

BOARD OF APPEALS

RUTHERFORD HALL
VILLAGE HALL
SCARSDALE, NY
February 8, 2017

A regular meeting of the Board of Appeals of the Village of Scarsdale was held in Rutherford Hall in Village Hall on Wednesday, February 8, 2017, 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 Cameron McLeod at Village Hall tomorrow at 722-1131. Also, tomorrow the decisions will be posted on the web at 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.

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**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, February 8, 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 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 and click on "Notify Me" to subscribe.

By Order of the Board of Appeals, Scarsdale, New York, dated January 24, 2017.
Elizabeth Marrinan, AICP, Village Planner

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CASE #42 OF 2016

1. The Chair declared the hearing open on 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.

Lucia Chiocchio, attorney, Eric Groft, landscape architect, Lili Herrera, landscape architect, Diego Villareale, engineer, were present.

Ms. Chiocchio said the plan had been amended to reduce the height of the stone walls and enhance the landscaping. Ms. Chiocchio said that maximum height of the walls around the patio area has been reduced to five feet six inches, a reduction of approximately two feet. The 12 foot wall that was proposed around the pool area has been reduced to five feet on the exterior side towards Sherbrooke Road and seven feet on the interior side towards the pool, a reduction of six to eight feet in the variance request. Ms. Chiocchio said additional landscaping is now proposed to further supplement the existing landscaping.

Ms. Chiocchio said that there are only 22 properties in the Village that are larger than five acres, of which only nine are residential. The layout of 5 Sherbrooke Road is unique among those nine residential properties.

Mr. Groft said the applicant proposes to supplement the existing evergreen screening along Sherbrooke Road and around the pool enclosure wall. The applicant also proposes to supplement the existing rhododendron glade situated in front of the pool. Mr. Groft provided the plant list.

Mr. Groft said the applicant proposes a four foot retaining wall to create a terrace, which will be concealed with evergreen and climbing hydrangea. A freestanding five foot six inches, previously seven foot, wall is situated on the terrace to create the outdoor patio area.

Mr. Groft said that the exterior of the pool enclosure wall will be bermed on the outside, reducing the exterior height to five feet, in compliance with the enclosure requirements. The Chair asked what the grading of the berm will be as it appeared to differ across two of the submitted cross-sections. Mr. Groft said it will appear very natural, not exceeding a three to one slope. The Chair said that as the wall is now five feet and will be used as the pool enclosure fence, it is compliant, and will not require a variance. Mr. Diodati said yes, this will now be addressed by the variance request to locate the pool in the front yard.

The Chair said while the proposed change in grade is not significant, it will increase gradually over a large distance. The Chair asked where the infill material will be sourced from. Mr. Groft said it will be a combination of the material excavated from onsite along with some offsite material. The Chair asked whether the existing vegetation will cope with the proposed changes. Mr. Groft 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.

CASE #3 OF 2017

2. 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 Mark Brooks, owner, were present. Mr. Sherman described the application and amendments. The proposed arborvitae plantings along the western boundary have been increased in height from five feet to eight feet and have been extended further along the boundary so as to better screen the pool. The proposed arborvitae plantings along the eastern side have been

increased in height from five feet to eight feet and have also been extended further along the boundary.

Mr. Sherman said the screening at grade around the pool enclosure terrace will be five feet along the southern elevation and four feet along the western and eastern elevations.

Mr. Sherman said the gate of the pool equipment pad is proposed to be solid wood. He said this does not form part of the pool enclosure fence, as he understands that would require a separate variance. The Chair asked whether a latched gate is required for the pool filter, Mr. Diodati 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 #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 variances to construct the pool in the front yard and stone walls which 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, 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 and on the Short Environmental Assessment Form, the Board determined that such application, the construction of minor accessory structures (such as driveways, fences or pools) on a wetlands controlled property is an Unlisted Action pursuant to Chapter 152 of the Village Code and 6 NYCRR 617.2(ak) and further determined with the proper erosion and sediment controls in place, limited land disturbance and tree removal and, given the landscaping plans and the required stormwater management facilities, the proposed project is not anticipated to have a significant negative impact on the environment; and

WHEREAS: The property is located in the AA-1 (2 acre) zoning district and is listed in the Assessor's records as 5.312 acres and on the lot coverage form as 232,478 sq. ft.; and

WHEREAS: The house was built in 1902 with alterations and renovations done since then, most recently in 2013 and 2014 with the construction of additions, a new garage and a swimming pool; and

WHEREAS: A tennis court was built in 1985 and a paddle tennis court added in 1988; and

WHEREAS: The property is considered a wetlands controlled property due to the wetlands areas located on the western side of the property and is located in a Sensitive Drainage Area pursuant to Chapter 254 of the Village Code; 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 lot line”; and

