

**MINUTES  
VILLAGE of ARDSLEY  
ZONING BOARD of APPEALS  
REGULAR MEETING (VIA ZOOM)  
WEDNESDAY, JULY 22, 2020**

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

**ALSO PRESENT:** Larry Tomasso

1) **Call to Order**

The Chair called the regular meeting to order at 8:02 pm.

The Chair noted 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.

The Chair introduced himself and the Zoning Board members, Village Building Inspector Larry Tomasso and the Board Recording Secretary.

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 26, 2020 at 8:00 pm.

**Approval of Minutes**

Mr. Weitz moved, and Mr. David seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of May 27, 2020.

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

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

3) **Public Hearing**

**Application for Variances**

**15-35 Center Street LLC (Lessee: Trustco Bank)**

**33-35 Center Street, Ardsley, New York**

**Section 6.50, Block 30, Lot 1, in the B-1 General Business District**

**For Second Proposed “Trustco Bank” Exterior Wall Sign, Exceeding Maximum Permitted: (1) Number of Signs on Building Fronting One Right of Way (Code 200-82C(2)(a)[1][c][i]; and (2) Overall Dimensions, in Aggregate, of Exterior Wall Signs (Code 200-82C(2)(a)[2][a][ii].**

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

**Also Present:** Chad Bolotin, Graphic Impact Signs  
Larry Tomasso, Building Inspector

The Chair read the original Legal Notice of May 6, 2020.

**Open Public Hearing**

The Chair stated that the Board had received applicant’s materials showing what is proposed and asked applicant to provide a brief description of the proposal along with any additional materials applicant may have.

Mr. Bolotin stated that he had nothing to show the Board beyond what was provided in the application packet.

Mr. Bolotin pointed out that looking down on the property from the Google aerial street view, one sees that the subject property is on three rights of way – American Legion Drive behind, Center Street to the right and the Village Green right of way to the left. Mr. Bolotin stated that because the bank branch is located in the back of the shopping plaza, the Center

Street address is given, but that because the bank also fronts the Village Green right of way, applicant requests a second sign for traffic going down American Legion Drive. The Chair stated that although there is a street sign at the exit/entrance of the shopping center, there actually is no right of way called "Village Green," and that indeed it is not a mapped street. Mr. Tomasso confirmed that [on the entrance to the Village Green shopping center] there is a street sign that says "Hillcroft Lane," but that it is not a mapped street. The Chair noted that if it were a mapped street, then placing a second sign would be permitted "as of right." The Chair explained that to understand why this matter is before the Board, it is important to note that the space leased by Trustco Bank is located on only one right of way.

Mr. Bolotin stated that the bank's intent is to mimic the look of the existing sign, except that the proposed additional side sign would not be illuminated, whereas the existing sign on the front of the branch has halo illumination. Mr. Bolotin continued that the proposed sign is the same size and intent of what already exists in the shopping plaza. Mr. Bolotin added that the size of the existing and proposed sign is 13" high by 136" wide, so Mr. Bolotin opined that the proposed sign does not exceed the 26" height limitation. The Chair indicated appreciation that the proposed sign is consistent with the existing sign. The Chair explained that the dimensional limitation applies by taking the dimensions of both the existing and proposed signs in aggregate, as if they were end to end and top to bottom. The Chair added that the Building Inspector had explained that although the signs will not be stacked, they will be next to each other wrapping around the building, so the aggregate length is the most significant issue. The Chair explained that the aggregate length is longer than would be permitted without a variance.

The Chair invited questions from Board members.

Mr. Amir asked why the bank thinks they need the additional sign. Mr. Bolotin stated his understanding that it is because of traffic that comes down American Legion Drive to Village Green right of way, explaining that people do not know that the bank is actually there at the end of that plaza, so they have to travel down Center Street and then down Village Green from the other way, so it is for traffic purposes to know where the bank is located.

The Chair pointed out that [the exit to American Legion Drive] is one way coming out of the DeCicco's shopping center, and that if someone enters the DeCicco's shopping center through the other entrance Mr. Bolotin mentioned, they cannot actually drive to the bank without exiting the shopping center again. Mr. Amir added that one cannot make a left turn into the shopping center from American Legion Drive. The Chair also pointed out that banks do not usually attract casual passers-by, as, for example, a diner would. The Chair therefore suggested that people going to the bank usually have an ongoing relationship with the bank and know where it is and how to get to it. Mr. Bolotin stated that the bank, for the safety of their clients, would like a sign on the side of that street [Hillcroft Lane], but conceded that he thought it was a two way street. Mr. Del Grosso

asked if it was not a two way entrance. The Chair stated that it is an entrance only for the adjacent shopping center. The Chair added that there is a link between the two shopping centers, but that the link is one way only from DeCicco's into the other shopping center.

Mr. Weitz asked if DeCicco's has any signage on Center Street, on the other side of its recycling machines. The Chair stated that he does not think there are signs for any of the other stores in the shopping center, and does not think there is any signage for DeCicco's on its own exterior wall. Messrs. Amir and Del Grosso confirmed this.

