

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, July 10, 2014, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

Mark I. Fisher, Chairman

Paul Katz

Ernest Fiore

Michael Strone

Steven Lowenthal

Tom Foristel

Members Absent

Paul Valentine

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

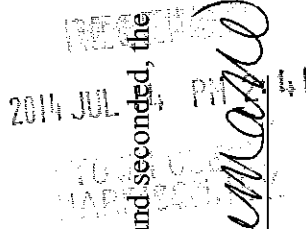
<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z14-005	550 Halstead Ave Multi-Family	92	15	Variance Granted
Z14-013	Belinda Defonce	286	5 & 6	Variance Denied
Z14-015	Vincent Pizzimenti	402	60	Heard – Closed – Findings being prepared
Z14-016	Lorenzo Santoli	795	7	Heard – Adjourned to September
Z14-017	Thomas & Michele Foristel	281	19	Heard – Adjourned to September
Z14-018	Michael Rossi	691	113	Heard – Adjourned to September
Z14-019	Faith Miller	604	29	Heard – Closed – Findings being prepared
Z14-020	Michael & Leslie Welhoelter	545	16	Heard – Closed – Findings being prepared

The next meeting was scheduled to August 14, 2014.

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

Maggie Murro, Deputy
Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary



THE FORMAL RECORD OF THE ABOVE PROCEEDINGS ARE THE TAPES THEREOF.

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

Calendar No. Z14-005

Date: July 10, 2014

Property Owner: 550 Halstead Corp.

Property Address: 550 Halstead Ave.

Block 92 Lot 15

WHEREAS, the applicant, the property owner, filed an application for site plan approval 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, 550 Halstead Corp., filed an application on February 4, 2014 for a number of variances from the Zoning Ordinance to permit the construction of a new 5 story 36 unit multi-family residence. The requested variances are as follows:

- (i) the maximum allowable number of stories permitted is 4 as compared to the 5 stories proposed thereby requiring a one story variance;
- (ii) the proposed height is 60 feet as compared with the 45 allowed thereby requiring a 15 foot variance;
- (iii) the minimum required side yard setback is 15 ft. as compared to the one foot provided thereby requiring a 14 foot variance;
- (iv) 7,200 square feet of usable open space is required (200 feet for each dwelling unit) as compared to the 3,600 feet proposed thereby requiring a 3,600 foot variance;
- (v) the proposed number of units is 36 as compared to 29 units allowed (based on the size of the lot) thereby requiring a variance for an additional 7 units.
- (vi) 45 parking spaces are provided as compared to the 54 spaces required thereby requiring a 9 space variance.

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 March 13, April 10 and May 22, 2014 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 tapes of the meeting: Ernest Fiore, Mark Fisher, Paul Katz, Steve Lowenthal, Michael Strone and Paul Valentine;

Z14-005

550 Halstead Ave Multi-Family Bldg

7/10/14

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

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 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:

1. The property is located a short distance away from the Harrison Central Business District and a non-conforming lumber yard is presently situated on the property. The property adjoins two 118 unit, seven-story multi-story family residential buildings to the south and a four-story residential building to the north.

Building Height and Number of Stories

Z14-005
550 Halstead Ave Multi-Family Bldg
7/10/14

2. The proposed building is located between two other residential buildings, one of which is taller than the proposed building and the other which is slightly shorter. Accordingly, the height and number of stories are comparable with the character of the surrounding area. In addition, the property is not located in the central business district and is in keeping with the type of building that is appropriate for the MF Zone.

Required Side Yard

3. In response to concerns expressed by the Board, applicant has revised the plans to reduce the extent of the side yard variance. The revised plans provide for a three foot setback for substantially all of the southern side of the proposed building except for a one foot setback required to accommodate a stairwell. In addition, there will be an approximately 38 foot separation between the building and the adjacent 7 story building as well as vegetation and a line of trees that will act as a buffer to the adjacent building. However, taken by itself this required variance is substantial and represents a 93% deviation from the required setback.

Usable Open Space

4. The Ordinance requires a minimum of 200 square feet of open space per unit or a total of 7,200 square feet. Applicant has provided for a total of 7,280 square feet consisting of (i) a 3,000 square foot rooftop deck, (ii) 2,180 square feet of balcony space and (iii) 2,100 square feet of open space on grade. However, under the Ordinance open space provided by rooftop decks and balconies can only account for 50% of or 3,600 square feet of the required minimum open space. In addition, the 2,100 square feet on grade does not meet the minimum dimensional requirements of the Ordinance. However, while technically not in compliance with the Ordinance, applicant has provided a substantial amount of open space.

