

BOARD OF APPEALS

RUTHERFORD HALL  
VILLAGE HALL  
SCARSDALE, NY  
October 5, 2016

A regular meeting of the Board of Appeals of the Village of Scarsdale was held in Rutherford Hall in Village Hall on Wednesday, October 5, 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.

\* \* \* \* \*

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](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.

\* \* \* \* \*

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, October 5, 2016**, at 8:00 p.m. at which time and place the Board of Appeals will consider the following:

1. 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.
2. 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.
3. 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.
4. The application of Cheryl and Steven Kessner for a variance from Chapter 310-7S of the Village Code to install a generator in the front yard at 44 Murray Hill Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 6L.
5. The application of Jennifer and Brett Fischer for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 28 Greenacres Avenue, identified on the Village tax map as Sec. 5, Blk. 4, Lot 29.

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 Board of Appeals, Scarsdale, New York, dated September 20, 2016.  
Elizabeth Marrinan, AICP, Village Planner.

\* \* \* \* \*

CASE # 31 of 2016

1. The Chair declared the hearing open on the application of 26 Hampton Road LLC, 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.

Geoff Ringler, architect, was present.

Mr. Ringler described the amendments to the application. He said the pool has been made smaller, moved closer to the house and raised to align with the elevation of the first floor of the house, which means the retaining wall can be smaller than originally proposed. The small retaining wall now runs along the back edge of the pool and extends towards to rear of the property.

Mr. Ringler submitted a revised plan at the meeting showing landscaping and the pool equipment pad. Mr. Ringler described the plan. He said that additional Norway spruce have been added to ensure screening where existing vegetation is insufficient.

The Chair asked whether the screening will be evergreen type trees. Mr. Ringler said it will be a mix. The Chair asked if existing vegetation will be relied upon for screening. Mr. Ringler said yes.

The Chair asked about the height of the proposed retaining walls. Mr. Ringler said that they will range in height from two and a half to three feet along the pool's edge, to five feet extending into the rear of the property.

Ms. Green asked whether the landscaping close to the house will be removed. Mr. Ringler said that the landscaped island in the center of the yard, which has some shrub cover, will be entirely removed, along with a large Oak tree, which is identified on the submitted landscape plan.

Mr. Arest asked whether the existing vegetation to be relied on for screening is on the application site or neighboring properties. Mr. Ringler said it is on site.

Mr. Diodati said the elevations shown for the retaining wall do not mirror those shown on the detail and requested this be amended. He noted the required height of landscaping screening is five feet which should be shown on the landscape plan. He asked about the height of the proposed screening. Mr. Ringler said the screening will be six to eight feet tall.

Mr. Arest asked for the finished height of the pool. Mr. Ringler said that the heights are shown on the plan, and this extended flat area is possible because of the proposed retaining wall. Ms. Marrinan asked about the difference in height from the pool to the rear of the property. Mr. Ringler said that there will be a seven foot height difference between the pool area and the rear boundary line.

Mr. Ringler said that the pool equipment pad is shown on the plan distributed at the meeting. Ms. Marrinan asked for the height of the proposed pool equipment pad fencing and screening. Mr. Ringler said they will be 24 – 36 inches. Ms. Marrinan said five feet is required.

Ms. Green asked whether the existing chain link that runs around the property line is to be used as the pool enclosure fence. Mr. Ringler said no, the plan shows a new wrought iron fence to be installed.

The Chair asked if the wall and fence combined will be five feet.. Mr. Ringler said no, the fence needs to meet the five foot requirement, and will therefore total seven feet where it is on top of the retaining wall.

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

\* \* \* \* \*

CASE # 36 of 2016

2. 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.

Frank Giuliano, architect and Dan Collins, hydraulic engineer, were present.

Mr. Giuliano described the revisions to the proposal. The existing screening will be removed, and will be replaced with 16 to 18 foot Norway spruce. Arborvitaes will be planted by the rear entrance so as to ensure screening while allowing access for service vehicles. The pool has been moved six feet closer to the house and is now 36 feet from the rear property line. The pool will have a patio on one side.