Mr. Weitz asked if the bank also had signage on the post sign near Starbucks (on the far side of Saw Mill River Road / Route 9A). Mr. Bolotin stated that the bank did not, that its only sign is on the building. Mr. David commented that many years ago, Hyacinth, the owner of the DeCicco's shopping center, had requested signage near Starbucks because people were unaware [of stores in the DeCicco's shopping center], so that is the reason for asking if you could add the bank's name to that sign. Mr. Bolotin asked if Mr. David meant the sign out by the road. Mr. David stated that he was referring to the sign by Starbucks, which would presumably do what you wish to do, which is make people aware. Mr. Bolotin replied that technically [the sign near Starbucks] is not part of this landlord's plaza, so he believes that would not work. Mr. David countered that he believes that it is. The Chair noted that Mr. Bolotin is from the sign company and may not know what Trustco Bank otherwise does or does not want to do. Mr. Bolotin stated that he has a general sense of what Trustco would want to do, and that because the bank is in a different lot than where the Starbucks is, the bank could not add on to that pylon sign. Mr. Bolotin added that that would technically be off-premise signage.

Mr. Amir commented that, looking at Google maps, he sees that DeCicco's does not have a sign on Center Street, but noted that Sunshine Bagels has a sign fronting Route 9A and a sign on Center Street, which Mr. Weitz confirmed. Mr. Amir pointed out that Sunshine Bagels fronts on two streets. Mr. Weitz asked if one sign just says "donuts." Mr. Amir confirmed this, but said that he brought it up to draw a distinction because that is a corner parcel with frontage on two streets. The Chair added that Evergreen Cleaners would be another example of an establishment with two signs because it fronts two streets. The Chair pointed out that this is not the case here, and that if Trustco did front two streets, two signs would not be an issue.

The Chair asked the Board members if they had further questions or comments, and they indicated that they did not.

The Chair asked Mr. Bolotin if he had received green cards from the bank's neighbors, and Mr. Bolotin replied that he has them and will mail them [to the Village] the next day.

Mr. Weitz asked if the size of the proposed sign for the side of building is identical to the existing sign on the front. Mr. Bolotin replied that the proposed sign it is identical in size

to the existing, and differs in that the proposed sign is not illuminated. Mr. Weitz asked if the proposed sign is identical in size, font, picture and everything else, and Mr. Bolotin confirmed that it is.

The Chair asked if any member of the public wished to speak in support of or in opposition to the application, and noted that no members of the public indicated a desire to comment.

Mr. David asked if the proposed sign conforms generally with what the Board of Architectural Review approves. The Chair stated that as the proposed sign conforms with the previously approved sign, he believes that it would be in conformity with those criteria. Mr. Tomasso added that if the Zoning Board approves the application, applicant will have to go to the Board of Architectural Review.

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

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

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

### **Close Public Hearing**

Mr. Amir proposed, and Mr. David seconded, the following Resolution.

WHEREAS, 15-35 Center Street LLC and Lessee Trustco Bank, of 33-35 Center Street, Ardsley, New York, 10502, has applied to this Board for a variance from strict application of the requirements of Section 200-82(C) of the Zoning Ordinance of the Village of Ardsley, for permission to install a second “Trustco Bank” exterior wall sign on the building which has street frontage of approximately thirty feet on one right of way where only one sign is permitted on a building that fronts only one right of way with frontage of more than Twenty-Five Feet and not more than Seventy-Five Feet (Village Code 200-82C(2)(a)[1][c][i]), and for permission to add a second sign of the same size as the existing sign where the overall dimensions in the aggregate of both signs attached to that building would have a horizontal measurement of approximately Twenty-Three Feet which exceeds the maximum permitted horizontal aggregate of Twenty Feet and would have a vertical measurement of Twenty-Six Inches which would exceed the maximum permitted vertical measurement of Twenty-Four Inches (Village Code 200-82C(2)(a)[2][a][ii]); and

WHEREAS, this application is made under the authority of Section 200-97 Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting premises known as 33-35 Center Street, Ardsley, New York, and designated on local tax maps as Section 6.50, Block 30, Lot 1, within the B-1 General Business District; and

WHEREAS, a Public Hearing on this application was held by the Zoning Board of Appeals via Zoom on July 22, 2020, after due notice by publication; and

WHEREAS, at the Hearing, Chad Bolotin of Graphic Impact Signs appeared on behalf of 15-35 Center Street LLC and Lessee Trustco Bank in support of this application, and no one appeared in opposition to this application, and all those desiring 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 in the character of the neighborhood nor a detriment to nearby properties will be created by the granting of the variances, as the additional sign is exactly like the existing sign except that the second sign will not be lighted, and as the second sign faces a different direction than the existing sign;
- (2) the benefits sought by the applicant cannot be feasibly achieved other than by variances, as the second sign on the side of the building is the only means by which and the only location from which to adequately inform pedestrians and visitors in the adjacent shopping center as to the location of the bank and direct them thereto;
- (3) the requested variances are not substantial as the proposed second sign adds only Three Feet beyond the permitted aggregate width and only Two Inches beyond the permitted aggregate height, and as the signs will not be stacked on top of each other, the combined aggregate height is less material, and as the second sign will be on a different exterior wall than the existing sign on the wall that fronts the right of way, mitigating the impact of the excess width;
- (4) the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district in that

the second sign will be of the same color, font, dimension and scope of the first sign but will not be illuminated; and

- (5) the circumstance requiring the variances was not self-created in that the location of the bank in the back of the shopping plaza and the single direction vehicular access requires additional signage.

