

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, May 9, 2019 at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

Paul Katz, Acting Chairman
Steven Lowenthal
Thomas Foristel
William Harold
Michael Tiesi

Members Absent

Mark I. Fisher, Chairman
Ernest Fiore

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>
Z18-029	Rocco DiLuna	846	25	Variance Granted
Z19-007	Michael & Olivia Curry	225	98	Variance Granted
Z19-008	Daniel & Lora Katsikas	601	66	Heard – Closed – Findings being prepared
Z19-009	Delilah Galente	834	6	Heard – Closed – Findings being prepared
Z19-010	Hugo Ruiz	519	4	Heard – Adjourned to the June Meeting
Z19-011	Montessori Childrens Center	692	3	Heard – Closed – Findings being prepared

The next meeting was scheduled to June 13, 2019.

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

Jacqueline Sheer

Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

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

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

Calendar No. Z18-029

Date: May 9, 2019

Property Owner: 111 Gainsborg LLC

Property Address: 111 Gainsborg Avenue

Block 846 Lot 25

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, Rocco DiLuna, on behalf of the property owner, filed an application on October 17, 2018 for a variance from the Zoning Ordinance to construct a new two-family home located at 111 Gainsborg Avenue in a B zoning district. Pursuant to §235-33.3(B)-A, the lowest floor of a dwelling unit shall not be higher than 4 feet above the lowest pre-existing ground elevation along the rear property line. Also as per §235-33.3(B)-E, no off street parking space shall have a slope in excess of 5% in any direction. As per §235-33.3(B)-G, no retaining wall greater than 3 feet in height shall be located within 4 feet horizontal of the rear property line. The lowest level of the existing ground elevation along the rear property line was determined to be @ 274.9. The proposed 2-Family Dwelling is shown to have the lowest floor @ 279 thus requiring a variance for being greater than 4 feet above the lowest pre-existing ground elevation along the rear of the property. The driveway (off street parking space) is proposed to have a slope of 10% thus requiring a variance; 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 December 13, 2018, February 14, 2019, March 14, 2019 and April 10, 2019 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present or indicated that they had listened to tapes of the meeting: Mark Fisher, Ernest Fiore, Paul Katz, Steve Lowenthal, Thomas Foristel, William Harrold and Michael Tiesi

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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DiLuna
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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., 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 proposed construction of a new two-family residence on a property located in a B-Zone at 111 Gainsborg Avenue.
2. Applicant acquired the property in 2015 and on January 29, 2018 filed an application with the Building Department for a building permit.
3. On February 13, 2018, applicant appeared before the Architectural Review Board and the Board approved the project.

4. On April 9, 2018, the Building Department disapproved the application for the building permit. The following printed language was circled on the disapproval notice:

“IT APPEARS THAT THE HEIGHT FROM THE GRADE TO THE FIRST FLOOR IS GREATER THAN 5 FEET AROUND THE ENTIRE HOUSE. THEREFORE, THE HOUSE IS TOO HIGH.”

In addition, the following written notification was also included in the notice:

“NEVER EXCEEDS MAX ROOF HEIGHT-GRADE PLANE.”

5. The denial letter was accompanied by a chart of the dimensional regulations of the Ordinance indicating that the maximum height in a B-Zone was 30 feet. Applicant has alleged that this information was different from the information initially provided to them.

6. On June 21, 2018, applicant filed an amended application with the Building Department which it believed fully complied with the dimensional regulations that were provided as a basis for the April 9th denial.

7. The amended application was never approved or denied.

8. On October 2, 2018, the Ordinance was amended to add §23-33.B which contains supplemental regulations (the “New Regulations”) for Two Family Residence Districts.

9. Applicant seeks a variance from two specific provisions of the New Regulations relating to the elevation of the lowest floor of the dwelling and the slope of the driveway.

10. There are currently two non-conforming residences located behind one another at 111 Gainsborg Avenue. The demolition of these structures and their replacement with a new single two-family structure would clearly result in a benefit to the neighborhood.

