

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING
WEDNESDAY, SEPTEMBER 22, 2021**

PRESENT: Michael Wiskind, Chair
Dr. June Archer
Mort David

1) Call to Order

The Chair called the regular meeting to order at 8:00 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, October 27, 2021, at 8:00 pm.

The Chair stated that he had been informed me that New York State has determined that boards will again be allowed to meet remotely, beginning in October, and asked the Board members present for their preferences. Dr. Archer stated that he had no preference. Mr. David stated his preference to meet in person. The Chair stated that he would prefer to continue meeting in person. The Chair reported that Mr. Del Grosso had advised of his preference to meet in person, and that he has not yet learned of Mr. Amir's preference.

Approval of Minutes

Mr. David moved, and Dr. Archer seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of August 25, 2021, as amended.

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

Michael Wiskind, Chair –	Aye
Dr. June Archer –	Aye
Mort David –	Aye

3) 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
Dr. June Archer
Mort David

Also Present: Frederic Zonsius, architect
Bryan Orser, applicant's representative

The Chair announced that this is a continuation of the Public Hearing which originally opened on September 23, 2020, and which has been continued and/or adjourned a number of times, and asked that the chronology be inserted. [Chronology: The Public Hearing was opened at the Zoning Board meeting of September 23, 2020, at which the Zoning Board announced that it would request comments from the Planning Board. The Review and Comment was on the agenda of the Planning Board meetings of October and November 2020 but was adjourned, and therefore was also on the agenda and adjourned from the Zoning Board meetings of October and November 2020. At the Planning Board meeting of December 14, 2020, which meeting was attended by applicants' representatives, the Planning Board stated its unanimous and strong disinclination to enlarge or even sustain the existing excess land coverage, and promptly advised the Zoning Board in writing. Thereafter, the Continuation of Public Hearing was on the agenda of the Zoning Board meetings of December 2020 and of January, March, April, May and July 2021, and was adjourned from each of these meetings at applicants' request or unpreparedness. The Public Hearing resumed at the Zoning Board meeting of August 25, 2021.]

The Chair informed applicant that only three Board members were present, and that as a five-member board, three is required for a majority, so that in order to move forward with a Resolution tonight, a vote would need to be unanimous. The Chair then modified that to state that if there were only three members present when voting on a Resolution, unanimity would be required, but that only a majority of three members present was necessary to decide to draft a Resolution.

The Chair stated that applicant had presented several different alternatives at the August meeting, and that the Board had then indicated that it was favorably inclined toward the

last of those alternatives. The Chair stated that the Board had advised applicant that that last alternative needed to be supported with appropriate documentation, that applicant has provided such, and asked Mr. Zonsius to take the Board through this newest proposal.

Mr. Zonsius stated that in the initial scheme of December 4,¹ the proposal requested a 6'5" setback and 12,828² square feet of land coverage; that the proposal presented last month sought a 9'4" setback and "still being over the maximum allowable [land coverage at 12,588 square feet, 241 sf less than the initial request and 848 sf more than the existing excess land coverage of 11,740 sf]; and that the proposed addition discussed tonight is 16'¾"³ [from the property line] and has less square footage [beyond the existing excess land coverage than did the prior two proposals, at 12,283 sf, 305 sf less than last month's proposal and 543 sf more than that existing].

The Chair noted that a calculation question⁴ had arisen regarding the subtraction for the water, and asked Mr. Zonsius if the stream in the back as well as the pond had been included in that 75% reduction [of the wetlands portion of the property upon which to calculate the permitted land coverage]. Mr. Zonsius replied, "I'm going to say yes, but my associate, Jay Liu, who did this, so I don't know but I'm going to say yes because he had instructions to do that because it's part of the lot." The Chair pointed out that would give you somewhat better numbers to the extent that you have unbuildable area where the stream is.

Mr. Zonsius showed drawings to illustrate that the addition as currently proposed does not encroach into the setback and to point out the removal of some of the driveway. Mr. Zonsius concluded, "so we're good on all the setback, the floor area ratio, which is the cubic volume of the structure, we're allowed 7,300 and we have 4,600, way lower, building coverage is 10,000 and we have 4,600, so the building coverage on the piece of land we're good, so it's just land coverage, and we're over from existing to now." The Chair noted that the requested additional land coverage is less than five percent more than the existing excess land coverage. Mr. Zonsius added "yes, because the existing footprint is still over."

