



FINDINGS AND RESOLUTIONS APPROVING VARIANCE FROM RESIDENTIAL PARKING REQUIREMENTS FOR PROJECT AT 46 SOUTH STREET, AND TO RATIFY AND AFFIRM PRIOR SETBACK VARIANCE APPROVAL AND SPECIAL USE PERMIT APPROVAL FOR SAME

WHEREAS, on January 22, 2019, the Village of Trumansburg ("Village") Board of Zoning Appeals ("BZA") received an application ("Application") from Ithaca Neighborhood Housing Services and Sundial Property Development, LLC/Claudia Brenner ("Applicants") for (i) an area variance from residential parking requirements set forth in the Village Zoning Ordinance§ 701.1, (ii) an area variance from front yard setback requirements set forth in the Village Zoning Ordinance§ 302, and (iii) a Special Use Permit for the stand-alone nursery school proposed as a part of Applicants' development of a residential/mixed-use/mixed-income residential project on a nineteen (19) acre parcel of property located at 46 South Street, and including the parcel located at 50 South Street, in the Village, Tax Parcel Numbers 9.-1-2, 8.-3-2.2, and 9.-1-4 (collectively "Site") on fifteen (15) individual lots, consisting of seventeen (17) market rate for-sale units, ten (10) affordable for-sale townhomes, six (6) affordable rental townhomes, forty (40) affordable rental apartments in a two story elevator building and a stand-alone nursery school ("Project"), and Applicants further filed supplemental submissions to the BZA in further support of the Application on February 12, 2019, February 19, 2019, and March 5, 2019; and

WHEREAS, pursuant to 6 NYCRR Part 617.6, the BZA was an involved agency duly participating in and bound by the Lead Agency for coordinated Project review determination under the State Environmental Quality Review Act ("SEQRA"), which negative declaration was duly issued October 25,2018;and

WHEREAS, County Planning issued General Municipal Law§§ 239-1, -m and-n reviews to the Village Planning Board, including as SEQRA lead agency, in relation to the Site and the project, duly including the proposed nursery school, such that 239 reviews relating to the impacts thereof were duly considered as required by law; and residential area variances relating only to yardage or setback requirements are arguably not subject to § 239 reviews under the intermunicipal review agreements between the Village and the County, but were requested anyway, if necessary, just to be thorough; and the parking variance issues, not being related to residential setbacks or yardage variances, were duly submitted for§ 239 review; and the County duly replied to each and all such requests by letter dated March 20, 2019, continuing prior§ 239 replies as were delivered in relation to subdivision and site planning reviews for the nursery school and duly re-stating that the projects and their permits and variances, as submitted, have "no negative inter-community, or county-wide impacts"; and

WHEREAS, on January 28, 2019, the BZA held a meeting, attended by Applicants and members of the public, in connection with the BZA's review of the Application, and upon February 19, 2019 at 6:00 p.m., the BZA further held a duly noticed public hearing ("Public Hearing") and heard a presentation

on the Application from the Applicants, and also heard public comment on the Application and took testimony, and evidence from all persons interested in the subject thereof, and thereafter the BZA duly deliberated thereon; and

WHEREAS, following the Public Hearing on February 19, 2019, the BZA determined and voted to: (i) approve an area variance from front yard setback requirements set forth in the Village Zoning Ordinance § 302 ("Setback Variance Approval"); to (ii) issue a Special Use Permit for the stand-alone nursery school ("Special Use Permit Approval"); and (iii) to table review of that portion of the Application that concerned an area variance from residential parking requirements, pending submission of additional parking data from Applicants; and

WHEREAS, on March 12, 2019, the BZA held an additional meeting, attended by Applicants and members of the public, in connection with the BZA's review of that portion of the Application that concerned an area variance from residential parking requirements, and thereafter the BZA further deliberated thereon and directed a § 239 review request be filed with the County Department of Planning and Sustainability; and

WHEREAS, on March 21, 2019, the BZA reconvened at a duly called meeting and reviewed the § 239 information and reply, and continued such further discussion regarding the parking variance as it deemed necessary; and

