

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, November 9, 2017, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present
Michael Strone, Acting Chairman
Paul Katz
Ernest Fiore
Steven Lowenthal
Paul Valentine
Tom Foristel

Members Absent
Mark I. Fisher, Chairman

The Chairman called the meeting to order at 8:00 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z17-017	Richard Morgado	856	17	Variance Denied
Z17-025	Brandon & Bridget Lower	523	8	Not Heard – Application Withdrawn
Z17-026	Robert A. Porto	442	2	Not Heard – Removed from Agenda
Z17-027	JNC Inc.	441	50.3	Heard – Closed – Findings being prepared
Z17-028	JNC Inc.	811	28	Variance Granted
Z17-030	Bernard & Cynthia Curry	543	1	Variance Granted
Z17-031	Ronald Denet	910	89	Heard – Adjourned to the December Meeting
Z17-033	249 Halstead Avenue Properties	131	20	Heard – Extension Granted
Z17-034	Joseph DeFonce	247	7	Heard – Closed – Findings being prepared
Z17-035	Domenick Farago	762	13	Heard – Closed – Findings being prepared
Z17-036	Bill Greenberg	642	3	Heard – Closed – Findings being prepared
Z17-037	Louis & Gina Ruisi	716	32	Heard – Adjourned to the December Meeting
Z17-038	Joshua & Nancy Blaine	671	14	Heard – Adjourned to the December Meeting

The next meeting was scheduled to December 14, 2017.

There being no further business to come before the Board, on a Motion duly made and seconded, the meeting was declared adjourned.

Jacqueline Dyer
Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

THE FORMAL RECORD OF THE ABOVE PROCEEDINGS ARE THE TAPES THEREOF.

**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z17-017

Date: November 9, 2017

Property Owners: Richard A. Morgado

Property Address: 49 Park Avenue

Block 856 Lot 17

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Richard Morgado filed an application on April 12, 2017 to create three additional parking spaces at the property. The property is located in a B Zoning District. Pursuant to §235-18-B(3) Accessory off-street parking spaces at the property, other than those which might be incidentally available within the actual driveway area, shall not be located within any front yard or required side yard or within 10 feet from any property line in the required rear yard. This application requires 2 variances: **Variance 1:** The site plan submitted indicates the parking area in the required rear yard to be at the rear yard property line therefore requiring a variance of 10 feet. **Variance 2:** The site plan also indicates the parking area located in the required rear yard to be at the side yard property line therefore requiring a variance of 10 feet. This application has received a positive recommendation from the Planning Board; and

WHEREAS, applicant filed an application for a site plan to convert the rear yard into a parking area with access enhanced by cutting off a small corner of the structure to allow for more parking in the rear yard.

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on June 8, 2017 and October 12, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present either in person or indicated that they had listened to the tapes of the meeting: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone, Steven Lowenthal, Paul Valentine and Tom Foristel; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

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WHEREAS, Applicant had sought variances in 2009 for the exact same relief as that being sought by the instant Application, which relief was denied by unanimous vote of this Board at its December 2009 meeting (Calendar No. Z09-20) (the "Prior Application"); and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., that it has jurisdiction to consider the requested variance.

The Board found that:

- A) At the hearing on October 12, 2017, Applicant's attorney consented to the incorporation into the record for this application of the record for the Prior Application. Accordingly, the relevant portions of the record for the Prior Application, including the findings in connection therewith, are hereby incorporated into and are deemed a part of the record of the instant Application.
- B) Applicant was given ample opportunity to distinguish the facts of this Application from the Prior Application and he was unable convincingly to do so. The only change cited by Applicant related to the anticipated construction of two new homes on the adjacent subdivided lot and the resulting need for a new curb cut on Park Avenue. No evidence was provided with respect to proposed off-street parking for the new development so we cannot assume, as Applicant does, that this new development will create an additional burden on on-street parking. Applicant also confirmed that

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the primary motivation for the variance request is economic as we found in our findings in the Prior Application.

