

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Wednesday Evening, August 8, 2018, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

Mark I. Fisher, Chairman
Ernest Fiore
Steven Lowenthal
Thomas Foristel
William Harold
Michael Tiesi

Members Absent

Paul Katz

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>
Z17-031	Ronald Denet	910	89	Variance Granted
Z17-036	Bill Greenberg	642	3	Variance Granted
Z17-041	Arturo Rossi	761	9	Variance Denied

The next meeting was scheduled to September 13, 2018.

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

Telluride
Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

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

RECEIVED
2018 AUG - 9 P 2:31
TOWN CLERK
HARRISON, NY

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

Calendar No. Z17-031

Date: August 8, 2018

Property Owner: Ronald & Jeann Denet

Property Address: 160-162 Lake Street

Block 910, Lot 89

WHEREAS, the property owner, filed an application to legalize a deck addition 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, Ronald Denet, filed an application on August 14, 2017 for a variance to legalize an existing deck. This property is located in a B Zoning District and pursuant to §235-9(B) of the Table of Dimensional Regulations of the Zoning Ordinance of the Town/Village of Harrison the minimum required side yard setback is 7 feet with a total of both to be a minimum of 15 feet. As per the site plan submitted for the deck legalization the side yard setback is indicated to be 0 feet thus requiring a variance of 7 feet.

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, November 9, 2017, January 11, 2018 and July 12, 2018 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, Steven Lowenthal, Tom Foristel, William Harold and Michael Tiesi (William Harold and Michael Tiesi were only present at the July 12th hearing); 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. 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:

*Z17-031
Denet
8/8/18*

- (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 property, which is the subject of the application, is located in West Harrison and borders Lake Street Boulevard on one side and Garfield Avenue (an unimproved paper street) on the opposite side. Access to the property from Lake Street Boulevard is through a paved driveway bordering Jefferson Street, which is a mapped paper street. The area of the property adjacent to Garfield Avenue is considered from zoning purposes to be a side yard thus requiring a 7 foot side yard setback.
2. The area denominated as Garfield Avenue is currently a grassy area that is surrounded by a heavily wooded area. In addition, there is a sharp drop off in elevation to the adjacent land which is part of Silver Lake Park. A fence has been erected in that area presumably for safety purposes.
3. This application relates to the legalization of a deck that has been constructed on the Garfield Avenue side of the property. Based upon our review of a 2002 survey, which was one year prior to the date applicant acquired the property, the deck that existed at that time was located 4.92 feet from the property line. The deck which is the subject of this application now extends 2.58 feet beyond the property line. In addition, there is a stairway attached to the deck that is located entirely outside the property line and which extends 14.67 feet beyond the property line. It is apparent to us that the deck was enlarged and reconstructed by applicant subsequent to applicant's acquisition of the property.

Z17-031
Denet
8/8/18

4. Legalization of the deck affords applicant the benefit of having a usable back deck off of the kitchen and provides a second means of ingress/egress to and from the house. At present the only other entrance is through the front door. In that connection, applicant has submitted a letter from a Captain of the Yonkers Fire Department. The letter indicates that in the event of a fire or need for an emergency exit; the present configuration of the house creates a safety concern due to the location of the front door and the location of the garage and boiler rooms below. In the event of a fire in one of those areas the hot smoke gases and flames would likely travel up the staircase to the front door preventing an exit out the front door as an option. Exiting from the windows would leave an approximately 20 ft. drop to the blacktop driveway. Accordingly, the Captain strongly recommends that an exit off the back deck be provided as a means of egress.

5. As a result of its location, the deck will not be visible from any adjacent property and the granting of a variance will not produce a change in the character of the neighborhood or create an adverse impact on any adjacent property.

6. While the variance is substantial from a numerical point of view and the difficulty is self-created, we believe the other factors cited above outweigh those considerations.

7. Since a portion of the deck, as well as the entire stairway, is located over the property line, we do not have the authority to grant a variance for the legalization of the entire deck or the stairway. We do have the authority to grant a side yard variance for the portion of the deck that extends to the property line and are willing to do so provided the owner of the adjacent property consents to the extension of the deck and the stairway into the adjacent property.

