



**VILLAGE OF SUFFERN
ZONING BOARD OF APPEALS MINUTES
NOVEMBER 30, 2023**

Attendance: Barry Tesseyman, Chairman
Cary Adwar, Member
Bruce Simon, Member
Lisa Wilson, Member
Andrew Zavoski, Member
Robert Magrino, Assistant Village Attorney
Melissa B. Reimer, Village Clerk

CALL TO ORDER

Chairman Tesseyman called the meeting to order at 7:30 P.M., led everyone in the Pledge of Allegiance. Mr. Tesseyman read the Public Hearing notice into the record.

8 Yorkshire Drive – Z2023-04

To permit the enlargement of the driveway.

Mr. James Licata, Esq., spoke on behalf of the applicant. Mr. Licata said that he has never seen this before that you need a variance to enlarge a driveway. It is a provision in the Suffern Village code.

Mr. Licata explained that the applicant rents out the property. The tenants were ruining the grass because they were trying to get out of the driveway and had to go on the grass. The owner expanded the driveway two feet on each side of the existing driveway. Mr. Licata stated that he was here to request a variance for that extension.

Mr. Licata said that the application asks about five balancing questions. He said 1) there is no change in the neighborhood, 2) there is no other way for us to do this, and then he said I can go through a formal presentation and go through the five items for you.

Mr. Magrino said that there is a discrepancy here. It is not just to enlarge the driveway. It is because the driveway is ten feet and anything more than ten feet is not compliant. Mr. Magrino stated that they are asking for 14 feet.

Mr. Licata answered that that was correct.

Chairman Tesseyman asked if it were done already.

Mr. Licata answered that yes, it was. He handed in a picture from that day. The Board passed the picture around to each other.

Mr. Licata said that unfortunately, the owner did not know that there was a ten-foot limit to the driveway. He added that he knows no other municipality that has a ten-foot limit.

Chairman Tesseyman asked to open the public hearing.

Motion - to open the public hearing was so moved by Board member Simon and seconded by Board member Adwar, with all in favor.

Chairman Tesseyman swore in Lizanne Fiorentino, 15 Yorkshire Drive. She does have an issue with the enlargement of the driveway. She had a picture of her house with the same driveway. She has three SUV's and a full-size Jeep parked. She said that she can easily park another 3-4 cars in the driveway and two in her garage. Number eight also has a two-car garage. Before they, against code added the two feet on each side, they could accommodate the same number of cars. She was annoyed, as she stated that, the work was done and then they asked for forgiveness instead of permission.

John Haberman, 4 Yorkshire Drive see no reason to be extended – Mr. Klein made the changes without permission to do so. Mr. Haberman stated that Mr. Klein committed the crime and now he wants to ask for forgiveness. He objects to the whole thing. He also believes that he is renting it to more than one family.

Motion- to close the public portion moved by Board member Adwar, seconded by Chairman Tesseyman, with all in favor.

Tesseyman asked if anyone had questions.

Board member Wilson asked about the survey and the picture that the Board was given at the beginning of the meeting. She asked, "Instead of doing what they did, why didn't they extend the back and make two spaces.

Mr. Licata said that he could not answer that. His problem was that people were driving on the grass.

Board member Wilson gave Mr. Licata the correct configuration of the driveway to keep it within the code and prevent the tenants from driving on the grass.

Mr. Licata stated that one car could not get around the other car in the driveway and it would drive through the grass.

Mr. Licata and Ms. Wilson had a conversation between themselves about the size of the driveway and what should be paved. Ms. Wilson suggested putting the car park at the back of the property and Mr. Licata said that is where the children play. Mr. Licata was adamant that the change to the driveway did not affect the neighbors in any way.

Mr. Magrino asked Mr. Licata to go through the factors.

Mr. Zavosky asked before anything was done to the driveway, was anyone complaining about what was happening to the property of the issues of unsightliness.

The property owner was complaining to the tenant. He was telling him that he was making a mess. Mr. Licata said that the building inspector complained that the mud was getting on the road.

Mr. Adwar asked how many people live in the house.

Mr. Licata answered four adults and two children (all related).

Mr. Magrino said that the variance would not be necessary if the last person just moved the car. Just say, "Look, whoever is last, has to move their car."

