

**MINUTES  
VILLAGE of ARDSLEY  
ZONING BOARD of APPEALS  
REGULAR MEETING  
WEDNESDAY, JULY 28, 2021**

**PRESENT:** Michael Wiskind, Chair  
Jacob Amir  
Dr. June Archer  
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.

**2) Announcements and Approval of Minutes**

**Announcements**

The Chair announced that the next meeting of the Zoning Board of Appeals is scheduled for Wednesday, August 25, 2021, at 8:00 pm.

**Approval of Minutes**

Mr. David moved, and Dr. Archer seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of May 26, 2021, as amended.

**Vote:** 5 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Aye
Dr. June Archer –	Aye
Mort David –	Aye
Serge Del Grosso -	Aye

3) **Public Hearing**

**Application for Variance from Village Code Requirements**

**708 Yellow Jersey LLC (Mr. Lee Spiegel)**

**708 Saw Mill River Road, Ardsley, New York**

**Section 6.50, Block 18, Lot 19, in an AE Special Flood Hazard Area**

**For two-story addition, where the first-floor elevation is below base flood elevation (Code § 115-5).**

**Present:** Michael Wiskind, Chair  
Jacob Amir  
Dr. June Archer  
Mort David  
Serge Del Grosso

**Also Present:** Lee Spiegel  
Joseph Thompson, Project Architect, Degraw & Dehaan  
Andy Di Justo<sup>1</sup>, 708 Saw Mill River Road (tenant)  
Larry Tomasso, Building Inspector

The Chair read the Legal Notice.

**Open Public Hearing**

Mr. Spiegel produced eleven green cards received in response to the Legal Notices mailed.

Mr. David asked why this issue is only coming up at this stage in the planning and construction of the building. The Chair expressed his understanding that the legal definition of the flood zone as it applies to this property had not been noted at the time the permit was issued.

Mr. Thompson stated that the applicant had come before this and other Ardsley Boards in 2018 for parking and other permissions, and that after a year of engineering, soliciting bids, selecting contractors and negotiating contracts, construction began in 2019. Mr. Thompson continued that the project was to renovate the two-story portion of the building (the rear being the laundromat which remains in its existing condition), that the masonry walls there were severely cracked and starting to fail, necessitating the removal of those walls. Mr. Thompson continued that they had planned to preserve the existing foundation and steel structure of the building, but by late 2019, construction exposed the building structure down to the foundation, when it was determined that the foundation needed reinforcing down to forty feet deep, and the equipment for this work required additional clearance,

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<sup>1</sup> Mr. Di Justo is present as a tenant and neighbor of applicant, but it is noted for the record that Mr. Di Justo is also a member of the Board of Trustees of the Village of Ardsley.

which meant taking down the structure temporarily with the intent to resurrect it, at which point DEC visited [the site] and said that flood requirements had now become activated, even though the tearing down and reconstruction was not part of the original scope of the work.

Mr. Thompson explained that after being notified of the flood requirements, they consulted their civil engineers, but after several months got no traction on the flood plain application. Mr. Thompson continued that after a Covid-caused work shut-down, they worked with different consultants who certified the base level of elevation and determined the “as built” level of the slab<sup>2</sup> resulting in a seven-foot difference where we must protect the building from flooding, and that they tried a Letter of Map Amendment (LOMA) proceeding to amend the maps. Mr. Thompson added that he has seen photographic history of downtown floods, that he understands that the flood wall constructed in 1980s resolved this with respect to the 708 Saw Mill River Road property, but that the flood maps were never updated after the flood wall was constructed. Mr. Thompson mentioned that the long-term tenant (Mr. Di Justo) was present during Irene, which was a 500-year storm, and had informed him that the water level never exceeded the threshold of his door, even though the flood plans had only been designed to sustain a 100-year storm, which would indicate that the flood wall has done what it was intended to do and has protected the Village. Mr. Thompson stated that he understands that the Village has requested that the flood maps be updated, and that this was never done by FEMA, which led to the LOMA process, which required consulting and collaboration with the local flood official, Mr. Tomasso. Mr. Thompson further stated that counsel had advised that LOMA could be a lengthy process and could also result in additional improvements being needed to recertify the wall to current standards, which would be a major undertaking.