- WHEREAS: Chapter 310-47(C) of the Village Code states that tennis courts and swimming pools may not be located within a front yard; and
- WHEREAS: Chapter 310-88 of the Village Code authorizes the Board of Appeals to consider Special Use Permits for the construction of swimming pools; and
- WHEREAS: Chapter 310-67(D) of the Village Code permits the replacement, without expansion, of nonconforming impervious surfaces; and
- WHEREAS: Chapter 158-6 of the Village Code regulates the height of solid walls in the front yard to 4 ft.; and
- WHEREAS: The plans and application materials show the proposed demolition of the existing swimming pool in the rear yard and the construction of a new pool and terrace in the front yard; and
- WHEREAS: The plans also show the construction of terraces enclosed with stone walls in the front yard; and
- WHEREAS: The orientation of the house is unusual in that the rear of the house functions as the front with the driveway sweeping around to the rear where there is a front entry; therefore the front yard, as defined by the zoning code, serves as a rear yard; and
- WHEREAS: The proposed pool location is in the front yard and therefore requires a variance for its location as well as the special use permit; and
- WHEREAS: The plans show the proposed construction of a swimming pool with a spa and the associated fences, walls, terraces and landscaping; and
- WHEREAS: The applicant is also seeking variances for the proposed stone walls around the new terraces in the front yard; and
- WHEREAS: The Board considered the application at its December 7, 2016 meeting and held the matter over to a future meeting pending receipt and review of additional information and consideration of a reduction of the size of the variance request for the wall heights; and
- WHEREAS: The applicant submitted revised plans which reduced the variance request for the wall heights , added additional evergreen landscaping to screen the walls and the pool from view from Sherbrooke Road, and provided additional information; and

WHEREAS: The revised plans show the proposed stone walls around the terraces in the front yard are 5 ft. 6 in high where 4 ft. is permitted for a requested variance of 1 ft. 6 in. or 37%; and

WHEREAS: The stone walls shown as part of the pool enclosure are 5 ft. on the exterior side as required and no variance is necessary; 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 Dove's Nest IV, LLC for variances from Chapters 310-47(C) and 158-6 of the Village Code to construct a swimming pool in the front yard and walls that would exceed the maximum permitted height as shown on Plans L1.0, L2.1, L3.1, L3.2, L3.3, L3.6, L3.7, L5.1, L8.4, L9.1 and LX.X dated 1/27/2017 at 5 Sherbrook Road be approved based on the following findings and conditions:

1. The requested variances will not produce an undesirable change in the character of the neighborhood as the pool and walls will be set back over 175 ft. from the front property line and will be heavily landscaped.
2. The benefit sought by the applicant, namely to locate the pool in the front yard and to screen the terraces with walls which exceed the maximum permitted height, might be achieved by another feasible method; however given the size of the property, the location on a street which can be busy at times, the large front yard setback and the orientation of the house, the variance requests are reasonable.
3. The variance requests may seem substantial, but given the unique circumstances of this property as noted above, are not substantial in this particular context.
4. The requested variances will not have an adverse effect or impact on the physical or environmental characteristics of the neighborhood given the extensive landscaping proposed, limited tree removal and compliance with the Stormwater Management regulations.
5. The requested variances may be self-created; however given the unique characteristics of the property and the house, this finding does not preclude the granting of the variances; and
6. The variances are granted on the condition that the landscaping as shown on the plans referenced above be installed and maintained on the property as long as the walls and swimming pool are in existence.

RESOLVED: That the application of Dove's Nest IV, LLC for a Special Use Permit, pursuant to Chapter 310-88 of the Village Code to construct a swimming pool as shown on Plans L1.0, L2.1, L3.1, L3.2, L3.3, L3.6, L3.7, L5.1, L8.4, L9.1 and LX.X dated 1/27/2017 at 5 Sherbrook Road 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. 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 #3 OF 2017

2. 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, 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-2 (20,000 sq. ft.) zoning district, is shown in the Assessor's records as 23,350 sq. ft.; and

WHEREAS: The original house was built in 1954 and was demolished in 2015. A new house is under construction; and

WHEREAS: The Board of Appeals approved a Special Use Permit for the construction of a swimming pool in 2015 which was never built; 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 considered the application at its January 11, 2017 meeting and held the matter over to a future meeting pending receipt and review of additional information regarding the proposed walls and landscaping; and

WHEREAS: The applicant submitted revised plans which supplemented the

landscaping; and

WHEREAS: The additional landscaping helps to screen the pool from the view from the adjacent properties to the west and east and, given the property's location adjacent to and at a lower elevation than Crossway Field, no additional landscaping is shown to the rear; 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 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 as shown on the Plan L-1 1/13/2017, 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. 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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Upon motion duly made and seconded, the minutes of the January 11, 2017 meeting 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, March 8, 2017, at 8 p.m.

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The meeting was adjourned at 8:40 p.m.

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Cameron McLeod
Assistant to the Village Planner