

PORT WASHINGTON NORTH
BOARD OF APPEALS

Public Hearing Closed June 20, 2005

(Application of Village to Permit Village-owned Vacant Lot to be
Developed with Insufficient Street Frontage)

WHEREAS, there has come before this Board the application of the Village of Port Washington North, as owner, with regard to the premises located at 107 Cow Neck Road, Port Washington, New York, for a variance from Section 176-14 of the Code of the Village of Port Washington North, to permit a lot, a portion of which is paved and presently incorporated into a parking lot encompassing several separate lots, to be developed with a single family home despite insufficient street frontage, and which premises are shown on the Nassau County Land and Tax Map as Section 4, Block 125, Lot 20 in a Residence A-1 zoning district (the "Subject Premises"); and

WHEREAS, the Board has duly conducted a hearing with respect to said Application at which all parties in interest were given an opportunity to be heard; and

WHEREAS, the Application was submitted to the Nassau County Planning Commission, as required by law, and said commission, having communicated to the Village no objections or modifications, having vested in this Board the jurisdiction to take such action as it deems appropriate; and

WHEREAS, the members of the Board have inspected the Subject Premises and have carefully reviewed the Application and all matters offered in support thereof and in opposition thereto; and

WHEREAS, the Board has made the following findings of fact:

1. The Subject Premises occupy an interior lot, in a residential zoning district within the Village, fronting upon a street that serves as the northerly border of the Village. Portions of the Subject Premises are presently improved as a paved parking lot. The paved portion of the Subject Premises abuts, and is incorporated into, a parking lot that extends across several separate lots immediately to the west of the Subject Premises. Said parking lot is used in conjunction with a commercial banking establishment on property to the west of the Subject Premises.

2. The Village, as Applicant, by Barbara Dzierney, a registered architect and the Village Building Inspector, presented to the Board a drawing of the Subject Premises, illustrating a proposed footprint of a potential residence to be built thereupon.

3. The Village, by its Building Inspector, advised the Board that the Village has no present plans to develop the Subject Premises with a single family home, but intends at some point to convey the premises to a third party, for development of a single family home, which is consistent with the master zoning plan for the Village, as the Subject Premises lie within a zoning district approved for residential use. The Board notes that the present use of the property is inconsistent with applicable zoning, as it is used as a commercial parking area for a neighboring banking facility.

4. The Village as Applicant advised the Board that the premises would be developable “as of right” with a single family home, but for the fact that the Subject Premises has 58’ of frontage on Cow Neck Road (the “Actual Frontage Segment”), while the Village Code requires a minimum of 60’ of street frontage. The Village represented that the front property line of the Subject Premises has two segments, the Actual Frontage Segment and a 30’ long section to the south thereof (the “Additional Segment”). The Village advised the Board that a small triangular parcel not owned by the Village, Lot No. 19, which is 134’ long and varying from 0’ to 15’ wide, is situated between the Additional Segment and the street line of Cow Neck Road. At its northwesterly terminus, the triangular parcel forms a point with the street and the westerly terminus of the Actual Frontage Segment. The triangular parcel widens toward its westerly terminus, so that at its widest point, the Additional Segment reaches its maximum distance from the street line, which is 15’. The triangular parcel contains only a lawn area. In effect, the front property line of the Subject Premises proceeds for 58’ along Cow Neck Road, and then bends for an additional 30’, in a slightly southwesterly direction. The triangular lot, No. 19, together with Lots 23 and 22, comprise the property and parking lot of the bank, and all three lots are owned by LFP 167 Shore Road, LLC (the “Bank Property Owner”).

5. Board Member Scott expressed concern that development of the Subject Premises with a single family home might have a safety impact, insofar as there exists a triangular safety zone in the middle of Cow Neck Lane, between the Subject Premises on the south side of Cow Neck Lane and a grammar school across Cow Neck Lane on the northerly side thereof. Mr. Scott suggested that there might be ingress and egress difficulties, as any residence at the Subject Premises would be close to that triangular safety zone, and close to the relatively busy intersection of Cow Neck Lane, Manorhaven Boulevard and Shore Road.

6. At the June 20, 2005 session of the public hearing, a neighbor, McFadden, living on the same side of Cow Neck Road as the Subject Premises is situated, testified to his perception that there can be a dangerous traffic situation along Cow Neck Road. Mr. McFadden noted that he had sought and obtained from the Town of North Hempstead a prohibition on parking on the south side of Cow Neck Road. Ingress and egress from residences along Cow Neck Road is problematic, according to Mr. McFadden. The Village Building Inspector noted that the proposed parcel could be improved with a turnaround on the property, so that vehicles could always exit the premises facing forward, rather than backing out into the street. Mr. McFadden suggested that such a condition would be appropriate and beneficial. Mr. McFadden noted that, with the relatively recent prohibition of parking on the south side of Cow Neck Lane, traffic safety had been “vastly improved.”