NOW THEREFORE, be it resolved that the application of 15-35 Center Street LLC and its Lessee Trustco Bank is granted.

**PROPOSED BY:** Mr. Jacob Amir  
**SECONDED BY:** Mr. Mort David  
**VOTE:** 5 in favor, 0 opposed, 0 abstentions, as follows:  
Michael Wiskind, Chair – AYE  
Jacob Amir – AYE  
Mort David – AYE  
Serge Del Grosso – AYE  
Craig Weitz – AYE

4) **Public Hearing**

**Application for Variance**

**Juan R. Rivera-Diaz**

**4 Western Drive, Ardsley, New York**

**Section 6.80, Block 56, Lot 22.1, in an R-3 One-Family Residential District**

**For Proposed Conversion of Unfinished Basement and Attic into Habitable Space, and Addition of Covered, Partially Enclosed Staircase, Increasing Existing Legal Non-Conforming Use as a Two-Family Dwelling in a One-Family Residential Zone (Code 200-100C)**

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

**Also Present:** Juan Rivera, applicant  
Adam Kaplinski, Kaplinski Architectural Design, LLC  
Kaushik Mody, 2 Western Drive, Ardsley, NY  
Edward Tomanek, 10 Western Drive, Ardsley, NY  
Larry Tomasso, Building Inspector

The Chair read the Legal Notice.

### **Open Public Hearing**

The Chair asked if applicant had the green cards and Mr. Rivera reported that he had seven green cards received in response to twenty-two notices sent. The Chair noted the low return rate and Mr. Rivera said that he had followed up with the Post Office, which had said that they cannot make people sign. The Chair asked if Mr. Rivera had paperwork confirming the mailing of the Notices, and Mr. Rivera stated that he did and that he also had the report showing the status of the Notices mailed per tracking number. The Chair asked Mr. Rivera to send the status report and the green cards received to the Building Inspector.

Mr. David noted that the Code uses the operative word “extension,” while Mr. Tomasso’s letter of denial used the word “expansion,” and inquired about the respective meanings of those words. Mr. Tomasso stated that the village attorney had directed him to write the denial letter that way. The Chair suggested that “extension” in the Code may refer to the non-conformity in general, whereas the denial letter’s use of the word “expansion” seems to refer to a greater dimensional variation. Mr. Tomasso expressed that the Board may be splitting hairs, and explained that applicant’s proposal to expand the non-conforming use into unfinished areas of the building, the basement and the attic, is what is requiring the variance.

The Chair asked applicant if he is proposing any exterior addition to the building other than the stair. Mr. Rivera stated that they are not changing the exterior footprint, only using unfinished space. The Chair asked Mr. David if that was what he was inquiring about, and Mr. David said yes. The Chair noted that if the request had been to have an addition that took up more of the lot, that would be a different conversation. Mr. Rivera stated his position that he is neither changing nor increasing the use, that he is complying with everything, and just wants to know if he can use the unfinished basement and attic to increase the small spaces that are there now, and added that the outside of the house is exactly the same. The Chair countered that applicant is proposing going from two 2-Bedroom units to two 3-Bedroom units. Mr. Rivera replied that that was the proposal. Mr. Weitz asked if applicant also proposed an exterior exposed staircase, and Mr. Rivera replied that this was correct.

The Chair asked applicant to begin his presentation of the proposal, and asked that if his presentation referenced materials submitted, to be specific about which file and which page within the file, to make it easier for Board members to follow along within the limitations of the Zoom meeting. The Chair added that if it was easier for applicant to display those documents via “screen share,” that could be done too. [Mr. Del Grosso screen-shared the relevant previously submitted documents for everyone’s convenience.]

Mr. Kaplinski said that page T-1 is a description of zoning and energy information to be followed, and suggested they first review page A-001, which is the demolition plan. Mr. Kaplinski pointed out that in the basement there is nothing to demolish except for the stair that leads up to the first level, shown in the bottom left of the drawing. Mr. Kaplinski continued that drawing 2 on that page shows that they propose removing a non-structural wall and the two small squares, which are bedrooms, at the top of that drawing, and that this will open up the space, the results of which are shown in subsequent diagrams. Mr. Kaplinski continued that drawing 3 on that page shows the same type of demolition as in drawing 2, where the two bedrooms and a couple of walls will be moved. Mr. Kaplinski stated that the attic is open space, so there is no demolition there. Mr. Rivera added that both the basement and the attic are raw space.

Mr. Kaplinski then referred to page A-002, which shows the proposed floor plans. Mr. Kaplinski began with drawing 1 of the basement on the bottom left of the page. Mr. Kaplinski explained that they want to create two bedrooms in the basement as usable space with windows looking up, a bathroom there, and a stair to walk up to the second floor [sic: first floor], and added that there already is a mechanical room in the basement, where all the proposed new mechanical equipment will be housed. Mr. Rivera added that the mechanicals are there now.

As to the drawing of the first floor plan, Mr. Kaplinski stated that the main entrance is currently in the middle of the house and that they propose moving it to the side, as shown on the top of the drawing, and added that from the entrance one would enter the first apartment by going down and the other apartment to the left of the stair. Mr. Kaplinski continued that they propose enlarging the living room by taking an existing hallway to enlarge it, to create a larger bedroom by combining the two existing bedrooms into one, and making a new kitchen and a new bathroom. Mr. Kaplinski noted that the beginning of the unenclosed stair can be seen at the top left corner.

