

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING
WEDNESDAY, JANUARY 26, 2022**

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

1) Call to Order

The Chair called the regular meeting to order at 8:06 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, February 23, 2022, at 8:00 pm.

Approval of Minutes

Mr. David moved, and Mr. Amir seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of December 22, 2021, as amended.

Vote: 4 in favor, 0 opposed, 1 abstaining, as follows:

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

3) **Public Hearing**

Application for Variances from Village Code Requirements

David Fink and Jessica C. Perez

34 Lincoln Avenue, Ardsley, New York

Section 6.80, Block 69, Lot 1, a corner lot in an R-3 One-Family Residential District

For proposed legalization of a walled terrace, where the side yard width on High Street is less than the twenty feet minimum required (Code §§ 200-26, 200-89).

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

Also Present: Mr. David Fink and Ms. Jessica Perez

The Chair read the Legal Notice.

Open Public Hearing

The Chair stated that the return green cards had previously been turned into village and that all sent had been returned.

The Chair asked the applicant to explain the proposal. Mr. Fink stated that they had wanted to build a patio with a wall for safety for their two young children, and that they had hired a contractor who had told them that they did not need any permits. Mr. Fink stated that the contractor began work on a Friday, that Mr. Tomasso came on Monday and told the contractor to stop working, and that the contractor did not stop working but completed the work on the next day, Tuesday. Mr. Fink stated that since then they have been working with Mr. Tomasso since then. Mr. Fink added that they had not known that Village property was part of our property as an easement. Mr. Fink acknowledged that a variance from the Zoning Board is only the first step toward legalizing the wall..

The Chair asked when this work took place, and Mr. Fink replied that the work had been done in September and that, since then, they have worked with the engineer to complete the plans, and then we submitted the plans.

The Chair asked if there had been any problems with construction, footings, etc. Mr. Fink stated that they are happy with the work that was done, although they are not happy that they had not been made aware of the permit process. The Chair asked if the Building Inspector is satisfied with the engineering quality, and Mr. Fink replied that he is.

Mr. David asked what had been there before the wall. Mr. Fink stated that before they put up the wall was land that they did not use because it is on a hill.

The Chair would like the Building Inspector to clarify, but as he understands it, had this been a patio without the wall that sticks up above it, it would not have been an issue, it is the wall that makes it an issue. The Chair stated that the other issue is that it is partially in the village right of way.

Mr. David pointed out that most houses in the Village encroach upon the right of way because the streets are not as wide as the forty feet allocated for them, so when one plants vegetation, one is encroaching on the Village right of way. Mr. David suggested that it is difficult to identify it as a real issue as it happens all the time. Mr. Fink added that one sees retaining walls all over the place.

Mr. David asked the height of the wall, and the Chair asked applicant to distinguish between the inside and outside heights. Mr. Fink stated that because it is on a hill, the wall has several heights. Mr. David asked for the maximum height, and the Chair stated that it seems to be about five feet high on the grassy side. Mr. David explained that he asked about the height because of another Village regulation about height of fences, which is province of the Board of Architectural Review (BAR). The Chair noted that the Building Inspector's letter does not reference that. The Chair asked applicant the height of the wall on the inside, and Ms. Perez stated that it is about three feet. Mr. Del Grosso asked if the wall was uniform in height on the inside (patio side) and varied in height only on the outside, and applicants confirmed that this was the case.

Mr. Amir asked if the patio can be accessed from the front of the house, and if that access was the reason for the gap. Ms. Perez advised that the patio can be accessed from the front via a walkway around the house. Mr. Amir asked if they had not wanted to extend the wall farther out. Ms. Perez said that there was no need for a wall at the gap Mr. Amir had noticed as the ground is level there. Mr. Fink added that there was an existing wall on the other side that the contractor adjoined.

Mr. David asked why a copy of these proceedings had been provided to the Title Insurance Company. Mr. Fink said that they had not been sure where the property line is and that since that would determine whether there was an issue of encroachment, Mr. Tomasso had asked them for a survey as part of the application, and that because the survey had been done in 2018, Mr. Tomasso said that they did not need another survey. The Chair pointed out that the survey had been sent to the Title Company when applicant purchased the house, and Ms. Perez confirmed that they had included a copy of the prior correspondence as part of their application package.

Mr. Amir asked if applicant had done any other work on the house after purchasing it in November 2018, and Mr. Fink advised that they had put on a new roof.

The Chair stated that Mr. Tomasso had advised that the retaining wall in and of itself would not require a variance, although the Planning Board would have to approve it. If this were just a retaining wall, without the patio and parapet, even in its current location, no variance would be required, only a licensing agreement from the Village Board for the encroachment would be required. As constructed, with the wall and patio in the right-of-way and with a parapet on the wall, what is required is a variance for the parapet, and then, should this Board grant a variance, applicant will also need a licensing agreement with the Village for the use of the right-of-way. The Chair pointed out that a licensing agreement would mean that if the Village were to decide to widen the street, it would have to come down.