Mr. Collins said that the grading has been amended, allowing for a three on one grade from the existing storm water system, which slopes to a two on one grade as it extends towards the rear property line. A proposed two foot retaining wall towards the rear of the property allows for the slope to be pulled away from the rear boundary line. The curtain drain will be moved further away from the rear boundary line. The amendments also allow the grading to be balanced, meaning any material that is removed will be repurposed somewhere on site.

Mr. Giuliano said that the applicant had reached out to the neighbors regarding the amended application, but had not heard back from them.

Mr. Arest asked about the lot coverage, as the original plan was close to the maximum permitted. Mr. Giuliano said that the amended application is within the permitted allowance, which was achieved by reducing the size of the pool patio.

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.

\* \* \* \* \*

CASE # 37 of 2016

3. 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.

Miguel Sostre, architect, was present.

Mr. Sostre described the amended proposal. Mr. Sostre said that the fence height is shown on the site plan, the proposed landscaping has been clarified and the pool location was staked.

The Chair asked if it is still proposed to put the pool equipment below grade. Mr. Sostre said yes.

Ms. Marrinan asked Mr. Sostre to run through the landscaping at the rear of the property. Mr. Sostre said that existing landscaping along the rear boundary line will be removed and replaced with arborvitae. There are existing dark American arborvitae in the rear corners of the property, which may be retained if they provide sufficient screening.

Charles Knapp, the owner of 2 Rectory Lane South, said that it appears that several maple trees are to be removed. Mr. Sostre said that all trees on the property line that belong to the Perelmans are to be retained.

Mr. Knapp said that the layout of the backyard means that a distance of seven to ten feet from the rear boundary line, bordering the driveway of 3 Rectory Lane South, is unusable. There is a steep drop off from this area to the rest of the yard. Mr. Knapp asked that the board consider requiring the fence to be at the base of the drop off, as opposed to on the rear boundary line. Alternatively, Mr. Knapp requested that the board require the plantings to be on the outside of the fence.

Cheryl Felton, the owner of 24 Rectory Lane asked what was happening with the trees bordering Rectory Lane South. The Chair showed Ms. Felton the landscape plan. Ms. Felton said she is concerned that some of the trees marked for removal may be in the right of way, being Rectory Lane South.

Ms. Felton said she is also concerned that some of the construction appears as if it will take place within the right of way. She is uncertain of the boundary of the right of way, and believes it actually extends into the Perelman's property. Ms. Marrinan

explained that work cannot take place outside of the Perelman's property. This will need to be confirmed by the as-built drawings, prior to sign off by the building inspector.

Susan Knapp, the owner of 2 Rectory Lane South, said it is not clear where the proposed fence is going to be built in relation to the existing maple trees. Mr. Sostre said he believed that the fence will be between the maple trees and the drive way. The Chair said for clarification that there is no requirement for the screening to grow through the fence. The Chair said that the applicant had not indicated whether this was their intention or not. Ms. Knapp asked that the applicants be considerate in the design of the screening.

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.

Ms. Felton asked to speak. The Chair asked if there was a motion to reopen the hearing. Mr. Arest moved to open the meeting and Ms. Green seconded, all were in favor. Ms. Felton said that brief research had shown her that an easement may extend onto someone's property. The Chair said that he believes an easement may extend onto someone's property, but that is was not the case here.

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.

\* \* \* \* \*

CASE # 38 of 2016

4. The Chair declared the hearing open on the application of Cheryl and Steven Kessner for a variance from 1.Chapter 310-7S of the Village Code to install a generator in the front yard at 44 Murray Hill Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 6L.

Robert Brehm, landscape architect, was present.

Mr. Brehm described the application. The Kessners would like to install a generator in the front yard. Due to the irregular shape of the property, a large portion of the property is considered the front yard. The generator would meet all other requirements. Mr. Brehm said that the proposed location is the only remaining unused location on the property. Alternative locations would interrupt drainage or be too close to the outdoor living area.