Mr. Licata said that the time should not matter. Five or six o'clock in the morning....

Mr. Magrino asked, "Do you want to go through the criteria?"

Mr. Magrino said, "...Generally speaking, 1) it's whether an undesirable change will be produced in the character that the neighborhood or detriment to nearby properties will be created by granting the area variance.

Mr. Licata said, "There is none to the neighbors."

2) Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance.

Mr. Licata said that he would disagree with the young lady that his answer is no because to take 400 feet of grass out of someone's backyard when they have children is unreasonable.

3) Whether the requested area variance is substantial.

Mr. Licata said that he can't see how this could ever be classified as substantial. We are talking two feet on the side of a driveway.

4) Whether the variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Mr. Licata said that he showed a picture from this morning, and I don't think anyone would be offended by the extension.

5) Whether the alleged difficulty is self-created.

Mr. Licata said it has to do with the rain and the driveway.

Mr. Magrino said, "It is self-created. That one you can admit to."

Licata asked how it is self-created.

Magrino answered, "Because they can move the cars."

Mr. Licata said that he believes that is is unreasonable to ask someone to get up at 4 A.M. to get up and move their car.

Mr. Magrino stated that you can plan that the night before.

Mr. Simon asked Mr. Licata a few questions about things that he believed Mr. Licata said. Mr. Licata then said that his client did not put on an addition to the home. He simply added two feet on either side of the driveway. He did not consider the need for the variance to be egregious.

Motion - to open the public portion again was so moved by Board member Simon and seconded by Board member Wilson, with all in favor.

John Haberman, 4 Yorkshire Drive was sworn in. He said that it's a bigger issue than four feet of pavement. He said there are too many people living in the house. He said that he believes that this house is rented as a multifamily home and is not allowed, and it is going on all over the Village. He said he objects to that.

Chairman Tesseyman asked, "How many cars do you see there at one time?"

Mr. Haberman said that he wasn't sure, but much more than two. Coming here he believes that there were four cars in the driveway.

Board member Wilson said that she doesn't find four cars out of the question.

Mr. Licata said that at this house it is one family. The building inspector has been there and there is no violation; it is not overcrowded. There are five bedrooms.

Ms. Fiorentino spoke to the Board and said, based on what Mr. Licata just said, that there is no overcrowding, with four adults – there are two cars in the driveway and two in the garage. There is no need to enlarge the driveway.

Motion- to close the public hearing moved by Board member Simon, seconded by Board member Wilson, with all in favor.

Motion- to deny

| | YES | NO | ABSENT |
|--------------------|-----|----|--------|
| BM Adwar | X | | |
| BM Simon | X | | |
| Chairman Tesseyman | | X | |
| BM Wilson | X | | |
| BM Zavosky | | X | |

The vote was three to two YES to DENY the variance to enlarge the driveway.

Wayne Project, LLC - 156-160 Wayne Avenue – Z2023-05 Interpretation Application

Mr. Daniel Richmond, Esq. represents 156-160 Wayne Avenue LLC. They are appealing the determination by the Village Building Inspector, dated October 18, 2023. The property is located in the MR-15 zone which, he stated is multifamily residence zone. He stated this is where lowrise multi dwellings are permitted use. The client proposes to develop a zoning compliant two and a half story 41 unit multi-family with associated parking and amenities. All 41 units would be studio apartments.

He stated that:

The project has fewer impacts and includes more amenities than the project reviewed by the Village Board at the time it rezoned the property to the MR-15. The project advances the Village's goals and objectives. The applicant submitted a site plan application to the Planning Board.

Mr. Richmond stated that the Building Inspector, on October 18, 2023, sent the applicant a memo stating that the proposal is impermissible based on a condition that he stated is not in the Village zoning law, but based on Village Board minutes. The applicant is appealing the building inspector's determination and is respectfully requesting an interpretation of the Village's zoning law section 266-54 and NYS Village Law section 7-712b.

The applicant is also seeking relief from the purported conditions that are in the Village Board minutes are not in the Village zoning law and are unenforceable. The project is permitted on the property as a right.

In 2011, the prior owner received a rezoning to MR-15 district. The prior owner was apparently processing a permit for a multi-family building comprised of 21 three-bedroom units as reflected in the Village Board's minutes. Mr. Richmond said that the building inspector reasoning was subject to the minutes of that meeting which stated that the "Number of units not to exceed 24 and the site plan to be in substantial conformity to the conceptual plan presented to the Village Board."

