

**MINUTES  
VILLAGE of ARDSLEY  
ZONING BOARD of APPEALS  
REGULAR MEETING  
WEDNESDAY, FEBRUARY 23, 2022**

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

**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, March 23, 2022, at 8:00 pm.

**Approval of Minutes**

Mr. Amir moved, and Mr. David seconded, the approval of the Minutes of the Zoning Board of Appeals meeting of January 26, 2022, as amended.

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

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

3) **Public Hearing**

**Application for Variances from Village Code Requirements**

**Ross and Amanda Firsenbaum**

**38 Western Drive, Ardsley, New York**

**Section 6.50, Block 31, Lot 7, in an R-1 One Family Residential District**

**Present:** Michael Wiskind, Chair  
Jacob Amir  
Mort David (recused)  
Serge Del Grosso

**Also Present:** Amanda Firsenbaum  
Susan Jainchill,<sup>1</sup> Landscape Architect and Certified Planner  
Joan DeMarco, 44 Western Drive, Ardsley, New York

The Chair read the Legal Notice.

**Open Public Hearing**

Mr. David asked if it was accurate that a trustee of the Village is the construction manager, and Ms. Jainchill replied that she believes that Mr. Craig Weitz is. Mr. David announced that he chooses to recuse himself because he believes that Mr. Weitz serving as construction manager, while one of the appointed authorities with oversight of the Zoning Board of Appeals and of the Building Inspector, presents a conflict of interest. Ms. Jainchill stated that Mr. Weitz is the construction manager and is not involved in this application. Mr. David stated that he felt uncomfortable nonetheless. The Chair pointed out that Mr. Weitz is not the applicant, that he would be a contractor of the applicants. Mr. David replied that the contractor will be working with the Building Inspector, and Ms. Jainchill said that Mr. Weitz has not yet been working with Mr. Tomasso. The Chair suggested that this question could be referred to the Village attorney for advice, inasmuch as Mr. Weitz is a trustee and a contractor who does live and practice in the Village, and as the Chair suspects that this is not the first time such a situation has arisen. Mr. David remarked that this is the first time it has arisen before the Zoning Board of Appeals. (The Building Inspector later clarified that he is not appointed by the Village Board, but by the Village Manager pursuant to civil service regulations. The Building Inspector further clarified that there is no prohibition against a Village trustee conducting business in the Village.)

The Chair asked about the return receipt “green cards.” Mrs. Firsenbaum stated that she mailed seventeen Notices, and she handed in the fourteen green cards received back.

The Chair requested an overview of the proposal. Ms. Jainchill stated that the scope of the work includes two wood platforms, one at grade and one that is one-and-a-half feet above

---

<sup>1</sup> Ms. Jainchill is a member of the Planning Board.

grade, both at doorsill. Ms. Jainchill explained that the Village Code terms them “decks” because, according to the Code, if it has a frame, it is a deck, and that this contributes to the need for a variance. Ms. Jainchill continued that they also propose a patio area that is larger than the existing patio area, which brings the gross land coverage above that permitted.

Ms. Jainchill explained that the basis for the proposed design is to maximize use of an awkward property. To support this, Ms. Jainchill showed, on a drawing of applicants’ property, the locations of the current front and back yards, and that the property is located on a curve in Western Drive with the long sides of the lot forming the front and rear property lines.

Ms. Jainchill then explained that they propose a deck area off to the side where there is an existing patio and a deck at grade at the back door. Ms. Jainchill added that where the rear deck is proposed, there is currently grass which is soggy, and that there is a guest room and a play room off of that back door. Ms. Jainchill stated that both decks will allow egress from the house and that the rear deck will provide steps down to the patios. Ms. Jainchill also stated that they propose pushing back an existing retaining wall to allow a little more space for a firepit area, and that at the edge of the side-yard deck, they propose a new outdoor kitchen area.

Ms. Jainchill continued that on the side, there would be a two hundred and fifty-nine square foot deck with a blue stone patio area two steps down, and that there would be two retaining walls of no more than two feet in height, and that they are trying to keep it at one and a half feet. Ms. Jainchill stated that at the back, the deck would be at grade, and that there would also be a rain garden area to take care of existing sogginess and runoff from the additional surface area, and referred the Board members to the plans for the deck and the rain garden area.

