

PLANNING BOARD

RUTHERFORD HALL  
 VILLAGE HALL  
 SCARSDALE, NY  
 August 3, 2016

A regular meeting of the Planning Board of the Village of Scarsdale was held in Rutherford Hall in the Village Hall on Wednesday, August 3, 2016, at 8:00 p.m.

Those members present were: James Blum, Chair, John Clapp, Linda Doucette-Ashman, Thomas Longman and Dan Steinberg. Also present were Village Attorney Wayne Esannason, Deputy Village Engineer Greg Caccoppioli, Village Planner Elizabeth Marrinan and Assistant to the Planner Cameron McLeod.

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Upon motion duly made and seconded, the minutes of the June 22, 2016, meeting were approved as amended.

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The Chair said good evening. As we begin this evening's meeting I'd like to take a few moments to explain the Board's procedure. We hear each application in the order in which it is noticed -- we hear first from the applicant and then from any persons speaking in favor of or in opposition to the application.

After all of the evening's hearings, the Board deliberates. Deliberations are not open to the public, but the Board's voting on all applications is done in public once the deliberations are over. You are free to leave at the conclusion of your hearing or to wait outside Rutherford Hall during deliberations and return for the Board's vote. Should you decide to leave before the vote, you can obtain the Board's decision by calling Elizabeth Marrinan at Village Hall tomorrow at 722-1132. Also, tomorrow the decisions will be posted on the web at [www.scarsdale.com](http://www.scarsdale.com) under Planning. Whether you stay or go has no bearing on the Board's deliberations or decision.

At the conclusion of deliberations on each application, the Board attempts to reach a consensus. For an application to be granted, at least three of the Board's five members must vote in favor of that application. The Board's decision is memorialized in a written resolution. The resolutions are filed at Village Hall and are available to the public.

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The reading of the following legal notice was waived by unanimous vote of the Board.

**LEGAL NOTICE  
PUBLIC HEARING  
PLANNING BOARD  
VILLAGE OF SCARSDALE**

**NOTICE IS HEREBY GIVEN** that a public hearing will be held by the Planning Board of the Village of Scarsdale in Rutherford Hall in Village Hall, 1001 Post Road, Scarsdale NY 10583, on **Wednesday, August 3, 2016**, at 8:00 p.m. at which time and place the Planning Board will consider the following:

1. The application of 36 Herkimer Properties LLC for a Wetlands Permit, pursuant to Chapter 171 of the Village Code, to construct a swimming pool on this wetlands controlled property at 36 Herkimer Road, identified on the Village tax map as Sec. 23, Blk. 1, Lot 67.
2. The application of Fatine Kourakos to appeal the determination of the Village Engineer, pursuant to Chapter 256 of the Village Code, denying a second curb cut to construct a circular driveway at 4 Burgess Road, identified on the Village tax map as Sec. 14, Blk. 6, Lot 12.

Copies of the above applications are on file in the Coordinating Office at Village Hall and may be viewed by interested parties at any time during usual business hours. To receive meeting agendas by e-mail, visit [www.scarsdale.com](http://www.scarsdale.com) and "Subscribe to News".

By Order of the Planning Board, Scarsdale, New York, dated July 19, 2016.  
Elizabeth Marrinan AICP, Village Planner.

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CASE #5 OF 2016

1. The Chair declared the hearing open on the application of 36 Herkimer Properties LLC for a Wetlands Permit, pursuant to Chapter 171 of the Village Code, to construct a swimming pool on this wetlands controlled property at 36 Herkimer Road, identified on the Village tax map as Sec. 23, Blk. 1, Lot 67.

Frank Giuliano, landscape architect, was present.

Mr. Giuliano described the application for a swimming pool to be constructed within the 100 feet of the edge of the wetlands. Mr. Giuliano distributed existing and proposed site plans, an aerial photograph, and site photos.

