

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, July 9, 2015, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

Mark I. Fisher, Chairman
Ernest Fiore
Michael Strone
Steven Lowenthal
Paul Valentine
Tom Foristel

Members Absent

Paul Katz

The Chairman called the meeting to order at 8:00 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z15-003	Harrison Playhouse Lofts	133	35 & 11	Variance Granted
Z15-006	David & Carmela Fuca	833	11	Heard – Closed – Findings being prepared
Z15-010	Marie Marino	90	31	Not Heard – Adjourned to the September Meeting
Z15-011	Martin & Debra Wolf	444	14	Variance Granted
Z15-012	550 Halstead Avenue	92	15	Heard – 1 Year Extension granted
Z15-013	Deborah DiFiore	31	61	Heard – Closed – Finding being prepared
Z15-014	William & Katherine Stempel	546	23	Heard – Adjourned to the August Meeting

The next meeting was scheduled to August 13, 2015.

There being no further business to come before the Board, on a Motion duly made and seconded, the meeting was declared adjourned.

Jacqueline Sheer

Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

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THE FORMAL RECORD OF THE ABOVE PROCEEDINGS ARE THE TAPES THE BOARD

**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z15-003

Date: July 9, 2015

Property Owner: Paul Properties

Property Address: 227-239 Harrison Avenue Block 133, Lots 35 & 11

WHEREAS, the Applicant, Verco Properties LLC, submitted an application to the Planning Board for Site Plan and Special Exception Use approvals for the property located at 227-239 Harrison Avenue

WHEREAS, the Applicant proposes to renovate the former Harrison Playhouse to accommodate 42 apartment units, 52 off street parking spaces in a below grade garage and 3,261 square feet of commercial space (hereinafter referred to as the "Project");

WHEREAS, the Planning Board referred the Project to the Zoning Board of Appeals for the required variances to be determined by the Building Inspector, including usable open space, building height, off-street parking and separate driveways; and

WHEREAS, Verco Properties LLC, on behalf of the property owner, filed an application on January 23, 2015 for the following variances from the Zoning Ordinance which the Building Inspector determined are required for the Project;

1. The proposed building height is indicated to be 65 feet, thus requiring a variance of 20 feet.
2. The proposed building indicates 6 stories, thus requiring a variance of 2 stories.
3. The proposed building is shown to have 42 dwelling units with only 7,085 square feet of open space thus requiring a variance of 1,315 square feet.
4. The proposed parking for the dwelling units is calculated to be 52 thus requiring a variance for 1 space. The builder has calculated parking for the commercial parking spaces, including the 10 space waiver for each use, and based on their calculation a variance for 13 spaces is required.
5. The proposed building indicates one ingress and egress into the parking garage at a width of 22 feet where two separate entrances are required at 15 feet each, thus requiring a variance; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on February 12, 2015, March 12, 2015, April 9, 2015, May 11, 2015 and June 11, 2015 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present or indicated that they had listened to

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tapes of the meeting: Mark Fisher, Paul Katz, Ernest Fiore, Michael Strone, Steven Lowenthal, Paul Valentine and Thomas Foristel

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits 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;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variances and that the variances sought were the minimum variances necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. The Project consists of the construction of a 42 unit luxury residential redevelopment above and behind the existing commercial uses at 227-239 Harrison Avenue. The portion of the property bordering on Harrison Avenue consists of the former Harrison Movie Theater which has been shut down for the last 14 years and two stories of commercial and retail space. The property extends from Harrison Avenue to Purdy Street and the portion bordering on Purdy Street was previously the site of a parking lot. The entire property, including the portion bordering on Purdy Street, is located entirely in the CBD District (Central Business District). Purdy Street extends for two blocks from Halstead Avenue to Park Avenue. The first portion of Purdy Street, which extends from Halstead Avenue to the end of Applicant's property, is all in the CBD District. This is true on both sides of the street. The remainder of Purdy Street, on both sides of the street, is located in the NB District (Neighborhood Business District).

