

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING (VIA ZOOM)
WEDNESDAY, MAY 26, 2021**

PRESENT: Michael Wiskind, Chair
Jacob Amir
Mort David
Serge Del Grosso

ALSO PRESENT: Larry Tomasso

1) Call to Order

The Chair called the regular meeting to order at 8:05 pm.

The Chair stated that the meeting was being held remotely via the web-based conferencing platform, Zoom, and that Larry Tomasso, Village Building Inspector, would be moderating and recording the meeting.

2) Announcements and Approval of Minutes

Announcements

The Chair announced that the next meeting of the Zoning Board of Appeals is scheduled for Wednesday, June 23, 2021 at 8:00 pm.

Approval of Minutes

Mr. David moved, and Mr. Del Grosso seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of April 28, 2021, as amended.

Vote: 3 in favor, none opposed, one abstaining, as follows:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Abstain
Mort David –	Aye
Serge Del Grosso -	Aye

3) **Public Hearing**

Application for Variance from Village Code Requirements

Robert and Karen Capicchioni

2 Riverview Avenue, Ardsley, New York

Section 6.80, Block 78, Lot 16, in an R-3 One Family Residential District

For a proposed second story addition, where the East Side Yard (existing and proposed) ranges from 7.66 feet (Rear) to 7.76 feet (Front) and a Minimum of Fifteen Feet is Required (Code § 200-26B).

Present: Michael Wiskind, Chair
Jacob Amir
Mort David
Serge Del Grosso

Also Present: Larry Tomasso, Building Inspector

Mr. David moved, and Mr. Amir seconded, that the Zoning Board close the Public Hearing.

Vote: 4 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Aye
Mort David –	Aye
Serge Del Grosso -	Aye

Close Public Hearing

Mr. Del Grosso proposed, and Mr. David seconded, the following Resolution.

WHEREAS, Robert and Karen Capicchioni of 2 Riverview Avenue, Ardsley, New York, have applied to this Board for a variance from the requirements of Section 200-26B of the Zoning Ordinance of the Village of Ardsley for the proposed second-story addition where the East side yard width (existing and proposed) ranges from 7.66 feet (rear) to 7.76 feet (front) and a minimum of 15 feet is required (Code 200-26B); and

WHEREAS, this application is made under the authority of Section 200-9, Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting premises known as 2 Riverview Avenue, Ardsley, New York and designated as Section 6.80, Block 78, Lot 16 within an R-3 One-Family Residential District on the tax maps of the Village of Ardsley; and

WHEREAS, a public hearing on this application was held by the Ardsley Zoning Board of Appeals via Zoom on April 28, 2021 after due notice by publication; and

.WHEREAS, at the hearing no one appeared in opposition, and all those who desired to be heard were heard and their testimony recorded; and

WHEREAS, this Board, after carefully considering all testimony and the application finds the following:

WHEREAS, this Board, in weighing both the potential benefit to the applicant and the potential detriment to the health, safety and welfare of the neighborhood if the variance is granted, has determined that:

- (1) Neither an undesirable change will be produced in the character of the neighborhood nor a detriment to nearby properties will be created by the granting of the area variance as the proposed addition does not change the existing land coverage or building coverage of the current dwelling and does not increase the existing non-conforming encroachment into the side yard setback other than vertically;
- (2) The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the proposed area variance since the proposed addition provides the desired increase in square footage for additional bedrooms to be used by the applicant and their family and expansion into the rear yard would require a larger foundation and would not reduce the existing non-conforming encroachment;
- (3) The requested variance is not substantial since there is no additional encroachment on the setback that is already non-conforming other than vertically;
- (4) The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood since the proposed addition does not negatively impact the overall character of the dwelling relative to neighboring properties and in fact provides increased consistency;
- (5) The circumstances requiring the variances were not self-created in that the proposed addition is consistent with the existing non-conformity.

NOW THEREFORE, be it resolved that the application of Robert and Karen Capicchioni is granted.

PROPOSED BY: Mr. Serge Del Grosso

SECONDED BY: Mr. Mort David

VOTE: 4 in favor, none opposed, none abstaining, as follows:

Mr. Michael Wiskind, Chair –	AYE
Mr. Jacob Amir ¹ –	AYE
Dr. June Archer –	Absent
Mr. Mort David –	AYE
Mr. Serge Del Grosso –	AYE

4) Public Hearing

Application for Variances from Village Code Requirements

Benito and Joanna Verrino

37 Captain Honeywells Road, Ardsley, NY

Section 6.50, Block 29, Lot 10 in an R-3 One-Family District

For Proposed Second-Story and Front Porch Additions where: the Proposed Building Coverage is 2,698 square feet (32.62% of the lot area) and the maximum permitted building coverage is 2,316 square feet (28% of the lot area) (Code § 200-25); and the Side Yards are 11.7 feet (West) and 6.1 feet (East) and Fifteen Feet is the minimum required on each side (Code § 200-26B).