The Chair asked applicant to confirm that he had been advised that even if the Board granted a variance, there would still be another step to the process, and Mr. Fink stated that he had been so informed. Mr. Amir asked if any variance the Board were to grant would be subject to the Village Board of Trustees. The Chair stated out that the Board would be granting a variance on the parapet. Mr. Del Grosso asked if the Village Board of Trustees would then be making a ruling on the encroachment. The Chair confirmed this and added that it appears not to be an uncommon procedure. Mr. Fink stated that Mr. Tomasso had explained that because the wall is more than eight feet from the street, it is not an uncommon procedure, but one step in front of another.

Board members discussed the two Code sections at issue and concurred that Section 200-26 requires fifteen feet side yard setbacks, and that Section 200-89 requires side yards of corner properties to have the same setback for the street-facing side and front yards, such that the side yard setback on that side would not be fifteen feet but would follow the front yard rule of twenty feet. The Chair noted that the house was legal non-conforming to begin with because house without the patio is only a bit over fourteen feet from the property line.

Mr. Del Grosso asked if the Zoning Board's jurisdiction ended with the variance, and the Chair confirmed that it did. Mr. Del Grosso asked applicants if they understood that even if they receive a variance from the Board and a licensing agreement from the Village, there is a chance that the Village could at a future date require the wall to be removed. Ms. Perez stated that they were aware of that risk.

Mr. David asked what materials were used on patio and if those materials are permeable. Ms. Perez advised that the wall has a drain and added that since constructing the wall they now have less water in their basement. Mr. Fink added that the patio is pitched and they resealed the basement. The Chair pointed out that, according to the zoning worksheet, the land coverage is less than the basic permitted as of right, even with the additional 360 square foot for the patio.

The Chair noted that no members of the public were present to speak on the matter, and stated that the Board had not received any written comments in advance of the meeting.

The Chair polled the Board and all members were in favor of granting the requested variance. The Chair advised applicants that the Board will prepare a Resolution to be voted on at the next meeting.

Mr. David moved, and Mr. Del Grosso seconded, to close the Public Hearing.

Vote: 5 in favor, 0 opposed, 0 abstaining, as follows:

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

Close Public Hearing

4) Resolution

Application for Variances from Village Code Requirements

Shea and Jennifer Gallante

38 Heatherdell Road, Ardsley, New York

Section 6.50, Block 20, Lots 3 & 15, in an R-3 One-Family Residential District

For proposed additions, where the existing and proposed side yard widths are less than fifteen feet (Code § 200-26B).

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

(The Public Hearing had been closed at the December 2021 meeting.)

Mr. Amir Proposed, and Mr. David seconded, the following Resolution:

WHEREAS, Jennifer and Shea K Gallante, 38 Heatherdell Road, Ardsley NY 10502, has applied to this Board for a variance from Section 200-26B of the Zoning Ordinance of the Village of Ardsley for construction of a second-story addition and two-story rear addition to the premises; and

WHEREAS, this application is made under the authority of Sections 115-6 and 200-97, Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting the premises known as 38 Heatherdell Road, Ardsley, New York and designated as

Section 6.50, Block 20, Lots 3 and 15, and is within an R-3 One- Family Residential District; 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 December 22, 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, and 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 in the character of the neighborhood, nor a detriment to nearby properties, will be created by the granting of the variance, where other single-family homes within the neighborhood of the applicant feature second-story and rear-additions similar to the additions the applicant seeks to construct;
2. the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue in its reasonable use and possession of the premises, as the property is improved by an existing non-conforming dwelling, the design plans submitted to this Board reflect that construction will remain within the existing footprint of the dwelling, and the property is of an unusual dimension which does not reasonably provide for alternative means to achieve the applicant's intended additions;
3. the requested variance is not substantial, in that the second-story addition on the west side of the property will remain with an existing 8.57 feet setback, and the two-story rear addition will remain within an existing 4.51 feet side yard setback, notwithstanding increasing the total square footage of the non-conforming structure;
4. the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood and therefore does not change the overall character of the commercial premises relative to neighboring properties, in that the additions within the existing footprint will not be readily or easily noticeable from the street; and

5. the circumstances requiring the variances was not self-created where the additions are to an existing non-conforming dwelling, and even if self-created, same would not preclude the granting of a variance.

NOW THEREFORE, be it resolved that the application of Jennifer and Shea K. Gallante, 38 Heatherdell Road, Ardsley, New York is granted.

PROPOSED BY: Mr. Jacob E. Amir

SECONDED BY: Mr. Mort David

ROSTER: Mr. Michael Wiskind, Chair – AYE

Mr. Jacob E. Amir – AYE

Dr. June Archer – AYE

Mr. Serge Del Grosso – AYE

Mr. Mort David – AYE

5) Adjournment

Dr. Archer moved, and Mr. Amir seconded, that the Zoning Board of Appeals adjourn its meeting at 8:40 pm.

Vote: 5 in favor, 0 opposed, 0 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