C) That said, the Board hereby restates the findings from the Prior Application denying that application and applies them to the instant Application, to wit:

- (1) The applicant's property is located in a B Zoning District that is zoned for 2 family use. The applicant's building is used for a 3 family use under a claimed prior non-conforming use.
- (2) If the applicant continued to use his property under the claimed prior non-conforming use, no change in the number of on-site parking spaces is required. The applicant may continue to use his property as it is with respect to the number of on-site parking spaces. Also, if the applicant used his property in compliance with the zoning ordinance as a 2 family house, no further on-site parking would be required. However, if the property had to comply with the parking for a 3 family use, the applicant would have to provide 5 off street parking spaces.
- (3) The property currently provides for 2 on-site parking spaces in the detached garage built under the open 1928 building permit. The applicant proposes to add 3 additional spaces in the rear yard. The removal of the corner of the building is proposed to allow a sufficient radius for the 3 cars to access the proposed parking area behind the building.
- (4) According to the applicant, the purpose of the reduction of the size of the building is to permit a greater turning radius and allow more parking in the rear of the lot. The applicant testified that the parking is desirable to facilitate his rental of the units in the building.
- (5) The applicant testified that the only reason to add the parking was to make the units commercially feasible since it is difficult to rent units without adequate off-street parking.
- (6) This parking deficiency, the need to modify the building, and the intrusion into the required yards is self-created since the applicant's family owned this property and the neighboring property which was an empty lot upon which there could have been adequate place to park for a 3 family unit but instead they sold the neighboring property.
- (7) We recognize that permitting additional parking will encourage the property to remain a non-conforming 3 family dwelling and encourage continuation of a non-conforming use.
- (8) Simply because a use is non-conforming does not mean that the non-conformity can be expanded to dimensions not otherwise permitted by the current zoning law.

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(9) Harrison Town Code §235-53 says "A nonconforming use shall be changed only to a conforming use, except as provided in §235-61D(1). Harrison Town Code §235-52 says "no structure or use which does not conform to the requirements of this chapter shall be expanded, enlarged, extended, reconstructed, structurally altered or restored by any means or in any respect whatsoever, nor shall any external evidence of a nonconforming use be increased unless in accordance with §235-61(D)(1). Harrison Town Code §235-61D(1) says "The Board of Appeals shall have authority to grant variances. (1) With respect to nonconforming uses, buildings and lots:

(a) To grant a permit for the enlargement or extension of a nonconforming use or building on the lot occupied by such use or building on the effective date of the provision of this chapter which created such nonconformity, provided that:

[1] Such enlargement or extension was arranged, intended or designed for such nonconforming use or building on the effective date of this chapter.

[2] Such enlargement or extension shall not exceed, in all, 50% of the replacement cost of the existing building on the effective date of this chapter, exclusive of foundations.

[3] All parking and truck loading requirements of Article VII are complied with.

The applicant proposes to change a purported non-conforming use and expand the parking area from 2 to 5 parking spaces. There was no proof that the enlargement was arranged, intended, or designed at the time of the Zoning Code. It is beyond cavil that the property does not meet the parking requirements for a 3 family use since that is what is being sought. The applicant has failed to meet the burden of §235-61(D)(1).

(10) Because nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination (see Matter of Toys "R" Us v. Silva, 89 NY2d 411, 417, 654 NYS2d 100 [1996]). Accordingly, municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them (see Matter of Syracuse Aggregate Corp. v. Weise, 51 NY2d 278, 287 [1980]).

(11) One of the purposes of the Town of Harrison's Comprehensive Zoning Plan is to promote the "gradual elimination of nonconforming uses" (Town of Harrison Code §235-2[F]). Section 235-2(F) of Harrison's Zoning Ordinance declares "[t]he gradual elimination of nonconforming uses" as one of its purposes. Section 235-5B prohibits rebuilding or alteration of any structure except in conformance with the Zoning Ordinance. Section 235-52 prohibits expansion, enlargement, extension, reconstruction or alteration of any nonconforming structure or use except in accordance with section 235-61D. 550 Halstead Corp. v. Zoning Bd. of Appeals of Town/Village of Harrison, 1 NY3d 561, 772 NYS2d 249 (2003).

(12) The right to continue a nonconforming use does not include the right to extend or enlarge such use. Smith v. Board of Appeals, 202 A.D.2d 674, 609 N.Y.S.2d

912 (2nd Dep't, 1994). Protection of vested rights in nonconforming structure existing when a prohibiting code is enacted does not extend to subsequent construction.

(13) The reduction of the building would permit parking that would enable and enhance the continuation of the non-conforming use in contravention to the policy and law of the Town.

(14) Even if the increase in on-site parking does not occur, the use of the property can continue to the extent it is a legally nonconforming use.