The Chair asked if the proposed screening is evergreen. Mr. Brehm said yes.

Mr. Arest asked about a hole in the existing screening where a structure was visible. Mr. Brehm said there is a retaining wall close, but not in that area, and that it may be a fence.

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

\* \* \* \* \*

CASE # 39 of 2016

5. The Chair declared the hearing open on the application of Jennifer and Brett Fischer for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 28 Greenacres Avenue, identified on the Village tax map as Sec. 5, Blk. 4, Lot 29.

Rivi Oren, landscape architect, was present.

Ms. Oren described the application. She said that the applicant would like the pool to stay close to the terrace, in order to allow them to be used in conjunction and to retain the existing open yard, hence the proposed location of the pool.

Ms. Oren displayed a cross section of the property, showing the existing and proposed grade, the various terrace levels and the pool. Ms. Oren explained that a significant retaining wall is required to mediate the existing grade of the property.

The Chair asked if the retaining wall will be visible. Ms. Oren said yes. The proposed retaining wall will be constructed of field stone.

Ms. Oren said the fencing of the pool was complicated due to the nature of the yard. Therefore, the retaining wall will act as part of the pool enclosure, with the rest consisting of a chain link fence.

The Chair asked Ms. Oren to describe the screening around the boundary. Ms. Oren said that there is significant existing landscaping that will be used for screening. Hollies and Norway spruce will be planted where the existing landscaping is insufficient. Ms. Oren added that the pool equipment pad will also be fenced and screened.

Mr. Arest asked whether the decorative gate requires approval by the Board of Architectural Review. Ms. Marrinan said no, but she was concerned that the gaps in the base of the decorative gate may be used as a toe-hold, allowing people to climb over the fence. Ms. Oren said she will remove these.

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.

\* \* \* \* \*

CASE #31 OF 2016

1. 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 pending receipt and review of the following:

1. Revised plans which clarify the existing and proposed landscaping. The plans should note the existing planting to be used to screen the pool from view. A plant list should be provided showing the size, type and number of the proposed plantings. The plans should also clarify the height of the wall and the detail provided should conform. The plans should also be revised to show the proposed screening of the pool equipment.

\* \* \* \* \*

CASE #36 OF 2016

2. 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, 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; 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-1 zoning district, totals 32,469 sq. ft. after a recent re-subdivision with 9 Park Road added just over 3,000 sq. ft. in a 15 ft. wide strip along the northern property line; and

WHEREAS: The property is irregularly shaped and fronts on Park Road with a narrow strip of land at the rear that reaches to Mamaroneck Road and allows for vehicular access to the rear of the property; and

WHEREAS: The lot's total area within a quadrilateral, excluding the pole, is 29,321 sq. ft. according to the lot coverage form; and

WHEREAS: The house was built in 1907 and an addition and substantial renovation was completed in 2011; 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 considered the application at its September 14, 2016 meeting and held the matter over pending receipt and review of revised plans; and

- WHEREAS: The applicant revised the plans and provided additional information regarding the proposed landscaping, re-grading and stormwater management facilities; and
- WHEREAS: The lot coverage form indicates the proposed project including the construction of the pool, pool equipment and retaining walls bring the total lot coverage close to the maximum permitted; 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 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 as shown on the Landscape and Fence Plan, revised 9/23/16, the Site Plan revised 9/22/16 and the Stormwater Management Plan C-1, C-2 revised 9/22/16, 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.
  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.