Proposed Number of Units

5. The proposed number of units is 36 as compared to the 29 units allowed by the Ordinance. Applicant has maintained that the additional units are required in order to make the project economically feasible and the Planning Board has forwarded this matter to us with a favorable recommendation.

Required Parking Spaces

6. Applicant has provided for 45 parking spaces (or 1.25 spaces per unit) as compared to the 54 spaces (1.5 spaces per unit) required by the Ordinance. The property is located in close proximity (approximately 2,000 square feet away) from the Harrison Train Station. The ready access to the station should serve to decrease the need for additional parking. In addition, the adjacent 7 story apartment building currently provides parking that is equivalent to a ratio of 1 space for each unit as compared to the proposed 1.25 ratio and a parking study submitted by applicant indicates that the number of spaces were not fully utilized. We find that the parking study fully supports the conclusion that a 1.25 ratio should be sufficient to accommodate parking for the project.

Z14-005

550 Halstead Ave Multi-Family Bldg

7/10/14

7. The Planning Board conducted extensive hearings with respect to the project and considered various alternative designs for the project. At the conclusion of those hearings the Planning Board forwarded this matter to us with a favorable recommendation and we accord substantial weight to the recommendation of the Planning Board.

8. We find that the development of this project, which replaces a non-conforming lumber yard with an attractively landscaped multi-family residence, will enhance the appearance of the neighborhood and be in keeping with the residential character of the neighborhood, will not create a detriment to the health, safety and welfare of the neighborhood or create an undesirable change in the character of the neighborhood. Accordingly, while a number of the variances sought are substantial, we find, on a balancing test, that the benefits of granting the variances outweigh the detriments.

9. In response to safety concerns raised by the Board, the site landscaping plan has been revised to provide access to a rear hydrant from the adjacent property located to the south. In that connection, applicant has submitted revised plans that demonstrate that a forty-five foot ladder truck will be able to access the property. We are mindful that such access to the fire hydrant must be maintained on a permanent basis and, accordingly, are granting the variances subject to the specific condition that the Planning Board, in consultation with Town counsel and the Building Inspector/Fire Marshall, determines that satisfactory arrangements have been made that ensure that emergency vehicles will continue to have access on a permanent basis to the fire hydrant located at the rear of the property.

NOW THEREFORE BE IT RESOLVED, that the application for variances to permit construction of a building as indicated in the plans submitted with this application be, and the same is hereby granted subject to the following conditions.

The variances are subject to applicant complying with the conditions provided in paragraph 9 above.

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.

This variance shall lapse unless construction begins within one year from the date this variance is 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

Z14-005
550 Halstead Ave Multi-Family Bldg
7/10/14

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 Ernest Fiore, seconded by Steven Lowenthal at the 7/10/2014 meeting.

ADOPTED: AYES: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone and Steven Lowenthal

NAYS: None

ABSTAINED: None

ABSENT: Paul Valentine



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
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z14-013

Date: July 10, 2014

Property Owner: Belinda Defonce

Property Address: 33 Adelphi Avenue

Block 286 Lots 5 & 6

WHEREAS, the applicant, the property owner, filed an application with the Planning Board for a proposed two lot subdivision. Following a hearing, the Planning Board referred the application to the Zoning Board for consideration of required variances together with a non-favorable recommendation.

WHEREAS, Belinda Defonce filed an application on April 17, 2014 for variances in connection with seeking a subdivision for the property. The property is located in an R-75 Zoning District and pursuant to §235-9(B) of the Table of Dimensional Regulations of the Town/Village of Harrison Zoning Ordinance the minimum required lot area is 7,500 square feet and the required lot width at the building setback line is 70 feet. The proposed lot area is 6,000 square feet for both lots thereby requiring a 1,500 square foot variance and the proposed lot width at the front setback line is 60 feet for both lots thereby requiring a 10 foot 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 May 22 and June 12, 2014 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 tapes of the meeting: Paul Katz, Ernest Fiore, Mark Fisher, Michael Strone, Steve Lowenthal and Paul Valentine.

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and numerous neighbors 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;

Z14-013
Defonce
7/10/14

- (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.

The Board found that:

1. The property, which is located in the Avondale section of Harrison, consists of a rectangular shaped lot containing 12,000 square feet that is currently improved with a single-family residence. Applicant acquired the property in 1984 and is proposing to subdivide the property into two 6,000 square foot lots and construct a single family house on each lot. The current house would be torn down.
2. This is the second time that a variance has been sought for a subdivision and variance for the property. The prior applications were made by applicant in 2006 but were withdrawn before final decisions were rendered.
3. We are cognizant of the requirement for us to follow the balancing test in determining whether to grant this variance and the remainder of these findings are addressed to those considerations.

