

BOARD OF APPEALS

RUTHERFORD HALL
VILLAGE HALL
SCARSDALE, NY
September 14, 2016

A regular meeting of the Board of Appeals of the Village of Scarsdale was held in Rutherford Hall in Village Hall on Wednesday, September 14, 2016, at 8:00 p.m.

Those members present were Jeffrey Watiker, Chair, Justin Arest, Anil Ferris, Marylou Green and Mary Kaye Koch. Also present were Counsel Richard Gardella, Building Inspector Frank Diodati, Village Planner Elizabeth Marrinan and Assistant to the Village Planner Cameron McLeod.

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The Chair said please allow me to take a few moments of your time to explain the Board's procedures. 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 will deliberate. Deliberations are open to the public. You are free to leave at the conclusion of your hearing or to stay for the deliberations. Some applicants choose to leave once their hearings have been concluded, while others choose to remain here. Should you decide to leave before the Board's deliberations you may 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 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 Chair noted that the application of 26 Hampton Road LLC, as contract vendee, for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 26 Hampton Road, identified on the Village tax map as Sec. 4, Blk. 4, Lot 517 would be held over at the request of the applicant.

The reading of the following legal notice was waived pursuant to a continuing resolution adopted by unanimous vote of the Board.

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

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Board of Appeals of the Village of Scarsdale in **Rutherford Hall** in Village Hall, 1001 Post Road, Scarsdale NY 10583, on **Wednesday, September 14, 2016**, at 8:00 p.m. at which time and place the Board of Appeals will consider the following:

1. The application of Fatine Kourakos for variances from Chapters 310-51 and 310-67 of the Village Code to construct an addition to the garage which would expand the existing intrusion into the required side yard setback at 4 Burgess Road, identified on the Village tax map as Sec. 14, Blk. 6, Lot 12.
2. The application of 26 Hampton Road LLC, as contract vendee, for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 26 Hampton Road, identified on the Village tax map as Sec. 4, Blk. 4, Lot 517.
3. The application of 21 Rural Realty LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 21 Rural Drive, identified on the Village tax map as Sec. 22, Blk. 21, Lot 20.
4. The application of 36 Herkimer Properties LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 36 Herkimer Road, identified on the Village tax map as Sec. 23, Blk. 1, Lot 67.
5. The application of Luis Mendes for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 5 Seneca Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 326.
6. The application of Alan and Deborah Annex for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 7 Park Road, identified on the Village tax map as Sec. 15, Blk. 2, Lot 7A.
7. The application of Jeremy Perelman for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 22 Rectory Lane, identified on the Village tax map as Sec. 3, Blk. 2, Lot 19B.

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 and "Subscribe to News".

By Order of the Board of Appeals, Scarsdale, New York, dated August 30, 2016.
Elizabeth Marrinan, AICP, Village Planner.

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CASE # 30 of 2016

1. The Chair declared the hearing open on the application of Fatine Kourakos for a variance from Chapter 310-51 and 310-67 of the Village Code to construct an addition to the garage which would expand the existing intrusion into the required side yard setback 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 both the original and revised applications. The original application proposed an extension to the front and back of the existing garage, expanding the existing non-complying intrusion into the side yard setback. The revised application will now only expand the intrusion at the front of the garage.

The proposed extension at the rear of the garage, which is to be used as a mudroom, will now comply with the setback requirement, being 21.4 feet from the lot line.

Ms. Choura said that there was no alternative to the extension to the front of the garage, due to the design of the existing structure. The extension is to increase the depth and capacity of the garage to accommodate two cars. This would not be possible without the extension to the front and the expansion of the existing non-conformity.

The Chair said that the board had requested information regarding the proposed location of the pool equipment, which will be displaced by the proposed mudroom expansion. Ms. Choura explained that the equipment will be relocated behind the house. The applicant intends to cover over the basement stairwell, creating a platform for the pool equipment and air conditioning unit, which will comply with the Board's regulations.

The Chair asked whether moving pool equipment and the equipment pad would require an amendment of the Special Use Permit. Ms. Marrinan said, in the past, the Building Inspector has permitted the relocation of pool equipment provided it complies with the Board's regulations regarding setbacks, fencing and landscaping.

The Chair asked whether the additional livable floor space to be added above the garage would encroach into the required setback. Ms. Choura said that the addition above the garage will comply with the setback.

Ms. Green asked whether the revision to the proposed mudroom altered the design of the extension to the front of the garage. Ms. Choura said yes, that the design of the front extension had to be modified to look better from an architectural perspective.

The Chair asked staff whether the applicant could remove the screening between the garage and the neighboring property after the variance is approved. Mr. Gardella said that if the board would like the applicant to retain the screening, it would need to be specifically listed as a condition. The Chair asked whether the applicant would be willing to maintain the screening. Ms. Kourakos said yes, they intend to maintain the screening and would be willing for this to be listed as a condition.

The Chair asked if there was anyone else who wished to be heard with respect to this application, either in favor or in opposition. No other persons desiring to be heard, the Chair declared the hearing closed.