WHEREAS, after due deliberation on the Application and discussion of the requested variance from residential parking minimums that focused on the five-part balancing test for an area variance as set forth in the Zoning Ordinance § 809(2) and NYS Village Law § 7-712-b (including subdivision (b)(3) therein), and after careful consideration of verbal and written comments of community residents and all evidence and testimony provided at the public hearing, the BZA now desires to grant a variance from residential parking requirements for the Project's affordable rental dwelling units, and reduce the required number of parking spaces for those units from 2 parking spaces per residential dwelling unit to 1.4 parking spaces per residential dwelling unit; and

WHEREAS, the BZA now wishes to ratify and affirm the Setback Variance Approval and the Special Use Permit Approvals that it approved and issued on February 19, 2019, and further wishes to clarify the basis of both the Setback Variance Approval and the Special Use Permit Approval, including to ratify the same after the March 20, 2019 § 239 reply from the County, even though the same noted no impacts, did not change prior § 239 review replies as respects such subject matter, and even though a 239 review may not have been technically required in respect of one or more of these applications; and

WHEREAS, it is duly noted that these variances and this Special Use Permit were referred directly from the planning board, which duly confirmed that it recommended the area variance applications to enhance the project site plan, as well as mitigate some of the potential negative impacts that could arise in respect of the same.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BZA AS FOLLOWS:

I Based upon a thorough review and examination of the Project, and the Application, and full consideration of Applicants' submissions and statements, and further consideration of all public comment, both written and verbal, the BZA has determined that it is appropriate to grant an area variance from the residential parking minimum set forth in Zoning Ordinance§ 701.1, as applied only to the 46 affordable rental dwelling units in the Project, and for those units only, grants a variance to require 1.4 parking spaces per unit ("Parking Variance Determination"). Reasons supporting the Parking Variance Determination are as follows:

1. The BZA finds that no undesirable change will be produced in the character of the neighborhood and that no detriment to nearby properties be created, or in the future become likely, due to arising from or in relation to the Parking Variance Determination.
2. The BZA finds and gives credible weight to the submitted parking data, including for comparable development projects in comparable settings, which in sum demonstrate that 1.4 parking spaces per unit for the Project's 46 affordable rental dwelling units will be sufficient.
3. Thus, the BZA also finds that no undesirable change in the neighborhood, nor detriment to nearby properties will be created by the Parking Variance Determination.
4. The BZA finds that the benefit sought by the Applicants cannot be achieved by some method, feasible for the Applicants to pursue, other than an area variance, as there is no other way feasible to reduce parking requirements in site plan review under Village zoning.
5. Moreover, and although Applicants could design a Project with more parking to satisfy the requirements of Zoning Ordinance§ 701.1, it is found that such a design could or would generate unused parking and more impervious surface area than is necessary to adequately service the Project's affordable rental dwelling units, and the negative impacts from such a requirement far outweigh the benefits conferred by this variance and the potential negative impacts arising or alleged as capable of arising from this variance (which, as noted above, the BZA finds would not exist in the first instance in respect of this particular project).
6. The BZA finds that the requested area variance to 1.4 parking spaces for the Project's 46 affordable rental dwelling units is moderately substantial. Mathematically, this represents a variance of approximately 30%, but substantiality is, by law, not completely measurable by, or defined in accord with, mathematical formulae, as each variance needs to be separately weighed together with a myriad of factors to determine the significance of the variance from existing standards.
7. The Zoning Ordinance,§ 701.1, requires 2 parking spaces per residential dwelling unit, which, as applied to the Project's 46 affordable rental dwelling units, would require 92 parking spaces. Accordingly, a reduction to 1.4 parking spaces for the Project's 46 affordable rental dwelling units would require approximately 65 parking spaces. Despite this reduction substantiality of the variance is also based on need, and the BZA concludes that because Applicants' data and submissions demonstrate that the parking needs of the affordable rental dwelling units will be sufficiently met by 1.4 parking spaces, the variance is appropriate.