The benefit to the applicant vs. the detriment to the health, safety and welfare of the neighborhood or the community

4. The benefit to the applicant in obtaining the variances is to maximize his economic return from the property through the construction of two new residences.
5. The granting of these variances would result in the conversion of one conforming lot into two non-conforming lots which, as set forth below, would be inconsistent with the character of the Avondale neighborhood.
6. Applicant is essentially attempting to squeeze two dwelling units into a lot that does not, under the requirements of the Zoning Ordinance, allow for two dwellings. There are a number of oversized lots in Avondale similar in size to applicant's property. We are concerned that the granting of this variance would create a precedent that would permit other property owners, particularly property owners in Avondale, to develop lots that do not satisfy the dimensional requirements of the Zoning Ordinance which would be detrimental to the Avondale neighborhood.

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created

Z14-013
Defonce
7/10/14

7. The property is located in the Avondale section of Harrison which is an R-75 Zone that requires a minimum lot size of 7,500 square feet. There is an adjacent neighborhood, the Brentwood section, which is a B Zone that provides for a minimum lot size of 5,000 square feet.

8. The overwhelming majority of developed lots in Avondale conform to the minimum 7,500 square foot lot size requirement. In that connection, applicant submitted a "Neighborhood Context Plan", as well as additional documentation, that indicated that, of the more than 130 developed parcels in Avondale, only 4 parcels failed to comply with the minimum lot size. Those parcels include a house adjacent to applicant's property as well as three other houses. According to testimony received at the hearing, the four houses were built in 1942, 1949, 1959 and 1963. Accordingly, no undersized lot has been developed in Avondale for more than 50 years and the character of the neighborhood is well established.

9. With respect to the lot width variance, applicant's submissions indicate that there are only 6 lots that do not conform with the width requirement and 4 of those lots are the same lots which do not comply with the lot size requirement.

10. Numerous neighbors testified at the hearing against the granting of the variance and 47 neighbors signed a petition urging the Board to reject the variances based on their belief that the granting of the variances would substantially alter the long established character of the neighborhood.

11. Avondale is a unique neighborhood characterized by largely older houses built on conforming lots and the granting of this variance will produce an undesirable change in the character of the Avondale neighborhood.

Whether the benefit sought by applicant can be achieved by some method feasible for the applicant to pursue other than a variance

12. Applicant requires a variance in order to achieve the benefit derived from building two houses on the property. However, applicant has enjoyed the reasonable use of the property since it was acquired in 1984.

Is the variance substantial

13. The lot size variance and lot width variances represent a 20% and 14.3% deviation, respectively, from the requirements of the Ordinance. Combined with the other factors cited above, particularly those relating to the impact of the granting of a lot size variance on the character of the neighborhood, we find that the variances are substantial.

Whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood

14. For the reasons cited above, we find that the granting of the variances will have an adverse effect and impact on the physical conditions of the neighborhood.

Is the difficulty self-created

15. Applicant acquired this property in 1984 and is charged with full knowledge of the provisions of the Zoning Ordinance which have long provided for a minimum lot size of 7,500 square feet in Avondale. Furthermore, in 2006 applications for a subdivision and variances similar to the ones currently being sought were filed but were withdrawn prior to a decision having been rendered. Finally, the desire to subdivide the property to maximize the economic return is a volitional act by the property owner. Accordingly, applicant's alleged difficulty is self-created.

16. The Planning Board, which has the responsibility for subdivision approval, referred this application to us with a unanimous non-favorable recommendation. The Planning Board has also determined that the proposed subdivision is substandard and problematic. We accord substantial weight to the recommendations of the Planning Board in the area of subdivision approvals and are loathe to grant a variance to facilitate a subdivision where the Planning Board has made a non-favorable recommendation.

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 deny the requested variances.

NOW THEREFORE BE IT RESOLVED, that the application for a variance from the lot area and minimum lot width requirements of the Zoning Ordinance be, and the same is hereby denied.

Z14-013
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7/10/14

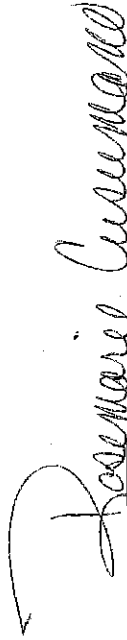
Foregoing Resolution submitted by Michael Strone, seconded by Paul Katz at the July 10, 2014 meeting.


ADOPTED: AYES: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone and Steven Lowenthal

NAYS: None

ABSTAINED: None

ABSENT: Paul Valentine


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

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