7. The residential premises immediately to the east of the Subject Premises are owned by the Hwangs. Mr. Hwang testified at the hearing that he did not oppose the application. Mr. Hwang did echo concerns with respect to the traffic situation.

8. Placement of the driveway on the north side of the property would move same away from the triangular safety zone existing in the road. In addition, placing same toward the southwesterly end of the 58’ length of Actual Street Frontage would place same in the middle of the property, as the unique parcel extends an additional 30’ in a southwesterly direction from the point at which the front property line is separated from the street line by the triangular parcel.

9. Board Member Scott, after hearing the testimony presented, agreed that ingress and egress should not be a significant problem, in light of the fact that the premises would be improved with only a single family home, and that a turn-around could be placed on the property to permit all egress to occur with the front of the vehicle proceeding first.

10. The Board also notes that development of the Subject Premises with a single family home will require a curb cut onto Cow Neck Road. That aspect of the project will require application to and approval from Nassau County. The County Department of Highways has jurisdiction over same, and would need to render its determination with respect to the safety of ingress and egress from the Subject Premises onto said street.

11. The Board finds that a grant of the variance conditioned upon locating the driveway to the northerly side of the property will, to a reasonable extent, mitigate any concerns as to ingress and egress safety, as the driveway will be placed as

far as possible from the busy intersection. The Village Building Inspector, a registered architect, opined that placement of the driveway in that location would be the best place for the driveway to be located.

12. While the Board certainly considers safety issues to be relevant to its consideration of an application, the Board notes that, but for a 2' deficiency with respect to street frontage, which appears to be a technicality in light of the unique shape of the parcel and the configuration of the triangular lot described above, the Subject Premises would be developable with a single family home as of right. The Board finds that the proposed variance is "de minimus."

13. If the variance sought hereunder is not granted, then a lot zoned to be developed for residential use, having lot square footage in excess of that required by the code, and satisfying all other code provisions but for the 60' street frontage requirement, could not be developed and used for the purposes for which the Subject Premises are zoned.

14. While a portion of the Subject Premises is presently physically incorporated into a parking lot that services the banking establishment on the neighboring property, the Bank Property Owner, by its representative, acknowledged to the Board that there is no contract or agreement under which the present owner, or any future owner, of the Subject Premises is obligated to provide parking to the neighboring parcel. Therefore, if the variance sought is denied, and the property cannot be developed for a permitted purpose under the Code, then the Subject Premises could only be used for the existing use, to the extent lawfully grandfathered, i.e., a parking facility for the neighboring bank.

15. The Bank Property Owner, through counsel, stressed its desire to see a buffer area provided for on the Subject Premises, rather than on the bank property, as a certificate of occupancy for the bank property already has been issued, and no buffer is required under such certificate on the parcels owned by the Bank Property Owner. The Bank Property Owner also recommended that the Board consider conditions on any development of the Subject Premises that would take into account the fact that a bank would be existing immediately next door to a residence, and that the impact of the commercial establishment on the residence could be mitigated if the house eventually built is designed taking into account that fact.

16. The Board considered the fact that the Village Code requires that a buffer area be placed on commercial property that abuts residential property. Presently, there is no buffer area on the commercial property to the west of the Subject Premises, as both parcels are physically joined for parking purposes with a paved area. In addition,

the Board notes that there is a coordinated drainage facility for the parking area, elements of which appear to be on the Subject Premises. The Board notes that the variance, if granted, would create an issue as to the possible obligation of the neighboring commercial premises to contain live vegetation as a buffer area.

17. The Board notes that there is a 6' stockade fence that presently exists between the Subject Premises and the residential property abutting it to the northeast. That stockade fence was intended as a buffer, and is presently in disrepair. The stockade fence is supplemented with a hedge along part of the property line. The Board finds that imposing a condition upon the grant of the variance, requiring the owner of the Subject Premises to install and maintain screening, would sufficiently mitigate any adverse impact on the neighboring commercial property, if same were deemed to become non-compliant with Village Code provisions mandating a buffer on commercial property abutting residential property, if the variance were to be granted.

18. The Board understands that the drainage infrastructure on the parcel appears to serve the bank parking lot, as well. The Bank Property Owner acknowledged that it has no easement rights over the Subject Premises. The issue of removing concrete, asphalt and curbing, and drainage structures, from the Subject Premises should be a matter addressed by the affected property owners, and not by this Board. The Board is concerned with whether relief from the street frontage deficiency should be granted to permit construction of a home on the Subject Premises, and attendant construction or demolition costs with respect to the existing improvements is an issue to be determined as a matter of private property rights.