Mr. Thompson stated that at the same time they realized that the Ardsley Zoning Code Chapter 115 appeared to be written for buildings such as theirs, because it applies when “adjacent buildings in a nearby radius have similar and existing conditions.” Mr. Thompson stated that this building has a walk-in ground floor, and that images of neighboring properties that surround it, next door and across the street on Saw Mill River Road, all have similar conditions where there is a walk-in ground floor retail that clearly is not six or seven feet above the base level elevation.

Mr. Thompson stated that to require buildings to be built [according to the base flood elevations on the flood maps] would mean having buildings on stilts or relegating the ground floor to a non-occupied use such as parking or storage, or to design a building with no openings [at ground level]. Mr. Thompson stated that they had worked with the Board of Architectural Review to design a building that, although modern in nature, spoke to a traditional storefront elements design, and designed a streetscape to provide a positive

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<sup>2</sup> Mr. Thompson referred to materials that had been previously provided to Board members: the flood plain certificate and the base flood elevation by design.

presence, all of which would have to essentially be removed or have the building left unoccupied on the ground floor.

Mr. Thompson concluded that therefore they seek relief, because since the building is constructed, the alternatives would have significant hardships. Mr. Thompson urged that the building was constructed with base levels similar to those as existed prior to construction, that to maintain the base elevations where they existed does not create any increased severity, and that to allow the building to be occupied by tenants would make a positive contribution to the downtown.

Mr. David stated that he has lived in Ardsley for 48 years and is fully aware of the history of that area, noting that prior to the construction of the flood wall, there were rowboats on Route 9A, and that the Post Office, which had been located where the cleaners now is, was totally flooded. Mr. David stated that the flood wall partially, but not fully, mitigated the flooding, citing as examples that Macy Park is a catch basin, that the basement in applicant's building had been unusable by prior tenants because it flooded, that cars had to be towed out of the parking lot behind Village Green because it had flooded in the first heavy rain storm, that the neighboring property Ardsley Tire periodically flooded, and that more recently, Stagioni's interior had flooded. Mr. David stated that his concern is the mold as a consequence of flooding which can be hazardous to tenants upstairs.

Mr. Thompson responded that he fully agrees and should qualify that the relief that they seek is not a complete abandonment of protection from flooding. Mr. Thompson outlined the flood protection measures they have proposed: that there will be an eighteen-inch-high masonry wall around the full perimeter of the building, and that there be a "Dam-Easy" flood barrier that could be installed in each one of the doorways, which would protect the building from any flooding up to the masonry wall height. Mr. Thompson stated that, based on past testimony, if water has gotten that close to the threshold, he agreed that the building should not be completely unprotected.

Mr. David pointed out that even if you protect the doorways, hydrostatic pressure can push water through the foundation. Mr. Thompson stated that that happens on older foundations, and added that this building does not have a basement and that its prior condition was slab on grade, that when they excavated they found footings at frost depth, but that when they reconstructed, they built the slab to protect from hydrostatic pressure, by having interior French drains, which is not standard construction, and a bed of gravel, which, based on soil conditions, they made approximately twelve to eighteen inches deep instead of the customary four to six inches of gravel. Mr. Thompson contended that these measures, along with a sealed vapor barrier, should significantly deter any water penetration.

Mr. David asked to where the French drains will drain. Mr. Thompson stated that they connect to the building's existing storm prevention system, and that all the leaders and drains flow to a catch basin in rear of the lot, which probably discharges to the Saw Mill

management drain. The Chair asked if there is backflow prevention in this drainage, and Mr. Thompson stated that there is.

The Chair asked if any member of the public wished to speak in support of or in opposition to the request for a variance. Mr. Andy Di Justo introduced himself as the owner of the laundromat at 708 Saw Mill River Road.

The Chair asked Mr. Di Justo how long he had been a tenant. Mr. Di Justo stated that he had been a tenant for fifteen years, through flood related to storms Irene, Floyd and Gloria.

The Chair asked Mr. Di Justo if his portion of the building is closer to the river, and Mr. Di Justo stated that it is.