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2. The first two stories of the Project bordering on Harrison Avenue will remain and the façade of the Movie Theatre will be restored. The next two stories will be set back an additional 25 feet and the last two stories will be set back an additional 8 feet. On the Purdy Street side, there are no additional setbacks until the fifth floor, which will be set back an additional 6 feet. All of these additional setbacks should minimize the visual impact of the Project on the surrounding area.

3. The property is situated in a portion of the CBD District that topographically slopes away from the main thoroughfare of Halstead Avenue and the train station and then runs down Harrison Avenue in the direction of the Boston Post Road. It is also significantly lower than the elevation on the other side of the train tracks where the Municipal Building sits on Heinemann Place and a large 6 story building at 3 Calvert Street is located on the corner of Calvert Street and Harrison Avenue. The property is also at a lower elevation than the southern portion of Halstead Avenue that runs from Harrison Avenue south to St. Gregory' Church.

The base (bottom-of-the-building) elevations of various buildings located in the immediate vicinity of the Project are as follows:

Proposed Avalon Bay project (Halstead Ave.)	=	69'5"
Municipal Building (Heinemann Place)	=	78'
3 Calvert Street	=	80'
CHASE branch on corner of Halstead Ave.	=	67' (on Halstead)
and Harrison Avenue	=	64' (nearest the Project)

The Project sits at an elevation of = 57' at the entrance on Harrison Avenue and 56'2" at the furthest point from Halstead Avenue

Consequently, the Project at the entrance on Harrison Avenue sits lower at the base from other buildings as follows:

- 12.5' lower than the Avalon Bay project
- 21' lower than the Municipal Building
- 23' lower than 3 Calvert Street
- 7' to 10' lower than the CHASE branch on Halstead

As a result of the Project sitting at a lower base elevation, the following chart demonstrates that its 127 foot top elevation (57.0' base + 70' (at Harrison Avenue), will not be substantially out of keeping with the elevation of the following neighboring buildings:

Avalon Bay project	=	69.5' base + 53.3' (4 story bldg.)	=	122.80'
3 Calvert Street	=	80.0' base + 67.0' (6 stories)	=	147.0'
Municipal Building	=	78.0' base + 35.1' (2 stories)	=	113.0'

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4. Applicant also presented to the Board a computer generated video presentation of the Project that shows the Project from a panorama of site lines. The video starts with a view from the intersection of Calvert Street and Harrison Avenue (in close proximity to the Municipal Building), proceeds down Harrison Avenue past the site of the Project, makes a left turn on Colonial Place, a left turn on Purdy Street past the site of the Project and ends at the intersection of Halstead Avenue and Purdy Street. This presentation clearly demonstrates the attractiveness of the Project from a visual perspective and shows the visual impact of the Project on the immediate surrounding area.

5. The Project is located in the CBD District and the provisions of the Ordinance require applicant to obtain a special exemption permit in order to build the Project. On the Purdy Street side, the CBD District extends from Halstead Avenue to the property line for the Project. The remainder of Purdy Street ends at Park Avenue and is also in the NB District. One and two family residences are not a permitted use in either the CBD District or NB District. At present, the properties on Purdy Street consist of 5 multi-story apartment buildings, 9 commercial/multi-use and other non-residential properties and six, 1, 2 or 3 family houses. In view of the existing zoning, a substantial portion of these properties appear to be prior non-conforming. The properties on the Harrison Avenue side of the Project are commercial properties, with, in some cases, dwelling units situated over the first floor of commercial use.

