

Minutes of the *Regular Meeting* of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on *Tuesday, March 16, 2021 at 7:06 pm* via Zoom Teleconference

Members Present: Chairman Harold Boxer
George Hoyt
Jacqueline Broth
Arthur Weise
Wayne Spector
Ralph Alfano

Staff Present: Whitney Singleton, Board Counsel
Peter J. Miley, Building Inspector

Chairman Boxer stated this is the March 16th meeting of the Zoning Board of Appeals and there would be one case on today is Martin Rivera Ramirez, is anybody here for that case?

Mr. Miley stated I don't see anybody Chairman.

Chairman Boxer stated great.

Mr. Miley stated I'll have Michelle check the waiting room.

Chairman Boxer stated okay.

Mr. Miley stated there's nobody in the waiting room.

Chairman Boxer stated okay, well let's do Michelle a favor, we'll approve these minutes.

Mr. Miley stated okay.

Chairman Boxer stated we have last November, November 17th, any changes? Okay anybody make a motion to approve?

Mr. Hoyt stated I make a motion to approve the two sets of minutes on the agenda.

Mr. Spector seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer stated so that's the November 17th and January 19th. Okay, maybe it's like college, we'll give him five minutes because he's not a full professor.

Mr. Miley stated I see a John S. that has their mic off. Who is that?

Chairman Boxer stated who is that?

Mr. Miley stated oh, that's John Stockbridge. Alright, so chairman, John Stockbridge, I'm assuming and he can correct me if I'm wrong, is here to speak on Sunrise Solar and Homeland Towers which are both adjourned this evening.

Chairman Boxer stated correct.

Mr. Miley stated John, if you can hear us, you will not be able to speak this evening, those are getting adjourned to the next...

Mr. Stockbridge stated yeah, thanks, whatever you think is agreeable.

Mr. Miley stated and we have one other person, Adebs, I'm not sure if that's the applicant or not. Adebs, can you identify?

Chairman Boxer stated they're muted.

Mr. Miley stated yeah, we just sent them a message, asking them to unmute. Can you unmute them? You can't? I don't see anyone here for the application unless this person is the applicant which they're not able to unmute and we can't do it for them.

**17 Lenox Place
Mount Kisco, NY 10549
(SBL 80.33-2-6)**

Area

Chairman Boxer stated okay. I'll just, one more time, anybody here for today's, the case is Martin Rivera Ramirez, 17 Lenox Place, anybody here for that? Okay... Anybody have anything else they want to discuss or are we good? Don't all talk at once?

Mr. Miley stated I mean, do you want me to describe the application?

Mr. Spector stated yeah.

Mr. Alfano stated it would help.

Mr. Miley stated since we have an understanding of the application, perhaps the applicant will jump on while we're talking about it. So Mr. Ramirez is, you might know him, he's the son of Mr. Mardino's, the Italian restaurant on Lexington. He recently purchased 17 Lenox, maybe a year ago, he purchased the home with an existing concrete patio in the rear, and however the concrete patio never received a permit. However, it's been constructed a long time and it does encroach into the rear yard setback. So he wants to create a new deck on top of this patio, some new footings, a new set of stairs located in pretty much the same location, however the same setback he's seeking is a 20 foot rear yard setback, keep in mind that this lot is a noncompliant lot with respect to dimensional setbacks, lot width, lot depth, this lot was created prior to the Code, it is pre-code. In addition to that, the home is also noncompliant with respect to dimensional setbacks, it sits too close to Lenox in the front yard, the side yards do comply with today's standards but the rear doesn't. So you have here a property that's located in the RT-6, one- and two-family zoning district, in addition to that, the required front yard is 25 feet today and the building sits at 10 ³/₄ feet from the property line, so it's very close to the property line. In addition to that because its noncompliant, your Board needs to make a determination whether they'd entertain any variance because that's the starting point with the Zoning Board. The second which is number two in my denial letter, is essentially an informational item, letting you know that the minimal lot area required is 6250 square feet, that's today's standard and that this too is noncompliant, its only a 3900 square foot lot. So no matter what they put there, they're going to need some relief because the rear and front, they just noncompliant with respect to today's standards, so what they're seeking is three variances. Out of the five that are listed, there's only three that apply, the first would be the amount of building coverage on a lot, and they're seeking a 4% variance that includes all structures, all improvements on the entire lot. The second variance is a development coverage, now development coverage incorporates all improvements whether it be a driveway, sidewalks, patios, rear deck that's being proposed, retaining walls. Everything and anything under the sun, that's placed on the lot. So they're seeking a 19% variance for that. And then the last one is the minimum rear yard setback, so because of the noncompliant lot, the minimum setback is only 20 feet, they're seeking a 20 foot variance for that. In other words, the house today is only 20 feet from the rear of the building, to the edge of the property line in the rear, they're looking to fill that void with a deck that would be right up on the property line of the adjacent home. So that requires a rear yard setback variance of 20 feet. And that pretty much sums up everything they're looking for, this deck would require three variances be issued, unless you discuss the possibility of you know, some reduction in some way, with rear or to the sides.