(15) The applicant acknowledges that he may continue to have, use, and rent the 3 units in the building without any relief from the Zoning Board. The principal purpose of the requested variances is to make the 3 dwelling units easier to rent and to obtain greater rents. There is nothing that requires the Town to make it easier to rent non-conforming dwelling units or to allow an owner to obtain greater rents when the property is not conforming to the zoning. Indeed, the policy of the Town is to the contrary.

(16) While the applicant argues that his proposal will remove cars from parking on the public streets, the Zoning Code neither requires nor prohibits a tenant from parking on the street. Furthermore, parking on public highways may not be limited to residents except by an act of the State Legislature. *New York St. Pub. Employees Fed. v. City of Albany*, 72 N.Y.2d 96, 531 N.Y.S.2d 770 (1988). ("The Legislature retains ultimate control over the highways, however, and these provisions are expressly made subject to its power to restrict localities and ensure uniform highway regulation throughout the State...

Historically, English highways were said to be the King's and impeding their use was proscribed for his right was one of passage for himself and for his subjects (see, *Town of Galen v. Clyde & Rose Plank Rd. Co.*, 27 Barb 543, 551; see also, *Cohen v. Mayor of City of N.Y.*, 113 N.Y. 532, 536, 21 N.E. 700). Tailoring the English rule to democratic concepts, the common law in New York has restricted local regulation by impressing a public trust upon the streets. The right to use of the highways is said to rest with the whole people of the State, not with the adjacent proprietors or the inhabitants of the surrounding municipality (*People v. Kerr*, 27 N.Y. 188, 199; accord, *City of New York v. Rice*, 198 N.Y. 124, 128, 91 N.E. 283). This public right is "absolute and paramount" (*Cities Serv. Oil Co. v. City of New York*, 5 N.Y.2d 110, 115, 180 N.Y.S.2d 769, 154 N.E.2d 814, rearg. denied 5 N.Y.2d 1041, 185 N.Y.S.2d 1025, 158 N.E.2d 131 cert. denied 360 U.S. 934, 79 S.Ct. 1453, 3 L.Ed.2d 1546; *Deshong v. City of New York*, 176 N.Y. 475, 484, 68 N.E. 880").

(16) However, with respect to the existing garage, there was a valid building permit issued for its construction at its current location. It has existed for some 75+ years and has become part of the character of the neighborhood and has been no apparent detriment to the surrounding properties or the neighborhood.

NOW THEREFORE BE IT RESOLVED, that the application for variances to allow parking in the required rear and side yards as indicated in the plans of Tom F. Abillama, R.A. dated March 12, 2008 submitted with this application be, and the same is hereby denied.

Foregoing Resolution submitted by Zoning Board Member Paul Katz, seconded by Zoning Board Member Paul Valentine at the November 9, 2017 meeting.

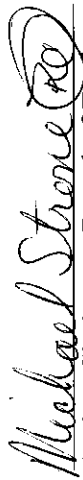
ADOPTED: AYES: Michael Strone, Ernest Fiore, Paul Katz, Steven Lowenthal and Paul Valentine

NAYS: Tom Foristel

ABSTAINED: None

ABSENT: Mark Fisher


Secretary, Board of Zoning Appeals


Acting Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055 or 670-3056.

TOWN CLERK
HARRISON, NY

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Morgado
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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z17-028

Date: November 9, 2017

Property Owner: JNC Inc.

Property Address: 493 Main Street

Block 811, Lot 28

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Michael Stein with Hudson Engineering appeared on behalf of JNC Inc., filed an application on August 4, 2017 for side yard variances in connection with a subdivision. This property is located in a B Zoning District. This property has been referred to the Zoning Board by the Planning Board for a consideration of side yard variances in connection with a proposed subdivision. Pursuant to §235-9(B) of the Table of Dimensional Regulations of the Zoning Ordinance of the Town/Village of Harrison the minimum required setback is 7 feet with a total to be a minimum of 15 feet. The existing house side yard setback has been reduced to 4.8 feet due to the proposed subdivision, thus requiring a variance of 2.2 feet (hereinafter referred to as "Variance A"). The total of both side yards has been reduced to 9.8 feet, thus requiring a variance of 5.2 feet (hereinafter referred to as "Variance B"); and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on September 14, 2017 and October 12, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present either in person or indicated that they had listened to the tapes of the meeting: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone, Steven Lowenthal, Paul Valentine and Tom Foristel; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