6. The unique design of the Project as well as the nature of the properties on both Purdy Street and Harrison Avenue serves to buttress the conclusion that the granting of a height and 2 story variance will not create an undesirable change in the character of the neighborhood. The commercial character of Harrison Avenue will be preserved and enhanced by the updating of the façade of both the movie house and the adjoining neighborhood businesses as well as by the substantial recessing of the four residential stories on Harrison Avenue. Purdy Street is already populated by a significant number of multi-story apartment buildings. Neither street is located in, or in close proximity to, a residential district where the construction of a multi-story residential property could have an adverse impact on single family houses. Purdy Street is already populated by a substantial number of multi-story residential apartment buildings and Harrison Avenue is commercial in nature. The substantial recessing of the top 4 stories on the Harrison Avenue side also serves to minimize the visual impact of the additional stories on the surrounding area, maintains light and air for the Project and minimizes the potential for the creation of a "canyon" effect on Harrison Avenue. In that connection, the additional stories included in the Project will not be visible when approaching the Project from the bridge over Harrison Avenue and will likely not be visible to pedestrians or drivers on Halstead Avenue. The visual impact of the 5th and 6th stories will also be mitigated by the use of lighter colored materials on those stories.

7. We are cognizant of our obligation to minimize the extent of any variance. In that connection, we asked applicant to provide an analysis as to the economic viability of constructing a project of less than 6 stories. Applicant has submitted an analysis that indicates that it would not be economically viable to construct a 5 story project. That analysis is based, in large part, on the fact that applicant would still have to incur the

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same significant costs associated with excavating down 2 stories in order to provide on-site parking. The analysis demonstrates that the excavation costs are not offset by the incremental cost of constructing an additional floor and the loss of income associated with the loss of units on that floor. In the judgment of applicant, this would result in the Project not being economically feasible.

8. We do not presume to minimize the substantiality of the height and two-story variances being sought as a 20 foot height variance (44%) and 2 story variance (50%) are certainly substantial from a numerical standpoint. However, we are mindful of the need to balance the substantiality of the variances with other relevant factors. Based on factors referred to above, including the elevation information referred to in paragraph 3, the video presentation referred to in paragraph 4, the Zoning District in which the Project is located and the fact that the character of the neighborhood referred to in paragraphs 5 and 6, including the fact that the Project is not adjacent to a residential district, and the design of the Project, we find that the granting of the height and 2 story variances, do not create a detriment to the health, safety and welfare of the neighborhood or the community, create an undesirable change in the character of the neighborhood or a detriment to nearby properties.

9. The Ordinance requires a minimum of 200 square feet of open space per unit or a total of 8,400 square feet. Applicant has provided for 9,283 square feet of open space for the residents in the form of a large courtyard on the 3rd floor (2,885 feet) and 6,398 feet of balconies located on the 2nd, 3rd, 4th and 5th floors. However, under the provisions of the Ordinance, open space provided by rooftop decks and balconies can only account for 50% or 4,200 square feet of the required 8,400 square feet of open space. This results in a total of 7,085 square feet and thereby requires a 1,315 square foot variance. In an effort to ameliorate the deficiency in open space, applicant has agreed to provide a rooftop recreation area containing 3,690 square feet. While this additional recreation area does not, as a result of the foregoing 50% limitation, technically count for purposes of satisfying the technical requirements of the Ordinance, we find that applicant has provided a sufficient amount of open space (12,973 square feet) to justify the granting of an open space variance.

10. Applicant has provided 52 parking spaces for residents and requires a one space variance. All of this parking is below grade, including 30 spaces that are being provided on a lower level. Under the circumstances, we view this aspect of the variance request to be of a de minimis nature. Applicant also requires an additional 13 space variance for use of the commercial tenants. However, all of the commercial uses are existing commercial space that will remain in place. Currently no on-site parking is provided for such commercial uses. In addition, there are existing available public parking areas located in close proximity to Harrison Avenue that can currently accommodate parking for the commercial space.

