

TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

January 27, 2005

OFFICE OF ZONING BOARD
(845) 566-4901

WINDSOR HILL REALTY, INC.
5020 Route 9W
Section 86, Block 1, Lot 15
IB Zone

Applicant is seeking to convert an existing residence to professional office use on premises located at 7 Rock Cut Road in the Town of Newburgh.

The required rear yard setback for an office use is 60 feet requiring a variance of 9 feet. The required lot area is 40,000 sq ft., requiring an area variance to 8,705 sq.ft. Article IV, Section 185-11

All mailings were in order.

Todd Kelson represented Applicant at the hearing.

Mr. Kelson stated that the applicant purchased the building located at 7 Rock Cut Road. immediately behind and north of Cumberland Farms at the corner of Rock Cut Road and 17K. The property has been rezoned to the IB Zone. It has been used as a residence but as a non-conforming use. The applicant purchased the property several months ago and now wishes to bring that non-conforming use into conformance converting the property to an office use for legal offices. In the process it was determined that there were two small variances that were required.

One variance is a lot size variance of 8,705 sq.ft. and a small rear yard setback variance of 9 feet. The Board is familiar with the Town Law and he would like to discuss how these variances impact on them. The first issue is whether there will be an undesirable change in the neighborhood. It is the applicant's position it will have a desirable change on the neighborhood. We are taking a non-conforming use and converting to a conforming use. The Town should see that as good for the Town. There will be no material impact on the neighborhood. Adjacent to this property there is pending before the Planning Board a more substantial office building so this use would be very consistent with the proposed use of the adjoining property to the north. To the south is the Cumberland Farms store and to the west is a truck and tire business. We do not believe there would be any undesirable change in the neighborhood. The benefits sought

by the applicant cannot be achieved by any means other than a variance. There is no land available on either side to expand the lot. We cannot use the property for a use permitted in the zone unless the variance was granted. The existing building is 1700 sq.ft. It takes up only 5.4% of the lot, which is a very small amount. The building has existed in its present state for over 48 years.

Finally the applicant's difficulty is not self created, the building, lot and footprint have existed this way for 48 years and all pre-date the Zoning for the Town of Newburgh. There is a stockade fence and behind it is a storage area for old trailers.

Mrs. Cardone asked if there were any questions from the Board. There being no response, she asked if there were questions or comments from the public.

Ken Krizek of 19 Rock Cut Road stated he has been there for almost 48 years and wanted to know what they were going to do with the drainage ditch that runs between the two properties.

Mr. Kelson replied we are not doing a thing. Nothing is going to change. He believed the property line is outside of that ditch. There will be virtually no change in the footprint. The only change in the footprint will be a handicap ramp for the office use. Nothing was going to change over there at all.

Jim Raab, who was present at the hearing, added the whole project was discussed in front of the Planning Board and remains open. As far as we are concerned, it will stay the same but he believes as far as the Planning Board is concerned, it may have to improve a little.

Mrs. Cardone asked if the Planning Board had a public hearing on this.

Mr. Kelson replied we had one meeting and this is the referral.

Mrs. Eaton asked if this had to go to County Planning. All agreed that it did.

No one knew when they would be going back to the Planning Board.

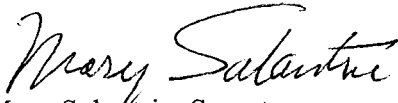
In response to questions from a member of the public, Mrs. Cardone explained that the Zoning would not change. We would not be able to change the Zoning. They are asking for variances for the rear yard and lot size. They are not changing the distance from the lot in back. Other questions were referred to the Planning Board.

Mr. Krizek pointed out that Orange County maintains that road and they also maintain the drainage ditch that goes from front to back.

Mrs. Cardone replied this is also before the Planning Board and the Planning Board will have the final say. They sent it to us just for this variance and you will be able to make comment there. The County has been notified also.

Mrs. Cardone asked if there were further questions or comments. There being no response, she declared this part of the hearing closed.

Submitted by:



Mary Salantrie, Secretary
Zoning Board of Appeals

/ms

After consultation with the Board's attorney, Mrs. Cardone stated this is a Type II Action Under Seqra. and asked if there were discussion on this application. Mr. Hughes stated with two variances and an 8,000 sq.ft. lot size, which is a fifth of an acre he would recommend that the use be approved with no further expansion being that there is such a deficiency in the footage and the parking the way it is. Mrs. Cardone asked if there were a motion to approve. Mr. McKelvey made a motion to approve. Mr. Kunkel seconded the motion. Mrs. Cardone asked all those in favor to please say "aye". All Board members were present with the exception of Paul Blanchard and approved by saying "aye". The motion was carried.