19. LFP 167 Shore, LLC, owner of the various parcels comprising the bank property abutting the Subject Premises to the west, appeared, through its counsel Bruce W. Migatz, to address the application. Mr. Migatz noted that he and Village Attorney Stephen Limmer had exchanged letters and communications concerning this parcel for various reasons, including the bank's contention that the parcel could not be sold without special act of the State Legislature, as same is devoted to public parking. The Board notes that such issues are not before it, and its jurisdiction lies solely with the application for variance. Mr. Migatz acknowledged same to be the case.

20. At the initial session of the public hearing held on May 3, 2005, Mr. Migatz suggested that the Board of Appeals at that point might not have had jurisdiction, as no disapproval or other decision by the Village Building Inspector had been issued with respect to the application. Counsel to the Board suggested that the issue be addressed by submission to the Village Building Department of a request for a determination as to the ability of the Subject Premises to be developed with a single family home, and a response thereto by the Village Building Inspector. Such action was

taken prior to the June 20, 2005 session of the public hearing. The Board notes, as advised by its counsel, that any determination by a Village building inspector can suffice as a basis for a variance application, including a letter from the Village building inspector notifying interested parties that a lot is not developable as of right in light of street frontage deficiencies.

21. Counsel for the Bank Property Owner suggested that full-blown building plans must be submitted before the Village Board of Appeals will have jurisdiction. In response to the suggestion by the Bank's counsel that a full set of building and design plans are required in order to enable the Board to render a decision, the Village Building Inspector pointed out that the only variance required, with respect to a deficiency in street frontage, can be considered without detailed architectural plans, as same are not necessary to understand the concept involved in the application. The placement of driveways, ingress and egress to and from the parcel, and any relevant impact on neighboring properties in the community can be considered, with respect to a deficient street frontage variance, without the need for detailed building and design plans. The Board finds that all the information reasonably necessary for a determination to be made as to the viability of the variance sought is contained in the drawings, the application materials and the testimony presented at the public hearing.

22. The Bank Property Owner expressed its concerns about the safety of ingress and egress to and from Cow Neck Road, the impact on eventual occupants of living next door to a bank with a drive-through window, and the impact of the introduction to the Subject Premises of a new residence on the bank's obligation to provide landscaping buffers. The Bank Property Owner's counsel stated that he was not speaking in opposition to the application, but focused on the imposition of conditions by the Board in any decision to grant, to mitigate potential adverse impacts, with a particular concern for ultimate relations between the existing bank facility and any future occupants of a home on the Subject Premises.

23. The Village, as Applicant, advised the Board that other parcels in the Residence A district have insufficient street frontage. The Building Inspector identified the existence of residential parcels in the Village Residence A district having street frontage of 48', 58', 53.75' and 54.96', and noted that this is not an exhaustive list. The Board notes that its consideration of variance applications depends in large measure on the peculiarities and unique nature of each parcel before it. However, the Board finds that the existence of other parcels with insufficient frontage does relate to the Board's weighing, as a factor, whether the application, if granted, would change the character of the community.

NOW, THEREFORE, based upon the foregoing findings of fact, this Board has weighed the benefits to the Applicant, if the Application is granted, against the adverse impact, if any, upon the adjacent property owners and the community, if the Application is granted, and based upon that weighing process, finds that there will be a substantial detriment to the Applicant if the Application is denied and a negligible, if any, adverse impact upon the neighbors and the community if the Application is granted with certain conditions, and, therefore, it is the determination of this Board that the variance Application be granted upon the following conditions:

1. Any development of the Subject Premises shall require that any driveway servicing a single family home to be built thereupon shall be placed in the northerly side yard of the Subject Premises, and said driveway shall contain a turn-around designed, to the reasonable satisfaction of the Village Building Inspector, to permit vehicles to exit the premises with the front end of the vehicle proceeding first.

2. A 6' high stockade fence shall be installed prior to issuance of a certificate of occupancy for a single family home at the Subject Premises, along the entire southerly property line separating the Subject Premises from the property immediately to the south.

3. Live evergreen screening shall be planted, prior to the issuance of a certificate of occupancy with respect to any residence at the Subject Premises, and thereafter maintained, to create a visual screening and buffer area, along that portion of the southerly property line having as its most westerly point the point parallel to the point where the southerly side and rear walls of the home meet, and the easterly point of which shall be the rear property line of the Subject Premises.

4. The variance is granted only to the extent specifically described in the foregoing conditions. Such variance shall not be deemed to permit any construction at any time without a new variance application and prior approval of this Board, unless such construction fully complies in all respects with either (a) the then-existing zoning ordinance of the Village, without giving effect to any impact on such compliance created by the variance now granted, or (b) each condition set forth above.

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