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CASE # 33 of 2016

3. The Chair declared the hearing open on the application of 21 Rural Realty LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 21 Rural Drive, identified on the Village tax map as Sec. 22, Blk. 21, Lot 20.

Frank Giuliano, landscape architect, was present.

Mr. Giuliano described the application. He said the proposed pool has an infinity edge. The yard slopes from the upper terrace by the house down to the rear property line. The pool would divide the yard into two levels. The applicant intends to retain the lower level as a meadow, while the upper level will be plantings and lawn.

Mr. Giuliano said that the existing screening and vegetation is very well established, effectively screening the yard from neighboring properties.

The Chair asked what material the veneer of the retaining wall will be. Mr. Giuliano said it would be native field stone.

Ms. Marrinan said that the staff notes requested a cross section of the pool and wall, which had not been submitted. This was to allow the Board to better understanding the grading and height of the proposed retaining wall. Mr. Giuliano said he did not notice this request. Mr. Giuliano explained that the pool itself will form the retaining wall. Mr. Diodati said that a top and bottom of wall elevations and a cross section would be helpful.

Ms. Marrinan said that the existing storm water management features need to be at least 10 feet away from the pool. The plans appear to show the pool located too close to the existing storm water system.

Mr. Arest said that the evergreens around the pool pad equipment are shown as three feet 6 inches on the plan, instead of the required five feet. Mr. Giuliano said he noticed this and that the plantings will be five feet.

Mr. Arest asked whether from the top of the pool to the ground will be two feet. Mr. Giuliano said yes, the water trough will be recessed into the ground.

The Chair asked if there was anyone else who wished to be heard with respect to this application, either in favor or in opposition. No other persons desiring to be heard, the Chair declared the hearing closed.

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CASE # 34 of 2016

4. The Chair declared the hearing open on the application of 36 Herkimer Properties LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool 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. He noted that they went before the Planning Board to receive a Wetlands Permit for construction within 100 feet of the edge of the on-site wetlands. Mr. Giuliano distributed a plan showing the proposed pool and the proposed wetland plantings, which are a condition of the Planning Board approval.

Mr. Giuliano said that the proposed fence extends around the property boundary as opposed to being around the pool, to allow young children to safely play in the backyard and prevent access to the stream.

The Chair asked whether the fence extends to street line. Mr. Giuliano said no, it is just around the backyard.

The Chair said that the plants that are on the right hand side of the pool do not count as pool screening. Mr. Giuliano said those plantings were part of the Board of Architectural Review approval for the house. These would be removed and replaced with appropriate screening if the Special Use Permit is granted.

The Chair asked whether the pool equipment, which is proposed to be located under the deck, would be screened. Mr. Giuliano said it is not possible to plant under the deck, therefore a wood fence could be used instead for both safety and noise mitigation.

Mr. Giuliano explained that the deck will be enclosed by a wooden lattice, and the pool pad will also be surrounded by the required chain link fence with a self-closing gate.

Ms. Marrinan said that the Board has the ability to waive its own regulations. This type of issue of screening pool equipment under a deck may not have been envisioned when the regulations were developed.

Susan Samtur, the owner of 40 Herkimer Road, was present.

Ms. Samtur submitted a letter, along with photographs, to the Board. Ms. Samtur read the letter.

Ms. Samtur said she is concerned the pool may exacerbate flooding issues given its location within 100 foot wetland buffer zone. She said that the Village Code says development in the wetlands buffer zone should be permitted only when it is unavoidable. She said a pool is avoidable. She is concerned about the disturbance of the wetland. The Scarsdale Board of Trustees' policy says that it is their intention to prevent the despoliation and destruction of wetlands and watercourses.

Ms. Samtur said that the wetland buffer on the plan submitted for the wetlands permit was not identical to that shown on the original landscape plan submitted to the Board of Architectural Review. Ms. Samtur said that the original plan showed the house within the wetland buffer, and that the wetland buffer had been moved further away from the house to accommodate it. Ms. Samtur said she believed that neither the wetlands nor property have been resurveyed, therefore the wetlands should not have been moved.

Ms. Samtur said that the view from her house looks directly at the pool. She also noted that due to the height of the chain link fence and her short stature she will not be able to see over the fence. She proposed that the planting be on the outside of the fence and that Jerith fencing be used to improve its appearance.

Ms. Samtur requested that the board consider requiring that the pool enclosure fence run around the outside of the pool as opposed to the outside of the property. She said that Mr. Giuliano had mentioned that this would be possible during previous discussions, with the fence to be set back 15 feet from the pool.

Ms. Samtur said that it does not seem that the pool is set back 30 feet from her boundary. She said this could be checked, but that it would be preferable to have the property boundary staked in order to be certain of the measurements.

The Chair asked what the findings of the Planning Board were in approving the wetlands permit and whether the pool would be within the wetland buffer. Ms. Marrinan responded no, the pool is not within the wetlands buffer, which is a 25 foot "no build" area measured from the edge of the wetlands. The pool is within the 100 foot wetlands setback, as it is 64 feet from the edge of the wetland. The setback is a Village regulation, inside which the Planning Board must grant a wetlands permit for construction activities.