Mr. Zonsius continued describing the drawings, pointing out the existing bedroom, the garage attached to the existing building, the entrance to the front, the façade and the driveway. Mr. Zonsius added that they will continue the rooflines and that they will maintain a fountain but that it will be smaller and move [over] so that people can drive straight in or drive in and turn around and come out. Mr. Zonsius mentioned that they may do mahogany doors. Mr. Zonsius stated, "since the entranceway and the pond is centered,

¹ Sic: December 14, 2020

² Sic: 12,829 square feet was proposed, per the Legal Notice

³ Per the Revised Zoning Worksheet, six-feet even.

⁴ On the Revised Zoning Worksheet, applicant states that the lot area is 37,027 sf after subtracting 75% of the lot area that is comprised of wetlands. In the initial application, the lot had been stated as 43,911 sf (presumably failing to subtract the 75% of the wetlands), and in a 2006 request, it was stated as 35,399 sf (which is why the Chair asked if the Revised Zoning Worksheet accounted for the stream as well as the pond). The lot size minus 75% of the sf of wetlands thereon is a significant component in determining the basic permitted and maximum allowed land coverage.

I put a column here and brought this [other column] out four feet so that as you approach the center, everything looks symmetrical, it maintains the center line from front door to fountain.” Mr. Zonsius concluded that this proposal provides a side door, front door and a laundry room door, and worked out very well.

Mr. David asked the Chair why the matter was before the Zoning Board if a setback variance is no longer required. The Chair explained that the initial proposal sought two variances, and that there remains the variance for land coverage, and that if a variance for that were granted, a Special Permit from the Planning Board would then be needed. The Chair added that because the existing land coverage is non-conforming, any project proposed [even without additional land coverage sought] would still need a variance for land coverage. The Chair added that in theory this meeting Notice should have been updated to reflect that the need for one of the variances initially requested has been eliminated.

Dr. Archer asked Messrs. Zonsius and Orser how they and applicants felt about the proposal in its current format. Mr. Zonsius replied that he thinks it works very well. Mr. Orser stated that they “left [last month’s meeting] in good spirits and said let’s go sit with him and pitch it to him, sat with him about an hour, made some adjustments, he ended up being very happy with it.” Mr. Orser reported that “he said ‘are you sure the village is going to do this’ and I said ‘they said they would support us if we would give them enough, if you give them a little bit, they’ll give us a little bit, maybe we can come to a resolution’ so he said ‘ok, I’m good with it’.” Mr. Orser concluded, “so it worked out good on that end, because I didn’t think he was going to go for it.” Mr. Zonsius added, “now with the shape of the driveway, the garage picks up, net-net, so that was coverage and this is the same coverage.” The Chair pointed out that it is not the same but a small increase in land coverage, and noted that this proposal provides a more functional garage and adds a laundry room.

Mr. David asked how Hurricane Ida impacted applicants and their neighbors, in light of the pond and the Sprain Brook in the rear of applicants’ property. Mr. Orser responded that “the pond is okay, but the water was very high, the village was there working like crazy, there are some sewer issues in that area, so they were there with excavators and machines, and I know that somebody’s car floated away from up on Grassy Sprain Road, floated down the brook, and the Fire Department had to come get them, something like five or six neighbors away.” The Chair inquired about the many belongings he had noticed in front of the house. Mr. Orser stated, “that was the basement of the next-door neighbor, but that’s a completely separate issue, that was a man-made issue that flooded the basement. Mr. David asked how it was man-made. Mr. Orser stated, “the village took an excavator, brought it along the side of the house and hit the house, or some sort of a back hoe or something like that.” Mr. David asked if the Village hit the neighbor’s house. Mr. Orser replied, “they hit it and knocked out all the windows in the basement in the neighbor’s house, so the house got flooded, so the insurance companies are looking at it, the Village

is looking at it, the Village came the next Saturday to clean up, they sent guys out there to pick up whatever they could, they'll get through that." The Chair asked if that incident had anything to do with this. Mr. Orser replied, "nothing to do with this," and Mr. Zonsius added that no one died.

The Chair polled the Board members for their inclination to grant a variance. While both Board members present indicated that they would be favorably inclined, Mr. David expressed procedural concerns.

Mr. David asked where it would leave the Planning Board if the Zoning Board were to grant a variance, as the Planning Board had previously expressed its opposition. The Chair stated that the Planning Board is an independent board and exercises its own judgment. Mr. Orser offered "I believe that their concern was the size of the variance and the side setbacks and all that stuff, but since you guys have done a great job eliminating some of these issues, I think the Planning Board's issues are kind of addressed." Mr. David pointed out that the Planning Board's purview is lot coverage and that really has not changed. The Chair suggested that the Zoning Board's Resolution should state what the changes are from the original proposal, the degree to which the land coverage increase has been minimized, and added that the increase in land coverage is only 550 square feet, which is not massively consequential relative to the total area involved. The Chair concluded that the Planning Board will reach its own independent judgment, and that the Resolution granting the variance will show that the Zoning Board has acted to address, as much as possible, the increased land coverage to achieve applicants' need by eliminating one variance entirely and minimizing the other variance.