Mr. Di Justo stated that he has experienced these 100-year and 200-year storms. Mr. Di Justo stated that the grade for the parking lot at 708 Saw Mill River Road is two and a half feet higher than the grade of the parking lot at Village Green and at the businesses at 700, 696, 686 and further South of 708, and that every time we had a 200-year or 500-year storm, water never reached the parking lot at 708. The Chair asked if Mr. Di Justo's business is at the level of the lot. Mr. Di Justo stated that neither building [neither portion of the building] has a basement. The Chair asked if the entrance to Mr. Di Justo's business is at the same level as the parking lot. Mr. Di Justo stated that it is, and that the rear entrance to his machinery room is six inches higher because it sits on cinder block, so that even if the water came over, it is still another six inches before it gets into his machinery room, which is behind the dryers.

Mr. Di Justo added that Mr. Spiegel and Mr. Thompson may not know that the gates on the retaining wall that protects the ponding area from the Saw Mill River have now been motorized, that previously you would have to go up to the end of the gas station and crank in case the gates did not shut, but that they have recently updated the gate system with the control box at the end of the gas station, so it is even easier to protect the property and the area in case the gates do not shut. Mr. Di Justo also stated that now, if the ponding area gets overflowed, we can install the emergency pump, which is also at the driveway of the Shell station. Mr. Di Justo stated that all this was done with a grant from FEMA, that it took ten years, but that it is now all ready.

Mr. Di Justo stated that because 708 Saw Mill River Road is higher than the nearby properties, he has been there when his neighbors got flooded while he was fine and ran over to help them.

Mr. Di Justo also stated that he saw the "Dam Easy" thing to protect the doors, and that if it is needed for the variance, that is fine, but that he does not think it would be necessary to purchase them.

Mr. Amir asked Mr. Thompson how the base flood elevation was calculated. Mr. Thompson stated that 135 feet is relative to sea level and that it comes from their surveyor who uses a GPS system that they can certify based on FEMA data which established 135 as the level, and who also certifies the floor elevation of this building at 128 feet, which means that this building is approximately six and a half feet below base flood elevation.

Mr. Amir asked about the installation of eighteen-inch barriers. Mr. Thompson stated that there are different types of flood barriers involving permanent or temporary construction, and that they wanted to find a system that would be both minimally invasive to the building and easily set up without significant effort. Mr. Thompson stated that there is a mock-up of the barrier they selected on the site, and that Mr. Tomasso has seen it. Mr. Thompson described it as a metal barrier with a pressurized tube system that is put inside the doorway, that a ratchet system is used to pressurize it against the sides of the doorway and lock it into place. The Chair asked how the tube is inflated, and Mr. Thompson said that with the device's psi gage, you use a hand pump to inflate the pressurized tube around the doorway perimeter to the proper psi, and suggested that it probably could be done in less than five minutes per opening. Mr. Thompson asserted that this is preferable to other systems that might require hold-down installation or that might require a full perimeter which could take hours or days to install.

The Chair pointed out that the windows in front seem to be close to the ground. Mr. Thompson stated that although the drawing is close to what has been built, the final finished elevation is eighteen inches, so [water would need to rise this amount] before it would impact store fronts, and that [if it did] these are sealed, so probably would hold up to it.

Dr. Archer asked whose responsibility it would be to install those devices. Mr. Thompson stated that it would be the responsibility of the property management company, that if there were a storm event, we would rely upon their personnel to take the systems out from on-site storage and put them up in advance, noting that there is usually a few days' notice when a big storm is coming. Mr. Thompson stated that property management personnel would have to be given a training session in advance, and added that it is pretty simple technology but very effective.

Mr. Del Grosso asked how many entrances would need the Dam Easy system. Mr. Thompson stated that on the reconstructed portion of the building there are three entrances that open to the parking lot, three double doors on Saw Mill River Road, and that in the alley there is a mechanical door that would also need protection.

Mr. Amir asked if the door in the back does not need protection. Mr. Thompson stated that technically it does not, that the flood provisions only impact the portion of the building that has been renovated, but that they could extend the protection to that door too. Mr. Amir clarified that he was asking from an engineering, not legal, point of view. Mr. Thompson stated that if water had not entered [the laundromat] in hurricane Irene, he did not imagine

that it ever would happen, barring future climate change issues, which are hard to quantify. The Chair asked if nothing is required for the portion of the property occupied by the laundromat because that portion of the property remains in the same condition as before the flood issue arose. Mr. Di Justo stated that he is not worried.

