

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, September 14, 2023 at 7:30 p.m. in the Court Room of the Municipal Building, 1 Heineman Place, Harrison, New York.

Members Present

Paul Katz, Acting Chairman
Ernest Fiore
Steven Lowenthal
Thomas Foristel
Jerome Valenti

Members Absent

Thomas Haynes
Michael Tiesi

The Chairman called the meeting to order at 7:30 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z23-017	KST Powell LLC	76	8	Variance Granted
Z23-021	Michelle Burton & Michael Zuckman	491	2	Variance Granted
Z23-022	MGM HAYDEN LLC	1001	58.3	Variance Granted
Z23-023	Gregory Hibbard & Susan Reifenhauser	77	33	Heard – Closed – Findings being prepared
Z23-025	Manhattanville College	631	5	Heard – Closed – Findings being prepared

The next meeting was scheduled to October 12, 2023

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

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

TOWN CLERK
HARRISON, NY

2023 OCT 13 A 10:46

RECEIVED

ZONING BOARD RESOLUTION Z23-017

SEPTEMBER 14, 2023

**SEQR DETERMINATION OF SIGNIFICANCE FOR THE
THE MULTI-FAMILY BUILDING AT
110 HALSTEAD AVENUE
KNOWN & DESIGNATED AS BLOCK 76, LOT 8**

WHEREAS, the Zoning Board of the Town of Harrison is conducting an Uncoordinated SEQR Review of an Unlisted Action submitted by KST Powell, LLC, located at 110 Halstead Avenue, Harrison, New York, more specifically known and designated as Block 76, Lot 8; and

WHEREAS, the Applicant has submitted an application for Amended Site Plan approval to the Town of Harrison Planning Board for the Property, including a Long Form Environmental Assessment Form ("EAF"); and

WHEREAS, the Applicant proposes to construct a multi-family residential structure on the property; and

WHEREAS, the Planning Board referred the application to the Zoning Board to consider certain variances requested by the applicant;

NOW THEREFORE BE IT RESOLVED, that in conformance with the procedures set forth in §617.6 (b) (3), the Town of Harrison Zoning Board hereby establishes its intent to serve as Lead Agency in this uncoordinated review.

BE IT FURTHER RESOLVED, pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law, the Lead Agency has determined that the proposed Unlisted Action will not have a significant effect on the environment for the reasons enumerated in the attached Negative Declaration Form.

On the motion of Zoning Board Member Steven Lowenthal, seconded by Zoning Board Member Thomas Foristel, it was adopted by the following vote:

AYES:	Paul Katz, Ernest Fiore, Steven Lowenthal and Thomas Foristel
NAYS:	None
ABSTAINED:	None

*110 Halstead Ave –Multi-Family Building
SEQR Determination of Sig.
08/9/2023*

ABSENT:

Michael Tiesi and Thomas Haynes



Paul Katz, Acting Chairman

The resolution was thereupon duly adopted.

110 Halstead Ave -Multi-Family Building
SEQOR Determination of Sig
08/9/2023

REASONS SUPPORTING THIS DETERMINATION

The proposed action calls for certain variances in regard to an application for demolition of an existing restaurant and for the construction of a multi-family residence in its place.

The project as proposed to the Zoning Board was a five-story building where only four stories are permitted in MFR zone; 53.67 feet in height, where 50 feet is permitted; a Lot area per unit of 656 square feet, where 750 square feet is required; a rear yard of 15 feet where 20 feet is required; eighteen (18) parking spaces provided, where 26 are required; a lot coverage of 51.6% where 50% is permitted.

During the hearing process, the Applicant amended the plans and proposed elimination of the 6th floor, a reduction in the number of units, an eleven (11') foot reduction in height, a reduction in the off-street parking variance from 8 spaces to 6 spaces. The rear yard setback required a 5-foot variance, the access driveway proposed 24.33 feet where 25 feet is required, necessitating a .67-foot variance the lot area per unit and the total coverage variances remain the same; and a reduction in the parking variance from 8 to 6 parking spaces.