The Chair asked what happened with the movement of the wetlands line from the original landscape plan to the site plan submitted to the Planning Board, and whether this had consequences for approval of the wetlands permit. Mr. Giuliano said that the initial plans he was provided to prepare the landscape plan for the BAR were incorrect. He said the wetlands had been inspected and staked by a specialist, and the plans amended to show the specialist's findings. The site plan was amended and the house was built six feet closer to the road to avoid construction within the 100 foot wetlands setback.

Mr. Giuliano noted that only Jerith fencing will be used, instead of chain link.

The Chair asked staff whether Jerith fence could have been installed on the boundary line as of right even if no pool had been proposed. Ms. Marrinan said yes, the owner is permitted to put a five foot open fence around the rear yard at the property line, including within the 25 foot wetland buffer.

The Chair asked Mr. Giuliano whether the applicant would consider putting the plantings on the exterior of the fence, so as to screen Ms. Samtur's view of the fence. Mr. Giuliano said no, that fences should be placed on property lines. Putting them anywhere else results in complications.

Ms. Samtur asked that the property line be staked. Mr. Giuliano said a Certificate of Occupancy will not be provided unless the as-built survey is submitted, ensuring that the construction is completed as per the final site plan, which means all construction must be within the owner's property. Mr. Diodati confirmed this, adding that a certified surveyor will have to confirm this.

Mr. Samtur requested screening of the pool equipment under the deck. Mr. Giuliano said that screening is already proposed to screen Ms. Samtur's view under the deck.

The Chair asked if there was anyone else who wished to be heard with respect to this application, either in favor or in opposition. No other persons desiring to be heard, the Chair declared the hearing closed.

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CASE # 35 of 2016

5. The Chair declared the hearing open on the application of Luis Mendes for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 5 Seneca Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 326.

Mr. Frank Giuliano, landscape architect, was present.

Mr. Giuliano described the application and provided additional material for the board. Mr. Giuliano noted that the plans mistakenly do not show screening around the

pool equipment, but this is proposed. Mr. Giuliano noted that the neighbors on the right have additional existing screening, which the proposed screening will add to.

Mr. Diodati said a watercourse traverses the property. He said, in the past, the Village has asked that the applicant install a device with a swinging mechanism where the pool enclosure fence crosses the stream to allow debris to pass through while preventing access to the pool. Mr. Giuliano said that this design will be used.

Ms. Marrinan said the stream was overgrown. She said that keeping the stream clear and free of obstruction is the responsibility of the owner.

The Chair asked if there was anyone else who wished to be heard with respect to this application, either in favor or in opposition. No other persons desiring to be heard, the Chair declared the hearing closed.

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CASE # 36 of 2016

6. The Chair declared the hearing open on the application of Alan and Deborah Annex for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 7 Park Road, identified on the Village tax map as Sec. 15, Blk. 2, Lot 7A.

Ms. Choura, architect, Mr. Giuliano, landscape architect, and Dan Collins, hydraulic engineer, were present.

Mr. Giuliano described the existing and proposed landscaping, noting the significant existing trees surrounding the property.

Ms. Choura said that there is an existing geothermal system in the rear yard which limited the location of the pool. Ms. Marrinan asked whether the location of the geothermal system was shown on any of the plans. Ms. Choura said no, but it is on the plans for the house which are on file with the Village. Mr. Collins said that the geothermal system is shown on the storm water and erosion control plan that they have prepared.

The Chair asked whether any retaining walls will be installed or whether the design will be achieved with re-grading. Mr. Collins said that yes, retaining walls will be installed. Ms. Choura explained that the retaining wall will not be visible, it will be obstructed by earth and grass. Mr. Annex said there will be no retaining walls for the pool. The grading will slope to the pool, which will be recessed at grade and will therefore act as a retaining wall, then the grade will slope away from other edge of the pool down to back property line.

Mr. Diodati said that the plans do not show the grading and elevations. Mr. Annex said that the contours were shown on the plan. Ms. Marrinan said that it was

difficult to determine whether the contour lines were existing or proposed making it difficult for staff and the Board to understand the plans.

The Chair said that the plans appear to show the hill below the pool dropping at almost a 45 degree angle. Ms. Choura said yes, that due to the nature of the site, the hill behind the pool does drop rapidly.

Ms. Green asked about the landscaping plan. She asked whether the trees to the rear of the property are existing 14 feet arborvitae. Mr. Giuliano said yes. Mr. Giuliano provided additional material showing the existing and proposed landscaping.

Ms. Kestenbaum said she is the owner of 16 Cambridge Road which borders the property to the rear. Ms. Kestenbaum said that the existing screening is not sufficient to obscure her view of the proposed pool. She said she is uncomfortable with the proposed stormwater system and questions the viability of the existing and proposed screening to be planted at the rear of the property.