**TOWN OF NEWBURGH
ZONING BOARD OF APPEALS**

2005

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In the matter of the application of:

DECISION AND RESOLUTION

WINDSOR HILL REALTY, INC.

Tax Map #86-1-15

for area variances to lot area and rear yard
setback requirements to convert existing
residence to office use
Article IV, Section 185-11 "IB" District

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The property which is the subject of this application is located at 7 Rock Cut Road Newburgh, New York and is designated on the tax map as Section 86, Block 1, Lot 15. It is located in the "IB" District.

Applicant's proposal to convert an existing one family residence to professional offices was referred to this Board by the Planning Board for the following two area variances: lot area of 31,295 square feet and rear yard setback of 51 feet. Applicant's proposal requires area variances as a building in an "IB" district requires a minimum lot area of 40,000 square feet and a minimum rear yard setback of 60 feet. Article IV, Section 185-11.

A public hearing on the application was scheduled for January 27, 2005 at the Town Hall, 1496 Route 300, Newburgh, New York. Notice of said public hearing, including the subject, date, place and time, was duly published and mailed. Proper affidavits of publication and mailing have been received from the applicant.

The public hearing was held on January 27, 2005. The applicant's representative, Mr. Todd A. Kelson, Esq., appeared at the public hearing and testified before the Board. The testimony and exhibits at the public hearing established that the applicant, who is the current owner of the site, had applied to the Town of Newburgh Planning Board for approval of a conceptual site plan to allow the conversion of an existing residence to professional offices on 31,295 square feet of property. The applicant was referred to this Board for area variances for lot area and rear yard setback.

The Board unanimously determines that the proposed action is a Type II action under SEQRA. The Board determines that this is an application for area variances and that the criteria which the Board must consider in determining whether or not to grant the variances is the factors

set forth in Town Law Section 267-b. In considering the benefit to the applicant if the variances are granted as weighed against the detriment to the health, safety or welfare of the neighborhood and community by such grant, the Board has considered the following five factors:

I. 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 VARIANCE?

The Board finds that the granting of applicant's area variances will not result in an undesirable change in the character of the neighborhood. The site is surrounded by commercial business uses or by vacant land to be developed as a commercial use. The subject building borders Cumberland Farms to the south and a commercial tire and repair shop to the west which is zoned for the same, with the proposed use being in character with the allowed uses in the "IB" zone. Furthermore, property adjoining the premises to the north is currently the subject of a Planning Board application for construction of an office building, thereby making the proposed office use more compatible with the developing neighborhood than the existing residential use.

II. WHETHER THE BENEFIT SOUGHT BY THE APPLICANT CAN BE ACHIEVED BY SOME METHOD FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE?

The Board finds that the applicant cannot achieve the benefit sought by some method feasible for the applicant to pursue other than the requested area variances. While the proposed change of use from a single family residence to an office is permitted, the existing lot does not meet all current bulk requirements. The requested setback variances are based upon the physical limitations of the site. It is not feasible for the applicant to proceed with the proposal and site requirements on the subject premises without the requested variances considering the configurations of the existing property. No additional property is available for sale, and there is no way to permit this lot to be used for a conforming purpose other than the granting of the lot area and rear yard variances.

III. WHETHER THE REQUESTED AREA VARIANCE IS SUBSTANTIAL?

The requested area variances are substantial but this factor alone does not require denial of the application.

IV. WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD?

The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The proposed lot for the development of professional offices is subject to site plan review by the Planning Board and concerns such as the layout of parking will be developed in conformity with all applicable requirements.

V. WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED?

The alleged difficulty is self-created in the sense that applicant purchased the subject property with full knowledge that the proposal could not conform to the Town's zoning requirements. However, when taking into consideration that applicant's premises is an existing nonconforming lot and with the growing trend of recent businesses being established in this neighborhood, this Board declines to place significant emphasis upon this consideration.

RESOLUTION

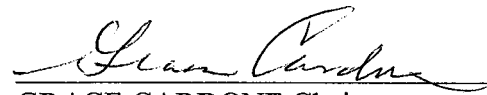
The Board determines that the applicant has met the requisites of Town Law § 267-b and hereby grants the following area variances: 1) lot area of 31,295 square feet; and 2) rear yard setback of 51 feet with the stipulation that there be no further expansion of the existing building, and that applicant reappear before the Planning Board for final site plan approval.

The Board finds that such variance is the minimum necessary to address the circumstances of this application.

Present and Voting on motion to grant application:

Grace Cardone	Aye
Paul Blanchard	Absent
Ruth Eaton	Aye
Michael Maher	Aye
Robert Kunkel	Aye
John McKelvey	Aye
Ronald Hughes	Aye

Dated: March 7 2005
Newburgh, New York


GRACE CARDONE Chairwoman
Town of Newburgh, Zoning
Board of Appeals