Mr. Kaplinski then directed the Board's attention to the drawing on the bottom right of the page, which is the proposal for the second floor. Mr. Kaplinski showed that this floor plan is very similar to that for the first floor, with a new living room, a new kitchen and dining area, and a new enlarged bedroom with a bath, and a new stair to lead up to the attic space. Mr. Kaplinski stated that in the attic space, they propose two bedrooms and a bathroom. Mr. Rivera added that there is an existing staircase [from the second floor] to the attic, which he believes to be original, but that the head clearance there is insufficient for code compliance, so the staircase needs to shift over a couple of feet to allow for head clearance.

Mr. Kaplinski summarized that the drawings [on page A-002] give the gist of what the new house will look like from the inside. Mr. Kaplinski stated that the rest of the plans describe the structural work needed, and specified that because the attic space is becoming a third floor, they will need to add sprinklers in the attic space and leading all the way down to the exit corridor.

Mr. Kaplinski then moved on to the drawings showing the elevations, and stated that the roof plans do not change much except the cover over the attic [sic: exterior stair]. On the front elevation, Mr. Kaplinski pointed out the proposed new stair and added that where the stair is now, in the middle, there will be a window and that there is [another] window where it was before. On the side elevations, Mr. Kaplinski pointed out that they propose adding a few windows to provide light to the basement and attic space. Mr. Rivera added that, based on what he saw on town records, the proposed location for the entrance staircase is where it was originally, to the right side of the front, that he infers that at some time it got shifted to the middle, so he believes that the proposal puts it back to where it originally was, which is to the right side of the front.

The Chair asked if the rear staircase was not for normal use. Mr. Rivera stated that if residents park their cars in the back, they are likely to use that back staircase rather than walking to the front. The Chair asked if the front stair gives access to both units. Mr. Rivera confirmed that it will, as it does today. Mr. Kaplinski stated that there will be two entrances/exits usable from both units, and that both apartments will have access to both means of ingress and egress. Mr. Kaplinski added that there is enough room in the lot for five parking spots, where he thinks four parking spots are legally required, and echoed that someone parked there might use the back stair.

Mr. Amir asked if the proposal has an entrance to the first floor apartment on the right side [of the front]. Mr. Kaplinski stated that both apartments can be entered from both sides [front and back]. Mr. Amir asked that the entrances be described in more detail. Mr. Kaplinski explained that when you come into the [front] entrance there is a common corridor, and that if you go to the door going down you will enter the first floor and basement apartment, and that if you continue straight you get to a door that accesses the second floor and attic apartment. Mr. Amir asked where the back exterior staircase will lead. Mr. Kaplinski replied that the back exterior staircase will serve both apartments.

Mr. Rivera pointed out that the proposed back staircase seen on the upper left corner of the drawing basically squares off the house. Mr. Rivera added that the thought was to keep within, for lack of a better word, the “footprint” of the house and that they could add a viable back entryway for both apartments if they could extend [the footprint] out, just to the point of getting rid of the notch and squaring off the house.

Mr. Amir pointed out that although the paperwork states that the dimensions of the property are not being extended and that the footprint remains the same, the dimensions are being extended because of adding that staircase. Mr. Rivera stated that it does increase the non-conformity. The Chair asked if there was an existing internal staircase. Mr. Rivera stated that there is currently a small, relatively narrow staircase going up to the second floor, and that he felt it would be a more usable width if they put an exterior staircase in the back, so that was the original proposal [prior to receiving Mr. Tomasso’s denial letter]. Mr. Weitz

asked if the existing [internal] back stair becomes a bathroom. Mr. Rivera replied that it does, that they found that if they put the staircase on the outside to square off the building, the space [previously used for the internal staircase] was perfectly efficient for a bathroom. Mr. Weitz asked if applicant would lose both bathrooms if he did not add the exterior staircase. Mr. Rivera stated that he would have to relocate a bathroom somewhere or figure out how to use it because it is an old layout that is not convenient to today's living environment standard. Mr. Weitz asked if that would be on both the first floor and the second floor, and Mr. Rivera replied that it would be.

Mr. Amir asked if improvements to the basement and attic could be made without creating a two-family structure. Mr. Weitz explained that it already is a two-family house.

Mr. Amir asked who is living in the house now. Mr. Weitz said that it is vacant. The Chair asked if there are no tenants or residents at all at this point. Mr. Kaplinski confirmed that the house is vacant right now.

Mr. David asked why the original house is non-conforming. Mr. Kaplinski stated that he thinks it is because a two-family house in a single-family zone. Mr. David asked when the house was built. Mr. Tomasso stated that the house was built prior to the enactment of the Ardsley Zoning Code, and added that it is a legal non-conforming two-family house. Mr. Kaplinski stated that he believes that it was built in or around 1923, and Mr. Tomasso confirmed that this was correct. The Chair explained that the house is legal non-conforming because it predates the Zoning Code.