Mr. Spector stated Peter, am I looking at this right? Does the deck go over the property line proposed there?

Mr. Miley stated yes, you're 100% accurate, the new wood deck they would have to be at the property line. You're 100% accurate. That survey you're looking at is an old survey, the stairs don't even match, so they have...

Mr. Spector stated their fence is off the property line by like various distances also, I can see...

Mr. Miley stated correct, any of those encroachments would be corrected under the building permit process, so the maximum variance that you can provide is up to the property line. You can't obviously allow them to build over the property line, that's something we'll take of administratively in the Building Department.

Mr. Hoyt stated Peter, am I wrong that the proposed variance for development coverage won't really change, right? They're adding a deck on top of a nonconforming, noncomplying concrete patio which shouldn't be there in the first place but nonetheless, so the actual percentage isn't really changing, nor is their building coverage changing. They're still out of compliance but they're not changing, correct?

Mr. Miley stated correct.

Mr. Spector stated so the current patio also encroaches on the neighbor's property to a degree, to a small degree.

Mr. Miley stated almost the same, yes.

Mr. Spector stated they could get a and Harold you know this, they could get an agreement with the neighbor if they asked, a lot line...

Chairman Boxer stated right.

Mr. Spector stated some kind of a lot line agreement or just an agreement with the neighbor that they're not seeking to take any of their property but if they chose to do that, if there was a reason to do.

Mr. Hoyt stated or they could have, adverse position, they've been showing this line, they've been living on the neighbor's property for all these years, they may [inaudible] as well.

Mr. Spector stated it might satisfy at least some of the factors, maybe.

Chairman Boxer stated yeah, I mean, it's not just being over the line for a certain amount of years, then again under the new law, it could be considered di minimus but...

Mr. Spector stated yeah...

Chairman Boxer stated can we, I mean we haven't gotten any letters for the adjoining neighbor...

Mr. Miley stated we have not received anything Harold.

Mr. Spector stated I wonder if the neighbor realizes the encroachment.

Chairman Boxer stated probably not.

Mr. Miley stated I'm not, everybody has been notified, you know they did their public notice, all homes within the 300 feet radius.

Mr. Spector stated there's somebody else that's one right, maybe it's the applicant, Guy?

Mr. Miley stated no, Michelle can confirm that the applicant it not on the Zoom. Most people are here to speak on the cell tower that's not on this evening. So...

Chairman Boxer stated okay.

Mr. Miley stated that's sums it up. So administratively in the Building Department, depending obviously if you grant the variance or not, if you grant the full 20 foot variance, it would have the lot line for the deck match, we can't allow a building permit to encroach into somebody else's property, we can only do up to the line or specific what the variance is issued for.

Mr. Spector stated I wouldn't feel comfortable voting on this because I don't have enough, I don't even know where the other house is located visa vie this deck.

Mr. Miley stated so I have an old survey that I pulled from 1975, so the rear of the foundation of the other home is three foot eleven inches, it's also noncompliant as well, it's very close to the property line. So you have a number of nonconforming lots in the area, noncompliant lots. I have a partial foundation on here and it indicates 3.11 feet from the rear property line, its close. It doesn't specify what's on that [inaudible], it just indicates that there's a foundation wall.

Mr. Alfano stated right.

Chairman Boxer stated Peter, if we put this over to the next meeting, ask the applicant to take pictures and bring them?

Mr. Miley stated sure, absolutely take pictures of the rear yard, the adjacent home.

Chairman Boxer stated right.

Mr. Alfano stated one comment I was going to make... go ahead Harold.

Chairman Boxer stated you have the neighbor right now, is only, is not looking at a raised structure, so even though it's on the line, it's not, it doesn't, it's not like having a building on the line.

Mr. Miley stated yeah, I think...

Chairman Boxer stated you know, how tall does he want to make the deck?

Mr. Miley stated the height?

Chairman Boxer stated yeah.

Mr. Miley stated I can look, right now, proposed, so there's some piers, 12 inch piers and some 2 by 6 framing, so 16, 18, another inch and a half. There's no dimension for height, but it spears it's going to be over the concrete, at least 10 inches and elevated a little bit more towards the driveway there the topography goes down. You can probably see, one, two, there's, probably going to be about four feet on the north rear property line. So looking at the deck it's going to be at grade to the right of the rear and it's going to be about four feet with six stairs, which 8 inch dimension on a stair is about 48 inches. So I would say four feet.

Chairman Boxer stated that's a lot different than 10 inch piers.

Mr. Miley stated there's a retaining that's also, so it's going to appear more elevated than it actually is and the reason being is they're putting a separate landing and stairs that's coming off the deck. I don't have an elevation here but I can ask the applicant to take pictures of that side yard where the stairs are going.

Chairman Boxer stated okay.

Mr. Spector stated I think we should have some elevations too, I don't think this is very complete, frankly.

Mr. Miley stated I can ask the applicant for some elevations.

Mr. Weise stated it looks like the applicant is doing this himself.

Mr. Miley stated he is, yes.

My. Alfano stated yes.

Mr. Weise stated he probably isn't aware of some the things that he may need to include.

Mr. Miley stated yeah, I mean, I'm trying to help the guy out. Tried to help him get as much as, it was a lot of get what you have before you and it would have been nice if he was here tonight to explain you know, what he's proposing but unfortunately he's not. So I'll convey the message, you want some yard, rear yard pics, at the very least come up with the elevation of the side. I know because I've been at the home prior to closing that the right side is at grade, so are you going to be satisfied Wayne, with the elevations on the north...

Mr. Spector stated yeah, I think under those circumstances that will be fine.

Mr. Miley stated anything else you'd like me to...

Mr. Alfano stated yeah, one comment right, just because there's a concrete patio there today that, maybe goes up to the property line doesn't mean the new deck should go to the property line.

Mr. Miley stated understand.

Mr. Spector stated goes beyond the property line.

Mr. Alfano stated yeah but you know what I mean, it's not a, you know it probably should be smaller.

Mr. Spector stated not engraved in stone.

Mr. Weise stated I think the question about elevation is a good one because I'm just taking a quick look at the property from Zillow and it looks like there is a big elevation difference which may be, which may explain some of their footprint.

Mr. Miley stated yeah, it certainly goes uphill Lenox, from Main Street up to Grove.

Chairman Boxer stated and the neighbor behind is at a higher elevation than where the deck is going?

Mr. Miley stated I don't know the answer to that Harold but I could take [inaudible].

Chairman Boxer stated okay.

Mr. Alfano stated it looks a little lower.

Mr. Miley stated and there's a rear yard fence as well that's covering the vinyl fence there.

Mr. Spector stated Harold, this is a title nightmare back there, you know?

Chairman Boxer stated pardon me?

Mr. Spector stated I said, Harold, this is a title nightmare back there.

Chairman Boxer stated well yeah... The question is when he bought it and they had the survey showing it, was that excepted from coverage?

Mr. Spector stated yeah. Well it wouldn't be a problem for him because the fence is off his property line, it's really his neighbor's issue.

Chairman Boxer stated right.

Mr. Miley stated yeah, I don't know who owns the fence either, I'm not sure who the owner of the fence is.

Mr. Spector stated well it looks like it curves in...

Mr. Miley stated yeah.

Mr. Spector stated so it would be, it looks like it would be this property.

Chairman Boxer stated well there's two fences, there's a...

Mr. Miley stated yeah.

Chairman Boxer stated there's a stockade fence and then in front of that is the, well maybe it's the same thing.

Mr. Spector stated no, it is two fences.

Mr. Miley stated it runs a little shy.

Mr. Weise stated can I ask you, have you ever swapped square footage of two properties, if there is an elevation issue, if the neighbor you know, gets a few feet in the front and that can be swapped with a few feet in the back of this house, has that ever happened?

Mr. Miley stated well that would be a subdivision under our code even though, yeah, I mean it happens all the time. People swap land, there's an application before the Board now that's swapping land in two different zoning districts. Yeah, it can occur but you don't want to further create a property that's nonconforming.

Mr. Weise stated right.

Mr. Miley stated so you always look to improve it, not to reduce it.

Mr. Weise stated right.

Mr. Miley stated I'm not if that's viable in this situation, there's just not enough information in the drawings.

Chairman Boxer stated and it also is a little difficult because not only do you have to get the neighbors, but if there's mortgages on the property, the banks have to agree to the swap.

Me. Weise stated right.

Mr. Miley stated so Chairman, I have pictures, rear, side yard, elevations, anything else you're looking for?

Mr. Spector stated I think he has to redraw this, this plan to, at the very least, comply with the property lines, I would think.

Mr. Miley stated yeah, that's, that's an old survey that was superimposed on for this drawing and they just drew in that rear deck, that's not the actual.

