

**VILLAGE OF WALDEN:
ZONING BOARD OF APPEALS**

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In the matter of the application of:

UAR CORPORATION

**FINDINGS OF FACT
AND DECISION**

for a use variance to change a non-conforming first floor professional office into a non-conforming retail pharmacy.

**TAX MAP NO.
309-16-13**

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The property which is the subject of this application is located at 108-110 Orange Avenue, Walden, New York and is designated on the Village Tax Map as Section 309, Block 16, Lot 13. It is located in an R-5 (Single Family) Zoning District.

A public hearing on the application was scheduled for October 28, 2010 at the Village Offices, One Municipal Square, Walden, New York. Notice of said public hearing, including the subject, date, place and time, was duly published and mailed. Proper affidavits of publication and mailing have been received from the applicant.

The public hearing was held on October 28, 2010 and continued on November 4, 2010. The owner, Gerald Jacobowitz, appeared in person together with his attorney, Marcia Jacobowitz, Esq. The testimony at the Public Hearing established that the property had previously been granted a use variance by this Board on May 6, 1999. That application allowed a previous owner to convert a non-conforming, multiple dwelling into a non-conforming, mixed use building consisting of professional offices on the first floor and two apartments on the second floor. In April, 2004, the current owner purchased the property and continued to operate the building pursuant to the 1999 variance. In late 2009 or early 2010, the firms occupying the first floor office space downsized their operations and move to other locations leaving the first floor vacant. Over the past 7-8 months, the owner has attempted to rent the space to other professionals through real estate agents, advertising or direct solicitation to no avail. The owner has had contact with the applicant, UAR Corporation, regarding use of the space as a small, neighborhood pharmacy, however, the property is zoned R-5 single family and retail uses are not permitted. Thus, the owner is seeking a variance to change from one non-conforming use to another non-conforming use.

The owner testified that the building was built before the 1940s and contained a mix of uses, mostly commercial, throughout the years.

The proposed pharmacy would not result in any physical changes to the building or the sign that now exists on the premises. The pharmacy would have 2-3 employees on site, a reduction in numbers from the previous use as professional offices and the hours of operation would be roughly the same as the office uses with the exception of limited hours on the weekends. The two residential units on the second floor would stay as they are.

The owner then testified that he believed that his situation qualified for the use variance in that he could satisfy the legal criteria necessary. First, he offered that the property is unique in that it was built as a commercial property that is now located in a single-family district. Most of the other surrounding properties were built for residential uses. Second, he stated that there would be no change in the character of the neighborhood in that the existing use of the premises as offices and apartments is not much different from the proposal to use it as a retail pharmacy. In addition, there are two commercial properties directly across the street from his property. He also provided the Board with a petition from 8 neighboring property owners that indicated they had no objection to the pharmacy use. Third, he stated that he believed that the hardship was not self-created in that the current economic conditions are dictating the conditions for land use and investment or lack thereof and that the vacant office space throughout the Village is indicative of the problem. Lastly, the owner presented the Board with documents indicating that he could not realize a reasonable return on the property without the variance. Taking his investment, expenses and income for the property into account, the owner demonstrated that his rate of return was less than 2%; and, when the mortgage was taken into account, his return may very well be a negative.

The Board heard from one immediate neighbor of the subject property who indicated that he was not opposed to the change but that he did have some concerns, namely, whether the site had sufficient parking spaces for the uses of the property, how snow removal will affect the number of spaces, how garbage collection was going to be handled and traffic issues on Orange Avenue for persons entering and leaving the site.

The Board examined and discussed these issues with the owner. In addition, the Board was concerned that if it granted

the use variance to allow a retail pharmacy then, in the future, other perhaps more intensive retail uses would be allowed and such uses could affect the neighborhood and add to difficult traffic issues. The owner indicated that it was not his intent to establish more intensive retain uses such as a convenience store or a delicatessen and he would

not object to the Board placing a condition on the variance that would exclude those specific types of retail uses from the decision.

The Board determines that this is an application for a use variance. The criteria which the Board must consider in determining whether or not to grant the use variance is the standard set forth in Village Law, Section 7-712-b(2). The Board has considered the following factors and has made the findings set forth below:

I. WHETHER UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT CANNOT REALIZE A REASONABLE FROM THE PROPERTY IN QUESTION?

The Board determines that the owner has proven that he cannot realize a reasonable return on the property without the need for a variance. The owner purchased the property in 2004 for \$350,000 and he assumed the mortgage from the previous owner. Expenses on the property including, taxes, insurance, utilities, maintenance and management of the property were demonstrated to the Board. The only income currently being generated by the property is from the two apartments on the second floor. Based upon the numbers, the owner is realizing a return on his investment of less than 2% and, if the mortgage payments are taken into account, his return is most probably in the negative. Given these facts, the Board determines that the owner has satisfied this criterion.

II WHETHER THE ALLEGED HARDSHIP IS UNIQUE, AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD?

