

AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF
MAMARONECK, HELD ON MAY 3, 2018, THE FOLLOWING RESOLUTION WAS
ADOPTED:

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APPLICATIONS 4I-2017 (Lot 3-1017 Grove Street) and 5I-2017 (Lot 2-1017 Grove Street)

VILLAGE OF MAMARONECK
NEW YORK

WHEREAS, on May 27, 2015, the Planning Board approved a final subdivision plat "for the subdivision of property located at 1017 Grove Street into three lots . . . and the construction of new single-family residences on each lot . . ." subject to compliance with 33 conditions of final plat approval, with such final plat having been filed with the Westchester County Clerk on November 5, 2015 ("Final Plat") with those three lots identified hereinafter as "Lot 1, Lot 2 and Lot 3" and owned by AVC Properties LLC/Marc Castaldi¹ ("Property Owner"); and

WHEREAS, on July 13, 2015 Jocelyn Donat ("Ms. Donat") appealed to this Board the Planning Board's final approval of the Final Plat and thereafter amended that appeal to include an appeal of the Building Inspector's zoning compliance determinations (Appeal 2I-2015 as amended) and thereafter appealed the Building Inspector's issuance of Building Permits for Lots 1, 2 and 3 (Appeal 1I-2016)² which appeals were denied by this Board on October 6, 2016 with that resolution filed with the Village Clerk on October 13, 2016 ("October 6, 2016 Resolution"); and

WHEREAS, the October 6th Resolution was subsequently unsuccessfully challenged by Ms. Donat in an Article 78 proceeding ("Donat Article 78 Proceeding"); and

WHEREAS, the Property Owner applied for multiple building permits to construct a single family home on each of the subdivided lots; and

WHEREAS, on February 18, 2016, the Board of Architectural Review ("BAR") approved building permit application plans for homes to be built on Lots 1, 2, and 3; and

WHEREAS, the Building Inspector thereafter issued the building permits, certificates of compliance/occupancy for development of Lots 2 and 3 of the 1017 Grove Street subdivision, as follows:

¹ At that time Lots 1, 2 and 3 were owned by AVC Properties LLC.

² On April 13, 2016, Ms. Donat filed an appeal of the Building Permits, specifically, Part One of the appeal: Lot 1 – final subdivision plat and building permit plans are inconsistent, lot depth insufficient, insufficient front and rear yards, FAR exceeded; Lot 3–lot depth insufficient, insufficient front and rear yards, FAR exceeded; Lot 2- FAR exceeded and with Part Two of the appeal (related to on-going litigation) having been subsequently withdrawn (Appeal 1I-2016), which were consolidated for purposes of the ZBA's public hearings and decision on these matters. The issues challenged in the prior appeals pertaining to zoning compliance are easily distinguishable from the instant appeals which principally relate to the Building Inspector's enforcement and implementation of approved plans, conditions of approval imposed by the Planning Board (Final Plat), and BAR approvals based on his determination that construction fully complied with these approvals, conditions and plans (TCO/CO issuance).

-On March 30, 2016, Building Permits were issued for 1017 Grove Street for (i) construction of a new one family dwelling on Lot 1(16-0303), (ii) for construction of the new one family dwelling on Lot 2 (16-0307), and (iii) for construction of a new one family dwelling on Lot 3 (16-0310), for Lot 1-Sheets AO & A7 dated January 5, 2016 and with Sheet AO last revised on March 8, 2016, for Lot 2-Sheets AO & A7 dated January 5, 2016 and with Sheet AO last revised on March 8, 2016, and for Lot 3-Sheet AO dated January 5, 2016 & Sheet A7 dated January 22, 2016, and with Sheet AO last revised on March 8, 2016 and all approved by the Building Inspector on March 28, 2016 ("Building Permits").³

-After the Property Owner proposed changes to the approved Building Permit plans the Building Inspector directed the Property Owner to apply to the BAR for framing and window revisions for homes under construction and the Property Owner appeared before the BAR at its August 18, 2016 meeting and at that meeting, the Property Owner withdrew his applications after he faced opposition and it was apparent that the BAR consensus was not to approve all proposed changes.

-On 10/13/16⁴, the Property Owner filed an application for a Building Permit amendment and amended plans for Building Permit #16-0310 (Lot 3)⁵ for "structural beam callouts, rear patio/steps, kids bath fixture layout" and which also included changes to basement window locations and additional basement windows, construction detail on size/location of basement window wells, moving one window to the 2nd floor, added basement egress, an increase in floor height from 8' to 9' from 1st to 2nd floor and 2nd to 3rd floor. (Lot 3)

-On 3/30/17, the Property Owner applied for a permit to install a fence on Lot 3 and on 4/24/17 Permit No. 17-0429 was issued for installation of a 6' high PVC white fence with a Certificate of Compliance issued on 6/22/17 (Lot 3).

