

BOARD OF APPEALS

RUTHERFORD HALL  
VILLAGE HALL  
SCARSDALE, NY  
January 11, 2017

A regular meeting of the Board of Appeals of the Village of Scarsdale was held in Rutherford Hall in Village Hall on Wednesday, January 11, 2017, at 8:00 p.m.

Those members present were Jeffrey Watiker, Chair, Justin Arest, Anil Ferris and Mary Kaye Koch. Marylou Green was absent. 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 Cameron McLeod at Village Hall tomorrow at 722-1131. Also, tomorrow the decisions will be posted on the web at [www.scarsdale.com](http://www.scarsdale.com) in the Agenda Center. 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.

This evening we have only four members of the Board in attendance. An application requires three positive votes to pass, however if you wish, therefore, to postpone your hearing until the next meeting of the Board, you may do so.

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The Chair noted that the application of Dove's Nest IV, LLC for a variance from Chapter 210-47(C) of the Village Code, a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool within the front yard and a variance from Chapter 158-6 of the Village Code to construct stone walls

which would exceed the maximum permitted height at 5 Sherbrooke Road, identified on the Village tax map as Sec. 13, Blk. 3, Lot 3 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 the **Rutherford Hall** in Village Hall, 1001 Post Road, Scarsdale NY 10583, on **Wednesday, January 11, 2017**, at 8:00 p.m. at which time and place the Board of Appeals will consider the following:

1. The application of Dove's Nest IV, LLC for a variance from Chapter 310-47(C) of the Village Code, a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool within the front yard and a variance from Chapter 158-6 of the Village Code to construct stone walls which would exceed the maximum permitted height at 5 Sherbrooke Road, identified on the Village tax map as Sec. 13, Blk. 3, Lot 3.
2. The application of Clark Gettinger for an amendment to the Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to legalize the pool enclosure fencing at 50 Sheldrake Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 102.
3. The application of Jessica and Mark Amfang for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 33 Meadow Road, identified on the Village tax map as Sec. 23, Blk. 1, Lot 127.
4. The application of Stefanie and Eric Cohen for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 37 Murray Hill Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 6E.
5. The application of Jennifer and Mark Brooks for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 43 Harvest Drive, identified on the Village tax map as Sec. 22, Blk. 19, 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 click on "Notify Me" to subscribe.

By Order of the Board of Appeals, Scarsdale, New York, dated December 27, 2016.  
Elizabeth Marrinan, AICP, Village Planner

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CASE # 42 of 2016

2. The Chair declared the hearing open on the application of Clark Gettinger, for an amendment to the Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to legalize the pool enclosure fencing at 50 Sheldrake Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 102.

Clark Gettinger, owner, was present. He described the amendment to the application, which was the additional screening as requested by the Board.

Mr. Arest asked if a section of arborvitae shown on the plans are proposed or existing. Mr. Gettinger said they are new arborvitae and that no existing arborvitae will be removed.

Mr. Arest said he is still concerned about the screening and believes there may be gaps. The areas of concern were identified for Mr. Gettinger. Mr. Gettinger said the screening was designed by the landscape architect to ensure that the pool would not be visible from any neighboring properties.

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.

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CASE #1 OF 2017

3. The Chair declared the hearing open on the application of Jessica and Mark Amfang for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 33 Meadow Road, identified on the Village tax map as Sec. 23, Blk. 1, Lot 127.

Richard Quigley, landscape architect, and Richard Gregory, civil engineer, were present.

Mr. Quigley described the application. The application is for a new swimming pool and spa. The proposed pool has coping at grade and the spa will have some decking, adjoining and flush with the pool coping. The property has significant existing screening, and the application has been amended to add additional pool equipment pad screening in response to concerns raised by staff.

Mr. Gregory said that as a result of the proposed additional impervious surface, an underground storage system will be installed to catch runoff. Runoff will be temporarily held in the system, where it will be slowly discharged into an existing infiltration system. The proposal will achieve net zero storm water impacts as required by Village regulations. Discharge from drawing down the pool for maintenance and winterizing will be discharged into a service connection directly into the sanitary sewer system.