8. Applicant has indicated that the adjacent property is owned by the Town of Harrison. However, the property owner who owns the property on Lake Street Boulevard adjacent to the property and who sold the property to applicant has indicated his belief that the consent of Westchester County may be required for any action to be taken with respect to the adjacent property.

9. We are willing to grant a side yard variance for the deck conditioned on the applicant obtaining a revocable license from the Town of Harrison permitting applicant to extend the deck and stairway onto Garfield Avenue and obtaining any other consent that may be required. The termination of any license to applicant would require applicant to remove the deck.

NOW THEREFORE BE IT RESOLVED, that the application for a 7 foot side yard variance for an existing deck as indicated on a site plan filed with the Harrison Building Department on 9/30/15 (the "Site Plan") be, and the same is hereby granted conditioned on the following:

1. Applicant's obtaining a revocable license from the Town of Harrison allowing a portion of an existing deck, as well as the existing stairwell, to be located on the adjacent land owned by the Town of Harrison as indicated on the Site Plan.

Z17-031
Denet
8/8/18

2. Applicant's obtaining such other consents that are determined by the Town Attorney of Harrison to be required in connection with the granting of the foregoing license.
3. Applicant's agreement to remove the existing deck and stairs in the event of the termination of the license referred to above.

Foregoing Resolution submitted by Zoning Board Member Steven Lowenthal, seconded by Zoning Board Member Ernest Fiore at the August 8, 2018 meeting.

ADOPTED: AYES: Mark Fisher, Ernest Fiore, Steven Lowenthal, Thomas Foristel,
William Harold and Michael Tiesi

NAYS: None

ABSTAINED: None

ABSENT: Paul Katz


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

2018 AUG -9 P
TOWN CLERK
HARRISON, N.J.

RECEIVED

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.

Z17-031
Denet
8/8/18

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

Calendar No. Z17-036

Date: August 8, 2018

Property Owner: William Greenberg

Property Address: 2929 Purchase Street
Purchase, New York 10577

Block 642 Lot 3

WHEREAS, the applicant, the property owner, submitted plans (1) to legalize a turnaround extension located to the left of an existing driveway and (2) to construct a fence 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, William Greenberg filed applications on September 18, 2017 and in June 2018 for area variances from the Zoning Ordinance. This property is located in an R-1 Zoning District and, pursuant to §235-9(B) of the Table of Dimensional Regulation of the Zoning Ordinance of the Town/Village of Harrison, the minimum required side yard setback is 20 feet. Also per §235-24.1 a minimum buffer setback of 100 feet shall be established along Purchase Street. Finally, pursuant to §235-26-C, no fence or wall in a required front yard shall have a height of greater than 4 feet. This application requires 4 variances. The expansion of the existing driveway is shown to have a front yard setback of 53 feet and a side yard setback of 12.20 feet thus requiring variances of 47 feet (with respect to the buffer setback) and 7.8 feet (with respect to the side yard setback), respectively; a portion of a proposed 6 foot fence is located in the required front yard, thus requiring a 2 foot height variance and the proposed fence is located in the buffer setback.

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 November 9, 2017, December 14, 2017, January 11, 2018, February 8, 2018, June 14, 2018 and July 12, 2018, 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, Steven Lowenthal, Tom Foristel, William Harold and Michael Tiesi (William Harold and Michael Tiesi were only present at the June 14th and July 12th hearings).

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance; all those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

*Z17-036
Greenberg
8/8/18*

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 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 an area 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, Section 267-a and 267-b and Harrison Town Code Section 235-56, et seq., it has jurisdiction to consider the requested variances.

The Board found that:

1. This application was initially filed to legalize a turnaround extension located to the left of an existing driveway. That extension was constructed in 2000 and has existed in its current condition since that time. Although applicant obtained a building permit in 2000, the turnaround that was constructed did not comply with the provisions of the permit and a variance was in any event required to comply with the 100 foot buffer setback.
2. Applicant is an attorney and conducts a legal practice at the property. As a result there are frequently a significant number of cars parked in the driveway. The turnaround was constructed to accommodate the flow of traffic in and out of the driveway.
3. At the time that the turnaround was originally constructed, a 6 foot stockade fence located on applicant's property screened the driveway from view by the adjacent neighbor. Over time, that fence deteriorated and was ultimately removed in 2014.
4. The adjacent neighbor has raised a concern about the adverse visual impact caused by the significant amount of vehicles utilizing applicant's driveway. In order to address that concern, applicant has agreed to construct a scaled down version of the original fence. The fence would begin approximately 10 feet off of Purchase Street and would extend for approximately 98 feet. The first 10 feet of the fence would have a height of 4 feet and the remainder of the fence, including approximately 20 feet located in the front yard setback, would have a height of 6