Ms. Jainchill pointed out that the property is an undersized, non-conforming lot of 22,216 square feet in an R-1 district, which has a required area of 40,000 square feet. Ms. Jainchill added that the property is also unusual because the long edge of the rectangle is the front yard and is set back from the public right of way (showing the adjacent road and right of way on the drawing). Ms. Jainchill noted that although the right of way appears to be part of applicants’ property and owners maintain it as nicely as they do their own property, it is not their property. Ms. Jainchill concluded that these combined circumstances are why they believe they should be granted a variance.

Mr. Amir asked if the rear deck is at grade, and Ms. Jainchill stated that it is. Mr. Amir then asked about the side yard deck, and asked why the variance requested was for the front yard setback. The Chair stated that what appears to be the front yard is actually the side yard, and Ms. Jainchill pointed it out on the survey. Ms. Jainchill explained that they are asking for a variance from the front yard setback because the side yard deck extends a little past the front of house, though under an earlier plan, it had extended even further. Mr. Amir asked if there is a need to extend the deck past the front of the house. Ms. Jainchill advised that this area is the only usable space for the family, so this captures a little more space for the patio area, and

it is a design move that does not infringe on visibility. Mr. Amir pointed out that it extends past the front of the house by only a couple of feet, and asked what would happen if it did not extend beyond the front of the house. Ms. Jainchill stated that a front yard setback would not be needed, but that the additional few feet make a difference in the space. The Chair pointed out that the front of the house is twenty-six feet eight inches to property line on the corner near the driveway, and Ms. Jainchill added that it is twenty-eight feet one inch on the other side. The Chair concluded that even if deck were even with the front of the house, a setback variance would still be required because it would be less than the forty-foot distance required. Ms. Jainchill pointed out that the Village Code defines the setback as forty feet from the street, not from the property line.

Mr. Amir asked what is currently where they propose the side yard deck. Ms. Jainchill stated that, as shown on the drawing and on the survey, there is a small patio and a little retaining wall.

Mr. Amir asked if the reason for a deck there is for an outdoor kitchen. Ms. Jainchill replied that this is part of the reason, but that it also is to provide usable space at the level of the house, so that instead of stepping down directly, one can take a breath and then step down. Mr. Amir asked if this meant that it would be more fluid with the house, and Ms. Jainchill replied that it was exactly so.

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

Ms. DeMarco stated that she lives at 44 Western Drive, directly next door to applicant, that she is in the house up the hill to the right when facing the applicants' property (on the side with the proposed side-yard deck). The Chair noted receipt of her letter to the Building Inspector with several questions, and asked if Mr. Tomasso had contacted her. Ms. DeMarco stated that she had not heard back regarding her questions about hours of operation and access to her property. Ms. DeMarco then asked if the kitchen area, including the fireplace and gas grill, would be powered by propane or from the house, and Ms. Jainchill and Mrs. Firsenbaum stated that these would be powered directly from the house. Ms. DeMarco stated that when the contractor built applicants' house, he had planted arbor vitae between the two properties, and that due to the neglect of the prior owner, these plantings are now dead and leaning over. Ms. DeMarco requested that applicants provide new appropriate screening between two properties. Ms. Firsenbaum stated that screening is part of the landscaping plan. The Chair advised that the Zoning Board of Appeals does not have jurisdiction over that. Ms. DeMarco asked who does, and she was advised that this was under the purview of the Planning Board. The Chair clarified that the Zoning Board cannot make landscaping a condition of any variance approval that might be granted. Ms. DeMarco stated that her husband had spoken to Mr. Tomasso, who had recommended that they send a letter and attend this meeting.

The Chair asked applicants how long they have been in their house, and the owner replied, five and a half years.

Mr. Amir asked if the retaining wall had been there when applicants purchased the property, and Ms. Jainchill replied in the affirmative.

