

ARDSLEY, NEW YORK

**ZONING BOARD OF APPEALS
JUNE 26, 2013**

Chairperson Hoffman opened the meeting at 8:07 p.m.

Board Members Present: Chairperson Hoffman, Mr. Amir, Mr. Wiskind, Mr. David, Ms. Slipp.

ANNOUNCEMENTS AND APPROVAL OF MINUTES

1. Announcements

A motion was made, seconded and unanimously passed, to confirm the scheduling of the next meeting of the Zoning Board of Appeals for the fourth Wednesday of the month, July 24, 2013, at 8:00 p.m.

2. Approval of Minutes

Mr. David made a motion, seconded by Mr. Wiskind, to approve the minutes of the May 22, 2013 meeting of the Zoning Board of Appeals, as amended. Mr. Amir, Mr. Wiskind and Mr. David voted aye; Ms. Slipp abstained due to her absence at the meeting; Chairperson Hoffman voted aye; and the motion passed by a vote of 4-0.

Respectfully submitted,

*Tasha Macedo,
Zoning Board Secretary*

ARDSLEY, NEW YORK

**ZONING BOARD OF APPEALS
JUNE 26, 2013**

Board Members Present: Chairperson Hoffman, Mr. Amir, Mr. Wiskind, Mr. David, Ms. Slipp.

**APPLICATION OF
891 SAW MILL RIVER ASSOCIATES INC
(d/b/a County Auto & Commercial Towing North, Inc.,
a/k/a Mobil Ardsley Service & Chestnut
((Petroleum Distributors) a/k/a Cheesnut) Mart),
891 SAW MILL RIVER ROAD
ARDSLEY, NEW YORK 10502
Section 6.10, Block 1, Lot 3,
in a B-2 Special Business District
(CONTINUATION)**

On the application for an area variance to construct a proposed 2-story addition with a rear-yard setback of less than 25 feet (Village Code § 200-77C), Mr. Wiskind made a motion, upon the applicant's request, to adjourn the hearing until the next meeting scheduled for July 24, 2013. The motion was seconded by Mr. David, and passed unanimously.

Respectfully submitted,
Tasha Macedo,
Zoning Board Secretary

ARDSLEY, NEW YORK

**ZONING BOARD OF APPEALS
JUNE 26, 2013**

Board Members Present: Chairperson Hoffman, Mr. Amir, Mr. Wiskind, Mr. David, Ms. Slipp.

**ARDSLEY MALL, INC.
(BY ARDSLEY RESTAURANT GROUP, INC.)
925 SAW MILL RIVER ROAD
ARDSLEY, NEW YORK
Section 16, Sheet 1, Block 0000/0, Lot P13K
(901-935 SAW MISS RIVER ROAD),
in a B-3 Shopping Center Business District
(CONTINUATION)**

On the application for a use variance to permit live entertainment at Pumpernickel Restaurant (Village Code Section 200-80.1A), Ms. Hoffman reported that she contacted the Building Inspector and the Village Attorney, who will be speaking with the Board of Trustees about getting this moved along. Mr. David made a motion to adjourn the hearing until the next meeting scheduled for July 24, 2013. The motion was seconded by Ms. Slipp, and passed unanimously.

Respectfully submitted,
Tasha Macedo,
Zoning Board Secretary

The session opened at 8:11 p.m.

Board Members Present: Chairperson Hoffman, Mr. Amir, Mr. Wiskind, Mr. David, Ms. Slipp.

**APPLICATION OF
ANTHONY S. DIFILIPPO AND DEANNA & KEVIN TIERNAN
6 LOOKOUT PLACE
ARDSLEY, NEW YORK
Section 6.30, Block 10, Lot 3,
in an R-3 One-Family Residential District**

Present: Anthony DiFilippo and Deanna Tiernan, 6 Lookout Place, Ardsley, New York.
Anthony Federico, R.A., 1048 Dobbs Ferry Road, White Plains, New York.
John McCauley, 8 Lookout Place, Ardsley, New York.
Steven Galletta, 27 Victoria Road, Ardsley, New York.
Miriam Allen, 23 Victoria Road, Ardsley, New York.

Chairperson Hoffman opened the public hearing by reading the Legal Notice and the application for variances from strict application of the following provisions of the Code of the Village of Ardsley, for proposed legalization of a deck constructed without a building permit to the rear of the existing legal non-conforming building, located within an R-3 One-Family Residential District:

- (1) Code § 200-25 (“Building Coverage”), requiring that building coverage not exceed 28% of lot area, where existing building coverage is 27%, and proposed building coverage is 30%; and
- (2) Code § 200-26C (“Yard Requirements”), requiring minimum rear yard depths of 20 feet, where the existing rear yard depth is 20 feet to the house, and the proposed rear yard depth to the deck is 10.17 feet.