The Chair asked whether the pool staking is visible from Ms. Kestenbaum's house. Ms. Kestenbaum said yes. Mr. Giuliano explained that due to the current slope of the property the staking is visible. Once the regrading is complete, the pool itself will not be visible and will be graded to the lower stake line.

The Chair asked how the screening will be achieved in winter. Mr. Giuliano said that the arborvitae are evergreen. There are also maple trees that are not evergreen. These trees are planted approximately 15 feet from the boundary.

The Chair asked whether the stormwater system will interfere with the growth and health of the existing and proposed trees. Mr. Collins said no, the system will be located away from the trees.

Fred and Mara Harris, the owners of 12 Cambridge Road, were present. Mr. Harris asked how big the root system of an 18 foot tree would be. Mr. Giuliano said the trees when planted would have a four foot root ball.

Mr. Harris said he is concerned about the storm water implications and the potential for damage to the underground streams and caverns. He wants to be assured that the additional storm water will be managed.

Mr. Harris asked whether the gate used to access the rear of 7 Park Road at the edge of his property will remain locked. The Chair said that the gate will have to be a self-locking pool enclosure fence. Mr. Harris said he is concerned that teenagers may access the area and the pool. The Chair said the required self-locking fence is intended to keep young children out, but the self-locking feature could be opened by a teenager. Mr. Giuliano said that the pool has an automatic locking cover, which requires a key to access.

Ms. Harris said that the pool will be visible year round from her property, through the rear access described above. There is currently no additional screening proposed for this section of the property. Mr. Giuliano said that screening in this area is complicated because it is the only method of access to the rear of the property. Ms. Marrinan said, in the past in similar situations, screening has been set back from, but in front of, a gate to provide both access and privacy. Mr. Giuliano said that applicants will consider this method of screening.

Alain Hyman, the owner of 9 Park Road, was present. Mr. Hyman said he welcomes the new pool. He said that the proposed work will not change the existing grade significantly, and as it requires the owners to add additional screening, it will be an improvement.

Mr. Annex said that they have proposed not to add retaining walls in order to ensure the neighbors have a view of grass. Mr. Annex is willing to install additional screening if any neighbors have an issue with what is existing and proposed.

The Chair asked if there was anyone else who wished to be heard with respect to this application, either in favor or in opposition. No other persons desiring to be heard, the Chair declared the hearing closed.

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CASE # 37 of 2016

6. The Chair declared the hearing open on the application of Jeremy Perelman for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 22 Rectory Lane, identified on the Village tax map as Sec. 3, Blk. 2, Lot 19B.

Mr. Miguel Sostre, architect, was present.

Mr. Sostre described the application. Mr. Sostre said the applicant is seeking special use permit for the swimming pool and a variance for the pool equipment to be within the required 20 foot side yard setback, as it will be 16 feet from the boundary.

Ms. Marrinan explained that the pool equipment location, intruding into the side yard setback, may be dealt with under the special use permit (as opposed to a variance request), as it is controlled by the Board's regulations, not the Village Code.

The Chair asked Mr. Sostre to describe the proposed fencing. Mr. Sostre explained that there will be a Jerith fence along the western property line on the Rectory Lane South side and then in the side yard between the house and Rectory Lane South. The fence will be chain link along the rear and eastern property lines.

Ms. Green asked whether there will be a gate. Mr. Sostre said yes there will be a removable fence. Mr. Arest said that the fence cannot be removable, and instead must be a self-closing gate. Mr. Sostre said there will be a self-closing gate.

The Chair noted that the property had not be staked when he visited it, he asked whether it had been staked since. Mr. Sostre said no, the property has not been staked.

Ms. Marrinan asked about the existing arborvitaes. Ms. Marrinan asked which arborvitaes are existing and which are proposed. Mr. Sostre said that those marked "A" are existing and will be retained for screening. Some other landscaping will be removed and replaced with arborvitae. Ms. Marrinan said that the landscaping plan was not clear. She asked whether the proposed landscaping will be placed on the outside of the existing landscaping. Mr. Sostre said yes, the proposed landscape will be on the outside of these.

Mr. Diodati said the landscape plan and legend are contradictory. Mr. Sostre agreed, and recommended the legend be ignored.

Mr. Diodati noted that the proposed cabana will be subject to approval by the Board of Architectural Review.

The Chair said neighbors had written to the board and requested that screening be placed on the outside of the fence, to screen the fence from their view. The Chair asked whether the applicant would be willing to do this. Mr. Sostre said no, as this would diminish the size of the property.

Neville Glacion, the owner of 24 Rectory Lane, was present. Mr. Glacion said he does not think the fencing should be street side. He said he read the Village Code and interpreted it to mean that fences on a street line have to be set back 50 feet from the street. He thinks the fence will affect the character of the street, and should therefore be screened by putting the plantings on the outside of the fence.