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WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. The Application comes to this Board with a positive recommendation from the Town Planning Board.
2. The area which abuts the western property line of the entire lot is in public hands and dedicated to public use. It is not impacted by the proposed subdivision in any way.
3. The property exists in a B Zoning District. Pursuant to §235-9(B) of the Table of Dimensional Regulations of the Zoning Ordinance of the Town/Village of Harrison the minimum required setback is 7 feet with a total to be a minimum of 15 feet. In 2009, however, the Town Board—while not changing the 15-foot minimum—up-zoned the B Zone to increase the minimum setback to 7 feet from the 5-foot minimum that had been the standard previously.
4. It must be noted that the area in which the property is situated is an older community of well-established homes, many of which pre-date the existence of any zoning regulations for the Town. With the able assistance of the Board's administrative assistant, Applicant provided a survey of residences in the surrounding area indicating that many have pre-existing, non-conforming side yard setbacks.

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5. With respect to Variance A:

- a. This proposed subdivision seeks to create two lots from a single lot with a house that is pre-existing non-conforming with respect to the side yard setback on the eastern property line. The creation of the subdivision requires a variance for this side yard although the distance between the structure and the eastern property line remains unchanged.
- b. There were no objections voiced from the surrounding neighbors who were duly-noticed. Clearly, the issuance of a variance is appropriate to legalize a setback which has remained unchanged for over 75 years and which is in keeping with other residences in the area.

6. With respect to Variance B:

- a. Applicant is seeking to subdivide a lot in a manner that provides the minimum Code-required square footage for each lot. If the Applicant were to re-draw the property line between the sub-divided parcels in order to achieve the appropriate side yard setbacks between the parcels, it would create an undersized lot that would, itself, require a variance.
- b. The total setback between the existing residence and the proposed residence conforms to the Code. The requested variance is necessitated by the placement of the property line in order to create 2 appropriately-sized lots. It cannot be avoided without getting a variance for lot-size. It cannot be avoided by reducing the size of the residence to be constructed on the sub-divided parcel because the variance refers to the distance between the dividing property line and the existing residence.
- c. Most importantly, the setback area between the existing residence and the residence to be constructed is entirely comprised of a shared driveway which serves both residences and leads to separate detached garages. Accordingly, this subject property line will always remain invisible to the eye. Due to the conforming overall distance between the setbacks and the residences, the appearance from the street will be one of conformity with the Code.
7. With respect to both Variance A and Variance B, although each may be said to be self-created and may be said to be substantial, they are the minimum variances possible to provide the benefit the Applicant is seeking. There is no detriment to the community nor will it produce an undesirable change in the character of the community.

NOW THEREFORE BE IT RESOLVED, that the application for side yard setback variances to allow a subdivision to be approved as indicated in the plans submitted with this application be, and the same are hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans by Hudson Engineering, C-1 dated 2/16/16, last revised 8/1/17, C-2 dated 3/20/17, last revised 8/1/17, C-3 dated 11/25/15, last revised 8/1/17.

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This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Paul Katz, seconded by Zoning Board Member Ernest Fiore at the November 9, 2017 meeting.

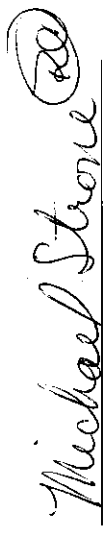
ADOPTED: AYES: Michael Strone, Ernest Fiore, Paul Katz, Steven Lowenthal,
Paul Valentine and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: Mark Fisher


Secretary, Board of Zoning Appeals


Acting Chairman, Board of Zoning Appeals

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TOWN CLERK
HARRISON NY

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JNC, Inc.
11/09/17

**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z17-030

Date: November 9, 2017

Property Owner: Bernard Curry

Property Address: 4 Belmont Avenue

Block 543, Lot 1

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Mitchell Wilk Architecture filed an application on August 14, 2017 on behalf of Bernard Curry for a variance for a new pool house. This property is located in an R-1 Zoning District and the property is located on a corner thus having two front yards. Pursuant to §235-18(B) of the Zoning Ordinance of the Town/Village of Harrison no accessory building or structure in an R-1 District shall be located nearer to the street line than 75 feet. The proposed pool house indicates a setback from the property line along one of the street frontages of 53.73 feet, thus requiring a variance of 21.27 feet; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on October 12, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present or indicated that they had listened to tapes of the meeting: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone, Steve Lowenthal, Paul Valentine and Tom Foristel; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