On behalf of the applicants, Anthony DiFilippo submitted the green return-receipt cards received back from his mailing of meeting notices to all owners of property within 200 feet, additional photos of the rear yard, and a letter to the ZBA from neighbor Katie Connick, 4 Lookout Place; and he submitted and read aloud the following written statement:

“My name is Anthony DiFilippo and I’ve lived in Ardsley for 42 years at 6 Lookout Place. My wife passed away a number of years ago and I decided to stay in Ardsley where we raised two daughters. In 2010 my oldest daughter wanted to move back to Ardsley to raise her two young daughters here. So I built an addition to my home so my daughter and her family could move in with me. I am here tonight to ask for a variance for a small deck I built in my rear yard which I now understand is in violation of my rear yard setback. I obviously made a mistake by not applying for a permit for the deck and I apologize for that. The reason I built the deck was that my daughter said she wanted to have a communion party for her daughter which would involve many small children and my older family members. When I saw my grandchildren and my older brothers having difficulty going up and down the steps to the rear yard I knew I had to do something before the party. I know now that I should have filed for a permit but at the time it seemed my only way out. The deck is only 1½ feet above the ground and only 10 feet deep with a bench built in because there is no room for chairs. I didn’t think such a low deck would be objectionable to my neighbors since it would be smaller than the patio I was approved to build on my original plans. Again, I apologize for what I built with a permit but I ask for your consideration of my situation and I hope you will grant the required variances. In case you haven’t had a chance to visit my home I brought some pictures of the deck.”

Mr. David disclosed to the ZBA that, having lived in the community for the past 40 years, he does know two of the applicants and their architect. Mr. David stated that while he does not feel it is necessary to recuse (as he has not seen them in a long time, and they never did have social relationships), he is perfectly willing to do so if any member of the ZBA feels he should. All ZBA members agreed they do not see a problem with his participation.

Mr. David inquired whether the deck that was built conforms to current Building Code requirements. Ms. Hoffman responded that the ZBA must review the variance application as if the deck does not exist, but instead is a proposed structure; and if a variance is granted, the applicant will then apply to the Planning Board for a special permit, since the proposed land coverage of 3,310 square feet exceeds the basic permitted gross land coverage of 2,775 s.f., followed by the Board of Architectural Review.

Ms. Hoffman noted that the photographs submitted by the applicant show a sizable shed on the premises which does not appear to be indicated on the Town's property card, and inquired whether it was included in the applicant's calculation of land coverage. Architect Anthony Federico responded that he thinks it was, but he will check to verify.

Ms. Hoffman inquired about the size of the deck, noting it sounds huge, though Mr. DiFilippo had described it as "small." Mr. DiFilippo stated that the depth of 10 feet is small to fit a table and chairs, which is why he had a bench built in against the parapet wall. Mr. Federico agreed that it would be difficult to walk around occupied chairs, noting that he had told Mr. DiFilippo that he should think about putting in a bench; and he stated the deck is 22 feet wide because of the location of the two doorways. Mr. DiFilippo stated that he had reasoned that the deck would be only 1.5 feet off the ground and also smaller and closer to the house than the rear patio that had been previously approved, but indicated he understands, as Mr. Wiskind pointed out, that Village Code requirements are not the same for patios and decks. Mr. DiFilippo also argued that the depth of 10 feet is only 6 feet further back than the prior landings and stairs; and Mr. Federico clarified that the two platforms were each 7 feet wide and 3 feet deep, with stairs down to grade.

Ms. Hoffman asked about the prior construction, and it was agreed that: before Mr. DiFilippo applied for a side yard variance in 2010 and special permits for house size and land coverage from the Planning Board, the house had been a one-story Huntley ranch; after completing the addition in 2011, the house size had been maximized to double the height (to two stories plus attic windows above), with building coverage at 27% of lot area, including a one-story frame (13'4" deep, 42'6" wide) family room built up to the buildable rear yard setback line with the rear wall 20 feet from the rear property line.

Ms. Hoffman noted that the Building Inspector had stated in a memo to the ZBA: "There are two sliding doors in the rear wall of the house. Stairs were needed outside each door because the doors are approximately two feet above finished grade. Since uncovered landings and stairs can encroach into a required yard, the approved plans showed a separate uncovered landing with stairs outside of each door. During construction, the owner had wanted to connect the landings, but I denied that request because I had determined that connecting the landings would have created a deck and a variance would have been required at that time."

Mr. DiFilippo agreed that, at the time of the prior addition, he knew he could not create a deck without a variance, but later decided to do so because of safety concerns with the two rear landings with stairs that he had had built, shown in photographs he submitted without railings.