The Chair asked whether the house is on a public or private road. Ms. Marrinan said the house is located at the corner of Rectory Lane and Rectory Lane South, which are both private roads. There is a private driveway at the rear of the property which extends from Rectory Lane South. The Chair asked whether it is a Village issue as to where the fence is located in relation to the edge of the right of way. Ms. Marrinan responded that the fence as proposed would be built on the edge of the right of way, on the owner's property.

Mr. Glacion asked whether the homeowner's association on Rectory Lane would have access for a few feet into all the properties on the Lane. Ms. Marrinan responded she imagined there would need to be an easement.

Mr. Arest said that there was some confusion in the letters submitted by neighboring landowners that both the fence and the pool must be screened from neighboring properties. Mr. Arest said the regulations only require the pool to be screened, not the fence. Ms. Marrinan said she believes that the intention of the Board

when the regulations were established was to permit open fencing that would allow shrubbery to show and perhaps even grow through to mask the fence.

Charles Knapp, the owner of 2 Rectory Lane South, was present. Mr. Knapp argued that the Board's regulations suggest the fence should be screened. The Chair said that Ms. Marrinan had explained that this is not the case and that the required fence could be see-through to ensure visibility of the shrubbery on the other side.

Mr. Knapp said it would be helpful if the Board were to clarify how the screening should be set out. The Chair said that the Board regularly approves screening on the inside of the fence. Ms. Marrinan said that this issue had been debated before and the Board had reached the same conclusion.

Mr. Knapp said that his driveway is actually a right of way. Installing a fence along this boundary would make this right of way very narrow. He suggested that requiring the screening to be on the outside of the fence may make this appear less imposing.

The Chair asked if there was anyone else who wished to be heard with respect to this application, either in favor or in opposition. No other persons desiring to be heard, the Chair declared the hearing closed.

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CASE #30 OF 2016

1. Fatine Kourakos
4 Burgess Road
Sec. 14, Blk. 6, Lot 12
Variance to expand an existing intrusion into the required side yard setback

The Board considered the application of Fatine Kourakos, Case #30 of 2016, and, upon motion duly made and seconded, with Mr. Ferris, Ms. Green, Ms. Koch and Mr. Watiker in favor and Mr. Arest abstaining, 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; now therefore be it

RESOLVED: That after careful examination of the site and evaluation of the information submitted with the application, the Board determined that such application, the construction or expansion of a single family residence and the grant of area variances for single-family residences are Type II actions pursuant to 6 NYCRR 617.5 (c) (9, 13) and no further environmental review is required pursuant to said regulations; and

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 with a swimming pool constructed in 2001; and

WHEREAS: The property is in a Sensitive Drainage Area, pursuant to Chapter 254 of the Village Code; and

WHEREAS: Chapter 310-51(A) of the Village Code regulates the required side yard setback in the A-1 district to 20 ft.; and

WHEREAS: Chapter 310-67(D) of the Village Code prohibits the expansion of nonconformities; and

WHEREAS: The existing garage is set back 14 ft. where 20 ft. is required; and

WHEREAS: The plans originally submitted showed the proposed expansion of the garage to the front for a more useable garage space and to the rear for a mudroom, both built to the existing nonconforming setback; and

WHEREAS: The Board considered the application at its July 20, 2016 meeting and held the application over for additional information; and

WHEREAS: The applicant revised the plan to show the expansion of the garage to the front for a requested variance of 6 ft. or 30% and revised the mudroom to the rear to meet the current setback requirements; and

WHEREAS: According to the proposed floor plan the total area of the garage addition is 88.5 sq. ft.; and

WHEREAS: The proposed addition appears to meet the building and lot coverage and FAR regulations; and

WHEREAS: The Board members have visited the site and are familiar with the materials in the application; and

WHEREAS: The Board members considered the criteria for granting area variances pursuant to New York State Village Law Section 7-712 (b) and conducted the appropriate balancing test as required therein, weighing the benefit to the applicant against the detriment to the neighborhood or the community; now therefore be it

RESOLVED: That the application of Fatine Kourakos for variances from Chapters 310-51 and 310-67 of the Village Code to construct an addition to the garage at 4 Burgess Road, as shown on plans A-O, A-1, A-6, A-7, A-9 and A-10, revised 8/17/16 be approved based on the following findings and conditions:

1. The requested variance will not create an undesirable change in the character of the neighborhood.
2. The benefit sought, namely a more usable attached garage that is sized for full-sized automobiles, cannot be achieved by another feasible method given the garage's location on the lot.
3. While the requested variance appears substantial on its face, in the context of the house and given the addition's limited size, namely 5 ft. deep, the requested variance is not large.
4. The requested variance will not have an adverse physical or environmental impact on the neighborhood.
5. The alleged hardship is not self-created and is primarily due to the location of the house on the property.
6. A Certified lot coverage form and as-built survey shall be required prior to the issuance of a Certificate of Occupancy.

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CASE #31 OF 2016

2. 26 Hampton Road LLC
26 Hampton Road
Sec. 4, Blk. 4, Lot 517.
Special Use Permit to construct a swimming pool

The Board considered the application of 26 Hampton Road LLC , Case #31 of 2016, and, upon motion duly made and seconded, held the application over to a future meeting at the applicant's request.