Mr. Giuliano provided a history of the wetland and brook. He explained that the Village of Scarsdale is the only agency that regulates the wetland. Mr. Giuliano explained that the wetland is fed by an unnamed brook, briefly describing the course of the brook,

which was diverted in the 1950s, to its present location, bordering numbers 30, 36 and 40 Herkimer Road. This diversion was conducted to create the irrigation pond on the golf course. The aerials show the brook's previous course, diverting away from the Herkimer Road properties.

Mr. Giuliano provided the board with a letter from the previous owner, Stephanie Kramer, dated July 29, 2016. The letter indicated that a basement drainage system and sump pumps had been installed by Ms. Kramer to drain her basement and eliminate moisture. According to Ms. Kramer, the drainage system was directed into drywells at the rear of the property, not close to the proposed location of the pool. Mr. Giuliano said that since the last meeting, six foot deep test holes were dug where the swimming pool will be located and stated that there was no evidence of a drainage system in that location.

Mr. Giuliano said that he had spoken to Susan Samater, the owner of 40 Herkimer Road, who was concerned about the implications for her view of the golf course. Mr. Giuliano said that the golf club recently planted along the boundary of the brook adjacent to 36 Herkimer and as a result Ms. Samater no longer has a view of the golf course.

The Chair asked Mr. Giuliano to describe the proposed plantings. Mr. Giuliano said the wetland mitigation plantings are native to Westchester County. The plantings include both 'upland wetland plants' and 'moist meadow rain garden mix', mirroring natural vegetation for this type of environment. The plantings will provide food for both birds and amphibians.

Mr. Longman asked about the elevation of the property as there had been concerns raised about the spreading of soil onsite increasing the elevation, which could lead to stormwater issues. Mr. Giuliano said the grading had been done according to the original SWEC plan, which allowed for certain sections to be raised up to six inches. Engineering will conduct a final inspection, to ensure consistency with the SWEC, before a certificate of occupancy is issued.

The Chair asked about the drywells. Mr. Giuliano responded that the drywells are now defunct. According to Ms. Kramer, an overflow pipe from the drywells emptied into the brook. Each was only 250 gallons, which is small by drywell standards.

Ms. Doucette-Ashman asked about the course of the waterway. Ms. Marrinan said that the unnamed, unnavigable stream feeds into the Sheldrake River, which subsequently feeds into the Mamaroneck River and Long Island Sound.

Ms. Doucette-Ashman asked about the agencies and legislation that regulate the stream. Ms. Marrinan informed the board that the stream is not regulated by any agencies other than the Village of Scarsdale. Ms. Marrinan said that even though some regulations deal with waterways, the proposed work will take place upland, outside of the watercourse or the 25 foot no build buffer.

Ms. Doucette-Ashman questioned the wording of the email to the United States Army Corps of Engineers (ACOE). As per the communication distributed to the Board, the Village Engineer contacted the ACOE regarding advice provided by the counsel of Dr. Philip Moskowitz, which said that the ACOE controls all watercourse buffers. Ms. Doucette-Ashman felt that staff should have also asked whether the ACOE regulated the waterway or the wetland. Ms. Marrinan said that as the work is not occurring in the off-site stream, there was no need to address this with them.

Ms. Doucette-Ashman asked whether the stream could be considered a wetland under the New York State Department of Environmental Conservation (DEC) Freshwater Act, which are protected by a 100 feet buffer. Ms. Marrinan said that this is not a DEC regulated wetland.

Ms. Doucette-Ashman noted that sod had been laid to the property boundary. She asked whether this will be removed as part of the mitigation work. Mr. Giuliano said that the sod will be removed if the permit is granted to allow for the mitigation planting.

Mr. Clapp asked about the type of fencing to be used for the pool. Mr. Giuliano said a Jerith aluminum fence will be used, which will have two inch openings and will be two inches above the ground. The two inch gap from the ground is in accordance with the Village Code for safety reasons, but also allows for migrating wildlife to pass underneath. Mr. Giuliano said the fence will also prevent children from getting into the stream.

Ms. Marrinan asked how far away the pool is from the wetland. Mr. Giuliano said 64 feet. Ms. Marrinan said she wanted to clarify some of the correspondence that had been sent to Board members, which indicated the work was being conducted within the wetlands or the wetlands buffer. It is not. It will be constructed within the Village of Scarsdale's 100 foot buffer, which requires a wetland permit for any construction activities, hence the application for the pool.