*Z17-030
Curry
11/9/17*

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. This application relates to the construction of a pool house that will be located 53.73 feet from one of the front yard property lines.
2. This property has two front yards. One of the front yards borders on the golf course of the Westchester Country Club. Applicant has submitted a letter from a representative of the Club indicating that they have no objection to the proposed project.
3. The closest neighbor to the other front yard is located a substantial distance away from applicant's property. Applicant has also submitted a screening plan providing for the planting of approximately 37 10 foot fir trees that will effectively screen the pool house from view from the adjacent property.
4. There are other properties in the area with pools and pool houses and the construction of the pool house will not produce an undesirable change in the character of the neighborhood.

NOW THEREFORE BE IT RESOLVED, that the application for permission to construct a pool house within the required front yard setback as indicated in the plans submitted with this application be, and the same is hereby granted subject to the following.

The granting of this variance is specifically conditioned on the installation, and continued maintenance, of a screening plan, dated October 13, 2017, prepared by Mitchell Wilk Architecture, consisting of approximately 37 10 foot fir trees.

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Curry
11/9/17

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans by Mitchell Wilk Architecture, A001 dated 8/14/17, A201 dated 8/14/17, A202 dated 8/14/17, A203 dated 8/14/17, A601 dated 8/14/17, A602 dated 8/14/17.

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Ernest Fiore, seconded by Zoning Board Member Tom Foristel at the November 9, 2017 meeting.

ADOPTED: AYES: Michael Strone, Ernest Fiore, Paul Katz, Steven Lowenthal, Paul Valentine and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: Mark Fisher

Rose Marie Casemano
Secretary, Board of Zoning Appeals

Michael Strone *RS*
Acting Chairman, Board of Zoning Appeals

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Curry
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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No.Z17-032

Date: November 9, 2017

Property Owner: Frank Canonico

Property Address: 48 Sterling Ave

Block 61 Lot 29

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Frank Canonico filed an application on 9/6/17 for a variance to construct a two story addition with attached deck and stairs at the above referenced property. The property is located in a B Zoning District and pursuant to 235-9B of the Zoning Ordinance, a 10 foot side yard and a 25 foot rear yard setback are required. The two story addition reduces the rear yard setback to 24 feet thus requiring a 1 foot variance. The wood deck and stairs attached to the addition reduce the rear yard and side yard setbacks to 14 feet and 5 feet, 6 inches, respectively, thus requiring variances of 11 feet and 4 feet, 6 inches, respectively.

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on October 12, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present: Paul Valentine, Paul Katz, Thomas Foristel, Steven Lowenthal, Michael Strone, Ernest Fiore, and Mark Fisher; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

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WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. There is no building bordering the rear yard as it backs up onto the Metro North railroad tracks. Accordingly, the granting of the rear yard variance will not create any detriment to the property located to the rear.
2. The side yard variance is required as a result of the location of an 11'x 21' foot deck constructed approximately 1 foot above ground. Only a minor portion of the deck, consisting of the stairs leading up to the deck, is located as close as 5'6" to the side yard property line. The remainder of the deck is between 9'3" and 9'6" from the side yard property line which represents a minimal incursion into the required side yard. There is also a hedge that separates the property from the adjacent property. Accordingly, we find that the granting of a side yard variance will not create a detriment to the adjacent property.
3. The addition and deck were constructed approximately 22 years ago and, accordingly, the granting of the variance will not produce an undesirable change in the character of the neighborhood.
4. There were no objections from neighbors.

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NOW THEREFORE BE IT RESOLVED, that the application for a side and rear yard variance to legalize an existing two story addition and attached deck be, and the same is hereby granted;

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

Foregoing Resolution submitted by Zoning Board Member Ernest Fiore, seconded by Zoning Board Member Paul Valentine at the November 9, 2017 meeting.

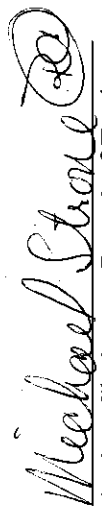
ADOPTED: AYES: Michael Strone, Ernest Fiore, Paul Katz, Steven Lowenthal, Paul Valentine and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: Mark Fisher


Secretary, Board of Zoning Appeals


Acting Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055 or 670-3056.

TOWN CLERK
HARRISON, NY

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