11. The .1th of a foot elevation variance is not substantial and is of a de minimis amount.

12. The granting of the variance will allow the applicant to build a residence with more living space above grade as compared to a zoning compliant slope which would require more below grade space.

13. Based on a numerical calculation, the proposed 10% slope for the driveway is substantial in that it represents a 100% deviation from the 5% requirement of the Ordinance. The plans submitted by applicant indicate that the 10% slope results in a 31 inch change in elevation over the 26 feet of the driveway as compared to a 15.5 inch change in elevation that would be produced from the 5% slope requirement of the Ordinance. We do not want to minimize the substantiality of the deviation particularly in view of the fact that the New Regulations were specifically designed to minimize grade changes.

14. To address the issues related to the extent of the slope and, as indicated in the last hearing on this matter, we are specifically conditioning the granting of this variance on the confirmation by the Building Inspector and the Town Engineer, prior to the issuance of a Building Permit, that the proposed slope of the driveway does not exceed 10%.

15. While applicant acquired the property prior to adoption of the New Regulations, which clearly requires a variance, there is an unresolved issue about whether applicant was entitled to be issued a building permit under the provisions of the Ordinance that existed at the time that the original application for a building permit was filed. While we do not have enough information to resolve that issue, we hold that the difficulty was not self-created.

16. This application is unique in many respects, particularly in view of the fact that more than 16 months have now elapsed since applicant first filed its application for a building permit. Accordingly, the granting of this variance should not be viewed as a precedent for granting variances under the New Regulations.

NOW THEREFORE BE IT RESOLVED, that the application for a (a) a .1th foot variance with respect to the elevation of the lowest floor and (b) a 5% variance with respect to the slope of the driveway to allow construction of a two-family dwelling as indicated in the plans submitted with this application be, and the same is hereby granted, subject to the following conditions.

This variance is specifically conditioned on the confirmation by the Building Inspector and the Town Engineer, prior to the issuance of a Building Permit, that the proposed slope of the driveway does not exceed 10%.

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

Foregoing Resolution submitted by Zoning Board Member Thomas Foristel, seconded by Zoning Board Member Steven Lowenthal at the May 9, 2019 meeting.

ADOPTED:

AYES: Paul Katz, Steven Lowenthal, Thomas Foristel, William Harold
and Michael Tiesi

NAYS: None

ABSTAINED: None

ABSENT: Mark Fisher, Ernest Fiore


Rosemarie Casemore
Secretary, Board of Zoning Appeals


Paul Katz
Acting Chairman, Board of Zoning Appeals

2019 MAY 14 A 9:10

TOWN CLERK
HARRISON, NY

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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.

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

Calendar No. Z19-007

Date: May 9, 2019

Property Owner: Michael & Olivia Curry

Property Address: 72 South Road

Block 225 Lot 98

WHEREAS, the applicant, the property owner, filed plans to legalize 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, Michael and Olivia Curry filed on March 5, 2019, an application for an area variance from the Zoning Ordinance to legalize an existing fence located at 72 South Road. The property is located in an R-1/3 Zoning District and pursuant to §235-9(B) of the Table of Dimensional Regulations the minimum required front yard setback is 30 feet. As per §235-26 C(1) no fence or wall in a required front yard shall have a height greater than 4 feet. The site plan submitted to legalize the fence indicates a fence that is 6 feet high in the required front yard thus requiring a variance of 2 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 April 10, 2019, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present: Mark Fisher, Paul Katz, Ernest Fiore, Steve Lowenthal, Tom Foristel, William Harrold and Michael Tiesi; 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 thereunder, 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:

- (A) the benefits to the applicant if the variance is granted, as weighed against the

