Shrub, and Other Woody Plant Management – Standard Practices" (Tree Risk Assessment; a. Tree Structure Assessment). Such plans shall accompany the building permit application.
- b. The Retained Expert shall either (i) confirm in writing that the landscape plans submitted with the application represent the best plantings to require minimum irrigation; or (ii) devise a modified landscape plan that incorporates similar buffering plantings that require minimum irrigation. Any modified

landscape plan must be provided to the building department prior to any plantings being placed on the Premises;

- c. The Retained Expert shall, during the construction of the Premises and for a period of three years after a certificate of occupancy shall issue for the dwelling, monitor the health and condition of the Tree and report written findings to the building department on an annual basis;
- d. All construction related activity, including the placement of any subgrade or on-grade structures, as well as the traversing of the Premises during and after completion of construction shall be performed in a manner that complies with the tree preservation retention and management plans prepared by the Retained Expert;
- e. Prune any dead wood in or upon the Tree; and
- f. Covenant that the Tree shall survive for at least three (3) years after issuance of a certificate of occupancy for the Premises, and that if the Tree shall not so survive, plant a replacement tree at the Premises of not less than 20 inch caliper hardwood or an equivalent hardwood or shade tree at a smaller planted caliper if such smaller tree is certified by the Retained Expert to provide an equivalent diameter after a growing period of not more than ten years. To assure compliance with this provision, and the provisions in this paragraph, applicant shall record a

Declaration of Covenants and Restrictions in a substance and form acceptable to the Village Attorney.

21. The construction shall be performed in accordance with the plans submitted with the application and all requirements of the building department; and the work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.