8. The BZA finds that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and instead expressly finds and concludes that reducing parking spaces while accommodating the proven, actual needs of these 46 units, promotes important planning and community goals outlined in zoning and the Comprehensive Plan, including more open space, more green space, a reduction in impervious surfaces, and more consistency with nearby residential and non-residential areas of the Village.

9. The BZA finds that the alleged difficulty is self-created, consistent with the Applicants' acknowledgement of such in the Application.

10. The law requires that each factor of the 5 factors for area variances be weighed and considered, and that the failure to meet one or even several standard does not, standing alone, preclude an area variance where, as here, the benefits achieved by the variance outweigh any detriments to the community and the benefits to the Applicant are not disproportional to the community benefits and detriments that may arise from such variance.

11. The applicants request for an area variance to reduce parking requirements to 1.2 spaces per unit is thus granted in part and denied in part, and an area variance be and hereby is approved at 1.4 spaces per unit.

12. The ZBA finds and declares that the above variance standard at 1.4 spaces/unit is the minimum variance deemed necessary and adequate as will also preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

13. This variance is granted subject to final site plan approval for the project and the Site by the Planning Board.

II. After due deliberation on the Application and discussion of the requested variance from front yard setback requirements that focused on the five part test for an area variance as set forth in the Zoning Ordinance § 809(2) and said Village Law § 7-712-b, and after careful consideration of verbal and written comments of community residents, the BZA now desires to further ratify and affirm the Setback Variance Approval it issued on February 19, 2019, which granted an area variance from the 50 foot minimum front yard setback required by the Village Zoning Ordinance § 302 to a 25 foot minimum front yard setback for the lots within the Project. Reasons supporting the Setback Variance Approval are as follows:

1. The BZA considered whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance, and it was determined that the sense of community and congruence with other setbacks in the area, creating more open spaces, and creating greater buffers and buffered parking areas, all mitigated in favor of finding that this area variance request promoted and protected the character of the neighborhood and avoided detriments to neighboring parcels, and did not detract from the same.

2. The BZA discussed and found that varying front yard setbacks in the Project would not significantly impact the appearance of front yard setbacks along South Street or other streets around the Project and Site.

3. The BZA further discussed and found that such a variance would promote more rear yard spaces, and provide for an overall better and enhanced streetscape.

4. It was therefore found and determined that no undesirable change would be produced in the character of the neighborhood, and no detriment to nearby properties result from the BZA's grant of an area variance reducing minimum front yard setback to 25 feet for lots in the Project, as requested in the Application.

5. The BZA considered whether the benefit sought by the Applicants could be achieved by some method, feasible for the Applicants to pursue, other than an area variance, and the BZA noted that, while a 50-foot setback could be created, the results thereof would be less favorable to the neighborhood character than a Project design that utilizes a 25 foot minimum front yard setback as requested in the Application, including as a reduced front yard setback creates larger rear yards, allows future residents to park vehicles in backyards, rather than parking prominently in the area between front porches or building fronts and the sidewalk and road, and reduced front yard setback as creates more buffering and space between the project and its improvements and existing neighbors and areas.

6. The BZA considered whether the requested area variance would be substantial, again noting that mathematical determinations are not alone conclusive. Yet, a 50% variance is deemed substantial, but none-the-less still beneficial to the project and the community. It is also noted that this straight-formula-based setback did not duly take into account the fact that there is an approximate 14'6" distance between the edge of the planned road pavement and the property boundary, such that such area mitigated the significance of the size of the variance, with the BZA duly and further noting that setback variances are typically measured from the edge of road pavement, not from the edge of the public right of way

7. The BZA considered whether the proposed setback variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and it was determined that the requested setback variance would not have any additional or cumulative impact on the environmental conditions in the Project or the community, as such variance actually mitigates project impacts created by new roads, new residences, and new buildings.