Potential impacts relating to the ultimate development of the site include the following:

1. The subject parcel is located in the MFR zoning district. The proposal is for the demolition of an existing restaurant, and construction of a 16-unit multi-family building. No adverse zoning impacts will result from the development of the site as proposed.
2. The construction of the multi-family residential structure, and associated site improvements will result in temporary air quality impacts during construction. These temporary impacts to air quality will be carefully monitored by the Building Department and will be mitigated through the implementation of an approved construction management plan that will be submitted with the Building Permit, as well as through a continual reliance on construction Best Management Practices and equipment repair and maintenance. The construction management plan will emphasize minimizing fugitive dust.
3. No negative impacts to surface water features will result from the proposed action. New stormwater management facilities will assure that the post development runoff rates will be equal to or less than the pre-development rates. Additionally, approval of the project shall be conditioned upon compliance with all applicable Phase II stormwater regulations, including the preparation of a Stormwater Pollution Prevention Plan (SWPPP) and the filing of a NYSDEC State Pollution Discharge Elimination System (SPDES) General Permit. These measures which not only address water quantity, but water quality as well, will assure that the proposed action will not result in any significant adverse environmental impacts to surface water features.

4. The site layout, areas of disturbance and grading plan have been designed to minimize overall site disturbances and the extent of required cut and fill.

These potentially adverse impacts will be mitigated through the installation of soil erosion and sedimentation control devices. These devices will be designed and installed in accordance with the requirements of the Town of Harrison as well as New York Guidelines for Urban Erosion and Sediment Control, and the New York Standards and Specifications for Urban Erosion and Sediment Control.

The soil erosion and sediment control measures will minimize the downstream erosion hazard by controlling runoff at its source, minimizing runoff from disturbed areas and de-concentrating stormwater runoff.

During construction, site assessments and inspections shall be conducted. This shall include an assessment of the site prior to the commencement of construction and a certification in an inspection report that the appropriate erosion and sedimentation control measures have been adequately installed or implemented to ensure overall preparedness of the site for the commencement of construction. Following the commencement of construction, site inspections shall be conducted by a qualified professional at least every seven (7) calendar days and within 24 hours of the end of the end of a storm event of 0.5 inches or greater. The site contractor shall be responsible for implementing measures and correcting deficiencies noted during site inspections.

5. Long-term noise impacts are not anticipated as a result of the development of the project.

Short term noise impacts associated with the construction of the project will occur. Construction activities are anticipated to generate noise levels of in the vicinity 85dBA measured at 50' from the noise source.

Short term noise impacts shall be mitigated by maintaining construction equipment in good working order and providing mufflers. Construction activities shall be limited to the hours prescribed by Town ordinance.

6. All solid waste generated by the project shall be collected on site and shall be disposed of at a certified solid waste disposal facility. Similarly, all recyclables shall be similarly disposed of. No adverse impacts are anticipated.

7. The project will not create any flooding impacts. No floodplains are located in the vicinity of the site.

8. There will be no impact on a significant habitat area as a result of this project. No threatened or endangered species of animals or the habitat of such species have been identified on the site according to the NYS Natural Heritage Inventory. No significant adverse wildlife impacts are anticipated.

9. The proposed action does not create a material conflict with the community's current development plans or goals.
10. The project will not result in an adverse impact to the character of the surrounding neighborhood. The varying uses, and building types along Halstead Avenue support, multi-family residential development. Substantial compliance with all of the applicable MFR District Zoning criteria will assure that proposal is consistent with the character of the surrounding neighborhood. No significant adverse impact is anticipated.

With regard to traffic impacts, the proposed residential building with 16 units, of which 8 are one bedroom, will generate less traffic than the existing restaurant.

The MFR zone permits a height of 50 feet. This height limitation does not apply to roof top appurtenances such as air-conditioning units, stairwells, elevator shafts, etc. Even a fully compliant 50-foot building unit still has appurtenances at an average height of 65 feet. The project proposes a five-story building where four stories are permitted and a height of the building is 53.67 feet, whereas 50 feet is allowed in the MFR Zoning District. Accordingly, the net result is whether the building is 4 stories or 4 stories over parking, as proposed, the total height variation of 3.67 feet is minimal.

The MFR zone requires a 20-foot rear yard setback. At present, the entire site is paved with cars parked within several feet of the rear property line. The project proposes a 15-foot rear yard setback, necessitating a 5-foot variance. This 5-foot variance allows the building to be set back 5 feet in the front yard to create a landscaped streetscape which is recommended in the Harrison Comprehensive Plan. This five-foot intrusion into the rear yard also allows balconies to be placed on the front of the building, which improves the aesthetics of the building.
11. The proposed action will not impair the character or quality of important historical, archaeological, or architectural resources. No such resources are located on or in the vicinity of the site according to the State Historic Preservation Office.
12. The proposed action will result in a change in the way energy is currently used on the site.
13. The proposed project does not present a hazard to human health.
14. The action will not result in changes in two or more elements of the environment, which alone would not have a significant effect on the environment, but when considered together, would result in a substantial adverse impact on the environment.