Mr. David requested an explanation of Code section 200-100C in light of the house predating the Zoning Code. Mr. Tomasso explained that because the house was built before the current Zoning Code was enacted, it was permissible to build it as a two-family house when it was built. Mr. Tomasso continued that under the current Zoning Code, it is no longer permitted to build a two-family house, but that the existing two-family structure is legal non-conforming or, as the term is used, "grandfathered." Mr. Tomasso then explained that a legal, code compliant use can be expanded into a non-conforming section of a building, such as a basement or an attic, but that a legal non-conforming use cannot be expanded into those areas. Mr. Tomasso offered an example to demonstrate the distinction: if a legal one-family house had a garage that was within the setback and it was desired to expand [the living area] into the garage, this would not require a variance because it is a permitted use and the footprint is already there. Mr. Tomasso contrasted that example with this case, where the non-conforming (two-family) use is being expanded into other areas of the building. Mr. Tomasso added that although the exterior stair is not insignificant, it is not the reason this application is before the Board, that this application is before the Board because of the expansion of the non-conforming use into the unfinished areas of the structure, with a substantial increase of square footage and number of bedrooms. Mr. Tomasso also pointed out that the year of original construction is not relevant other than

establishing that the house currently is a legal two-family because it predates the Zoning Code, but that this does not provide any exemptions for any expansion going forward.

Mr. David specified his concern based on Article 12 of Zoning Code Section 200-100 C, which states, “the extension of a lawful use to any portion of a non-conforming building which existed prior to the enactment of this chapter shall not be deemed an extension of such non-conforming use.” Mr. Tomasso stated that that question would have to be referred to the village attorney, who had advised Mr. Tomasso that a variance would be required for expansion into other areas of the building.

Mr. Kaplinski mentioned that applicant had interpreted the Zoning Code as allowing expansion of at least one of the apartments without a variance, assuming that it is the second apartment that makes the structure non-conforming. Mr. Tomasso stated that they had discussed that possibility but that the decision was made to try for both.

The Chair pointed out that the Zoning Code section to which Mr. David had referred states “the extension of a lawful use” and contended that, by definition, this use is not [a lawful use]. Mr. Tomasso concurred that the Zoning Code was addressing a “lawful” use, and noted that the Zoning Code specifically states that “a non-conforming use shall not be extended.” Mr. Tomasso contended that the Zoning Code’s permission to extend a lawful use limited permitted expansion only of legal use into non-legal use.

The Chair asked applicant if there was anything further they wished to explain about the plans. Mr. Kaplinski said that they had covered everything but that they would be happy to answer any other questions that Board members had.

Mr. David asked if one of units will be owner occupied. Mr. Rivera said that both units will be, that he would be in one, and that his sister would be in the other. Mr. Weitz asked for clarification, noting that Mr. Rivera’s letter included in the application stated that Mr. Rivera’s son and his son’s wife and their twins currently reside with Mr. Rivera and that they will move into one unit, and that Mr. Rivera’s daughter and her family will move into the other. Mr. Rivera said that he is Juan Rivera, that his son is John Rivera and John’s sons are Sebastian and Joaquin, and that [his daughter] Cynthia and her husband Luis are in Florida now and will be relocating to New York in the fall. Mr. Weitz asked Mr. Rivera if he owned the house. Mr. Rivera stated that Juan Rivera and John Rivera both own the house. Mr. Weitz reiterated that Mr. David had asked if you will be living there. Mr. Rivera said that he would not, that John will be living there. The Chair sought confirmation of Mr. Rivera having stated that his son, John, is also an owner, and Mr. Rivera confirmed that he is.

Mr. David asked if there will be an entrance and exit door from the basement, as he is concerned about safety in case of fire. Mr. Kaplinski stated that the emergency exit from the basement will be through egress windows in the basement, and that there will not be a

door from the basement directly to the outside. The Chair noted that the Building Code requires an egress window there if there is a bedroom there, which there is. Mr. Kaplinski confirmed that there will be an egress window from each bedroom.

The Chair noted that Mr. Kaplinski had mentioned putting sprinklers into the attic, and asked if the rest of the house is already sprinklered. Mr. Kaplinski said that it is not, and said that when there are three floors not including the basement, code requires that the third floor have a sprinkler. Mr. Tomasso stated that the code has flipped back and forth about whether or not one could finish an attic, and pointed out that this is attic space, and is not technically a story. Mr. Tomasso continued that code currently allows finishing an attic for habitable space with the provision that you sprinker both the attic itself and the means of egress from the attic to the main door of the house. Mr. Tomasso confirmed that applicant will have a sprinkler system in the attic and that the sprinkler system will come down the staircase to the apartment and that it will extend through to the emergency egress, and that that makes it only a partial sprinkler system, which is all that the Building Code requires.

Mr. Amir noted that the Westchester County Clerk's records have the last deed of record from April 17, 2020, and asked Mr. Rivera if that was when he purchased the property. Mr. Rivera replied that it was. Mr. Amir asked if it was a foreclosure purchase, and Mr. Rivera said that it was. Mr. Amir pointed out that applicant is the only person on the title. Mr. Rivera said that this was so, but that it will be owned as a life estate with John as remainderman, and that the documentation of the life estate is with the attorney, who has not filed it yet. Mr. Amir stated that he wanted the record to be clear to avoid confusion later. Mr. Rivera stated that the attorney recommended that we wait until things settle down from the foreclosure before we file the life estate. Mr. Amir asked if Mr. Rivera was going to hold the life estate with title held by both of his children, and Mr. Rivera advised that the title would be held only by his son, John. Mr. Amir asked if Mr. Rivera's daughter will be living in the other apartment, and Mr. Rivera replied "exactly."