The Chair and Board members discussed separately each of the four different variances sought. The Chair stated that the proposed rear deck is twenty-nine feet from the property line instead of the forty feet required. Ms. Jainchill pointed out that the house itself is thirty-six feet eight inches from the property line at its farthest point. Ms. Jainchill also noted that the proposed deck does not extend farther than the existing stone retaining wall for utilities. The Chair confirmed that the proposed rear deck is at grade level and does not extend beyond the existing retaining wall. The Chair polled the Board members as to the requested variance for the rear yard setback, and none of the Board members had a problem with that.

The Chair and the Board members then discussed the variance from the front yard setback for the side deck. The Chair stated that the issue is that the side yard deck would encroach on the front yard setback. The Chair acknowledged that, with the point Ms. Jainchill raised about the definition in the Village Code, it may not, and confirmed that the Village Code does define the setback as being from the front line of the building to the street. The Chair asked Ms. Jainchill if she had discussed this Code definition with Mr. Tomaso, and Ms. Jainchill stated that they did not fully explore this question. The Chair then opined that, as a matter of practicality, the area owned by the Village is never going to be anything other than what it is (undeveloped and undevelopable), so that it functions effectively as a front yard, and moreover, that forty feet from the street is far from where the deck is proposed. Mr. Amir added that the Village's right of way adds a buffer. Mr. Del Grosso concurred that a front yard variance would have no ill effect.

The discussion then turned to the requested variances for building coverage and gross land coverage. The Chair asked about the back and forth with the Village on dimensional questions. Ms. Jainchill explained that she had not realized that a wood deck would be included in the building coverage, because a patio would not be, and that the decks account for the additional five hundred and thirty-six feet of building coverage, which brings them to fourteen percent of the property area instead of the twelve percent allowed. The Chair pointed out that a wood deck is not impermeable, whereas a patio is.

The Chair asked if the number requested for gross land coverage was the same as that stated in the email of February 7th. Ms. Jainchill confirmed that it is the same as they submitted in their February 22<sup>nd</sup> material, and that the square footage they are requesting for gross land coverage is 6,068 square feet (not 6,053 square feet). The Chair asked if the house size does not change, and Mrs. Jainchill said that it does not, that the existing house is over the basic allowed gross land coverage. The Chair suggested that to some degree one could make the same argument as to the Village owned property in the front, which might be a shaky argument,

but if the Village owned property were part of the overall lot, which functionally it is, it would change the amount of gross land coverage permitted. Ms. Jainchill pointed out that if the property were in a zone for the size of the lot, there would be different parameters, but that this is a smaller lot that is subject to the restrictions for larger lots. Ms. Jainchill added that there does not seem to be an extraordinary amount of paving when you look at it, it because it is a non-conforming lot with 22,000 square feet instead of 40,000 square feet. The Chair acknowledged that this is exacerbated by the shape of the property and by the fact that, relatively speaking, there is a fairly large driveway, with which Ms. Jainchill concurred.

The Chair asked if the rain garden incorporates a Cultec system. Ms. Jainchill replied that it does not, that it is designed to incorporate storage for a good amount of rain, and that any overflow will go into the same stormwater system that takes the water from the driveway.

Mr. Del Grosso asked what a rain garden is. Ms. Jainchill explained that it is all about impervious surface, that soil treats and cleans water naturally and that a rain garden, which is one type of green infrastructure, mimics the natural and preferable way of treating storm water, because a rain garden uses plants that pull up water and store it in their leaves or uses the soil to let water be slowly released into the ground, where it should be. Ms. Jainchill added that every state has its own “best practices,” and a rain garden is something they recommend, and that Mr. Tomasso was very pleased to see. Mr. Del Grosso asked if a rain garden was a form of sustainability, and Ms. Jainchill said that it was, and added that landscape architects try to be preachers of sustainability. Mr. Del Grosso asked if the rain garden is part of what is inflating the gross land coverage, and Ms. Jainchill said that it was not, that it is taking care of any existing soggy areas as well as dealing with water coming off the patio.

Mr. Amir summarized that although there is a twenty-three percent increase from the existing gross land coverage of 4,924 square feet to the proposed of 6,068 square feet, it is an eight percent increase over the 5,610 square feet that is the maximum allowed. Mr. Del Grosso asked if they could have gone up to 5,610 square feet without a variance. Ms. Jainchill replied that, as a member of the Planning Board, she does not like to go above the maximum permitted, because that is what the Village Code is for, but that this specific instance deserves the variance because of the unusual situation of the property. Mr. Del Grosso pointed out that if the Board thought about building coverage through the same view as Mr. Amir’s calculation on gross land coverage, the building coverage would be a net two percent increase.