Mr. Steinberg said that the site plan presented at the previous meeting indicated that the house was to be constructed within the 100 foot setback, and wondered whether the house had now been moved. Mr. Giuliano said he was provided with the base map for the original proposal to the Board of Architectural Review (BAR). The location of the house was subsequently moved prior to construction. This amended plan with the house outside of the 100 foot wetlands buffer was approved by the BAR.

Mr. Steinberg noted that neighbors had expressed concern about the fencing running around the edge of the property as opposed to around the pool, and also about the proposed plantings. Mr. Steinberg asked Mr. Giuliano whether he had discussed this with the concerned parties. Mr. Giuliano said he had spoken to the owner of 40 Herkimer Road. Mr. Giuliano said that her concerns were about her view to the golf course, which have now been obstructed by the golf course plantings.

Ms. Marrinan noted that the owners of 40 Herkimer Road were also concerned about the line of sight from their property into the pool. Mr. Giuliano said that additional

screening is now proposed between 40 and 36 Herkimer Road, which will be approximately 7 feet high. This will screen the view from 40 Herkimer Road to the pool. Mr. Steinberg asked whether similar screening is proposed for the opposite boundary. Mr. Giuliano said yes, 22 arborvitae will be used for screening.

The Chair asked if there was anyone in the audience who would like to speak to the application either in favor or opposition.

Dr. Philip Moskowitz, owner of 40 Herkimer, asked to speak. He said that he feels the pool may have environmental impacts on the tributary stream and adjacent home owners.

Dr. Moskowitz expressed concern that the Corps had not been contacted about this property in particular. Ms. Marrinan said that the Village Engineer had contacted the Corps about 36 Herkimer Road and the stream in particular and had received a response, indicating that they do not regulate the stream. Dr. Moskowitz said that he would have appreciated being informed of this. The Chair provided Dr. Moskowitz with a copy of the correspondence.

Dr. Moskowitz said Mr. Giuliano had mentioned planting to address the possibility of flooding, meaning it therefore has to be recognized as a risk. Mr. Giuliano said no, the plantings were for wildlife and wetland mitigation, not to address flooding concerns.

Dr. Moskowitz said he contacted Ms. Kramer's representative, which resulted in the letter regarding the drainage system. Dr. Moskowitz recalls the installation was to drain standing water. Dr. Moskowitz is concerned this water will subsequently flow onto his property, which has occurred in the past. The Chair noted that 100% of the runoff must be contained onsite, which will be certified by the owner's engineer on sign off. Greg Caccioppoli, the Assistant Village Engineer, noted that the stormwater system has been checked and is functioning as intended.

Ms. Dorothy Pack was present in place of Susan Samtur, the owner of 40 Herkimer Road. Ms. Marrinan said that the board had received and read the letter. The Chair noted that a number of the concerns raised in the letter have been addressed, or are outside of the scope of the application before the board.

Ms. Bonnie Clark, owner of 29 Herkimer Road, supports the pool.

Mr. Giuliano reiterated the small size of the pool of approximately 700 sq ft and noted they were proposing 2500 sq ft of wetlands planting.

Ms. Doucette-Ashman asked how deep the pool will be. Mr. Giuliano responded that excavation is generally one foot deeper than the depth of the pool. He said that the pool will be six feet deep at its deepest point.

No other person desiring to be heard, the Chair declared the hearing closed.

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CASE #6 OF 2016

2. The Chair declared the hearing open on the application of Fatine Kourakos to appeal the determination of the Village Engineer, pursuant to Chapter 256 of the Village Code, denying a second curb cut to construct a circular driveway at 4 Burgess Road, identified on the Village tax map as Sec. 14, Blk. 6, Lot 12.

Bana Choura, architect, was present.

Ms. Choura described the current state of the site noting the house is currently undergoing renovation with a second story addition.