15. The proposed action is not related to another action which would be funded or approved by an agency which, when considered cumulatively, would meet one or any of the aforementioned criteria.
16. A School District Impact Analysis was prepared and submitted which establishes that only 2 public school district children will be generated by the project. Further, the projected program costs per pupil is covered by the school district's projected tax revenue from the project.
17. The Harrison Off-Street Parking Ordinance requires that one and one-half parking spaces per unit be provided for each residential unit. The sixteen units would require 24 spaces and the project proposes 18 on-site spaces and therefore a deficiency of 6 on-site spaces. However, the site is located within one-half mile of the Harrison Train Station, and therefore, is considered a transit-oriented development.
- As a transit-oriented development it is not uncommon for communities to permit one space per unit. While the Harrison Code does not so provide, this Board has been presented with such evidence in the past, and approved one space per unit, where the project was within walking distance to the train station (See, e.g., *Harrison Zoning Board Approval Resolution Z15-022, February 11, 2016, item 2a and b*).

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

Calendar Z23-017

Date: September 14, 2023

Property Owner: KST Powell, LLC

Applicant: KST Powell, LLC

Property Address: 110 Halstead Avenue Block 76 Lot 8

WHEREAS, the applicant, the property owner, applied for a Building Permit 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, Albert J. Pirro, Jr., Esq. filed an application on behalf of KST Powell, LLC, for variances from the Zoning Ordinance to demolish an existing restaurant and construct a 5-story multi-family building. This property is located in an MFR Zoning District. As per §235-9-B of the Table of Dimensional Regulations of the Town/Village of Harrison Zoning Ordinance the maximum allowable height is 4 stories at 50 feet. As per §235-35 Method of Determining Off-Street Parking for parking requirements is 1.5 per dwelling unit. This application requires 7 Variances:

- 1) The proposed number of stories is 5; ***thus requiring a variance for 1 story.***
- 2) The proposed height is 53.67 feet; ***thus requiring a variance of 3.67 feet.***
- 3) The required parking spaces are 24 spaces. The applicant is providing 18 spaces; ***thus, requiring a variance of 6 spaces.***
- 4) The required rear yard requirement is 20 feet. The applicant is **providing 15 feet, thus a variance, for 5 feet is required.**
- 5) The minimum access driveway is 25 feet, and 24.33 is provided, **requiring a variance of .67 feet.**
- 6) The maximum lot coverage is 50%, and 51.6% is provided, **requiring 1.6% lot coverage variance.**
- 7) The required lot area per unit is 750 square feet, and 618 square feet is provided, **thus requiring a variance of 132 square feet.**

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WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, Harrison, New York, at 7:30 p.m., on June 8, 2023, July 13, 2023, and August 9, 2023, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the Hearing: Paul Katz, Ernest Fiore, Steven Lowenthal, Tom Foristel, Michael Tiesi, and Thomas Haynes; and

WHEREAS, the Board reviewed the Long 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, with regard to an uncoordinated SEQRA review, and determined that the action was an unlisted 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 variances and neighbors appeared and spoke 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:

- 1) 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;
- 2) 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;
- 3) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- 4) Whether the requested variance is substantial;
- 5) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 6) 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

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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:

KST Powell, LLC are the owners of Wellington's Grill and Powell Catering, which houses a 2,642 square foot restaurant at 110 Halstead Avenue, Harrison, New York.

The property at 110 Halstead Avenue is located on the north side of Halstead Avenue just east of First Street. The property has a legal non-conforming use restaurant on the first floor of property in the MF-R zoning district which requires, in addition to site plan approval, a special exception use permit which was not required when the restaurant was built. Further, the 2,642 square foot restaurant establishment and the entire site, from lot line to lot line, is improved by an impervious concrete/asphalt paving upon which the restaurant has ten (10) off-street parking spaces located on site where eighteen (18) are required for the restaurant (one space per every 150 square feet of restaurant).

Accordingly, the present structure is legal non-conforming both as to the use without a special permit, lot line set back requirement, and, off-street parking. In this regard Section 235-2F of the Harrison Code encourages elimination of prior non-conforming uses.

As more fully set forth in the filed architectural plans prepared by Gregg DeAngelis, AIA of EnviroSpace Architects and the affidavit in support by managing member Alexandra Powell of KST Powell LLC, the application as originally filed, did seek to demolish the existing restaurant and build a seventeen (17) unit, six (6) story 64.4 linear foot high multi-family residential structure with eighteen (18) off-street parking spaces provided on site.