Z17-036
Greenberg
8/8/18

feet. The construction of the fence would, together with existing plantings, effectively shield applicant's driveway from view by the adjacent neighbor.

5. Granting of the variance for the turnaround benefits the applicant by alleviating congestion problems in his driveway relating to the conduct of his law practice. The turnaround has existed for many years without any apparent detriment to any nearby property other than the visual impact on the adjacent neighbor caused by the removal of the old fence. That visual impact will be addressed by the erection of a new scaled down fence. Furthermore, in view of the history of the turnaround and the prior fence, the granting of variances for the turnaround and the fence will not produce an undesirable change in the character of the neighborhood.
6. The Planning Board has issued a positive recommendation with respect to the granting of a variance from the 100 foot buffer requirement in the case of the turnaround.
7. We have been extremely reluctant to grant height variances for fences. However, we believe that the instant case involves a unique situation. The proposed fence is a scaled down version of a fence that existed for many years and most importantly protects a residential neighbor from the adverse visual and other impacts caused by the conduct of an active law practice in the adjacent property.

NOW THEREFORE BE IT RESOLVED that the application for variances to permit (1) the existing turn-around to be located within the 100 foot buffer from Purchase Street and 12.20 feet from the side yard property line, (2) a portion of a 6 foot fence to be located in the front yard setback and (3) a fence to be located within the 100 foot buffer, all as indicated in a Survey, dated June 7, 2017, prepared by TC Merritts Land Surveyors and annotated to indicate the location of the fence, be, and the same is hereby granted subject to the following conditions:

The fence shall be limited to a height of 4 feet for the first 10 feet.

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.

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

Z17-036
Greenberg
8/8/18

and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Steven Lowenthal, seconded by Zoning Board Member Thomas Foristel at the meeting on August 8, 2018.

ADOPTED: AYES: Mark Fisher, Ernest Fiore, Steven Lowenthal, Thomas Foristel, William Harold and Michael Tiesi

NAYS:

ABSTAINED:

ABSENT: Paul Katz


Secretary, Board of Zoning Appeals


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.

RECEIVED
2018 AUG -9 P 2:30
TOWN CLERK
HARRISON, NY

Z17-036
Greenberg
8/8/18

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

Calendar No. Z17-041

Date: August 8, 2018

Property Owner: 34 Old White Plains Ave LLC

Property Address: 34 White Plains Road

Block 761, Lots 9 & 10

WHEREAS, the property owner applied for a Building Permit for a one-family residence 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, Attilio Rossi, on behalf of the property owner, filed an application on November 14, 2017 for a variance for lot width in order to build a new single family home. This property is located in an R-75 Zoning District and the property is existing and non-conforming with regards to lot area as it contains 6,244 feet as compared to the 7,500 feet required in the Ordinance. Pursuant to §235-4 of the Zoning Ordinance lot width is measured from side lot line to side lot line along a line parallel to the street line at the required minimum front yard depth. The minimum required lot width is required to be maintained from the minimum front yard setback for a distance of not less than 35 feet toward the rear lot line. In this case the lot width is 60 feet thus requiring a variance of 10 feet.

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 December 14, 2017, February 8, 2018, March 8, 2018, May 24, 2018, June 14, 2018 and July 12, 2018 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, Steven Lowenthal, Tom Foristel and William Harold (William Harold was only present at the May 24th, June 14th and July 12th meetings); and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and various neighbors appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it.

WHEREAS, the Board reviewed all testimony and documents submitted.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, that it does not have jurisdiction to consider the requested variance since the property has been merged with an adjacent property.