Present: Michael Wiskind, Chair
Jacob Amir
Mort David
Serge Del Grosso

Also Present: Larry Tomasso, Building Inspector

Mr. David moved, and Mr. Amir seconded, that the Zoning Board close the Public Hearing.

Vote: 4 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Aye
Mort David –	Aye
Serge Del Grosso -	Aye

Close Public Hearing

Mr. Del Grosso proposed, and Mr. Amir² seconded, the following Resolution.

¹ Mr. Amir was not present at the April 28, 2021 meeting at which this matter was heard. Mr. Amir had fully reviewed the underlying materials and the proposed minutes of the April 28 meeting, and thus was able to vote on this resolution.

² Mr. Amir was not present when this matter was heard on April 28, 2021, but had fully reviewed all relevant materials, including the proposed minutes of the April 28, 2021 meeting, and thus was able to second and vote on this resolution.

WHEREAS, Benito & Joanna Verrino (represented by Allison Verrino) of 37 Captain Honeywells Road, Ardsley, New York, have applied to this Board for variances from the requirements of Section 200-25 and of Section 200-26B of the Zoning Ordinance of the Village of Ardsley for the proposed second-story and front porch additions where:

- 1) The existing building coverage is 2,652 square feet (32.06% of the lot area) and the proposed building coverage is 2,698 square feet (32.62% of the lot area); and the maximum permitted building coverage is 2,316 square feet (28% of the lot area) (Village Code 200-25); and
- 2) The side yard width on the West side is 11.7 feet to the existing house and to the proposed second-story addition, and on the East side is 6.1 feet to the existing house and to the proposed second-story addition, where the minimum side yard width required is 15 feet (Village Code 200-26B); and

WHEREAS, this application is made under the authority of Section 200-9, Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting premises known as 37 Captain Honeywells Road, Ardsley, New York and designated as Section 6.50, Block 29, Lot 10 within an R-3 One-Family Residential District on the tax maps of the Village of Ardsley; and

WHEREAS, a public hearing on this application was held by the Ardsley Zoning Board of Appeals at the Municipal Building, 507 Ashford Avenue, Ardsley, NY on April 28, 2021 after due notice by publication; and

WHEREAS, at the hearing no one appeared in opposition, and all those who desired to be heard were heard and their testimony recorded; and

WHEREAS, this Board, after carefully considering all testimony and the application finds the following:

WHEREAS, this Board, in weighing both the potential benefit to the applicant and the potential detriment to the health, safety and welfare of the neighborhood if the variances were granted, has determined that:

- (1) Neither an undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variances as the proposed changes do not change the existing footprint of the dwelling and increases building coverage by 48 square feet only for the addition of a roof over the existing front porch, and do not

increase the existing legal non-conformity with regard to encroachment into the side yard setbacks other than vertically;

- (2) The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than an area variance since the proposed additions provide the desired increase in square footage for additional bedrooms and storage space without enlarging the foundation and thus further stretching the building coverage limitations;
- (3) The requested variances are not substantial in that there is no additional encroachment, other than vertically, on the legally non-conforming side yard setbacks, and in that the increase in building coverage from adding a roof over the existing front porch is less than one percent of the lot area;
- (4) The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood since the proposed additions do not negatively impact the overall character of the dwelling relative to neighboring properties and in fact provide increased consistency;
- (5) The circumstances requiring the variances were not self-created in that the proposed additions are consistent with the legal non-conformity of the existing encroachment into the side yard setback, and in that the roof will overhang the existing front porch floor.

NOW THEREFORE, be it resolved that the application of Benito and Joanna Verrino and Allison Verrino is granted.