To accomplish the project proposal as originally proposed, the following variances were required:

- 1) a two (2) story variance; the application proposes a six-story building where the MF-R zoning district only permits four (4) stories; and
- 2) a 14'4" height variance; the MF-R Zoning district permits fifty (50) feet; and
- 3) a 133 S.F. lot area per dwelling unit variance; the Code requires 750 S.F. of lot area per dwelling unit and 617 S.F. is provided; and

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- 4) an eight (8) parking space variance; 17 dwelling units require 26 parking spaces and 18 are provided; and
- 5) a 2% lot coverage variance is required; the Code permits 50% lot coverage, and the project covers 52% of the lot; and
- 6) a 5 linear foot variance in the rear yard; the Code requires a 20 linear foot rear yard setback, and 15 linear feet is provided.
- 7) A 0.67-foot variance for the driveway width is required; the code requires 25 feet.

At the July 13, 2023 public hearing, the Zoning Board expressed dissatisfaction with the plan and the applicant decided to make certain revisions to the submitted plans and therefore a modification and reduction in the variance requests. Although the modified plans presented on August 9, 2023 still required seven (7) variances, the totality of the variances were not considered substantial.

With regard to the height, the 6th story was removed and therefore the two-story variance became a one-story variance request; more importantly, the height variance request of 64.4 feet, where only 50 feet is permitted, was changed to 53.7 feet, only necessitating a 3.67-foot variance in height.

The rear yard variance request to provide a rear yard set back of 15 feet, where 20 feet is required, remained the same.

The maximum lot coverage variance of 1.6% remained the same.

The reduction in units from 17 to 16 reduced the parking variance from 8 spaces to 6.

The driveway access remained at 24.33 feet where 25 feet is required, necessitating a 0.67 variance.

The reduction in unit count reduces the lot area per unit variance.

In this regard the Town of Harrison Code Section 235-61 C and N.Y. Town Law Section 267-b(3)(c) set forth the factors to be considered and balanced by the Harrison Zoning Board of Appeals when deciding whether to approve this application for the requested area variances.

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In making its determination whether to grant the variance application, the Board did engage in a balancing test weighting the benefit to the applicant against the health, safety and welfare of the neighborhood or community. While the Board did consider each of the five factors in Town Law Section 267, no one factor is dispositive.

The requested variances are reviewed taking into consideration each of the factors set forth in Section 267-6(3)(c) of the NYS Town Law and Section 235-61 C of the Harrison Zoning Code.

(a) The One-Story and Three Feet Four Inches (3' 7") in Height Variance

It is fundamental that the number of stories in a building is, as a practical matter, controlled by the permitted height. In this regard, the height of 50 linear feet is permitted in the MF-R zoning district, therefore, the number of stories is not as significant as the height.

Under the code, roof-top structures are allowed to and typically do, exceed the permitted height. In this case, the applicant is seeking a 3-foot, 7-inch variance in the permitted height. There are several factors which support this aspect of the application.

In a 4 story 50 L.F. zoning compliant building the roof of the 4th story roof top would be 50 L.F. but the Zoning Code permits, and doesn't count, the height of roof top elements like air conditioning units, the elevator shaft or stairwell. Accordingly, even in a zoning compliant building the height of the building will still be 64'4" to accommodate the elevator shaft and stairwell. The fact that the top floor height is 53.67 rather than 50 feet is de minimus when considering that permitted roof top appurtenances will be 64'4".

A review of the 2013 Harrison Master Plan supports a relaxation of height requirements on Halstead Avenue. The 2013 Harrison Comprehensive Plan recognized that:

- 1) new residential development within the MF-R zoning district supports downtown revitalization including streetscape, economic and aesthetic considerations; and
- 2) approvals in the Halstead Avenue corridor should include a relaxation of height and open space restrictions (2013 Comprehensive Plan, p. 89); and
- 3) some of the recommendations for the CB-D zoning district also applies to the development of Halstead Avenue and that a relaxation of height requirements would support a "transit-oriented residential population necessary for successful downtown revitalization" (2013 Comprehensive Plan, pp. 77, 79-80, 92). In this regard the project site is 0.5 miles from the Harrison Train Station and approximately 1.3 miles to the Mamaroneck Train Station which qualifies the project site as "transit-oriented;"