*Z17-041
34 Old White Plains Avenue LLC
8/8/18*

The Board found as follows:

1. Applicant is seeking a variance to construct a single family house on a parcel of undeveloped land (the "Undeveloped Property") located at 34 White Plains Avenue. The land contains 6,244 square feet as compared to the 7,500 square feet required by the Ordinance. The Undeveloped Property is located adjacent to a developed property (the "Developed Property") at 36 White Plains Avenue that contains a house (constructed in the 1930's) that is located on 5,000 square feet of land. Accordingly, both the Undeveloped Property and the Developed Property are non-conforming since neither one satisfies the 7,500 square foot requirement of the Ordinance. The 7,500 square foot requirement has been in existence since at least 1974.
2. Since neither property satisfies the dimensional requirement of the Ordinance and there is a history of common ownership of the Undeveloped Property and the Developed Property, we are confronted with a threshold issue as to whether, pursuant to the provisions of the Ordinance, there has been a merger of both properties. If that is the case, then we would not have the authority to grant a variance since the Undeveloped Property and the Developed Property would be merged and treated for all purposes as a single lot that satisfies the 7,500 square foot requirement of the Ordinance.
3. §235-5D of the Ordinance provides as follows:

"Adjoining lots which are now or which hereafter, under circumstances, come to be held in common ownership shall be deemed merged and treated for all purposes as a single lot, regardless of whether or not such merger is recorded upon any Tax Map or other official record, where such merger is necessary for the lot to conform with the dimensional regulations of this chapter."
4. A review of the deeds filed with the Tax Assessor of the Town of Harrison indicates that both the Undeveloped Property (lots 9 and 10) and the Developed Property (lots 11 and 12) were acquired by Attilio Rossi pursuant to one Deed, dated as of March 3, 2010, that was filed with the Tax Assessor on March 17, 2010. Subsequently, pursuant to separate deeds dated March 29, 2010, Mr. Rossi conveyed (i) the Undeveloped Property to 34 Old White Plains Ave LLC and (ii) the Developed Property to 36 White Plains Ave LLC. Those deeds were filed with the Tax Assessor on April 26, 2010 in the case of 34 Old White Plains Ave LLC and April 19, 2010 in the case of 36 White Plains Ave LLC. Finally, on November 11, 2011, 36 White Plains Ave LLC re-conveyed the Developed Property to Attilio Rossi.
5. Based on the conveyances referred to above, it is clear that as of March 3, 2010, both the Undeveloped Property and the Developed Property were held in common ownership by Attilio Rossi, and, accordingly, were merged into one single lot in order to conform with the dimensional requirements of the Ordinance.
6. A review of the deeds previously filed with the Tax Assessor prior to March 2010, indicates that all prior deeds involved conveyances of both the Undeveloped Property and the Developed Property in a single deed covering lots 9, 10, 11 and 12.

Z17-041
34 Old White Plains Avenue LLC
8/8/18

7. We also note that Applicant has indicated that there are separate tax bills for the Undeveloped Property and the Developed Property. However, as provided in Section 235-5D of the Ordinance, a merger of properties is deemed to occur regardless of whether the merger has been recorded on a Tax Map or other official record.

8. As a result of our finding that there has been a merger of the Undeveloped Property (lots 9 and 10) and the Developed Property (lots 11 and 12) into one single lot, we do not have the authority to grant a variance on the Undeveloped Property (lots 9 and 10) since it no longer exists as a separate lot.

9. In order for applicant to proceed with plans to build a new single family home, it would first have to file an application with the Planning Board for a subdivision of the merged lot.

NOW THEREFORE BE IT RESOLVED that the application for a variance be, and it hereby is, denied.

Foregoing Resolution submitted by Zoning Board Member William Harold, seconded by Zoning Board Member Steven Lowenthal at the August 8, 2018 meeting.

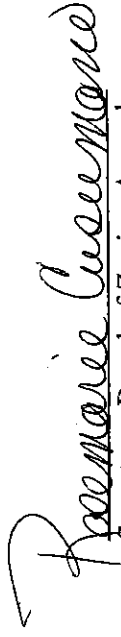
ADOPTED: AYES: Mark Fisher, Steven Lowenthal, Thomas Foristel and William Harold

NAYS: Ernest Fiore

ABSTAINED: None

ABSENT: Paul Katz

RECUSED: Michael Tiesi


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals