

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, September 8, 2022 at 7:30 p.m. in the Court Room of the Municipal Building, 1 Heineman Place, Harrison, New York.

Members Present

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

Members Absent

The Chairman called the meeting to order at 7:30 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z22-024	Westchester Avenue Associates, LLC	602	2.03	Heard – Extension Granted
Z22-026	Frank Bardani	672	26	Variance Denied
Z22-029	Alison Antanasio	611	19	Heard – Closed – Findings being prepared
Z22-030	Rogério Lobo	545	45	Heard – Closed – Findings being prepared
Z22-031	Jose Oreiro	910	86	Not Heard – Adjourned
Z2-032	Gloria Fernau & Alison Ganassi	691	117	Heard – Closed – Findings being prepared
Z22-033	Reynaldo Roisenvit	545	90	Heard – Closed – Findings being prepared
Z22-034	Gino & Maria Vetrini	644	9	Heard – Withdrawn
Z22-035	Elk Homes, LLC	191	1	Heard – Closed – Findings being prepared

The next meeting was scheduled to October 13, 2022

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

Jacqueline Greer

Town Clerk's Office

2022 SEP 9 PM 4:25
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HARRISON, N.Y.
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Rosemarie Cusumano
Rosemarie Cusumano, Secretary 25

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

BOARD OF ZONING APPEALS

TOWN/VILLAGE OF HARRISON, NEW YORK

Calendar No. Z22-026

Date: September 8, 2022

Applicant: Frank Bardani

Property Owner: Betty Himmel

Property Address: 10 Pond's Lane

Block 672, Lot 26

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, Wayne Esannason, filed an application on behalf of Frank Bardani on June 6, 2022 the neighbor of 10 Pond's Lane for an appeal the Building Inspectors determination of condensers installed in 1984 not subject to setback requirements; 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 7:30 p.m., on July 14, 2022 and August 14, 2022, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the Hearing: Paul Katz, Ernest Fiore, Steven Lowenthal, Tom Foristel, William Harold, Michael Tiesi and Thomas Haynes; 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 Andrew Himmel 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:

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- (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 installation of condensers installed at 10 Pond's Lane lawfully as per the approved plans on file in the Building Departments office dated July 10, 1984. Condensers in 1984 were not subject to setback requirements; beginning in April, 2010 the Building Department required all new condensers installed to comply with required setbacks.
2. The applicant resides at 8 Ponds Lane and claims that the condensers at 10 Ponds Lane are located 11 feet from the property line and should be moved to at least 12.5 feet from the property line, which would be in compliance with the zoning code.
3. Ms. Himmel purchased 10 Ponds Lane in November, 2006 and applied for a variance for a 90 square foot addition to close in an existing small wood deck which was granted in August 2, 2007.
4. Condensers were not subject to the setback requirements at the time the subject condensers were installed at 10 Pond's Lane in 1984 because until April 2020 the Building Inspectors of the Town of Harrison did not consider condensers to be a "structure" within the meaning of the Zoning Code. In April 2010, the Building Inspector made the determination that hence forth condensers would be considered "structures" and subject to Town zoning regulations. It is within the Building Inspector's authority and discretion to interpret the zoning code.
5. The Applicant's Attorney stated Mr. Bardani has sleep deprivation caused by the continuous mechanical noise emanating from the neighboring air condition condensers.

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In a letter dated June 30, 2021 to Ms. Himmel he noted that "Mr. Bardani is herein requesting that you immediately investigate and eliminate the source of the noise and vibrations emanating from her property. Such investigation shall include, but is not limited to, having the air conditioning compressors inspected and tested for noise levels to ensure that they are consistent with the manufacture's specifications, inspect and test any and all sub-surface mechanical pumps and mechanical equipment located on the property to eradicate the source of the noise and vibrations".

6. A letter dated August 10, 2022 from Ms. Himmel to the Board included an invoice from Robison Air Conditioning dated June 28, 2021 for the inspection of the condensers which noted that the condensers are not making any unusual noise and all sounds are normal. Ms. Himmel also submitted a letter to Mr. Bardani dated June 22, 2021 noting that Robinson inspected her basement and reported that no sump pumps were found.
7. That based upon the documentation submitted by Ms. Himmel, the noise level of the condensers at 10 Pond's Lane are within the normal range.
8. Ms. Himmel stated that she did replace her old condensers in August 2020 and that the new condensers were placed in the same location where the old condensers were located.
9. That moving the condensers a few feet further away from the boundary line, as is the applicant's request, will not significantly reduce the noise levels which the applicant has alleged is causing him sleep deprivation.
10. That moving the condensers would cause an undue financial burden upon Ms. Himmel in light of the fact that the noise levels which the applicant has complained about will not be significantly reduced; and in light of the fact that the condensers have lawfully remained in the same location since 1984.
11. The Zoning Board finds no reason why the determination of the Building Inspector as per his letter dated May 5, 2022 should be over-ruled.

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

Foregoing Resolution submitted by Zoning Board Member Thomas Foristel, seconded by Zoning Board Member Ernest Fiore at the September 8, 2022 meeting.

ADOPTED:

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

NAYS: None

ABSTAINED: None

ABSENT: None

Rosemarie Cusumano
Secretary, Board of Zoning Appeals

Paul Katz

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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TOWN CLERK
HARRISON, NY

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