Ms. Choura said the applicant seeks a second curb cut to provide for a circular driveway. The site has 121 feet of frontage on Burgess Road, where the Village Engineer's guidelines require 130 feet of frontage for circular driveways.

Ms. Choura explained that the applicant would prefer a circular driveway due to the location of the driveway close to Post Road and the visual obstructions adjacent to the applicant's driveway entrance. A second curb cut would allow the owner to more easily exit the site facing forwards, as opposed to reversing.

Mr. Longman asked whether a profile plan should be included with the application, as per the driveway regulations. Ms. Marrinan said that the Village had not requested a profile plan, and that the applicant would likely wait until approval was received for the second curb cut.

Mr. Longman asked about a new intersection being created, and whether this related to the intersection of two driveways across the road from each other. Ms. Marrinan explained that an intersection meant two streets intersecting, but that the location of a driveway opposite the proposed entrance, along with sight distances, are important considerations.

Ms. Marrinan noted that both the existing and proposed entrances have sight distance issues. This is exacerbated by cars parked on the roadside, which is prohibited on the street.

Ms. Marrinan said that the Chair had asked her to look at previous applications for second curb cuts. She said she found eight applications since 2005. One application was approved on Mamaroneck Road. The circumstances were unique, in that the road is very busy and there were no driveway entrances across the road from the proposed cut. Ms. Marrinan said the other applications were denied because alternative options were available. She said that there were no other second curb cuts on Burgess Road.

Ms. Kourakos said that while backing out of her driveway, she has been unable to see cars approaching and children walking past her driveway, which has also been used as a turn around by other cars.

Mr. Steinberg asked whether the vegetation causing a visual obstruction is on Village property. Ms. Marrinan said that if the vegetation is on village property, it could likely be removed if it is causing a sight distance issue.

Mr. Steinberg noted that other homeowners on Burgess Road have been able to implement alternative methods for turning around on their property. He asked the applicant if they had considered alternatives. Ms. Choura said that the intention is to move the cut as far from Post Road and the driveway of the adjacent neighbor as possible. Ms. Choura also said that a circular driveway would provide more onsite temporary parking, as there currently is none and parking on Burgess Road is prohibited.

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CASE #5 OF 2016

1. 36 Herkimer Properties LLC  
 36 Herkimer Road  
 Sec. 23, Blk. 1, Lot 67.  
 Wetlands Permit - Swimming Pool

The Board considered the request from 36 Herkimer Properties LLC, Case #5 of 2016, for a Wetlands Permit to construct a swimming pool on this wetlands controlled property at 36 Herkimer Road, and upon motion duly made and seconded, unanimously adopted the following resolution:

WHEREAS: the Board has considered the subject application pursuant to the State Environmental Quality Review Act and Chapter 152 of the Village Code; and

WHEREAS: there are two involved agencies in this matter: the Planning Board with jurisdiction for the Wetlands Permit and the Board of Appeals for the Special Use Permit; now therefore be it

RESOLVED: that after careful examination of the site and evaluation of the information submitted on the plans and on the EAF, the Board determined that such application, the construction or expansion of a single family house on a wetlands controlled parcel, is an Unlisted Action pursuant to Chapter 152 of the Village Code and 6 NYCRR 617.2; and be it further

RESOLVED: pursuant to 6 NYCRR 617.6(4) the uncoordinated review for Unlisted actions involving more than one agency, the Board determined that with adequate erosion controls during construction, compliance with the Village Code regarding stormwater management and the wetlands landscaping plan, the proposed action will not have a significant negative impact on the environment; and

WHEREAS: The property, located in the A-3 (10,000 sq. ft.) zoning district, is shown in the Assessor's records as 23,339 sq. ft. and abuts Quaker Ridge Golf Course to the rear; and

WHEREAS: The wetlands associated with the stream on the golf course's property extend onto the subject property and therefore it is considered a wetlands controlled property; and

WHEREAS: The original house, dating from 1937 was demolished and a new house is nearing completion; and

WHEREAS: Chapter 171 of the Village Code regulates freshwater Wetlands and states that any construction activity within 100 ft. of on-site wetlands requires a Wetlands Permit from the Planning Board; and