Mr. Tomasso summarized that the original project, while a major renovation to the building, was a small addition that added two or three hundred square feet to the second floor, so the intended addition and renovation was not substantial enough to trigger the requirement for a flood plain development permit, and that requirement kicked in when the building was taken down by necessity. Mr. Tomasso continued that because they were so involved in trying to reconstruct the building, the flood plain issue got buried until DEC called him, and that when he explained the situation, DEC agreed that we had to prevent the instability first and after we would have to do the permit.

Mr. Tomasso also reviewed the issue of the flood plain, stating that there are files showing Route 9A flooding and cars there totally submerged, but that when the wall went up in the mid to late 1980s, flooding was substantially reduced. Mr. Tomasso continued that in 2005, he and the Village Manager asked FEMA to lower the base flood elevation level in that area in light of the wall having been installed in a flood control project, and that everyone agreed that they had to lower the base flood elevations, but even though FEMA admits that the base flood elevation is no longer 135, they did not adjust their maps when they redid their maps in 2007, so we are stuck with those maps even though FEMA admitted at that meeting that the wall did substantially lower the base flood elevation.

The Chair asked if we have a new number for what the flood elevation would be now. Mr. Tomasso stated that no one had quantified the new flood elevation, but we know that we have a 128-foot elevation and that water is not encroaching, so we know that the current base flood elevation in that area is below 128 feet, even if only by inches.

Mr. Tomasso added that the parking lot in Village Green is a retention area that is meant to flood, and that when we know that a storm is coming, the police make sure that everyone gets their vehicle out. Mr. Tomasso also stated that the County park to the North, which has a Flood plan development permit from around 2010 when they redid the ball fields, is a giant retention area. Mr. Tomasso concluded that the combination of the wall and the retention areas to the North has virtually eliminated flooding except possibly in some basements. The Chair pointed out that that did not apply down by Stagioni. Mr. Tomasso advised that the flood prevention wall does not go down that far, that it ends at Addyman Square, so the wall does not protect further down the road from flooding, and the base flood elevation further down the road should not be changed. Mr. Tomasso reiterated that any properties protected by the flood prevention wall should no longer be in the flood plain, and that FEMA has acknowledged that but has not changed the map.

Mr. David stated that significant monies were expended in construction, and asked if the building has flood control insurance, and if not, why flood insurance was not granted. Mr. Spiegel said that he was not sure, that he would have to check with his insurance company. Mr. Spiegel stated that he pays a lot more for insurance for that building than he does for other buildings he owns, but he does not know if that is because the insurance company is aware of the flood plain issue. Mr. David stated that flood insurance is separate, that it is federal insurance. Mr. Spiegel replied that he does not know.

Mr. Tomasso advised that flood insurance is not required for commercial or residential properties, even in the flood plain. Mr. Tomasso stated that if one elects to get flood insurance for a property in the flood plain, the cost will be at a substantially higher rate than for property outside the flood plain or in a preferred zone. Mr. Tomasso pointed out that if the Zoning Board were to grant the requested variance, it would substantially increase any flood insurance premiums if the owner chose to obtain it, and advised that the vast majority of businesses in the downtown area do not have flood insurance because it is less expensive to remediate sheetrock and mold than it is to pay for flood insurance. Mr. Di Justo stated that he never had flood insurance because of the price, but acknowledged that the interior of his business is metal, concrete and tile. The Chair asked if the cost of insurance would go up if the variance were to be granted, and Mr. Tomasso confirmed this. Mr. Amir asked if the converse would be true if FEMA redid their maps, and Mr. Tomasso said yes, because then the building would be in a preferred or low risk zone. Dr. Archer asked if the Village could get FEMA to change their numbers. Mr. Tomasso advised that they had discussed that with the Village's [consulting] engineers, who advised that because the flood prevention wall was built in the 1980s, the wall would have to be recertified, and that to recertify would cost the Village hundreds of thousands of dollars just for engineering fees, and there could be additional substantial costs in rebuilding.