\* \* \* \* \*

CASE #37 OF 2016

3. 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, 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; 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-3 (10,000 sq. ft.) zoning district, is shown in the Assessor's records as 23,268 sq. ft.; and

WHEREAS: The house was built in 1937 and an addition and substantial renovation was completed in 2014; 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 cabana appear to meet the setback requirements; and

WHEREAS: The cabana is subject to BAR review; and

WHEREAS: The plans show the proposed construction of a pool equipment and storage area adjacent to the house at the end of the driveway at the basement level; and

WHEREAS: The zoning table states the pool equipment would be set back 16 ft. inside the pool enclosure structure where the Board of Appeals regulations regarding swimming pools state that pool equipment should be set back 20 ft.; and

WHEREAS: The lot coverage form indicates the proposed project including the pool, the new pool enclosure and storage area as well as the pool house bring the total lot coverage close to the maximum permitted; and

WHEREAS: The Board considered the application at its September 14, 2016 meeting and held the matter over pending receipt and review of revised plans and staking the proposed location of 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 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 as shown on the Site Plan revised 8/26/16, 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.
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 and other pool equipment shall be installed and maintained as shown on the plans referred to above in the pool enclosure and storage area.
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 building and 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.

\* \* \* \* \*

CASE #38 OF 2016

4. Cheryl and Steven Kessner  
44 Murray Hill Road  
Sec. 17, Blk. 1, Lot 6L.  
Variance to install a generator in the front yard

The Board considered the application of Cheryl and Steven Kessner, Case #38 of 2016, 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; 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 CS Cluster Subdivision AA-1 (2 acre) zoning district, is shown in the Assessor's records as 2.0 acres and was created in 1983; and

WHEREAS: The house was built in 1985, the tennis court was built in 1986 and the swimming pool was completed in 2001; and

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

WHEREAS: The Planning Board, on October 22, 2014, granted site plan approval for the removal of the tennis court and swimming pool the construction of an addition, new pool and pool house; and

WHEREAS: The Board of Appeals, on March 9, 2016, granted a Special Use Permit to construct the new swimming pool; and

WHEREAS: Chapter 310-7S of the Village Code specifies that generators may be installed in the side or rear yards; and

WHEREAS: Chapter 310-2 of the Village Code defines the front yard as the "space within and extending the full width of the lot from the front lot line to the part of the principal building which is nearest to such front lot line"; and

WHEREAS: The plans show the proposed location of the generator in the front yard,

approximately 21 ft. from the western property line and 28.5 ft. from the northern property line and 300 ft. from the street line; and

WHEREAS: The existing plantings are to remain and additional evergreen screening is proposed; 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 Cheryl and Steven Kessner for a variance Chapter 310-7S of the Village Code to install a generator in the front yard at 44 Murray Hill Road, as shown on plans L-1.0a dated 9/12/16 be approved based on the following findings:

1. The requested variance will not create an undesirable change in the character of the neighborhood as the generator will not be visible from the street and is well screened from the neighboring property.
2. The benefit sought, to install the generator located away from the house, outdoor living spaces and adjacent properties, might be achieved in a complying location, but the proposed location will not have any more impact than a conforming location.
3. While the requested variance may appear substantial in that a front yard location is not permitted, as noted above, the proposed location will not have any greater impact than a conforming location.
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 irregular shape of the property.

\* \* \* \* \*

CASE #39 OF 2016

5. Jennifer and Brett Fischer  
28 Greenacres Avenue  
Sec. 5, Blk. 4, Lot 29.  
Special Use Permit to construct a swimming pool

The Board considered the application of Jennifer and Brett Fischer, Case #39 of 2016, 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; 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-3 (10,000 sq. ft.) zoning district, is shown in the Assessor's records as .93 acres and is improved with a house built in 1938 with renovations and alterations made since; 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 plans described the proposed pool enclosure fencing including the retaining wall to the rear of 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 Jennifer and Brett Fischer for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 28 Greenacres Avenue as shown on the plans L-1, L-2 and L-3 dated 7/7/16, 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 provided with the plans shall be revised to exclude the decorative detail at the bottom of the pool enclosure gate and 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.

\* \* \* \* \*

Upon duly made and seconded, the minutes of the September 14, 2016, meeting were approved.

\* \* \* \* \*

The Chair announced that the next meeting of the Board of Appeals would be held on Wednesday, November 9, 2016, at 8 p.m.

\* \* \* \* \*

The meeting was adjourned at 9:40 p.m.

\* \* \* \* \*

---

Cameron McLeod  
Secretary to the Board