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CASE #33 OF 2016

3. 21 Rural Realty LLC
21 Rural Drive
Sec. 22, Blk. 21, Lot 20.
Special Use Permit to construct a swimming pool

The Board considered the application of 21 Rural Realty LLC, Case #33 of 2016, and, upon motion duly made and seconded, 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; now therefore be it

RESOLVED: That after careful examination of the site and evaluation of the information submitted with the application, the Board determined that such application, the construction of minor accessory structures (such as driveways fences or pools), is a Type II action pursuant to 6 NYCRR 617.5 (c) (10) and no further environmental review is required pursuant to said regulations; and

WHEREAS: The property, located in the A-2 (20,000 sq. ft.) zoning district, is shown in the Assessor's records as 20,804 sq. ft.; and

WHEREAS: The original house was built in 1955; however, after Committee for Historic Preservation review found the house was not historically significant, the house was demolished in 2016 and a new house is under construction; and

WHEREAS: The property was considered a wetlands controlled property due to the proximity of the New York State DEC regulated wetlands behind Crossway field; however a wetlands report was filed dated March 20, 2015 noting that the property is over 100 ft. from that wetlands and thus the property is not locally regulated as a wetlands controlled lot; and

WHEREAS: Chapter 310-88(A) of the Village Code authorizes the Board of Appeals to consider Special Use Permits for the construction of swimming pools; and

WHEREAS: The plans show the proposed construction of the swimming pool and associated patio, landscaping and fencing; and

WHEREAS: The location of the proposed pool and pool equipment appear to meet the setback requirements; and

WHEREAS: The Board members have visited the site and are familiar with the materials in the application; now therefore be it

RESOLVED: That the application of 21 Rural LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 21 Rural Road as shown on the Landscape and Swimming pool plan dated 8/11/16, be approved conditioned on the following:

1. The proposed swimming pool is consistent with the public health, safety, morals and general welfare of the community.
2. There shall be installed and maintained on the lot upon which the pool is located, and completely enclosing the pool, a fence or wall not less than 5 feet in height, with all gates and doors equipped with self-closing and self-latching devices designed to keep and capable of keeping such gates and doors securely closed at all times when not in actual use. The fence shall be constructed as represented to the Board at the meeting and on the approved plans. The fencing detail shall be provided with the application for a building permit.
3. Evergreen screening shall be planted as represented on the plans but in any event, at a minimum of 5 feet in height, and spaced so as to completely screen the pool from the view of all persons occupying adjoining properties and from the street, subject to the approval of the Building Inspector, shall assure that these features be installed and maintained on the applicant's property as long as said pool is in existence.
4. A 24-hour filter circulating system shall be installed and maintained above ground, and said filter (and heater, if any) shall be enclosed with a fence 5 feet in height with a self-closing and self-latching gate and landscaped screening.
5. Lighting of the pool and adjacent premises shall be limited to underwater lighting.
6. Drainage and sanitary facilities, conforming to the requirements of the Scarsdale Village Code, shall be installed and maintained. Measures must be taken to insure that water containing chemicals, such as acids or detergents resulting from lowering the water level of the pool or from pool cleaning, will be pumped directly into the sanitary sewer system, and not drained onto any land or into any stream or storm drain.
7. The use of the swimming pool shall be limited to the occupants of the principal building and their guests.
8. No excavation or removal of additional soil or rock shall be permitted except to construct the pool and any related stormwater management facilities.

9. A Stormwater Management and Erosion Control permit is required and shall include methods and plans for tree conservation and preservation. The soil erosion control and tree protection measures shall be in place prior to the issuance of a Building Permit. A tree removal permit may be required.

10. The applicant shall submit an "as built" survey and certified lot coverage form to the Building Inspector prior to the issuance of a Certificate of Occupancy, showing the final location of the pool, associated improvements, fencing and the as-built lot coverage.

11. The swimming pool shall be completed within 18 months and shall not be used prior to the issuance of a Certificate of Occupancy.

12. The Certificate of Occupancy shall not be issued until the applicant complies with all conditions set down by the Board.

13. Failure to obtain a Certificate of Occupancy for the swimming pool within a period of 18 months from the date of this resolution shall cause the Special Use Permit to become null and void.