- 4) Halstead Avenue presents considerable variation in building heights, types, and land use which not only range in height but also present a less clearly defined character (2013 Comprehensive Plan, p. 80); and
- 5) Halstead Avenue from Broadway on the east to Thatcher Avenue on the west is in a valley and the subject property is in this Valley. From the viewpoint of contextual zoning, a height variance in this valley will still present a harmonious visual relationship between this project and surrounding, as built, development. The Harrison ZBA has previously determined that the topography of the site along Halstead Avenue is an extremely relevant consideration. Where, as here, the site is in a valley, this Board has found that the height and story variance is appropriate. *(See Harrison ZBA Approval Resolution Z 15-022, February 11, 2016, item 2 a and b); and*
- 6) In the 2013 Master Plan, the Town has recognized that new residential development within the MFR zoning district supports downtown revitalization including streetscape, economic and aesthetic considerations; and
- 7) The 2013 Master Plan stated that the Town Board should promote higher densities along Halstead Avenue as much of Halstead Avenue is significantly underutilized (2013 Harrison Master Plan, p. 91); and

(b) The Off-Street Parking Variance

As indicated above, the present restaurant use serves over 100 patrons at any one time and has only ten (10) off-street parking spaces. The existing restaurant requires eighteen (18) spaces, and therefore, has 55% of the requirement or a 44% deficiency from present requirements. In this regard, eighteen (18) spaces are provided on site in the new multi-family use where twenty-four (24) spaces are required, which requires a 6 off-street parking space variance. This decreases the parking deficiency from 44% to 25%.

In addition, since the property is in close proximity to the Harrison Train Station, there is a lesser need for commuter vehicles. In fact, many residential developments which are in fact transit-oriented only require 1 space per residential unit which would make the present 18 spaces compliant and not in need of a variance. For example, New Rochelle and White Plains only require one space per dwelling unit and Yonkers only requires one space per dwelling unit if the dwelling unit is within .25 miles of a train station.

Notably, based upon studies submitted, this Zoning Board has previously determined that one (1) space per unit was sufficient to issue a parking variance for 241-247 Halstead Avenue due to its proximity to the train station. *See Harrison ZBA Approval Resolution Z 15-022*

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(Harrison Real Estate Group, LLC, February 11, 2016). We find this case to also be appropriate for one (1) space per unit to therefore the 18 spaces provided are sufficient for the 16 units.

(c) The Set Back Variance

The MF-R zone requires a twenty (20) foot rear yard setback, and the Applicant proposes fifteen (15) feet necessitating a five (5) foot rear yard setback variance. At present there is no rear yard setback. On-site parking for the restaurant covers all of the site not used for the restaurant. Accordingly, at present, there is a 100% degree of non-conformity with regard to the rear yard setback. The new proposal creates a fifteen (15) linear foot rear yard setback where none exists. This permits a five (5) foot setback on Halstead Avenue which permits a streetscape to be created as well as balconies in the units.

There is precedent for this variance where, as here, the parcel is already paved. In 2016 the ZBA issued seven (7) variances to 241-247 Halstead Avenue one of which was a 75% variance on setback requirements. The ZBA acknowledged that where, as here, the site is already 100% paved that the variance request is mitigated. *(See Harrison ZBA Approval Resolution Z 15-022, February 11, 2016, annexed).* We find the same condition in this case.

Certain design opportunities are created with the setback variance. The front façade of the building will be moved rearward to provide space for plantings for a streetscape. Creation of streetscapes along Halstead Avenue is one of the goals set forth in the 2013 Comprehensive Plan. (See, 2013 Harrison Comprehensive Plan, p. 96). The creation of a five (5) foot landscaped streetscape in the front yard has created the need for the five (5) foot variance in the rear in the rear yard setback by a like amount.

In addition, the rear yard setback variance allows balconies to be created along Halstead Avenue which breaks up the building's front façade and creates a more aesthetic design.

(d) Lot Coverage Variances

As indicated, the proposed building requires a 1.6% lot coverage variance. In addition, the Code requires 750 S.F. per dwelling use and the project proposal 617 S.F. per dwelling unit, which requires a 132 S.F. lot area variance per unit.

The Present Application Meets the Standards for Issuance of an Area Variance

In addition to the Harrison Zoning Code, Town Law § 267-6(3)(c) sets forth the factors to be considered and balanced by the Harrison Zoning Board (hereafter "ZBA") when deciding whether to approve an application for an area variance application.

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1) Change in Character of Neighborhood, or Detriment to Nearby Properties, Generally

Town Law § 267-6(3)(b)(1) requires the ZBA to consider whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties, by the granting of the variance. In this regard, the Board found that, in addition to the facts set forth above, the following is relevant.

The Property is in the MF-R District which permits a 50-Foot-high building “as of right,” The 3.67-foot height variance is de-minimums.

The property is located in the lowest elevation of Halstead Avenue.

Accordingly, there is no detriment to neighboring properties regarding the height or one-story variance. Equally, the six (6) space variance will not affect the orderly traffic flow on Halstead Avenue.