PROPOSED BY: Mr. Serge Del Grosso

SECONDED BY: Mr. Jacob Amir

VOTE: 4 in favor, none opposed, none abstaining, as follows:

Mr. Michael Wiskind, Chair –	AYE
Mr. Jacob Amir –	AYE
Dr. June Archer –	Absent
Mr. Mort David –	AYE
Mr. Serge Del Grosso –	AYE

5) Continuation of Public Hearing

Application for Variances

Musa & Asma Eljamal

9 Cross Road, Ardsley, New York

Section 6.120, Block 103, Lot 10, in an R-3 One-Family Residential District

For Proposed Additions to Existing Driveway and One-Story Building, with a Proposed Six Foot Five and a Half Inch North Side Yard Setback, where a Fifteen-Foot Setback is the Minimum Required (Code § 200-26B); and with 12,829 square feet of Proposed Gross Land Coverage, where 9,688 square feet is the Maximum Permitted Subject to Planning Board Special Permit Approval (Code § 200-83C).

Present: Michael Wiskind, Chair
Jacob Amir
Mort David
Serge Del Grosso

Also Present: Fred Zonsius, architect
Bryan Orser, applicants' representative
Adam Eljamal, grandson of applicants
Larry Tomasso, Building Inspector

The Chair stated that applicants' representatives had appeared before the Planning Board at its December 14, 2020 meeting, and that the Planning Board had reviewed the application and had provided written comments to the Zoning Board.

The Chair reminded everyone that this application to add a garage involves two variances. The Chair explained that applicants request a side yard setback variance to allow the proposed garage to be located 6 feet 5-1/5 inches from the property line at its closest point, where a 15-foot setback is required, and noted that the existing house is close to the required setback [currently intrudes slightly into the required setback]. The Chair pointed out that applicants also request a variance for excess gross land coverage, and noted that there needs to be clarification about updated calculations for the land coverage.

The Chair asked who was at this meeting representing the applicants, and Mr. Zonsius introduced himself as the architect and Mr. Orser stated that he handles construction for the Eljamal family.

The Chair reminded applicants' representatives that the Board had asked for specific items that it had not received. Mr. Orser stated that the Board had asked for other options of garage placement and that they tried for: a detached garage; a garage on the right side of the house; and adding a second story to the house [so that a garage could be located within the existing first floor] – and that they could not get anything to work. Mr. Orser claimed that these options did not work mainly because of Mr. Eljamal's age and difficulty going

up and down stairs [because] he had a liver transplant. Mr. Orser concluded that the only way they can add a garage it is by putting it where it was initially proposed.

Mr. Orser stated that Mr. Eljamal's daughter, who cares for him, lives next door [on the side of the requested further encroachment into the setback] and that the encroachment does not affect her and her family in any way.

Mr. Orser stated that they had some other things that we were thinking about that might satisfy this Board, and that Mr. Zonsius has some calculations with which Mr. Tomasso may or may not agree. Mr. Orser added that the neighbors were not too happy at the prospect of having the garage in front of the house.

Mr. Zonsius stated that the Ardsley code has different provisions for FAR, land coverage and building coverage. As to building coverage, Mr. Zonsius stated that for this property the maximum building coverage permitted is 12,000 square feet³ and that the proposed addition brings the building coverage to 4,000 square feet.

As to land coverage, Mr. Zonsius stated that this includes "the building and other impervious surfaces such as the driveway, which is large because the house is set back more than 125 feet from the front of the property, and such as the existing pool and patio and the pond, which they cannot fill because it is wetlands."⁴ Mr. Zonsius stated that the maximum land coverage permitted is 9,000 square feet, and that the property currently has 12,000 square feet of land coverage.⁵ Mr. Tomasso pointed out that the Ardsley Zoning Code includes pervious surface in land coverage.

As to the side yard setback, Mr. Zonsius stated that the property line jogs and that the house currently is 13 feet and some inches from the property line in the front of the house and is 14 feet and 9-3/4 inches from the property line in the back of the house. Mr. Orser added that there are 18-foot high trees dividing the property [from its neighbor]. Mr. Zonsius opined that the proposed addition is unassuming.

The Chair stated that the Zoning Board had requested that they be provided revised drawings of the front elevation to reflect a change in roof lines discussed at the prior meeting, which they had not received. The Chair stated that Mr. Tomasso had estimated that the permitted land coverage needed to be reduced by approximately 1,000 square feet.

³ Background Information: Building coverage is not at issue here, but the maximum permitted building coverage for this property is 9,912 square feet, reflecting the required reduction due to the wetlands on the property.

⁴ The phrase "which they cannot fill because it is wetlands" refers only to the pond, not to the pool or patio.