11. Applicant has provided for one driveway of 22 feet rather than two separate driveways of 15 feet. The driveway will be located on Purdy Street and there will be no access to parking from the Harrison Avenue side of the Project. Since Purdy Street is one way, cars entering and exiting the garage will be limited to a right turn in

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and a right turn out only. To enhance vehicle/pedestrian safety, applicant will install two wall mounted, convex safety mirrors on the garage walls. These mirrors will provide exiting drivers with a view north and south of the sidewalk as they approach Purdy Street. Additionally, two pedestrian detectible warning strips are proposed within the sidewalk to alert pedestrians that they are about to cross a traveled way. Applicant has also submitted information to support the fact that a 22 foot single driveway will provide adequate space for ramps and turning. An increase in the width of the driveway would only serve to increase the required parking variance. In order to mitigate concerns of the Board, applicant has agreed to increase the driveway at the curb cut to a 25 foot width which would gradually decrease to a 22 feet opening at the building line.

12. Applicant's variance application has received a positive recommendation from the Planning Board.

NOW THEREFORE BE IT RESOLVED, that the application for variances with respect to building height, number of stories, open space, off-street parking and separate driveways, as indicated in the plans submitted with this application, be, and the same is hereby granted.

Granting of the variances is specifically conditioned on the inclusion in the Project of a 3,690 square foot rooftop recreation area as provided in Applicant's letter of May 6, 2015 and a 25 foot width for the driveway at the curb cut on Purdy Street.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

These variances shall lapse unless construction begins within one year from the date these variances are recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Inspector has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Michael Strone, seconded by Tom Foristel at the July 9, 2015 meeting.

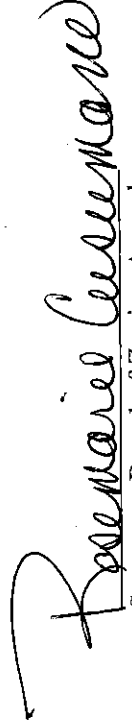
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ADOPTED: AYES: Mark Fisher, Ernest Fiore, Michael Strone, Steven Lowenthal and Tom Foristel

NAYS: Paul Valentine

ABSTAINED: None

ABSENT: Paul Katz


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055, or 670-3056.

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**BOARD OF ZONING APPEALS
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Calendar No.Z15-011

Date: July 9, 2015

Property Owner: Martin & Debra Wolf

Property Address: 216 Sunnyridge Rd.

Block 444 Lot 14

WHEREAS, the applicant filed an application to legalize an existing cabana and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Paul Feldman, on behalf of the property owners, Martin & Debra Wolf, filed an application on May 7, 2015 for a variance from the Zoning Ordinance to legalize a cabana located in an R-1/3 Zoning District. The cabana was constructed in 1944 and, at that time, the Code of the Town/Village of Harrison, Sec 235-9B Table of Dimensional Regulations for Residence Districts required a side yard setback of 3 feet in an R-1/3 zone. The accessory building reduces the side yard to one foot, two and three quarter inches (1'-2³/₄"') requiring a variance of one foot, nine and one quarter inch (1'-9¹/₄"'); and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on June 11, 2015 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present: Paul Katz, Ernest Fiore, Mark Fisher, Michael Strone, Steve Lowenthal, Thomas Foristel and Paul Valentine

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

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WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits 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;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

- A) The cabana is separated from the adjacent neighbor by a wire fence as well as heavy screening and is not visible from the adjacent property.
- B) The variance is of a de minimis nature.
- C) The cabana was constructed more than 70 years ago and has not had any adverse impact on any adjacent properties.
- D) The cabana does not change the character of the neighborhood.
- E) There were no objections from neighbors.

NOW THEREFORE BE IT RESOLVED, that the application for a variance to legalize a cabana as indicated in the plans submitted with this application be, and the same is hereby granted.

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Foregoing Resolution submitted by Michael Strone, seconded by Steven Lowenthal at the 7/9/2015 meeting.


ADOPTED: AYES: Mark Fisher, Ernest Fiore, Michael Strone, Steven Lowenthal, Paul Valentine and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: Paul Katz


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

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