Mr. Spector stated oh, okay, alright.

Mr. Miley stated the actual drawing of the deck is to the left of that.

Chairman Boxer stated so the deck is going to be the same grade as the walkway on one side...

Mr. Miley stated it will still show a slight elevation because they're doing framing on top of the existing patio.

Chairman Boxer stated right.

Mr. Miley stated the patio is at grade but they're indicating that they're going to put 2 by 6 framing on top of it, so an inch and a half of material, essentially one step.

Chairman Boxer stated but under the Code, it's considered a deck, correct?

Mr. Miley stated it is. It is still development coverage as well, it's solid...

Chairman Boxer stated if it's a deck, then they would have to have railings and everything.

Mr. Miley stated only if it exceeds a certain dimension of 30 inches.

Chairman Boxer stated so it could end up being basically flat, then?

Mr. Miley stated except on the left side or the north corner. If it exceeds 30 inches, they would have to install railings, correct.

Chairman Boxer stated I think for us, it's just a question of whether we want to do the variance. If the neighbor is not going to object to the deck, it's not up to us to object to it for what his view is going to be.

Mr. Miley stated its in your Board's hands, how you want to proceed. Right now, there's not applicant here and I still need to convey this information to him and give him the information from this meeting, so he can resubmit.

Chairman Boxer stated okay...

Mr. Weise stated yeah, I think we definitely need pictures considering the elevation here, looks like it's on a hill.

Mr. Miley stated yeah, I don't think that's a bad idea, get a better understanding of the project.

Chairman Boxer stated yeah.

Mr. Miley stated so I will certainly convey that, if you want to push it to the next meeting, you'll need a motion. What's the next meeting date? That will be for the April 20th meeting, Chairman.

Chairman Boxer stated so we haven't even opened it so, we can adjourn it on our own without him requesting.

Mr. Miley stated sure.

Chairman Boxer stated alright, so I think we should do that, give him one more shot at it, if he's going to show up. Also, I think it would be nice if there's going to be any railings, if he can kind of give us the schematic of what the deck will look like with the railings.

Mr. Miley stated sure. I'll convey all these points and prior to him submitting and putting it on an agenda, I'll make sure that he's complied with these requests.

Chairman Boxer stated okay, now do we have anything where it shows he's not going over the property line with the deck?

Mr. Miley stated no, currently he is but that's an old survey on this application. He will have to provide, certainly at the as-built, at the end of the day, it has to show, demonstrate that he's on his own property in accordance with the variance, depending on what, on what you grant. If you grant a zero, it has to be a the property line, if you grant a 15 yard then you have to come in five feet, it all depends on what your Board allows him to do.

Chairman Boxer stated right. So I mean, worst case scenario, if we have him reduce it, it's still, he's got 20 feet to play with, so its not like a small area.

Mr. Miley stated correct.

Chairman Boxer stated okay, any other questions? **Then, we'll need a motion to adjourn this to the next meeting.**

Mr. Spector stated so moved.

Chairman Boxer asked for a second.

Mr. Weise seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer stated any opposed? Okay, so let him know he's on for the next meeting.

Mr. Miley stated I will, I will contact him and I will draft an e-mail to him with your requests.

Chairman Boxer stated okay. Great, anybody want to go home? Motion?

Mr. Hoyt stated I am home.

Chairman Boxer stated we're all home.

Mr. Miley stated I'll go home.

Chairman Boxer stated yeah, Peter's not home...

Mr. Miley stated and Michelle.

Mr. Weise stated now I really regret being late. What did I miss?

Mr. Spector stated the most exciting part of the meeting you missed.

Mr. Weise stated these are delayed to the next meeting?

Mr. Miley stated they're all adjourned.

Chairman Boxer stated the other two requested adjournments.

Mr. Weise stated okay.

Chairman Boxer stated and hopefully we won't get another pile. Every time they adjourn it, we get a pile just like the last pile, so I end up having to recycle everything except the last one we get.

Mr. Weise stated this is a lot of paper here.

Mr. Alfano stated this is a lot of paper.

Mr. Miley stated Mr. Stockbridge, we love to see your face but not tonight.

Chairman Boxer stated okay...

Mr. Stockbridge stated that's okay, that's okay, just had a couple things to say.

Mr. Miley stated the meetings are adjourned for the two applications that you're looking to speak about.

Chairman Boxer stated alright, then we have a motion to adjourn the meeting?

Mr. Weise stated I'll make a motion to adjourn the meeting.

Chairman Boxer stated second? I'll second if no one else will.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

The meeting adjourned at 7:31 pm.