The Chair asked if any member of the public wished to speak in support of or in opposition to the application.

Mr. Kaushik Mody asked if the external staircase would give the building the look and feel of an apartment complex or if it will still look like a house. Mr. Kaplinski stated that it will still look like a house, and added that the staircase will be visible only from the backyard of 6 Western Drive, and maybe a little bit visible from the street. The Chair asked Mr. Mody if, from the front of the subject property, his house is to the left, at the corner of Ashford Avenue, and Mr. Mody confirmed that it is. The Chair advised that the location of the proposed staircase is on the side of the house opposite Mr. Mody's house. Mr. Kaplinski opined that because the staircase will be hidden in a corner, Mr. Mody will not be able to see it, and that it may be a little visible from the street, but tucked into a corner. Mr. Rivera stated that it is a subjective question.

Mr. Weitz asked applicant to describe the materials to be used [on the back stair] and to describe the railing system. Mr. Rivera stated that the proposal is for a pressure treated wood staircase with some kind of Timbertech or composite decking, and with composite railing. Mr. Weitz noted that the proposal states that the staircase will be illuminated, and refers to page A-005 which mentions that there will be staircase illumination under a new staircase roof. Mr. Weitz asked if the lighting will that be on a timer, because he believes that an exterior staircase that is lighted at all times could give the feeling of a multi-family building. Mr. Rivera stated that he believes that it is just a switch light when someone uses [the staircase]. Mr. Weitz asked if that is what is required, and Mr. Tomasso advised that code requires a light, at least a motion sensitive light.

Mr. Weitz asked if they planned to use the rear staircase for seating or a barbeque. Mr. Rivera stated that there is a bluestone patio. Mr. Kaplinski stated that on the staircase there is room only for egress, and added that there are no balconies or anything else like that. Mr. Weitz pointed out that there is a landing. Mr. Rivera stated that the landing is big enough only to turn to go up to next flight. Mr. Weitz asked Mr. Kaushik if the staircase discussion addressed his concerns. Mr. Kaushik replied that it did, that they had been worried only about possible detrimental impact on the value of neighboring homes.

The Chair asked if any other member of the public had questions or comments.

Mr. Edward Tomanek asked if the house is a legal two-family or not, because the letter he received says “non-conforming use and shall not be extended.” Mr. Tomanek stated that he understood the letter to mean that the house is non-conforming as a two-family and that it is not going to be extended as a two-family, so he asks the purpose of the discussion. The Chair explained that the house is referred to as a “legal non-conforming two-family” because it was already a two-family house when the Zoning Code was enacted, so it is, as Mr. Tomasso used the term earlier, “grandfathered.” The Chair further explained that this means that if there were no changes, the house could continue to be used as a two-family house, and that the applicant had to come to the Zoning Board only because he wants to make changes.

Mr. Tomanek expressed concern because it is a residential neighborhood with only one-family homes, and pointed out that the proposal also doubles the living space and goes from two or three bedrooms to six bedrooms, which means that obviously more people will be living in the house. Mr. Rivera stated that it is now has two bedrooms in each apartment for a total of four bedrooms, and that they want to add two more. Mr. Tomanek asked if it is going from four to six [bedrooms]. Mr. Rivera stated that it is going from two small 750 square-foot apartments to two apartments with just making the apartments larger and more comfortable. Mr. Rivera added that each bedroom now is about ten feet by ten feet and that the new bedrooms will be more medium-sized. Mr. Tomanek said “alright.”

Mr. Rivera added that the use does not change in that they are not going from a two-family to a three-family, that it was two-family before and it is a two-family now. Mr. Rivera stated that the change is just that the current space is ridiculously small and that since, other than the exterior staircase, there is the space, he thought why not use the space that is there now when the space now is completely storage in two separate areas, the attic and the basement. Mr. Tomanek said “alright.” The Chair asked Mr. Tomanek if that addressed his question, and Mr. Tomanek said “yeah.”

Mr. Tomanek asked if now everyone else in the neighborhood could use their basements to make their home into a two-family. Mr. Rivera said “that is not what is happening.” Mr. Tomanek said “no.” Mr. Rivera reiterated that he is not changing the use of the house.

The Chair asked Mr. Tomasso if there are other non-conforming two-family homes in the village. Mr. Tomasso said that there are many but that he did not have an exact number. Mr. Tomasso explained that the current Zoning Code was enacted in 1959 and that there were many homes built in the Village prior to 1959, so there are many legal non-conforming two-family and three-family homes, and even some four-family homes. Mr. Weitz asked if there are other multi-family homes on Western Drive or Eastern Drive or Orlando Avenue. Mr. Tomasso stated that he does not know off the top of his head about those blocks, but that he does know that there are several on Ashford Avenue within very close proximity.

Mr. Tomasso addressed what he understood to be included in Mr. Tomanek’s question. Mr. Tomasso stated that if this was a one-family house, no approvals other than building permits would be required in order to expand the number of rooms or bedrooms into the attic or basement, and went on to say that if this were a one-family house, they could have used every available square foot and converted it into perhaps a ten-bedroom home without requiring a variance. Mr. Tomasso explained that the only reason a variance is required in this case is because of the existing legal non-conformity. Mr. Tomasso continued that any house on Western Drive that has adequate headroom in the attic can convert the attic into habitable space, and that any house in the neighborhood that has ample ceiling height in the basement could also convert their basements into habitable space, and that the difference is because of the number of “dwelling units” in the building.