Mr. Gregory said that runoff from the lawn area directed towards the eastern property line as a result of the grading will be picked up by a drain inlet by the driveway, where it will pass into the proposed drainage system.

Mr. Gregory said that the proposal would have exceeded site coverage. In order to accommodate the proposal, the applicant will remove a playset and modify a portion of the existing driveway from asphalt to gravel to ensure compliance.

The Chair asked Mr. Diodati whether it is ok for the pool to discharge into the sanitary sewer system. Mr. Diodati said yes.

The Chair asked about the screening on the east side of the pool, which did not appear to be sufficiently dense. The Chair asked whether the applicant would be willing to increase the screening. Mr. Quigley said yes.

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.

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#### CASE #2 OF 2017

4. The Chair declared the hearing open on the application of Stefanie and Eric Cohen Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 37 Murray Hill Road, identified on the Village tax map as Sec. 17, Blk. 1, Lot 6E.

Dan Sherman, landscape architect, was present.

Mr. Sherman described the application. He said that the proposed pool will replace an existing pool in a different location. The applicant proposes to enhance the existing screening which was approved for the existing Special Use Permit. The existing complying chain link fence and the existing tennis court fence will be retained.

Ms. Marrinan asked if the pool was factored into the storm water management plan for the new construction. Mr. Sherman said it is incorporated as it is the same size as the existing pool. Mr. Diodati said that it needs to be revised to show the new location and the new patio should also be incorporated. Mr. Sherman said yes, the patio had not been incorporated, and that he will amend the existing open storm water plan for the ongoing renovations to the dwelling.

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.

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#### CASE #3 OF 2017

4. The Chair declared the hearing open on the application of Jennifer and Mark Brooks for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 43 Harvest Drive, identified on the Village tax map as Sec. 22, Blk. 19, Lot 29.

Dan Sherman, landscape architect, and Jennifer Brooks, owner, were present.

Mr. Sherman described the application. He said that a house is currently being constructed on site. Mr. Sherman said the applicant would like to submit an amended plan this evening. The Chair asked him to submit the plan to the Board. Mr. Sherman said that amended plan shows the pool enclosure fence and gate is located at grade level rather than on the elevated pool patio.

The Chair reiterated a request in the staff notes for a larger lot coverage form for the file. Ms. Marrinan said that it appears that the pavers are not accounted for in the proposed lot coverage calculation. Mr. Sherman said no, they are not included. The Chair said that the Board may approve the maximum lot coverage, with the applicant to amend the final plan by removing the newly added stepping stones as required, to be verified for the certificate of occupancy. Ms. Marrinan asked if the amendment affected the location of the adjacent pool equipment pad. Mr. Sherman said no.

Mr. Arest asked staff whether the proposed pool enclosure, being a five foot solid wall, is permitted. Ms. Marrinan said yes, the wall acts as the pool enclosure and that six foot freestanding solid walls are permitted in the rear yard.

Mr. Diodati said that the grade elevations provided do not appear to match the existing elevations, which appear to be higher. Mr. Sherman said it will be excavated and graded out to align with the proposed plan.

Mr. Diodati said that the storm water management plan will need to be amended to incorporate the pool. Ms. Brooks said that it had already been amended by Elliot Senor.

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.

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CASE #41 OF 2016

1. Dove's Nest IV, LLC  
5 Sherbrooke Road  
Sec. 13, Blk. 3 Lot 3.  
Special Use Permit to construct a swimming pool and a variance to construct stone walls which would exceed the maximum permitted height

The Board considered the application of Dove's Nest IV, LLC , Case #41 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 #42 OF 2016

2. Clark Gettinger  
50 Sheldrake Road  
Sec. 17, Blk. 1 Lot 102.  
Amendment to the Special Use Permit to legalize the pool enclosure fencing

The Board considered the application of Clark Gettinger, Case #43 of 2016 and, upon motion duly made and seconded, with Mr. Ferris, Ms. Koch and Mr. Watiker in favor, 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 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 (1 acre.) zoning district, is shown in the Assessor's records as 1.02 acres and is improved with a house built in 1948 and recently renovated; and

WHEREAS: The property is located in a Sensitive Drainage Area, pursuant to Chapter 254 of the Village Code; 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 Board of Appeals, at the March 14, 2012 meeting, approved a rear yard variance and a Special Use Permit for the repair of the then existing swimming pool; and