The location of the site 0.5 miles from the Harrison Train Station and 1.3 miles from the Mamaroneck Train Station should reduce peak hour vehicular traffic flow from residents of the proposed building (the new ITE updates provides that proximity to a rail transit station is a proper factor when assessing traffic impacts for a multi-family building). (*Trip Generation Manual, 11th Ed., Sept. 2021, page 22*).

The existing 2,642 square foot restaurant (ITE 931) generates 83.84 weekday trips per 1,000 square feet or 221.50 weekday trips. Fifty (50%) percent of the am trips enter and fifty (50%) percent in the am peak hours are out. With regard to weekday pm peak hours, 67% of the trips enter and 33% are out.

In comparison, the proposed mid-rise, multi-family building (ITE 221) is expected to generate considerably less traffic than the existing restaurant. It is projected that one (1) vehicle will enter and three (3) will exit during the am peak hour and three (3) will enter and two (2) will exit during the pm peak hour.

The rooftop open space not only creates a recreational area for residents but also incorporates solar panels and stormwater retention features. The rooftop recreational facilities reduce cooling and heating costs and therefore fuel consumption. It also assists in management and retention of stormwater runoff and delays peak flow volume which delays the peak flow period minimizing the impact on existing sewer systems.

The absence of a detrimental impact on neighboring properties supports granting an area variance. The area variance requested is compatible with the area in which it is proposed.

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This Board considers the effect of the requested variances on the neighborhood a “critical” aspect of the board’s responsibility in balancing the relief requested against the interests of the municipality. The Board finds that the totality of the variances are not substantial and will not be out of character with the neighborhood or adversely affect neighboring properties. While there was community opposition to the requested variances the MF-R zone does permit a building 50 feet in height. The objections were more to the existing zone which is more a matter for the legislative powers of the Town Board.

The Board finds there is no change in the character of the neighborhood, and, no detriment to nearby properties.

2) Feasibility of Alternatives to Variance

Another factor balanced by this Board was whether there are feasible alternatives for the applicant to consider other than the variance. See, Town Law § 267-b (3) (b) (2). The question here starts with the review of the reason the applicant seeks the variances.

In an effort to conform to the zoning requirements the present plan is the only proposal which will work. The present plan accommodates the goals in the Comprehensive Plan while allowing the Applicant a reasonable return which was calculated at approximately 5%.

The only other alternative would be to enlarge the non-conforming building and build a larger restaurant. This alternative is in dereliction of the present zone and contrary to the purpose of the Code with respect to elimination of non-conformity; a larger restaurant would require a greater parking variance and maintenance of the existing 100% intrusion into the rear yard setback.

This alternative does not achieve the desired benefit and therefore is not a feasible alternative.

There is no feasible alternative.

3) Substantiality of Variance

Another factor the Board did consider, and balance, is whether the requested variance is substantial. (*See Town Law § 267-b(3) (b)(3)*).

The impact of the variance sought by the Applicant does not cause a detriment to the health, safety and welfare of the neighborhood or community. This fact mitigates against the substantiality of the variance.

The building, at the proposed five (5) stories rather than four will still only exceed the 50 LF height limitation by 3.67 feet and, in any event, due to the need to construct an elevator shaft and stairwell, the height of the building will be 64'4" whether the building is built as five stories over parking or a fully zoning compliant building.

The impervious area in the rear yard will not only be reduced and bring the rear yard setback more in conformity with the present rear yard setback requirements, but also, permit a 5' LF front-yard setback to accomplish a streetscape along Halstead Ave and accomplish one of the Master Plan goals.

As stated above we have found one parking space per unit to be suitable due to the proximity to mass transit.

We find the variances not to be substantial.

4) Adverse Effect or Impact on Physical or Environmental Conditions

The fourth factor which the Board must balance is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. (*See Town Law § 267-b(3)b(4)*).

This factor takes into consideration elements such as drainage, flooding, stormwater runoff, topographical elements such as slopes, grade, trees, and vegetation. *Hampshire Management Co. v. Nadel*, 241 A.D.2d 496, 660 N.Y.S.2d 64 (2d Dept. 1977).

A review of the topographical conditions of the property and the relationship of the proposed construction is set forth in the plans submitted by architect Greg DeAngelis, AIA of EnviroSpace Architects. The stormwater management system has been designed to town and state standards.

There is no adverse physical or environmental condition which results from the variance grant.

5) Whether the Owner's Difficulty Was Self-Created

The fifth factor balanced by the ZBA is whether the applicant's difficulty was self-created. (*See Town Law § 267-b(3)(b)(5)*). Where an area variance application is concerned the fact that the hardship is self-created is not at bar. We find that, to a large extent, the owner's difficulty was created by the zoning code requirements in the MFR district.