The Board determines that the applicant's hardship is unique. The property is located in a one-family district where many of the properties are improved by single-family homes. The building in this instance was constructed before the 1940s, pre-dating zoning in the Village and was designed for essentially commercial uses. In 1999 when this Board approved a previous owner a variance, the property was used for a non-conforming

multiple dwelling. That 1999 variance allowed the property to be used for professional offices on the first floor and two apartments on the second floor and the Board at that time apparently believed the previous owner had demonstrated the uniqueness of this property. Therefore, this Board believes that same uniqueness applies to the instant application to permit a variance for the change in the first floor use from office space to a retail pharmacy.

III. WHETHER THE REQUESTED USE VARIANCE, IF GRANTED, WILL ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD?

The property is located in a single-family residential district. Most of the properties in this neighborhood are single-family homes. The subject building was built prior to the 1940s as a commercial property and has been used for a wide range of uses throughout the years. The 1999 variance granted by this Board permitted the property to be a non-conforming, mixed use building. The current application to substitute one non-conforming use for another non-conforming use does not appear to be one that would alter the essential character of the neighborhood considering the previous uses of this building and the other non-conforming properties directly across the street from the subject property. Under all of the circumstances presented, the Board determines that the granting of the variance would not alter the essential character of the neighborhood.

IV. WHETHER THE ALLEGED HARDSHIP HAS BEEN SELF-CREATED?

The owner maintains that the current economic conditions are dictating the adverse real estate market and that these conditions are responsible for the loss of his commercial tenants and the inability to rent the premises. While this may be all too true, the Board does not believe that this is the true measure of the self-created hardship criterion. The Board, therefore, determines that the owner's hardship is self-created. However, this is only one of the criteria the Board must consider and it is not the determinative one.

DECISION

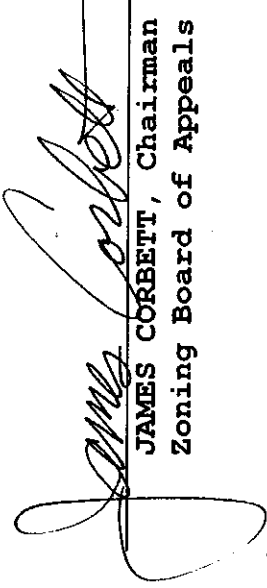
The Board determines that the requested variance pursuant to Section 148-51(D)(2)(c) of the Village Code to permit the conversion of first floor, non-conforming professional office

...g, retail pharmacy is granted. This
...ed upon the following conditions: (1) that the
... obtain approval from the Village Planning Board
pursuant to Section 148-56 of the Village Code; and (2) that the
owner agrees that the extent of this variance does not include
specific retail uses classified as a convenience store or a
delicatessen. In the event the owner wishes to change the
retail use of the first floor to one of these two specific
retain uses, he must re-apply to this Board for another
variance.

Present and Voting on this resolution to grant the
requested variance:

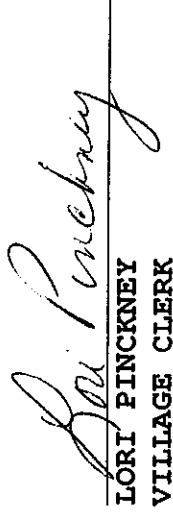
James Corbett,	Aye
David Ohlmer,	Aye
Brenda Adams,	Aye
Jason Trafton	Aye

Dated: Walden, New York
November 5, 2010



JAMES CORBETT, Chairman
Zoning Board of Appeals

Filed in the Village Clerk's Office this 9 day of November,
2010.



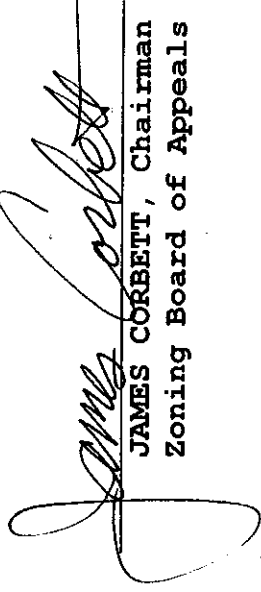
LORI PINCKNEY
VILLAGE CLERK

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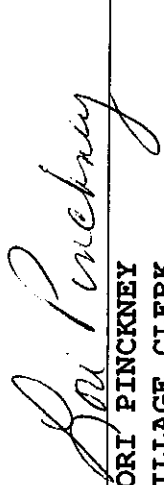
Present and Voting on this resolution to grant the
requested variance:

James Corbett,	Aye
David Ohlmer,	Aye
Brenda Adams,	Aye
Jason Trafton	Aye

Dated: Walden, New York
November 5, 2010


JAMES CORBETT, Chairman
Zoning Board of Appeals

Filed in the Village Clerk's Office this 9 day of November,
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LORI PINCKNEY
VILLAGE CLERK