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CASE #34 OF 2016

4. 36 Herkimer Properties LLC
36 Herkimer Road
Sec. 23, Blk. 1, Lot 67.
Special Use Permit to construct a swimming pool

The Board considered the application of 36 Herkimer Properties LLC, Case #34 of 2016, and, upon motion duly made and seconded, 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; now therefore be it

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 and the Planning Board, at its August 3, 2016 meeting 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; now therefore be it

RESOLVED: that the Board of Appeals concurs with Planning Board's finding that the proposed construction of the swimming pool 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 original house, dating from 1937, was demolished and a new house is nearing completion; 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 Planning Board approved a wetlands permit for the construction of the swimming pool at its August 3, 2016 meeting; and

WHEREAS: Chapter 310-88(A) of the Village Code authorizes the Board of Appeals to consider Special Use Permits for the construction of swimming pools; and

WHEREAS: The plans show the proposed construction of the swimming pool, landscaping and fencing; and

WHEREAS: The location of the proposed pool and pool equipment appear to meet the setback requirements and, as the lot coverage calculations are close to the maximum permitted, the Planning Board resolution requires that 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; and

WHEREAS: The plans show the proposed wetlands buffer planting within the 25 ft. "no build" wetlands buffer area as approved by the Planning Board and evergreen pool screening is also shown along the side property lines; and

WHEREAS: The proposed fencing is shown as Jerith style aluminum along the periphery of the property and connecting to the house at the sides; and

WHEREAS: The Board members have visited the site and are familiar with the materials in the application; now therefore be it

RESOLVED: That the application of 36 Herkimer Properties LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 36 Herkimer Road, as shown on Wetland Mitigation and Pool Site plan revised 7/5/2016 be approved conditioned on the following:

1. The proposed swimming pool is consistent with the public health, safety, morals and general welfare of the community.
2. There shall be installed and maintained on the lot upon which the pool is located, and completely enclosing the pool, a fence or wall not less than 5 feet in height, with all gates and doors equipped with self-closing and self-latching devices designed to keep and capable of keeping such gates and doors securely closed at all times when not in actual use. The fence shall be constructed as represented to the Board at the meeting and on the approved plans. The fencing detail shall be provided with the application for a building permit.
3. Evergreen screening shall be planted as represented on the plans but in any event, at a minimum of 5 feet in height, and spaced so as to completely screen the pool from the view of all persons occupying adjoining properties and from the street, subject to the approval of the Building Inspector, shall assure that these features be installed and maintained on the applicant's property as long as said pool is in existence.
4. A 24-hour filter circulating system shall be installed and maintained above ground, and said filter (and heater, if any) shall be enclosed with a fence 5 feet in height with a self-closing and self-latching gate and landscaped screening.

5. Lighting of the pool and adjacent premises shall be limited to underwater lighting.
6. Drainage and sanitary facilities, conforming to the requirements of the Scarsdale Village Code, shall be installed and maintained. Measures must be taken to insure that water containing chemicals, such as acids or detergents resulting from lowering the water level of the pool or from pool cleaning, will be pumped directly into the sanitary sewer system, and not drained onto any land or into any stream or storm drain.
7. The use of the swimming pool shall be limited to the occupants of the principal building and their guests.
8. No excavation or removal of additional soil or rock shall be permitted except to construct the pool and any related stormwater management facilities.
9. A Stormwater Management and Erosion Control permit is required and shall include methods and plans for tree conservation and preservation. The soil erosion control and tree protection measures shall be in place prior to the issuance of a Building Permit and the 25 ft. "no-build" buffer should be staked and protected to prevent any disturbance to the wetlands. A tree removal permit may be required.
10. The applicant shall submit an "as built" survey and certified lot coverage form to the Building Inspector prior to the issuance of a Certificate of Occupancy, showing the final location of the pool, associated improvements, fencing and the as-built lot coverage.
11. The swimming pool shall be completed within 18 months and shall not be used prior to the issuance of a Certificate of Occupancy.
12. The Certificate of Occupancy shall not be issued until the applicant complies with all conditions set down by the Board.
13. Failure to obtain a Certificate of Occupancy for the swimming pool within a period of 18 months from the date of this resolution shall cause the Special Use Permit to become null and void.

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CASE #35 OF 2016

5. Luis Mendes
5 Seneca Road
Sec. 17, Blk. 1, Lot 326.
Special Use Permit to construct a swimming pool

The Board considered the application of Luis Mendes, Case #35 of 2016, and, upon motion duly made and seconded, 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; now therefore be it

RESOLVED: That after careful examination of the site and evaluation of the information submitted with the application, the Board determined that such application, the construction of minor accessory structures (such as driveways fences or pools), is a Type II action pursuant to 6 NYCRR 617.5 (c) (10) and no further environmental review is required pursuant to said regulations; and

WHEREAS: The property, located in the A-2 (20,000 sq. ft.) zoning district, is shown in the Assessor's records as 20,552 sq. ft. and abuts Fenway Golf Club to the rear; and

WHEREAS: There is a stream which runs across the rear of the property from the Murray Hill ponds across the properties on Seneca Road to Cayuga Pond and beyond; and

WHEREAS: The property was considered a wetlands controlled property due to the stream; however a wetlands report dated April 17, 2014 was filed noting that there are no wetlands soils or vegetation associated with the stream; and

WHEREAS: The Board of Appeals granted a variance to renovate the existing house and to build an addition that exceeded the maximum permitted FAR at its June 11, 2014 meeting; and

WHEREAS: Chapter 310-88(A) of the Village Code authorizes the Board of Appeals to consider Special Use Permits for the construction of swimming pools; and

WHEREAS: The plans show the proposed construction of the swimming pool, landscaping and fencing; and