6) No Precedential Effect

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Although not enumerated as a factor to be considered, this zoning board does consider whether a variance grant will have any precedential effect.

As demonstrated above, the variance requested is unique to the 110 Halstead Avenue property topographical conditions.

There is precedent for the relief requested in prior approvals by this Board.

After referral by the Planning Board, this Zoning Board has issued variances in situations similar to the present application. (See, e.g., 550 Halstead Avenue 1 story height variance, 15 foot height variance, open space variances for 100% rooftop parking, 9 parking space variance, a 17% parking variance in MF Zoning District; see, also, 55-33 Calvert Street, 1 story variance, height variance, rear yard setback, lot coverage, open space in PB Zoning District; see, also, 227-239 Harrison Avenue, 6 Purdy Street and Playhouse Lofts, 20 foot height variance, 1,315 square foot open space variance, 14 parking space variance after application of 10 space parking waiver, 2 story variance in the CB-D Zoning District, see, also, 241-247 Halstead Avenue, 7 variances, building height of 55 feet where only 45 feet permitted, 5 stories where only 4 stories permitted, 820 square foot open space variances, 5 parking space variance after application of 10 space waiver, variance to have CB-D Zoning District extended through the Business District portion of the lot, 2 side yard variances of 7.5 feet (75%) and 10 feet (100%) and 3 feet setback variance at Freemont Street, buffer strip variances all in the CB-D Zoning District).

It must be noted that where the Zoning Board has issued similar approvals in other projects it constitutes strong evidence for issuance of the variances in the present case (see, *Knight v. Amelkin*, 68 NY2d 975 (1986)).

Documentary Evidence Submitted In Connection With The Application

Applicant has submitted: (a) a Long Form Environmental Assessment Form (EAF). In this regard the Planning Board has declared itself Lead Agency. (See, Long Form EAF, Exhibit "A" incorporated hereby reference).

In addition, Applicant has submitted or will be submitting the following:

- a. (b) a complete set of plans, as required, prepared by Gregg DeAngelis, AIA, Enviroospace Architects (**Exhibit "B"**); and
- b. (c) a school age impact study (**Exhibit "C"**); and
- c. (d) topographic and planimetric surveys (**Exhibit "D"**); and
- d. (e) traffic study (**Exhibit "E"**); and

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- e. (f) a supporting Affidavit of Aly Powell (**Exhibit “F”**); and
- f. (g) prior correspondence (**Exhibit “G”**); and
- g. (h) economic analysis of the 17-unit plan (**Exhibit “H”**).
- h. Zoning Board Approval Resolution, 241-247 Halstead Avenue, Z15-022, February 11, 2016.

NOW THEREFORE BE IT RESOLVED that the application to demolish an existing one-story restaurant and construct a 5-story multi-family building 53.67 L.F. in height, indicated in the plans submitted with this application be, and the same is hereby granted.

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.

Foregoing Resolution submitted by Zoning Board Member Thomas Foristel, seconded by Zoning Board Member Ernest Fiore at the September 14, 2023 meeting.

ADOPTED:

AYES: Paul Katz, Ernest Fiore, Steven Lowenthal and Thomas Foristel

NAYS: None

ABSTAINED: None

ABSENT: Michael Tiesi and Thomas Haynes


Secretary, Board of Zoning Appeals



Acting 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.

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

Calendar No. Z23-021

Date: September 13, 2023

Property Owner: Michelle Burton and Michael Zuckman

Property Address: 823 West Street Block 491, Lot 2

WHEREAS, the applicant, the property owner, applied for a Building Permit 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, Cristianne Ortiz with Fractal Architects filed an application on behalf of Michelle Burton and Michael Zuckman on June 15, 2023 for a variance from the Zoning Ordinance to construct a front entry portico, attached carport and circular driveway. This property is located in an R-1 Zoning District and is legally existing non-conforming with regards to the front yard setback (15.62 feet) and pursuant to the Code of the Town/Village of Harrison §235-9 b the proposed Portico & Attached Carport will require 4 Variances. 1) The minimum required front yard setback is 40 feet the proposed Front Entry Portico with a front yard setback of 15 feet 11 ½ inches; **thus, requiring a 24 foot ½ inch variance.** 2) The minimum required front yard setback is 40 feet, the proposed Carport with a front yard setback of 8 feet 3 inches; **thus, requiring a 31 foot 9 inch variance.** 3) The minimum required side yard setback is 20 feet. The proposed Carport with a side yard setback of 8 feet ¾ inch; **thus, requiring a 11 foot 11 ¼-inch variance.** 4) The minimum required combined side yard setback is 40 feet, the proposed combined side yard setback of 35 feet 9 inches; **thus, requiring a 4 foot 3 inch variance.** And pursuant to the Code of the Town/Village of Harrison §235-18B(3)(c) The driveway shall be no closer to the street or any property line that 20 feet measured along a radius at the midpoint of a line between the nearest points of the driveways at the street or at the property line, whichever is larger. The proposed Circular Driveway with a distance to the street of 15 feet 8 ¾ inches; **thus, requiring a variance of 4 feet 3 ¼ inch;** 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 7:30 p.m., on July 13, 2023 and August 9, 2023, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the Hearing: Paul Katz, Ernest Fiore, Steven Lowenthal, Tom Foristel, William Harold, Michael Tiesi and Thomas Haynes; and