Mr. Richmond believes that the building inspector's determination should be overruled because it is not in the Village's zoning law. The building inspector's determination does not appear in the Village's code and is not in the text of the subject local law effectuating the rezoning. In fact, he stated that, the text of the local law, including the version filed with the New York State Department of State does not include conditions related to the rezoning of the property.

He was stating that the zoning code must be used in their ordinary meaning. Mr. Richmond stated, "...there is nothing in the plain language in the Village zoning law as codified that would contradict that the fact that the project is zoning compliant." Mr. Richmond cited case law to support that if there is any ambiguity then it would be resolved in favor of the property owner. Finally, he stated that the building inspector's determination unconstitutionally violates the applicant's due process rights and cited the case law. He then explained why he believes the building inspector violates the applicant's due process.

Mr. Richmond stated that the applicant's plan poses fewer impacts than that of the previous plan. The plan has a third less bedrooms than the previous plan. He stated that there are 41 studio apartments compared to 63 bedrooms in the previously approved project. It is three feet shorter and unlike that project, it contains additional amenities (including a bus stop gazebo and a dog park). The project is surrounded by other multi-family buildings.

Mr. Richmond mentioned that the plan is a significant investment, and it would contribute to the revitalization of the downtown. This was a goal of the Village Board during the Village's comprehensive plan kickoff meeting.

This would provide a much needed more affordable housing type within the Village. This would bring in new residents and new revenue for local businesses. Mr. Richmond mentioned that it is also in accordance with the Rockland County Comprehensive Plan. These units are more affordable.

Mr. Richmond stated that they received a letter from Terry Rice at 5:54 P.M. this evening. He stated that he reviewed the letter and the case law. He said that it was flawed in multiple respects. He believed that the letter was a red herring. He believed that Terry Rice's letter was off point. Finally, he asked the board to overturn the building inspector's determination.

Board member Simon recused himself from the matter as he has a prior relationship with the property.

Mr. Magrino added that Mr. Simon was a member of the Village Board.

Mr. Simon added that he was a member of the Village Board and he was the deciding vote in changing the zone.

Mr. Richmond thanked Mr. Simon.

Mr. Simon left the room.

Chairman Tesseyman swore Mr. Peter Gato, Planner in and he presented renderings of the project. Mr. Gato said that in Mr. Rice's letter he stated that they did not take into consideration the steep slope law. Mr. Gato said that they indeed had. It is in A100 – he has a slope reduction chart, and it shows how it is reflected.

Mr. Gato explained that the front of the building is condensed to match and to replicate sort of the street architecture and character. He explained that the entrance is on the ground floor. The smaller studios have balconies and the other studios have larger windows.

Mr. Magrino explained the Building Inspector has made a determination; Mr. Richmond's client disagrees with that interpretation. You as the Appellate Board of the Village, if you will, make that determination. He said that the Board needs to review this and either agree with what the building inspector said or with what Mr. Richmond is saying and the building inspector was incorrect.

Mr. Magrino said that Mr. Richmond's argument is in his letter dated November 14, 2023. Mr. Rice's letter was just received today November 30, 2023. He was not sure how much time the Board had to review everything.

Mr. Magrino asked, "When the local law was approved that was 2011, correct?"

Mr. Richmond answered, "Yes."

Mr. Magrino asked, "...the minutes of the meeting that night, would you agree, that it was part of a motion where they mentioned the motion to approve the zone change was subject to certain conditions?"

Mr. Richmond answered, "I'm not sure I would agree with you..." This board, he stated that, authorized to review and administer the Village code not legislative history. The case law, he stated, is not looked at, the plain language of the statute is unambiguous and says what is required here. The Village Zoning Law unambiguously says what the bulk requirements and other parameters are for building in the MR-15, without reference to any condition. His client, when he bought this property, did not know of this condition.