WHEREAS: The location of the proposed pool appears to meet the setback requirements; and

WHEREAS: The watercourse is regulated by the Freshwater Wetlands chapter of the code to the extent that there is a 25 ft. “no-build” buffer from the edge of the stream; and

WHEREAS: The fencing is shown to cross the stream in two locations and a “breakaway trash rack” at the stream crossings should be installed to help prevent the obstruction of the stream while providing an enclosure for the pool; and

WHEREAS: The Board members have visited the site and are familiar with the materials in the application; now therefore be it

RESOLVED: That the application of Luis Mendes for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 5 Seneca Road, as shown on Master Site and Pool Plan dated 8/3/2016 be approved based on the following findings and conditions:

1. The proposed swimming pool is consistent with the public health, safety, morals and general welfare of the community.
2. There shall be installed and maintained on the lot upon which the pool is located, and completely enclosing the pool, a fence or wall not less than 5 feet in height, with all gates and doors equipped with self-closing and self-latching devices designed to keep and capable of keeping such gates and doors securely closed at all times when not in actual use. The fence shall be constructed as represented to the Board at the meeting and on the approved plans. The fencing detail shall be provided with the application for a building permit. The plans should be revised to provide for “breakaway trash racks” at the two stream crossings.
3. Evergreen screening shall be planted as represented on the plans but in any event, at a minimum of 5 feet in height, and spaced so as to completely screen the pool from the view of all persons occupying adjoining properties and from the street, subject to the approval of the Building Inspector, shall assure that these features be installed and maintained on the applicant's property as long as said pool is in existence.
4. A 24-hour filter circulating system shall be installed and maintained above ground, and said filter (and heater, if any) shall be enclosed with a fence 5 feet in height with a self-closing and self-latching gate and landscaped screening.
5. Lighting of the pool and adjacent premises shall be limited to underwater lighting.
6. Drainage and sanitary facilities, conforming to the requirements of the

Scarsdale Village Code, shall be installed and maintained. Measures must be taken to insure that water containing chemicals, such as acids or detergents resulting from lowering the water level of the pool or from pool cleaning, will be pumped directly into the sanitary sewer system, and not drained onto any land or into any stream or storm drain.

7. The use of the swimming pool shall be limited to the occupants of the principal building and their guests.

8. No excavation or removal of additional soil or rock shall be permitted except to construct the pool and any related stormwater management facilities.

9. A Stormwater Management and Erosion Control permit is required and shall include methods and plans for tree conservation and preservation. The soil erosion control and tree protection measures shall be in place prior to the issuance of a Building Permit and the 25 ft. "no-build" buffer should be staked and protected to prevent any disturbance of the stream. A tree removal permit may be required.

10. The applicant shall submit an "as built" survey and certified lot coverage form to the Building Inspector prior to the issuance of a Certificate of Occupancy, showing the final location of the pool, associated improvements, fencing and the as-built lot coverage.

11. The stream should be cleared of growth and debris and should be maintained clear and free of obstruction during and after construction.

12. The swimming pool shall be completed within 18 months and shall not be used prior to the issuance of a Certificate of Occupancy.

13. The Certificate of Occupancy shall not be issued until the applicant complies with all conditions set down by the Board.

14. Failure to obtain a Certificate of Occupancy for the swimming pool within a period of 18 months from the date of this resolution shall cause the Special Use Permit to become null and void.

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CASE #36 OF 2016

6. Alan and Deborah Annex
7 Park Road
Sec. 15, Blk. 2, Lot 7A.
Special Use Permit to construct a swimming pool

The Board considered the application of Alan and Deborah Annex, Case #36 of 2016, and, upon motion duly made and seconded, held the application over to a future meeting pending receipt and review of the following:

1. A cross section east-west through the property from the rear of the house to the rear property line showing the re-grading, the pool location, the location of the proposed underground stormwater facilities and the proposed landscaping.
2. The Stormwater and Erosion control plan should be provided.
3. Plans should be revised to show any additional screening to the rear and the screening in the area of the gate to the access drive from Mamaroneck Road.
4. The site plan, stormwater plan and landscaping plans should all conform.

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CASE #37 OF 2016

7. Jeremy Perelman
22 Rectory Lane
Sec. 3, Blk. 2, Lot 19B.
Special Use Permit to construct a swimming pool

The Board considered the application of Jeremy Perelman, Case #37 of 2016, and, upon motion duly made and seconded, held the application over pending receipt and review of the following:

1. The location of the pool should be staked.
2. The landscaping plan should clarify and distinguish between the existing and proposed landscaping materials.
3. The fence height should be corrected.
4. The property line should be shown more clearly on the proposed plans.
5. A survey should be submitted, if available.

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Upon duly made and seconded, the minutes of the July 20, 2016, meeting were approved.

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The Chair announced that the next meeting of the Board of Appeals would be held on Wednesday, October 5, 2016, at 8 p.m.

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The meeting was adjourned at 11:15 p.m.

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Cameron McLeod
Secretary to the Board