Mr. Wiskind asked for clarification about the timeline of events. Mr. DiFilippo stated that his nephew built the deck for him in the month or so before the party which was planned for May of 2013. Mr. Federico agreed that was around 18 months after completion of the prior construction in 2011; and he stated that he was not called about the deck until after the Building Inspector became aware of the construction and issued a violation notice around June of 2013.

Ms. Hoffman noted that she has a problem with the application, in that the ZBA has an obligation to grant only the minimum variance required, considering the protection of all properties and the setting of precedents; here, the deck is not “small”; a 50% rear yard setback variance is substantial; and the applicant knew he had maxxed out with his prior construction. Ms. Slipp concurred, noting that the ZBA’s considerations are not personal but are needed to enforce the rules.

Mr. David stated that, to him, another factor may be the unique needs of an intergenerational home created to provide a support system to help a senior citizen age in the community. Ms. Slipp inquired whether this would be considered a two-family home, and it was confirmed that the issue was addressed at the time of the prior construction, and a dwelling that includes a family and a grandparent is considered a one-family residence.

Public Comment

In support of the application:

John McCauley, 8 Lookout Lane, stated that: the prior platforms and stairs were dangerous, and that he had fallen down when leaving the house out the back; he had watched the deck being constructed; and he would like to see the application approved;

Katie Connick, 4 Lookout Place, in a letter submitted by Mr. DiFilippo, stated that she had witnessed others’ struggles negotiating the steps and platform, and believes that the deck is so low off the ground that it does not change the character of the neighborhood.

In opposition to the application:

Steve Galletta, 27 Victoria Road, noting that his property is one of the most impacted, as it is directly behind, argued that: the applicants did in the past and would most likely in the future continue to live in the house even without a deck; the rear entry hazard was created by the applicant’s own prior construction; while the base of the deck may be 1.5 feet off the ground, it is enclosed on three sides with brown painted slats of wood rising to approximately 5 feet in height, which from his property is an eyesore; as a result, potential buyers will find his house less desirable, which will decrease the value of not only his property but also of comparable properties in the neighborhood; and yard requirement encroachments change the character of the suburban neighborhood.

Miriam Allen, 23 Victoria Road, also directly behind, stated that: from her backyard, the deck feels as if it is right on top of her in the same yard, and if allowed to remain, will diminish the value of her property; the applicants knowingly violated the Code instead of fixing their steps, and the advantage to the applicants should not outweigh the disadvantage to the neighbors.

Mr. DiFilippo’s daughter, co-applicant, Deanna Tiernan, 6 Lookout Place, apologized to the neighbors, agreeing that approval should have been sought before building the deck; and she offered to put in shrubbery if it would help improve the view from their properties, noting that there are also existing trees between their properties.

Ms. Hoffman explained that the following criteria are required to be considered by the ZBA on an application for an area variance:

- (1) 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 area variance;
- (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue and not requiring a variance;
- (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) whether the alleged difficulty is self-created, which is relevant but does not necessarily preclude the granting of a variance.

Ms. Hoffman concluded that in applying the required standards to this application:

- (1) undesirable changes would be produced in the character of the neighborhood, as the granting of the requested variance would create a precedent-setting situation, which others could use to argue for similar encroachments on neighboring properties;
- (2) alternative methods to address rear yard hazards may require modifying proposed plans to minimize the variance required, such as for example, considering something like a 3-4 foot porch with hand rails;
- (3) the requested deck size of 10 feet by 22 feet is huge; and the 50% rear yard variance request (10 feet where a minimum of 20 feet is required) is substantial;
- (4) building the deck within 10 feet of the rear property line adversely affects the neighbors, and the rest of the community would want to do the same; and
- (5) the situation was self-created two years ago, when the applicant had the house designed and constructed to the buildable line, with only landings and stairs to the backyard.

Mr. David concluded that, while he is sympathetic to the needs of the applicant, the ZBA must take all the needs into consideration, and is bound by legal standards which indicate the application should be denied.

Mr. Amir stated that he concurs, noting his sympathy with situations hazardous to young children, but concluding that the ZBA is confined by existing law, and there are less intrusive alternatives that will help maintain a more neighborly atmosphere.

Ms. Hoffman noted that the Board cannot vote on the building coverage variance request until the architect confirms whether the rear shed has been included in the calculations, and inquired whether the applicant would like an opportunity to reconsider the rear yard variance request, noting that if the ZBA votes and denies the application, the applicant is precluded for one year from re-applying.

At the request of the applicant, a motion was made, seconded and passed unanimously, to adjourn the public hearing to the next meeting scheduled for July 24, 2013.

It was noted that the neighbors are welcome to come back for that meeting, but were reassured that the public comments heard at this meeting will be preserved for the ZBA's consideration.

Upon a motion made by Mr. David, seconded by Ms. Slipp, and passed unanimously, the meeting was adjourned at 9:11 p.m.

*Respectfully submitted,
Tasha Macedo,
Zoning Board Secretary*