The Chair polled the Board members as to all four variances, and all were fine with each.

The Chair explained that the Board’s procedure is to prepare a Resolution and vote on it officially at the Board’s next meeting. The Chair added that anything within the Planning Board’s purview is subject to the Planning Board’s independent review and decision.

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

**Vote:** 3 in favor, 0 opposed, 0 abstaining, as follows<sup>2</sup>:

Michael Wiskind, Chair –	Aye
Jacob Amir –	Aye
Serge Del Grosso –	Aye

### **Close Public Hearing**

The Chair agreed to prepare the Resolution in this matter.

Ms. DeMarco asked if she should submit her request for screening to the Planning Board. The Chair said that she should, and suggested that Mr. Tomasso could forward the same letter to them. Ms. DeMarco said that she and her husband will follow up with Mr. Tomasso.

#### **4) Resolution**

##### **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).**

<b>Present:</b>	Michael Wiskind, Chair
	Jacob Amir
	Mort David
	Serge Del Grosso

(The Public Hearing was closed at the January meeting.)

The Chair asked if there were any edits to the previously circulated proposed Resolution, and the Chair and Board members discussed the wording of the Resolution.

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

WHEREAS, David Fink and Jessica C. Perez of 34 Lincoln Avenue, Ardsley, New York 10502, have applied to this Board for a variance for proposed legalization of a terrace and wall constructed, with a portion encroaching on the Village Right-of-Way, where the side yard width on the High Street is less than the 20ft minimum required (Code 200-26, 200-89). The applicants requested a variance from the strict applications of the provisions of Ardsley Village Code Sections 200-26 (“Yard requirements,” in an R-3 zone) and 200-89 (“Corner lot transition”) where the side yard width on High Street is: 14.37 feet to the

---

<sup>2</sup> Mr. David had recused himself on this matter.

existing dwelling, and 0 feet to the walled patio; and

WHEREAS, this application is made under the authority of Section 200-26, 200-89), with one variance modifying the other existing non-conformity, affecting premises known as 34 Lincoln Avenue, Ardsley, New York, a corner lot, designated on local tax maps as Section 6.80, Block 69, Lot 1, 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 Wednesday, January 26, 2022 after due notice by publication; and

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

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

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

- (1) Neither an undesirable change will be produced in the character of the neighborhood nor a detriment to nearby properties will be created by the granting of the area variance as the addition of a walled patio that converts part of the side yard to a recreational space used by the homeowner's family is consistent with similar conversions by private homeowners in the Village;
- (2) The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, since the construction of the walled patio has already been completed and would incur substantial cost and inconvenience to dismantle;
- (3) The requested variance is not substantial in that although portions of the wall and patio do encroach on the Village right of way, the encroachment is de minimus. The applicants understand that the Village may require use of all or part of the right of way in the future;
- (4) The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood since the existing walled patio includes drainage that will funnel excess water to the street and storm drains reducing the risk of flooding in the event of a severe rain event;



- (5) The circumstances requiring the variance while self-created, is consistent as a reasonable enhancement of the homeowner's property for the benefit of the applicant and their family.

NOW THEREFORE, be it resolved that the application of David Fink and Jessica C. Perez is granted.

PROPOSED BY: Mr. Serge Del Grosso

SECONDED BY: Mr. Mort David

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

MICHAEL WISKIND, CHAIR – AYE

JACOB AMIR – AYE

DR. JUNE ARCHER – ABSENT

MORT DAVID – AYE

SERGE DEL GROSSO – AYE

## 5) Adjournment

There being no further business before it, the Zoning Board of Appeals adjourned its meeting at 8:57 PM.

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

Michael Wiskind, Chair – Aye

Jacob Amir – Aye

Mort David – Aye

Serge Del Grosso – Aye

Respectfully submitted,  
Judith Calder,  
Recording Secretary