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Curry
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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 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 §§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. Applicant's property is located on an oversized irregularly shaped corner lot. The front of applicant's house faces South Road and the rear of the house backs up on Highfield Road and, for zoning purposes, applicant is deemed to have two front yards, one on South Road and the other on Highfield Road. There is a large side yard that extends from the side of applicant's house to the intersection of South Road and Highfield Road. Substantially all of this side yard is screened from view from both South Road and Highfield Road by significant screening.
2. Applicant acquired the property in August, 2012 and has done substantial upgrades since that time, including erecting a zoning compliant stone wall in the front of the house on South Road. Applicant also recently installed the fence which is the subject of this application. The fence was built, in part, to shield from view from neighboring properties on South Road, as well as from passersby, a seasonal ice rink that applicant installs in the side yard during the winter months.
3. The fence begins at a point a few feet off of South Road adjacent to the stone wall, and extends for approximately 35 feet towards the rear of the property. The lattice design is made from wooden pieces arranged in a criss-cross pattern with spaces in between that allows light to penetrate between the spaces. There are two 6 foot high sections on either side of a 4 foot section that swings open to allow access to the side yard. There is also an arch on top of the 4 foot section.
4. Unlike solid fences, which serve as barriers, this fence, which applicant categorizes as an "open lattice screen", is more appropriately viewed as part of the landscaping of the property.

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5. Applicant constructed the fence based on the belief that the installation was being made in the side yard. While from a visual standpoint, the fence would appear to be part of the large side yard, the two six-foot sections require a two-foot variance since they are both located for zoning purposes in the front yard and the Ordinance limits fences in front yards to a height of 4 feet.

6. The benefits to the applicant if the variance is granted consist of the screening of the ice rink referred to above, as well as to safety achieved by effectively completing the enclosure of the side yard. There does not appear to be any detriment to the health, safety and welfare of the neighborhood caused by the granting of a variance.

7. The location and design minimize any potential detriment to any nearby properties and support a finding that no undesirable change will be produced in the character of the neighborhood. Furthermore, to address any concern relating to the visual impact on adjacent properties applicant has submitted a screening plan providing for plantings in front of the fence.

8. From a numerical standpoint, the 2 foot variance represents a 50% deviation from the requirements of the Ordinance. However, the substantiality of the variance should be viewed in the context of the other factors we are required to consider.

9. Numerous letters from the neighbors in favor of the fence were received by the Board and two neighbors personally appeared to support the granting of the variance.

10. We believe that, in view of the location and design of the fence and the other factors set forth above, this application is unique and granting of this height variance does create a precedent with respect to future height variance applications.

NOW THEREFORE BE IT RESOLVED, that the application for a 2 foot front yard variance with respect to an existing 6 foot fence in the front yard of the property at 72 South Road be, and hereby is granted subject to the following condition.

Granting of the variance is subject to the completion and continued maintenance of the screening plan, dated May 2, 2019, submitted with this application.

Foregoing Resolution submitted by Zoning Board Member William Harold, seconded by Zoning Board Member Thomas Foristel at the May 9, 2019 meeting.

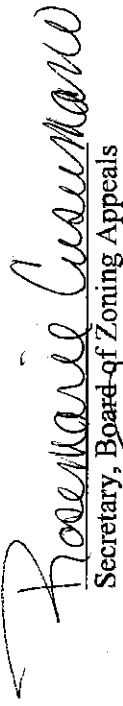
ADOPTED:

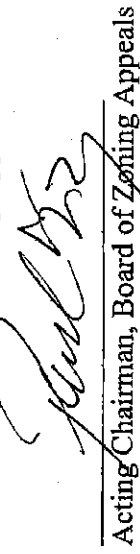
AYES: Paul Katz, Steven Lowenthal, Thomas Foristel, William Harold and Michael Tiesi

NAYS: None

ABSTAINED: None

ABSENT: Mark Fisher, Ernest Fiore


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.

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2019 MAY 14 A 9 11
TOWN OF BURLINGTON
PLANNING DEPT.

Z19-007
Curry
5/9/19