WHEREAS: On July 30, 2014, the Board of Appeals approved a Special Use Permit for the removal of the existing pool and the construction of a new pool in a conforming location; and

WHEREAS: The applicant is now seeking to amend the 2014 Special Use permit to legalize the as-built location of the pool enclosure fencing; and

WHEREAS: The application and plans show the existing pool fence location around the perimeter of the property and the proposed landscaping; however the approved plan showed the fencing and landscaping around the

pool; and

WHEREAS: The Board considered the application at its December 7, 2016 meeting and held the matter over pending receipt and review of revised landscaping plans to better screen the pool from view from the adjacent properties; and

WHEREAS: The applicant submitted revised plans; 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 Clark Gettinger for an amendment to the Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to legalize the fencing and landscaping at 50 Sheldrake Road as shown on the Revised Landscape and Pool Plan dated January 5, 2107 be approved; and be it further

RESOLVED: The conditions included in the July 30, 2014 Board of Appeals resolution shall remain in full force and effect.

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CASE #1 OF 2017

3. Jessica and Mark Amfang  
33 Meadow Road  
Sec. 23, Blk. 1 Lot 127.  
Special Use Permit to construct a swimming pool

The Board considered the application of Jessica and Mark Amfang, Case #1 of 2017 and, upon motion duly made and seconded, with Mr. Arest, Mr. Ferris, Ms. Koch and Mr. Watiker in favor, 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 20,230 sq. ft.; and

WHEREAS: The original house, built in 1957, was demolished in 2011 and a new house built in 2012; 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, retaining walls 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 for a Jessica and Mark Amfang for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 33 Meadow Road as shown on the Site Plan revised 12/20/16, 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, and the applicant shall assure that these features be installed and maintained on the applicant's property as long as said pool is in existence. Additional infill landscaping materials shall be installed on the eastern side off the property.
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 #2 OF 2017

4. Stefanie and Eric Cohen  
37 Murray Hill Road  
Sec. 17, Blk. 1 Lot 6E.  
Special Use Permit to construct a swimming pool

The Board considered the application of Stefanie and Eric Cohen, Case #2 of 2017 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 is the result of a cluster subdivision approved in 1979 and is split-zoned with a portion of the lot in the AA-2 (2 acres) zoning district and the balance in the A-1 (1 acre) zoning district; and

WHEREAS: The Building Inspector has determined that the A-1 zoning setback requirements apply to the property; and

WHEREAS: The property is listed in the Assessor's records as 2 acres and is improved with a house built in 1980, a swimming pool in 1983 and a tennis court in 1995; and

WHEREAS: The Planning Board has site plan review authority because the property was part of a cluster subdivision;

WHEREAS: In 2015, the Planning Board approved a site plan for the construction of a new house and the existing pool, tennis court and new site improvements; however, subsequently the plans were changed and the house is currently being renovated; and

WHEREAS: The proposed pool location is shifted slightly to the north and is not significantly different than the approved site plan; 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 Stefanie and Eric Cohen for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code, to construct a swimming pool at 37 Murray Hill Road as shown on the Plans L-1, dated September 23, 2016, L-2 dated December 22, 2016 and L-3 dated December 23, 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.
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, and the applicant 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. An amendment to the 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 #3 OF 2017

5. Jennifer and Mark Brooks  
43 Harvest Drive  
Sec. 22, Blk. 19 Lot 29.  
Special Use Permit to construct a swimming pool

The Board considered the application of Jennifer and Mark Brooks, Case #3 of 2017 and, upon motion duly made and seconded, held the application over to a future meeting (a) for consideration by the full board and (b) to offer the applicant the opportunity to present for review revised plans which better address the landscaped screening of the pool from view from the adjacent properties to the east and west.

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Upon motion duly made and seconded, the minutes of the November 9, 2016, and December 7, 2016, meetings were approved as amended.

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The Chair announced that the next meeting of the Board of Appeals would be held on Wednesday, February 8, 2017, at 8 p.m.

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The meeting was adjourned at 9:25 p.m.

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Cameron McLeod  
Assistant to the Village Planner