The Chair added that someone could not take that hypothetical one-family house and make it into a two-family because that is not permitted. Mr. Tomasso confirmed that this was correct, and clarified that although anyone in the neighborhood could expand into unfinished areas with sufficient headroom, even with a substantial increase of habitable space and number of bedrooms, they could not have a two-family house.

Mr. Tomanek stated that it is a unique property, and supposed that in a basement you have to have windows which have to be above ground. The Chair stated that the proposal provides for egress windows. Mr. Tomanek stated that [the subject property] is unique in

that the basement is high enough for that, and that it has a high basement and a stand-up attic, where you cannot stand up in most attics, and added that it is a pretty square house.

Mr. Amir followed up on Mr. David's question about the language of code Section 200-100C. Mr. Amir focused on the language "the extension of a lawful use of any portion of a non-conforming building," and asked if the unfinished basement and unfinished attic would be the current "lawful" use of the non-conforming building. Mr. Amir explained that since the proposal adds bedrooms in the building's unfinished basement and unfinished attic, he wants to know if "lawful use" refers to the unfinished basement, and if it is lawful in this non-conforming building to use the basement as a basement.

Mr. Tomasso stated that the building itself is not non-conforming, that the building itself meets zoning requirements. Mr. Tomasso stated that it is the use that is non-conforming. Mr. Tomasso returned to his example of a one-family dwelling, and described a house built before the side-yard setbacks became more restrictive with a garage located within the newer requirements of a wider setback. Mr. Tomasso explained that to convert a garage thus located into habitable space would mean expanding a conforming use into a non-conforming section of the building, and that this is what this [portion of this section of the code] is referring to, and that it is not referring to extending a non-conforming use into a non-conforming building. Mr. Tomasso reiterated that the building is not non-conforming, that the building meets code requirements, as best as he can tell, regarding setbacks, and that the non-conformity is the use itself. Mr. Amir stated that the portion of the building that is being used for an unfinished basement and an unfinished attic seems to be the lawful use of the lawful non-conforming building, and that the plans seem to be extending the non-conforming use into the basement and attic. Mr. Tomasso said that that was correct, and that that is why he had issued a denial letter after speaking with the village attorney.

Mr. Amir asked Messrs. Rivera and Kaplinski how many bedrooms are currently on the first floor, and Mr. Rivera answered that there are two. Mr. Amir asked how many there currently are on the second floor, and Mr. Rivera answered that there are two. Mr. Amir asked how many bedrooms are proposed on the first floor under the plan, and Mr. Rivera answered that one is proposed. Mr. Amir said that he meant in the [first floor] unit. Mr. Rivera stated that three bedrooms are proposed. Mr. Amir asked if in the second floor [unit], the proposal is to go from two to three [bedrooms], and Mr. Rivera replied in the affirmative.

Mr. Amir asked Mr. Rivera if in his letter he had stated that he and his family will live in one unit and his daughter in the other unit. Mr. Rivera said "yes." Mr. Amir asked how many children there are and what is the breakdown. Mr. Rivera said that his son, John, has a wife and twins, and that his daughter has a husband and an elderly father-in-law. Mr. Amir asked Mr. Rivera if he would be living with his son and his son's family, and Mr. Rivera said that he would not. Mr. Amir explained that he wanted to be clear about the occupancy. Mr. Amir said that for Mr. Rivera's son with the twins, he assumes that each

[twin] will have his own bedroom, so that is three [bedrooms], but that for Mr. Rivera's daughter and her husband and father-in-law, two bedrooms are needed so there will be an extra bedroom. Mr. Amir pointed out that Mr. Rivera had said that the apartments are small, which he understands from the dimensions, but that for the second-floor unit, Mr. Rivera is adding a bedroom that is not going to be occupied. Mr. Rivera replied that in today's conditions every room is occupied, whether for zoom meetings or working from home, so he cannot say that his daughter will not be using the third bedroom. Mr. Rivera also stated that his daughter and her husband are trying to have a child and that he does not know what will happen, but he can say that right now it is going to be two bedrooms [that will be used as bedrooms].

The Chair asked if any other member of the public wished to be heard, and noted that there seemed to be another member of the public on the Zoom meeting who did not wish to speak.

The Chair asked if anyone on the Board had anything else they wanted to ask about or bring up. Mr. Del Grosso stated that he had no questions, and no other Board member indicated a desire to speak or question further.

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

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

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

### **Close Public Hearing**

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

WHEREAS, Juan Rivera-Diaz, of 4 Western Drive, Ardsley, New York, 10502, has applied to this Board for a variance from strict application of the requirements of Section 200-100C of the Zoning Ordinance of the Village of Ardsley, where the existing two-family dwelling is a legally non-conforming use in a one-family zone, and whereas the proposed construction would extend the non-conforming use into the unfinished basement and attic and would create an addition of a rear external staircase; and

WHEREAS, this application is made under the authority of Section 200-97 Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting premises known as 4

Western Drive, Ardsley, New York, and designated on local tax maps as Section 6.80, Block 56, Lot 22.1, in an R-3 One-Family Residential District; and

WHEREAS, a Public Hearing on this application was held by the Zoning Board of Appeals via Zoom on July 22, 2020, after due notice by publication; and