⁵ Mr. Zonsius' statement is at odds with the Planning Board's conclusion that the basic permitted land coverage for this property is 6,900 square feet and the maximum permitted within the Planning Board's discretion is 8,100 square feet. (See Minutes of Planning Board meeting of December 14, 2020.)

Mr. Tomasso stated that he remembers applicants providing updating numbers, but did not have his file with him.

The Chair asked if applicant could add a garage that does not go into the setback. Mr. Amir asked if applicants' calculations account for car doors swinging out, and if they would still have a garage if they made it two feet narrower on both sides, and Mr. Zonsius stated that they could.

Mr. David asked, since the request is based on Mr. Eljamal's handicapped situation, if Mr. Eljamal has a handicap permit from the Ardsley Police Department. Mr. Adam Eljamal stated that his understanding is that the Eljamals have a handicap permit or did at some point in time. Mr. Adam Eljamal stated that the primary issue is Mr. Eljamal's health, that he had had open heart surgery leading to liver transplant, and that they are concerned about a potential slip and fall, and even about a simple cold.

Mr. David pointed out that Mr. Adam Eljamal was suggesting that there was some urgency about this application, but that this request has been before the Zoning Board for eight months. Mr. Adam Eljamal replied that he would prefer to do it right rather than in a rushed manner. Mr. Adam Eljamal added that because of Covid there have been more rules and procedures. Mr. Zonsius stated that meetings have been cancelled for lack of quorum.⁶ Mr. Adam Eljamal stated that they do not want to cut out the fountain in the middle of the circle [which had been suggested as one way to reduce land coverage]. Mr. Adam Eljamal stated that his grandfather's cirrhosis was a few years ago and that with age, it is not helping.

Mr. Tomasso stated that he has been dealing with this application for more than two years and that the problem is with the merits and not with the urgency. Mr. Zonsius stated that it is a work in progress because this is a complicated lot and that it is not even a spring-fed lake.

Mr. Amir asked about applicants' calculations of permitted land coverage of 9,668 square feet, existing land coverage of 11,740 square feet, and proposed land coverage of 12,829 square feet, and asked if the increase of 1,089 square feet was all due the garage. The Chair stated that some of the additional requested land coverage is additional driveway.

⁶ Background Note: Since this Public Hearing was opened in September 2020, there have been no Planning Board or Zoning Board meeting cancellations due to lack of quorum. The Planning Board's Review and Comment was originally scheduled for the Planning Board's October 2020 meeting, but at applicants' request was adjourned in October and then again in November. After the Planning Board's Review and Comment of December 14, 2020, the Zoning Board met in December 2020 and January 2021, but applicants did not proceed at either meeting. The Zoning Board did not meet in February or March of 2021 because applicant had not provided new materials and no other applications were scheduled to be heard. The Zoning Board met in April 2021, but applicant had not timely submitted materials for that meeting.

Mr. Amir and the Chair asked if there had been prior applications for excess land coverage, and Mr. Tomasso advised that there had been.⁷ Mr. Amir asked about the area by the pool and the patio. The Chair advised that the Zoning Board may not debate what is and is not wetlands.

The Chair stated that the Planning Board expressed significant concern that additional land coverage would cause flooding of neighboring properties, and asked Mr. Zonsius if he had worked out that issue. Mr. Zonsius stated that if the Chair meant drywells and percolation [tests], he still needs to go through that process.

The Chair asked if applicant had considered reducing the size of the driveway. Mr. Zonsius stated that they could make the additional driveway area of pervious surface. The Chair asked if there is need for that much paved area, pervious or impervious, and refer to one of Mr. Zonsius' illustrations showing three cars parked on one side. The Chair asked Mr. Zonsius if he would put in this much driveway space if he were starting from scratch. Mr. Zonsius stated that it is necessary to turn a car around in such a deep lot. The Chair pointed out that a car is turned around only near the garage. Mr. Zonsius opined that if he turns this to impervious surface, and if the building is not a two-2-story 7,000 square foot building but only a 4,000 square foot building, then he is meeting "the spirit of the code." The Chair pointed out that there still are these requirements. Mr. Zonsius stated that he throws himself on the mercy of the Board.

The Chair asked how many bedrooms are in the house. Mr. Zonsius stated that there are three bedrooms. The Chair asked how many people live in the house. Mr. Orser stated that Mr. and Mrs. Eljamal live in the house, but that their grandchildren come. Mr. Adam Eljamal added that his grandparents do not sleep in the same room.