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

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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 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 property is located at 832 West Street in an R-1 Zoning District and is legally existing non-conforming with regards to the front yard setback.
- B) The property is an odd shape with the majority being in the rear of the yard.
- C) The existing driveway is directly across from the Harrison High School athletic field entrance. Permitting a circular driveway will allow a second means of ingress and egress so as to allowing the occupants to pull forward out of the driveway.
- D) There were no objections from the neighbors.

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E) No undesirable change in the character of the neighborhood or detriment to nearly properties will be created by the granting of the variance

NOW THEREFORE BE IT RESOLVED, that the application to construct a front entry portico, attached carport and circular driveway indicated in the plans submitted with this application be, and the same is hereby granted.

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 two years from the date this variance is recorded in the Clerk's Office and is completed no more than four 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 Department 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 Zoning Board Member Ernest Fiore, seconded by Zoning Board Member Thomas Foristel at the September 13, 2023 meeting.

ADOPTED:

AYES: Paul Katz, Ernest Fiore, Steven Lowenthal and Thomas Foristel

NAYS: None

ABSTAINED: None

ABSENT: Michael Tiesi and Thomas Haynes


Secretary, Board of Zoning Appeals

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Paul King

Acting Chairman, Board of Zoning Appeals

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

Calendar No. Z23-022

Date: September 13, 2023

Property Owner: MGM Hayden LLC

Property Address: 5 Hayden Lane

Block 1001, Lot 58.3

WHEREAS, the applicant, the property owner, applied for a Building Permit 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, Alyssa Manfredonia with AMA Architects filed an application on behalf of MGM Hayden LLC on June 15, 2023 for a variance from the Zoning Ordinance to construct a front entry portico, attached carport and circular driveway. This property is located an R-1 Zoning District and pursuant to the Code of the Town/Village of Harrison §235-9B of the Table of Dimensional regulations the minimum required side yard is 20 feet. The proposed HVAC condenser units with a side yard setback of 15 feet: *thus, requiring a 5-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 7:30 p.m., on August 9, 2023, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the Hearing: Paul Katz, Ernest Fiore, Steven Lowenthal, Tom Foristel, William Harold, Michael Tiesi and Thomas Haynes; and

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;

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- (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 property is located at 5 Hayden Lane and is in an R-1 zoning district. Hayden Lane is a new 6 lot subdivision
- B) The house was set on the property at an angle because of a 100-foot buffer setback from a wetland which caused it to be closer to the side yard setback, two of the four condensers are within the setback.
- C) There were no objections from the neighbors and one neighbor sent in a letter in favor of the application.
- D) No undesirable change in the character of the neighborhood or detriment to nearly properties will be created by the granting of the variance

NOW THEREFORE BE IT RESOLVED, that the application to construct a HVAC condenser units indicated in the plans submitted with this application be, and the same is hereby granted.

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 two years from the date this variance is recorded in the Clerk's Office and is completed no more than four 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

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the terms of this condition. Construction shall be deemed to have been completed when the Building Department 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 Zoning Board Member Thomas Foristel, seconded by Zoning Board Member Steven Lowenthal at the September 13, 2023 meeting.

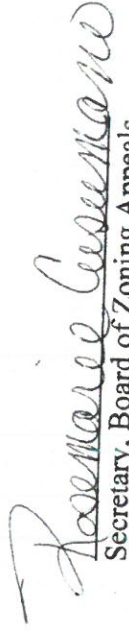
ADOPTED:

AYES: Paul Katz, Ernest Fiore, Steven Lowenthal and Thomas Foristel

NAYS: None

ABSTAINED: None

ABSENT: Michael Tiesi and Thomas Haynes


Secretary, Board of Zoning Appeals



Acting Chairman, Board of Zoning Appeals

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