8. The BZA considered whether the alleged difficulty was self-created and it was generally agreed that the alleged difficulty was self-created, consistent with the Applicants' acknowledgement of such in the Application. Again, the BZA further noted that such a self-created difficulty in this instance did not preclude the BZA from issuing the Setback Variance Approval, and noted that this request originated, at least in part, from the planning board, which was seeking to improve the overall site plan and reduce impacts.

9. The law requires that each factor of the 5 factors for area variances be weighed and considered, and that the failure to meet one or even several standard does not, standing alone, preclude an area variance where, as here, the benefits achieved by the variance outweigh any detriments to the community and the benefits to the Applicant are not disproportional to the community benefits and detriments that may arise from such variance.

10. The applicants request for an area variance to reduce the front yard setback to 25' be and hereby is approved.

11. The ZBA finds and declares that the above front yard variance is a reasonable minimum variance deemed necessary and adequate as will also preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

12. This variance is granted subject to final site plan approval for the project and the Site by the Planning Board.

13. Thus, this resolution ratifies and memorializes, and duly affirms, the Setback Variance Approval and grants an area variance to reduce the front yard setback requirement for the lots in the Project to 25 feet.

14. Finally, it is noted that the prior approval of this area variance was duly made by motion of Phil Carubia, as duly seconded by Neil Henniger, and unanimously approved by a roll call vote duly taken and recorded. Nothing herein displaces such prior approval and these declarations, findings, and ratification, re-statements and approvals are intended to supplement and affirm such prior approval, including to create a full record and recordable minutes for the same.

III. After due deliberation on the Application and the request for a Special Use Permit for the nursery school proposed for the Project, and discussion that focused on the three part test for a Special Use Permit as set forth in Zoning Ordinance § 807, and after careful consideration of verbal and written comments of community residents, the BZA now desires to further ratify and affirm the Special Use Permit Approval it issued on February 19, 2019. Reasons supporting the Special Use Permit Approval are as follows:

1. The BZA considered whether the location and size of the nursery school, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, would be such that it would be in harmony with the orderly development of the district, and the location, nature and height of buildings walls, and fences would not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

2. In considering the nursery school's location within the greater Project Site, and whether the nursery school's size and parking provisions were appropriate as proposed, BZA members felt that the expanded parking provisions and layout for the nursery school as proposed in the Applicants' February 12, 2019 supplemental submission to the BZA, were a significant improvement and were more in harmony with the orderly development of the district.

3. BZA members also noted that the enlarged lot measuring approximately 101,252 square feet, on which the approximately 4,000 square foot nursery school building would sit, is large, but is, nevertheless, consistent with the scale of the Project.

4. The BZA further noted that the staggered nature of the nursery school drop-off schedule, which is not available to traditional elementary or middle or high schools that feature uniform start and end times, allows for flexibility to ease vehicle congestion and prevent the traffic around the nursery

school from having a detrimental impact on the Site, the Project, and the surrounding Village streets.

5. The BZA determined that with approximately 48 students proposed to be in attendance at the nursery school on schooldays, where some parents may have multiple children in attendance, there would not necessarily be 48 individual vehicles dropping children off at the nursery school each day, such that traffic levels and congestion associated with the proposed nursery school would be appropriate for the Site and the nursery school's layout and parking provisions.

6. The BZA also considered the traffic studies reviewed by the Village Engineer for this project, including two studies that found no significant traffic impacts as arising or likely to arise in respect of the Project as a whole, or the nursery school in particular.

7. The BZA found that the nursery school's operation, nature, and intensity would be in harmony with the district, noting that regular hours of operation for children in attendance would be from 8:00 a.m. to 5:00 p.m., with occasional parent meetings and staff trainings during evening hours.

8. The BZA also considered that pre-school and nursery school and related educational services are inherently imbued with an important public interest that NYS and applicable laws affecting this review duly consider important.