Mr. Amir asked if there are current or periodic maintenance issue with the flood retaining wall. Mr. Tomasso advised that it is periodically inspected, that the Village is required to do maintenance in the retention and ponding areas to restore them to their original capacity, and that FEMA's and DEC's flood control agents regularly inspect the wall, approximately four times a year. Mr. Amir asked if the wall is in the same condition today that it was in when installed. Mr. Tomasso stated that with any concrete structure there will be cracks and settling and movement, but that the wall is deemed to be as functional today as it was when installed. Mr. Amir asked if the wall has changed materially such as to impact the properties in the area, and Mr. Tomasso said that the wall itself has not changed materially. Mr. Tomasso added that the flood plains are being re-evaluated again, but they will not be coming into the Village to re-evaluate, because these will be coastal maps. Mr. Tomasso explained that after hurricane Sandy, they revised the coastal maps, and now they are going inland for any area affected by coastal waters, but it looks like the Village is too far up the Saw Mill River to be considered to be impacted.

Mr. David asked how the building had been financed, and Mr. Spiegel said that it had been self-financed. Mr. David asked if any bank or financial institution had been involved, and



Mr. Spiegel replied “no.” The Chair noted that no title activity had been triggered that might have unearthed this issue earlier.

The Chair asked if any other member of the public wished to speak in support of or in opposition to the application, but no other members of the public were present.

The Chair then polled the Board members on their inclination as to whether or not to grant the requested variance. Mr. Amir, Dr. Archer and Mr. Del Grosso all indicated their inclination to grant the variance.

Mr. David stated that he did not support granting a variance because he believed that a variance would be in contravention of federal law, and asked how the Village could act in contradiction to FEMA. Mr. Tomasso stated that Chapter 115 of the Ardsley Village Code is a model law that FEMA forced the Village to adopt, that FEMA requires that the Village offer a variance procedure, so following the Code does not circumvent, but follows and enforces, federal law. Mr. Amir pointed out that it is not uncommon for the federal government to impose laws and regulations but to allow states and municipalities to issue variances from those laws and regulations depending upon local conditions. Mr. Tomasso agreed, and said that that is what is written in the model law that FEMA wrote for us. Mr. David asked if that law was adopted, and Mr. Tomasso said that it was adopted as Chapter 115 of the Ardsley Village Code. Mr. Tomasso explained that the applicant would not be before the Board but for Chapter 115, because without it there would have been no mechanism for appeal. Mr. Del Grosso asked if that section is the variance, and the Chair said that that Chapter outlines the provisions under which the Board can grant a variance. Mr. Tomasso stated that it is similar to Chapter 200 of the Ardsley Zoning Code in that Chapter 200 is the appeals provision mandated by the State, whereas Chapter 115 is the appeals provision mandated by the federal government. The Chair pointed out that Chapter 115 provides that the Zoning Board will decide appeals when it is alleged that there is an “error in requirement,” and in this case, Mr. Tomasso has said that the 135-foot flood elevation is in error. Mr. Tomasso provided additional background on Chapter 115, stating that, unlike other laws where there was an option to adopt or not, municipalities did not have a viable option on whether or not to adopt Chapter 115, because we were required to adopt it if we wanted our residents to be able to obtain flood insurance.

The Chair indicated that he also was inclined to grant the requested variance.

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

**Vote:** 5 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair – Aye

Jacob Amir – Aye

Dr. June Archer – Aye

Mort David – Aye

Serge Del Grosso - Aye

### **Close Public Hearing**

The Chair advised the applicant that Mr. Amir will draft a Resolution upon which the Board will vote at its August meeting.

#### **4) 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).**

This matter was adjourned pursuant to applicants' request.<sup>3</sup>

#### **5) Adjournment**

Mr. Amir moved, and Mr. David seconded, that the Zoning Board of Appeals adjourn its meeting at 8:59 pm.

**Vote:** 5 in favor, none opposed, none abstaining, as follows:

Michael Wiskind, Chair – Aye

Jacob Amir – Aye

Dr. June Archer – Aye

Mort David – Aye

Serge Del Grosso – Aye

Respectfully submitted,  
Judith Calder,  
Recording Secretary

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<sup>3</sup> Mr. Zonsius, applicants' architect, emailed Ms. Macedo, Zoning Board Secretary, at 5:41PM to request an adjournment due to an emergency.