The Chair asked if any Board members had further questions. Mr. David stated that he had not received an answer as to whether handicapped permits had been issued. Mr. Adam Eljamal stated that his understanding is that they do and that he can provide an answer by the next meeting. Mr. Zonsius suggested to Mr. Adam Eljamal that if he is arguing accessibility, his grandparents would be able to get handicapped permits if they do not have them. The Chair stated that the Zoning Board must think long-term, because the Eljamals are not likely to be living in the house in twenty years, while the structure will last a lot longer. Mr. Zonsius stated that that was why he had shown pictures to demonstrate that the proposed addition is "compliant" with the neighborhood.

The Chair asked if any member of the public was present and wished to speak in support of or in opposition to the application, and no one present so wished. Mr. Zonsius stated that this was where neighbors should "kick in." The Chair advised that the Board had received letters from five neighbors (Dalai Issa of 11 Cross Road; Joseph Cipollone and

⁷ Background Note: Applicants were granted a variance for excess land coverage in 2006 for a pool, and were granted a subsequent variance for excess land coverage for a patio.

Vincent Colangelo of 7 Cross Road; Robert Scalare of 9 Cross Road; Claudio Cho of 11 Exeter Place; and Christina Pipolo of 4 Cross Road), all in support of the proposed work.

The Chair stated that the Zoning Board had not previously seen the plans Mr. Zonsius was screen sharing, and that the Zoning Board had not received any revised plans after the September meeting. Mr. Orser stated that they had submitted them on December 4, 2020. Mr. Tomasso advised that those plans had been submitted to the Planning Board, and that applicants had not provided anything to the Zoning Board after the September meeting. Mr. Orser asked how many copies were needed, and Mr. Tomasso advised that applicants needed to submit eight copies to the Zoning Board two weeks before a meeting.

Mr. Zonsius asked if he had received approval from the Planning Board. Mr. Tomasso restated that the input sought from the Planning Board in December was “Review and Comment,” and that if the Zoning Board were to grant a variance [on land coverage], applicants would need to return to the Planning Board for a Special Permit.

Mr. Zonsius asked which Board has authority. Mr. Tomasso explained that the Planning Board cannot issue a Special Permit [for the requested excess land coverage] unless a variance has been granted by the Zoning Board. Mr. Tomasso added that obtaining a variance does not compel the Planning Board to issue a permit because the Planning Board still has the right to do their own review, and that a zoning variance is what opens the door for the Planning Board to review the issue.

Mr. Zonsius asked if it would make a difference if he made the driveway a dirt road. Mr. Tomasso stated that it would not, and the Chair explained that [to not be considered land coverage] it must have vegetation.

The Chair recommended that applicants make clear how they propose to remediate the additional runoff that would result from an increase in impervious surface if the requested variance in land coverage were to be granted.

The Chair also suggested that applicants consider adding a second floor for bedrooms for the grandchildren and putting the garage within the footprint of the existing house, which would obviate the need for a side yard variance.

The Chair proposed that this matter be adjourned until the meeting of June 23, 2021, at which time the Zoning Board will expect to have received copies of plans that were screen-shared tonight, as well as of other options as discussed.

Mr. Zonsius asked if he could ask the Zoning Board to look at how to avoid [the need for] a side yard variance and what can be done to the driveway either to completely remove it or to make some of it pervious. Mr. Amir advised that the Zoning Board is not an advisory board, that various options have been well discussed, and that applicants must show that

what they propose entails the minimum variance needed to reasonably accomplish the objective and meets all the other requirements for a variance.

Mr. Zonsius asked if [granting] a variance is determined by a current snapshot tied to the inhabitants or a building point of view. Mr. Amir stated that it is not appropriate for the Zoning Board to give legal advice, but that one element of the determination is if the need for a variance is a self-created issue. Mr. David added that the Zoning Board is bound by both State zoning law and our local code, and that the need for a variance must be justified.

The Chair advised applicants to provide the requested materials and to attempt to eliminate or at least minimize the need for at least one of the two requested variances. The Chair also recommended that applicants review the Minutes of the Planning Board meeting of December 10, 2020 to understand the Planning Board's perspective on their application.

This matter was adjourned.

6) **Adjournment**

Mr. David moved, and Mr. Del Grosso seconded, that the Zoning Board of Appeals adjourn its meeting at 9:06 pm and go into Executive Session.

Vote: 4 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Aye
Mort David –	Aye
Serge Del Grosso -	Aye

Respectfully submitted,
Judith Calder,
Recording Secretary