WHEREAS, at the Hearing, applicant Juan R. Rivera-Diaz appeared in support of the application, and architect Adam Kaplinsky of Kaplinsky Architectural Design LLC appeared in support of this application, and two members of the public asked questions about the application, and no one appeared in opposition to this application, and all those desiring 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 in the character of the neighborhood nor a detriment to nearby properties will be created by the granting of the variance, as the house was built as a two-family house in 1923 and has continued to be used as such since its erection, and in that the size and look of the house will not change substantially beyond the proposed addition of an exterior stairway which will neither be obtrusive to neighboring properties nor very visible from the street, and in that the proposed expansion would be as a matter of right were the same alterations to be made to a single-family home;
- (2) the benefit sought by the applicant cannot be reasonably achieved other than by a variance as expansion of the existing living space, even into unhabitable space within the confines of the existing structure, is deemed an expansion of a legal non-conforming use, which requires a variance;
- (3) the requested variance is not substantial in that, although it transforms two two-bedroom units, each on one floor of the structure, into two three-bedroom units, each on two floors, the proposed construction is completely within the existing structure and does not expand the existing structure other

than to create a covered and partially enclosed exterior staircase in the right rear corner of the building to provide a second means of entrance and egress;

- (4) the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district in that this house has existed as a two-family dwelling since 1923, including as a legal non-conforming two-family dwelling since the adoption of the Village Zoning Code, and in that the attic and egress therefrom will be equipped with a sprinkler system consistent with current Building Code requirements, and in that the basement floor will contain emergency egress windows consistent with current Building Code requirements; and
- (5) the circumstance requiring the variances was not self-created in that this house has always been a two-family house and the present owner purchased it with the intent of housing the owner's son, daughter and extended family members.

NOW THEREFORE, be it resolved that the application of Juan R. Rivera-Diaz is granted.

Before the Board voted on the proposed Resolution, Mr. Tomasso noticed that a member of the public was "raising their hand" in the Zoom. The Board members agreed that everyone should be given the opportunity to be heard. Therefore, Mr. Del Grosso moved, and Mr. Weitz seconded, to reopen the Public Hearing.

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

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

### **Re-Open Public Hearing**

Mr. Mody stated that he did not have anything else, that his "raised hand" was from before.

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

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

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

### **Re-Close Public Hearing**

The Chair called for a Vote on the previously proposed Resolution, which had been proposed by Mr. Del Grosso and seconded by Mr. David.

**Vote:** 3 in favor, 2 opposed, and none abstaining, as follows:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Nay
Mort David –	Aye
Serge Del Grosso –	Aye
Craig Weitz –	Nay

Mr. Amir commented that although he does not have a large opposition to the proposal, he is a little bit troubled by the application and thought that the Board could benefit from some clarity from the Village attorney on Code Section 200-100 because he had understood that it should be read strictly. Mr. Amir added that he also had considered the definition of use and specific purpose defining use in Code Section 200-2, so he is concerned about applying those Code provisions to this application based upon what we heard. Mr. Amir stated that he is also somewhat troubled by the fact that this property was purchased at foreclosure and that it is now vacant, so he does not know if this gives rise to an abandonment issue or if the vacancy has affected the non-conforming use, and that he would have liked some clarity on that point as well. Mr. Amir also stated that he is not sure that the applicant has met the five elements that he believes are needed for the variance. Mr. Amir concluded that for those reasons, and because the Resolution is being presented tonight, he respectfully has to oppose.

Mr. Weitz stated that he feels the same as Mr. Amir. Mr. Weitz added that he also echoes Mr. Mody's concern that an exposed rear staircase with a lighting component gives a multi-family feel to the neighboring properties in a single-family area. Mr. Weitz stated that he would have liked to have seen a second option, as discussed earlier, that would have maintained an interior staircase and not added a new exterior staircase that expands the [house] size, and to see what options that would have afforded, being that this is not going to be before the Architectural Review Board.

Mr. David suggested that it might be prudent to adjourn, rather than to deny or grant the variance, until the Board receives input from the Village attorney. The Chair pointed out that the Board had already voted on the Resolution. Mr. Amir said that although he had

explained his opposition, the procedure has already been followed, that the Board had a quorum and had voted with a permissible 3-2 vote. Mr. Tomasso concurred that the Board has voted and that he does not think the vote can be retracted. Mr. Tomasso expressed understanding that having aired the dissenting concerns earlier might have changed the Board's decision, but that it does not change the fact that the vote has already been taken.

Mr. Tomasso added that Mr. Weitz's concern will be addressed by the Board of Architectural Review, as it will review the staircase. Mr. Tomasso explained that anything on the exterior of the structure is reviewed by the Board of Architectural Review, and he assured the Zoning Board that the comments from this meeting will be passed on to the Board of Architectural Review prior to its meeting. Mr. Weitz stated that he appreciates knowing this because he believes that [the proposed exterior staircase] should be looked at for conformity with the neighborhood and its use. Mr. Weitz specified that he would like it to be on the record that he feels strongly that this will create the feel of a rental apartment building on a single-family block, and he thinks that there are other designs that could be used to avoid that.

5) **Adjournment**

The Chair adjourned the Zoning Board of Appeals meeting at 9:46 pm.

Respectfully submitted,  
Judith Calder,  
Recording Secretary