Mr. Magrino said that Mr. Richmond mentioned his client's due diligence. The property is currently vacant. Mr. Richmond agreed. Mr. Gato is not the client. Magrino asked if the applicant purchased the property from the developer who obtained the zone change. Richmond stated that he wasn't sure. Mr. Magrino asked, "As part of reasonable due diligence, if the applicant purchased from the person who obtained the zone change isn't that something that would come up as part of the negotiations? I would be interested in seeing the contract of sale. Maybe in the contract of sale, he purchased the plans. That is certainly relevant as to his due diligence." Mr. Richmond answered that would be only if his client brought a federal civil rights

action and might get into discovery. The question before this board is very narrow. What does the Village zoning law say.

Mr. Magrino also stated that if a Village Board legislatively approves something it can set conditions as part of the approval.

Mr. Richmond said that yes, a board can attach conditions. He kept repeating the only issue before this Board was what does the Village zoning code say.

Mr. Magrino pointed out that Mr. Richmond mentioned a civil rights suit at least three or four times. Mr. Magrino asked about the Board having the opportunity to see the full record such as the contract, testimony from the applicant saying, "I didn't know."

Mr. Richmond stated that yes, reasonable conditions can be cited. He said that these are generalized conditions that can be imposed on a project – not you can only build this project. There is ample case law against that. He stated that they have presented the full record. The full record is the Village Zoning Code. That is what this Board is here for is to interpret the zoning code period. Not the condition that Terry Rice uncovered from the January 3, 2011, Board of Trustees meeting.

Mr. Zavosky asked what was the condition that Terry Rice uncovered.

Mr. Magrino explained that the zone change was approved. It came before the Village Board was presented with a resolution to change a local law. He read the Board of Trustees motion verbatim into the record.

Board Member Wilson had a question for Mr. Gato. She asked about the second page of the slope calculations. She wanted to know the reduced area after the slope calculations.

Mr. Gato answered with slope reductions is 132.

Ms. Wilson corrected Mr. Gato and told him that was the gross area. She asked after the slope reductions, what is your net area.

Mr. Gato started to explain how the slope area works and Ms. Wilson said that she knew how it works. She explained that she was referencing the original site plan that was submitted. They did the slope reductions, she stated that she did not have Mr. Gato's to compare it to that. She said that we were only given one sheet and they were not given the bulk table. (Mr. Gato said that he was not aware of that.) She said that the original slope reductions took the net area down to 117 and changed. Mr. Gato did not have the information. Ms. Wilson stated that at 117,732 according to our bulk regulations, for the MR district – if you use the studio (considered no bedroom) her calculations show that you are only going to be allowed 35 units. Her question is are you planning on coming back for a variance? Ms. Wilson stated that you are asking for more units that you will be allowed.

Mr. Gato said that the math works on his end, so he is not sure of the discrepancy. Mr. Richmond stated that their intent is to submit a zoning compliant project.

Mr. Magrino stated that the 41 units is in compliance with the zoning. Mr. Gato said that is his understanding and he has not heard anything that makes him think otherwise.

Board Member Adwar said that he did not get a long period of time to read all the documentation. He asked if the Board could discuss the matter in Executive Session to consult with their attorney.

Executive Session

A motion to enter executive session at 8:37 P.M. was moved by Board Member Zavoski and seconded by Chairman Tesseyman, with all in favor.

A motion to close executive session at 8:53 P.M. was moved by Chairman Tesseyman and seconded by Board Member Adwar, with all in favor.

Mr. Tesseyman stated that the Board would like to have a continuance to the next meeting, January 18, 2024, at 7:30 P.M.

MOTION TO APPROVE MINUTES FROM AUGUST 3, 2023, ZONING BOARD OF APPEALS MEETING.

A MOTION to approve the Zoning Board of Appeals minutes of August 3, 2023, was moved by Board Member Adwar, seconded by Board Member Simon, with all in favor.

Board Member Simon brought the attention of the board members to the fact that it would be beneficial to have a deadline to be on the agenda.

RESOLUTION - Zoning Board of Appeals resolved that all applications must be submitted to the Zoning Board of Appeals Clerk at least two weeks in advance of the planned meeting. Moved by Board Member Simon, seconded by Chairman Tesseyman, with all in favor.

ADJOURNMENT MOTION to adjourn the meeting at 8:59 P.M. until Thursday, January 18, 2024, at 7:30 P.M. at the Suffern Village Hall, was Chairman Tesseyman, seconded by Board Member Wilson, with all in favor.

Respectfully,

Melissa B. Reimer, CPA
Village Clerk