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# Zoning Board of Appeals Minutes 2/9/2015

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
February 9, 2015; 8:00 P.M.

PRESENT: Chairwoman Lawrence; Members Maloney, Jolly, Brown, Weisel; Counsel Shumejda; Secretary Bellantoni

ABSENT: Village Engineer McGarvey

## APPROVAL OF THE MINTUES – January 12, 2015

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the minutes of January 12, 2015, be approved as submitted. Motion carried

## CONTINUATION OF PUBLIC HEARING–Crescent Associates–155 White Plains Road

Counsel Shumejda explained that this public hearing was closed at the January 12, 2015 meeting and we are here tonight for the final approval resolution. He said since the last meeting the applicant's attorney requested a change in the approval. They would like it to state *medical use* rather than just the three specialties originally stated (orthopedics, cardiology, and radiology). He explained they would like to be able to expand what is allowed in the future if need be.

Don Walsh, Development Strategies, explained that there is one walk-in urgent care in the building and they do not plan for another; they just would like other practices allowed. Joel Sachs, Keane and Beane, said they have a long lease, an expensive lease, and he reiterated that they would like the approval for *medical office use* so that they can expand the types of specialties allowed should that become necessary in the future. He said there will be no walk-ins; by appointment only.

Ms. Weisel asked if there is a restriction in terms of surgery. Counsel Shumejda said they are asking for a variance for this type of office; adding more ambulatory surgery because it's not an allowed use.

Mr. Walsh explained that the zone does not allow medical use but the building has predominately been used for medical use. Mr. Sachs asked that they leave out "no ambulatory surgery" since it's so ambiguous.

Mr. Jolly asked if the other offices ever got variances for medical use. Counsel Shumejda said the OB district is changing and this may be a non-issue in the future.

Mr. Jolly moved, seconded by Mr. Maloney, and unanimously carried that the Board having arrived at the Findings required by the ordinance:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance;
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. That the requested area variance is not substantial;
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

grants the above-referenced variances for 155 White Plains Road.

VILLAGE OF TARRYTOWN

ZONING BOARD OF APPEALS

February 9, 2015

Re: Crescent Associates LLC  
155 White Plains Road, Tarrytown New York  
Sheet 1.201, Block 121, Lot 5.11 and 5.12 [OB Zone]

Application for Variance pursuant to Village Law §7-712-b.3 (b)

The applicant is the owner of a 63,988 sq ft building which is located in the OB ("Office Business) Zone of the Village of Tarrytown. Approximately 22,500 sq ft of the existing building has been vacant for more than four years. Currently 38,248 sq ft of the building is being used as medical offices - a legal nonconforming use - and the subject vacant 22,500 sq ft had been previously used as medical offices of Kaiser Permanente. The applicant has a prospective tenant in the form of Trustees of Columbia University in the City of New York that wishes to utilize the 22,500 sq ft for an ambulatory medical office. The applicant seeks an area variance to clarify and determine that the currently vacant 22,500 sq ft out of the total 63,988 sq ft building is an accessory use and that additional medical offices are therefore allowed in this much space in this building.

155 White Plains Road was purchased by an affiliate of the Silverman Realty Group in 2001. A company called Petals occupied the subject 22,500 sq. foot space at that time; however, it filed for bankruptcy in 2004 and vacated the premises. The space remained vacant for three years until Davis Studio rented it in 2007. Davis Studio stopped paying rent in September of 2010 and the lease was subsequently cancelled in bankruptcy.

In rendering a decision on whether to grant an area variance pursuant to Village Law §7-712-b.3(b), a Zoning Board of Appeals must take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making this decision, a Zoning Board must consider the following factors:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance;

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

[3] Whether the requested variance is substantial;

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of an area variance.

With respect to the instant application the Zoning Board of Appeals finds as follows:

[1] No undesirable change will be produced in the character of the neighborhood and no detriment to nearby properties will be created by the granting of the area variance to the applicant. There are essentially no differences in the characteristics of the medical offices being proposed in the 22,500 sq ft of vacant space and the types of offices presently allowed in the OB Zone - including the existing medical offices at the subject property.

[2] The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. The subject 22,500 sq ft of office space has now been vacant for more than four years. The Applicant has submitted to the Board an analysis of the office leasing market in Westchester County which was drafted by Howard Greenberg of Howard Properties Ltd. As stated in the analysis, leasing activity throughout Westchester County has been very slow in 2014, with a 27% decline from 2013 to an anemic total of only 1.5 MSF countywide. Over the past twelve months, there has been a negative absorption of space (in other words, space returned to the market as vacant) of over 59,000 SF in the Western submarket. Given the low leasing velocity, space is essentially commoditized. Medical has been one of the few growth sectors in recent years. The expansion of the large medical groups and the trend towards pushing medical services out from the hospitals into suburban community settings are the primary reasons for Medical being one of the few growth sectors.

With respect to the subject property, 155 White Plains Road was not built as a multi-tenant building; therefore, its space was not designed to be flexible, or to appeal to standard office tenants. Over 50% of the subject space is non-windowed. There is no way to physically divide the subject space like a normal space in a multi-tenant building. There is no room for contiguous growth. Most tenants prefer a traditional lobby type multi-tenant building. Many competitive buildings to 155 White Plains Road have amenities such as cafeterias, fitness centers, day care centers, and some have covered parking, all of which are highly valued by tenants. A medical tenant, on the other hand, would value high visibility and easy highway access from the building. It would not care about having an attractive lobby or amenities, and can effectively use the non-windowed space for examination rooms. Therefore, given [a] the fact that the subject 22,500 sq ft of space has been vacant for more than four years and [b] the unappealing characteristics of the 22,500 sq ft for the types of office space currently permitted in the OB Zone and [c] the anemic market to lease the types of office space currently permitted in the OB Zone, we conclude that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

[3] The requested area variance is not substantial. The area variance only allows use of 22,500 sq ft of the total 63,988 existing sq ft of office space whose use has been medical in nature since at least 1981 - when Olivetti Corp. leased substantially (and eventually all) of the building to Kaiser Permanente.

[4] The proposed area variance will not have an adverse effect or impact the physical or environmental conditions in the neighborhood or district. There are essentially no differences in the characteristics of the medical offices being proposed in the 22,500 sq ft of vacant space and the types of offices presently allowed in the OB Zone - including the existing medical offices at the subject property.

[5] The alleged difficulty was not self-created. The difficulty the Applicant has had in leasing the vacant space was caused by changes in the office market over which the Applicant has no control and as documented by Howard Properties Ltd. has been anemic and in decline. Furthermore, as noted above, 155 White Plains Road was not built as a multi-tenant building, its space was not designed to be flexible and it lacks many of the amenities and features which would otherwise appeal to standard office tenants; therefore, there are only limited lease opportunities and a medical tenant has been shown to be the most viable given the characteristics of the property.

The Zoning Board has determined that the application has met the standards for the granting of an area variance pursuant to Village Law §7-712-b.3 (b) and conditions the variance such that there will be no walk-in clinic or urgent care in the space and, patients will use the facilities by appointment only.

Mr. Jolly moved, seconded by Ms. Weisel that the Board determines that the decision of the Village of Tarrytown Zoning Board is to grant applicant's application for an Area Variance pursuant to Village Law §7-712-b.3(b).

Votes in Favor 5

Votes Against 0

ADJOURNMENT

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the meeting be adjourned – 8:15 p.m.

Dale Bellantoni  
Secretary