- WHEREAS: The plans show the proposed construction of a swimming pool, with its closest point 55 ft. from the edge of the wetlands, and the associated landscaping and fencing; and
- WHEREAS: The location of the proposed pool and pool equipment appear to meet the setback requirements; and
- WHEREAS: With the construction of the swimming pool, the property appears to be at the maximum permissible lot coverage for this wetlands controlled lot which would limit future development; and
- WHEREAS: The Board considered the application at its June 22, 2016 meeting and held the matter over pending receipt of revised plans and staking the proposed pool, wetlands and wetlands buffer; and
- WHEREAS: The applicant submitted revised plans and staked the property as requested; and
- WHEREAS: The Board members have visited the site, understand the neighborhood context and are familiar with the materials in the application; now therefore be it
- RESOLVED: that the application of 36 Herkimer Properties LLC, for a Wetlands Permit to construct a swimming pool on this wetlands controlled property at 36 Herkimer Road, as shown on the Wetland Mitigation and Pool Site plan revised 7/5/2016 be approved conditioned on the following:
1. A Special Use Permit is required from the Board of Appeals.
  2. A certified as-built lot coverage form and survey should be submitted prior to the issuance of a Certificate of Occupancy for the swimming pool.

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CASE #6 OF 2016

2. Fatine Kourakos  
 4 Burgess Road  
 Sec. 14, Blk. 6, Lot 12  
 Appeal Denial by Village Engineer - Circular Driveway

The Board considered the request from Fatine Kourakos, Case #6 of 2016, to appeal the determination of the Village Engineer, denying a second curb cut to construct a circular driveway at 4 Burgess Road, and upon motion duly made and seconded, unanimously adopted the following resolution:

- WHEREAS: The property, located in the A-1 (1 acre) zoning district, is shown in the Assessor's records as 25,844 sq. ft. and is improved with a house built in 1924 and a swimming pool built in 2001; and
- WHEREAS: A building permit has been issued for the renovation of the house and the applicant has applied for a side yard setback variance to construct an addition to the garage which was held over to a future meeting by the Board of Appeals at its meeting on July 20, 2016; and
- WHEREAS: The property is in a Sensitive Drainage Area, pursuant to Chapter 254 of the Village Code; and
- WHEREAS: Chapter 256-23 of the Village Code regulates curb cuts and requires a permit from the Village Engineer who is authorized to promulgate standards and guidelines for the construction and maintenance of driveways; and
- WHEREAS: The plans show the proposed construction of a second curb cut for the construction of a circular driveway while maintaining the existing driveway to the garage; and
- WHEREAS: The Village Engineering Department Driveway Guidelines allow second curb cuts on properties with 130 ft. or more of street frontage and, as this property has 121 ft. of frontage, the second curb cut would require action by this Board to overturn the Village Engineer's denial; and
- WHEREAS: The Board members have visited the site, understand the neighborhood context and are familiar with the materials in the application; now therefore be it
- RESOLVED: that the application of Fatine Kourakos, to appeal the determination of the Village Engineer, denying a second curb cut to construct a circular driveway at 4 Burgess Road, as shown on the Site Plan and Zoning analysis dated 7/11/2016 be denied based on the following findings:

1. The applicant has feasible alternatives available which conform to the Village Engineer's regulations and allow for improved ingress and egress to the property.
2. The benefit to the applicant, namely a second egress and a one-way circulation pattern, does not outweigh the detriment to the neighborhood of additional curb cuts and the potential of additional traffic conflicts on this well-travelled street.
3. The proposed second curb cut would be out of character in this neighborhood as there are no other circular driveways or second curb cuts on the block or in the immediate area.
3. There was no evidence submitted to show that the determination of the Village Engineer was not reasonable or carefully considered and thus there was not cause for the Planning Board to overturn the decision.

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The Chair announced the next meeting of the Planning Board would be held on Wednesday, September 28, 2016.

The meeting was adjourned at 9:30 p.m.

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Cameron McLeod  
Assistant to the Village Planner