Mr. David continued, asking where it leaves the applicants if the Planning Board decides not to issue a Special Permit. Mr. Zonsius stated, "that was my question day one." The Chair noted that this is the process. The Chair added that he is not on the Planning Board and does not have any insight into their operations, but that he supposes that they might have ideas about things that they would like to have done, such as to handle water, and reminded Mr. Zonsius that he had mentioned culverts and different ways of handling water. The Chair concluded that the Zoning Board should not pre-judge what the Planning Board may or may not do. Mr. Zonsius stated, "my experience with ZBA versus Planning is that ZBA does the variance piece of it, and then the Planning Board makes it legal, in terms of the compliance, the run-off, the grades, the drainage, they're there to make sure it all works." The Chair said that he believes there is something to the engineering piece. Mr. Zonsius said, "my experience is that I have to get through you because without you, they can't engineer something that is not approved." The Chair reminded applicants' representatives that they already had been before the Planning Board to get a take on their position, and that the Planning Board had taken a severe position. The Chair reiterated his opinion that the Zoning Board had mitigated at least some of the Planning Board's concerns, and added that whether those mitigations would be sufficient will be the Planning Board's call.

Mr. Orser added “if I worried about what everyone was going to say, I’d never get nothing done.” Dr. Archer replied that the Zoning Board will have “tee’d it up,” but that one should not put the cart before the horse.

The Chair expressed his understanding that the three Board members present tonight and the other two Board members not present are supportive of the proposal in its current format and addressed the upcoming procedures. The Chair explained that the Zoning Board’s current procedure is that, after reaching a favorable consensus, the Board drafts a Resolution that outlines the reasoning and the logic, and then votes on the Resolution at the next meeting. Mr. Zonsius asked if they needed to be at the meeting at which the Resolution is voted on, and the Chair informed him that they do not.

The Chair stated his belief that the Planning Board will want an actual approved Resolution before deciding about a Special Permit. The Chair pointed out that the Planning Board’s next meeting is November 10th, and that the earliest the Zoning Board could vote on a Resolution would be at its next meeting on October 27th, and that he does not know if that will provide sufficient notice for the Planning Board, and noted that this is a question for the Building Inspector. The Chair added that the Zoning Board can inform the Planning Board that this is coming, that he suspects the Planning Board may require an actual approved Resolution, and that he will confirm the procedure with the Building Inspector.

Mr. Zonsius asked if he would need to return to the Zoning Board if the Planning Board makes changes to his drawings that affect the setback, and if he would not need to return if the Planning Board makes changes that do not affect the setback. The Chair advised that any changes the Planning Board seeks will likely involve drainage, etc., which does not involve the Zoning Board. The Chair stated that if there will be no encroachment into the setback, there will be no need for a [second] variance, and gave the hypothetical that if the Planning Board were to want the wall moved six inches out, it would be irrelevant to the Zoning Board as long as it does not encroach into the setback. Mr. Zonsius asked if this would be true even though his zoning calculations might change. Mr. Zonsius asked if the addition goes from sixteen-feet one-inch to fifteen-feet nine-inches, and it does not encroach into the setback, there is no need for a variance. Mr. Zonsius asked if the land coverage changes to a small degree. Mr. Orser said, “I don’t think the Planning Board is going to say ‘let’s increase,’ they might say ‘change the roof line’.” The Chair opined that [rooflines] are not the Planning Board’s kind of issue. Mr. Zonsius stated, “it shouldn’t be, they’re not ARB.” The Chair concluded that a de minimus change will not make a big deal, and that it does not seem likely that the Planning Board will be more liberal than the Zoning Board has been, and that to the contrary, they may want you to remove some paving, and acknowledged that this would just be a guess.

Mr. David moved, and Dr. Archer seconded, that the Public Hearing be closed.

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

Michael Wiskind, Chair – Aye

Dr. June Archer – Aye

Mort David – Aye

Close Public Hearing

4) Adjournment

There being no other business before the Board, the Zoning Board of Appeals adjourned its meeting at 8:26 pm.

Respectfully submitted,
Judith Calder,
Recording Secretary