9. The BZA also considered whether operations in connection with the proposed nursery school would be more objectionable in nature to nearby properties by reason of noise, fumes, vibration, flashing lights, increased traffic or any other objectionable reasons, than would be the operations of any permitted use. The BZA found and hereby re-declares and affirms that the operations in connection with the nursery school must not be more objectionable in nature to nearby properties as compared to the operations of another permitted use in an R-1 district, such as a regular school. The BZA also noted that where the nursery school children would spend approximately one-half hour outdoors, twice daily, and generally towards the end of the school day, such use would not be objectionable to nearby properties. Moreover, the BZA members noted that a regular school is permitted in the district, and further noted that the Applicants' proposed use as a nursery school has lesser impacts and was a smaller-scaled operation than a regular elementary, middle or high school. Finally, the BZA recognizes proximity to existing school campuses, and finds no necessary conflict with such schools, either as respects redundancies of service or undue location impacts.

10. Therefore, the BZA determined that the proposed nursery school would not be more objectionable in nature to nearby properties than would be the operations of any permitted use. Furthermore, the BZA members felt that, though traffic would increase in the immediate Project area in connection with the proposed use of the portion of the Site for a nursery school, such increase would, nevertheless, be a marked improvement over the traffic and pedestrian conditions associated with the nursery school's current location on Main Street in the Village, which presently yields excessive parking congestion, and challenging walking conditions for parents and children entering and exiting the current nursery school building on Main Street.

11. The BZA also considered whether the nursery school would be in conformance with the Village of Trumansburg Comprehensive Plan, and the BZA thus noted that the Village of Trumansburg Comprehensive Plan promotes safety and walkability in the Village, and promotes attracting young families, and further promotes the development of quality schools for children, and that such values

would be consistent with the nursery school's mission. The BZA noted that the nursery school component of the Project enhances the Project's capacity to attract young families and draw them to the Village, and further found that the Planning Board's comprehensive review of the Project as a whole would ensure the nursery school would be appropriate for the Site.

12. The BZA further noted that developments to and alterations of the nursery school design since the initial Project proposals to the Planning Board have been made by the Applicants in response to, and in an effort to accommodate, community concerns and public comments made thereon.

13. Finally, the BZA was cognizant that a nursery school was an allowed use in the zone, and the BZA determined that no impact was so large and unavoidable as would or could result in a denial of the Special Use Permit for such allowed use, and therefore the Special Use Permit was approved, and such approval is hereby ratified, re-declared, and affirmed.

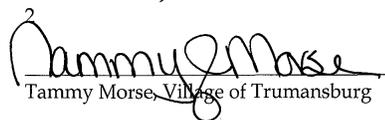
14. Such Special Use Permit remains subject to site plan approval and subdivision approval of and for the nursery school and its lot. The BZA also affirms that this approval is no contingent upon the exact plan as submitted, duly recognizing that additional site planning and adjustments for site conditions will occur. Thus, the BZA Special Use Permit, as herein ratified, and as was previously issued, shall only require a supplemental approval if the Planning Board determines that any one or more project changes as respects the nursery school or its lot and layout, are individually or cumulatively so significant as to require further review from the ZBA, and the Planning Board is duly requested to refer such matter if and when so required by law or under SEQRA.

15. Finally, it is noted that the prior approval of this Special Use Permit was duly made by motion of Phil Carubia, as duly seconded by Scott Sheavly, and unanimously approved by a roll call vote duly taken and recorded. Nothing herein displaces such prior approval and these declarations, findings, and ratification, re-statements and approvals are intended to supplement and affirm such prior approval, including to create a full record and recordable minutes for the same.

The question of the adoption of the foregoing findings, declarations, resolutions and approvals and ratifying resolutions was offered by BZA Member Neil Henniger and seconded by BZA Member Mike Schlossberg. Following discussion thereupon, the following roll call vote was taken and recorded:

Timothy Hamilton, Chair-	Aye
Neil Henniger-	Aye
Mike Schlossberg-	Aye
Scott Sheavly-	Aye
Phil Carubia-	Aye

I, Tammy Morse, Secretary of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Village of Trumansburg Board of Zoning Appeals for the March 21st, 2019


Tammy Morse, Village of Trumansburg