-On 6/20/17 a building plan amendment was issued for Building Permit #16-0310 (Lot 3) for "structural beam callouts, rear patio/steps, kids bath fixture layout" and which also included changes to basement window sizes/locations and two additional basement windows, construction detail on size/location of basement window wells, moving the

³ For Appeal 11-2016, the listed plans associated with the building permits issued on March 30, 2016 for Lots 1, 2 and 3 were submitted into the record for that appeal by the Building Inspector. For Applications 4I-2017 and 5I-2017 the Building Department submitted a far more extensive record for building permits issued for Lots 2 & 3 which included the following additional plans which were submitted as approved by the Building Inspector on March 28, 2016: (i) for Lot 2- Sheets A1, A2, A3, A4, A5, A6 dated January 5, 2016 and (ii) for Lot 3-Sheets A1, A2, A5, A6 dated January 22, 2016 and Sheets A3, A4 dated January 5, 2016. There were subsequent revisions/amendments to these plans which were not approved by the Building Inspector until June 20, 2017. These amendments and subsequently issued building permits related to home construction materially changed Building Permit plans approved by the Building Department on March 30, 2016 which were previously challenged by Ms. Donat in Appeal 11-2016.

⁴ The same date as the October 6th Resolution was filed.

⁵ For Lot 2- Sheets AO, A1, A2, A3, A4, A5, A6 last revised on 7/19/16, and (ii) for Lot 3- Sheet AO last revised on 9/9/16, Sheet A1 last revised on 5/2/16, Sheets A2, A3, A4, A5, A6 last revised on 9/8/16. Plan Amendments for Lots 2 and 3 were approved on 6/20/17. An application for a Building Permit amendment for Building Permit #16-0307 (Lot 2) was filed on 6/20/17 the same day it was approved.

location of one window to the 2nd floor, added basement egress, an increase in floor height from 8' to 9' for the 1st to 2nd floor and 2nd to 3rd floor. (Lot 3)

-On 6/20/17 a building plan amendment was issued for Building Permit #16-0307 (Lot 2) for "patio/beam callouts" and which also included changes to basement window sizes/locations and two additional basement windows, construction detail on size/location of basement window wells, added basement egress, and increase in floor height from 8' to 9' for the 1st to 2nd floor and 2nd to 3rd floor. (Lot 2)

-On 7/12/17, the Property Owner applied for a permit to "Relocate existing garage windows to a usable height off garage floor. Install fixed window in stairwell to match existing 2nd floor window sizes...sheets A5&A6" but with no permit having been issued or any permit issued having been rescinded and with such application remaining open. (Lot 3)

-On 7/27/17 Building Permit No. 17-0831 was issued (prior to issuance of CO) to "Frame and Sheetrock Exterior Basement Walls" and "Install Vinyl Floor" in the home's basement and subsequently the certificate of compliance was issued for that permit on 12/1/17 (Lot 2) and on 7/28/17 Building Permit No. 17-0838 was issued (prior to issuance of TCO) to "Frame and Sheetrock Exterior Basement Walls" and "Install Vinyl Floor" and subsequently the certificate of compliance issued for that permit on 12/1/17. (Lot 3)

-On 7/28/17 a certificate of occupancy ("CO") was issued for Building Permit No. 16-0307 and on that same day Building Permit No. 17-0840 was issued to "Relocate Existing Garage Windows to a Usable Height off Garage Floor. Install Fixed Window in Stairwell to Match Existing 2nd Floor Window Sizes on Plans Page #s A5 & A6" which has resulted in the installation of three additional windows (1st and 2nd floor) and a change in size/location of other windows⁶ for the home constructed on Lot 2. (Lot 2)

-On 8/14/17 a temporary certificate of occupancy ("TCO") was issued for Building Permit No. 16-0310 which has been subsequently extended to April 14, 2018. (Lot 3)

; and

WHEREAS, thereafter Ms. Donat and others commenced the following appeals which challenged the issuance of these multiple permits and certificates/determinations (all issued after approval of the original Building Permit plans) pertaining to the development of Lots 2 and 3, with no appeal of permits and certificates/determinations issued for the development of Lot 1:

-On 6/13/17 Ms. Donat, Anthony Lividini and Karen Colaneri, all residing adjacent to or near Lot 3 of the 1017 Grove Street Subdivision appealed issuance of the Fence Permit 17-0429 to install a fence on Lot 3 (related to alleged noncompliance of approved landscaping and building envelope approved by Planning Board as part of subdivision approval), which appeal was thereafter amended to include an appeal of (i) Certificate of

⁶ Submitted with the permit application were Sheets A5 and A6 last revised on 7/19/16 which had been changed to show the location of new/moved windows.

Compliance for Permit # 17-0429, (ii) Building Permit No. 17-0838 (issued prior to issuance of TCO and required BAR approval) and subsequently the certificate of compliance for that permit, (iii) Building Permit 17-0833 (which was later determined to not have been issued and/or was rescinded⁷), and (iv) a temporary certificate of occupancy ("TCO") issued for Building Permit No. 16-0310 (Improper implementation of approval conditions by Building Inspector and alleged noncompliance of home with BAR approved plans, Planning Board approved Landscape Plan & building envelope, setbacks (window wells) and approved grading) all pertaining to construction of a single family home on Lot 3-1017 Grove Street (collectively "Application # 4I-2017").

-On 8/14/17 Ms. Donat appealed issuance of (i) Building Permit No. 17-0831 (issued prior to issuance of CO and required BAR approval) and subsequently the certificate of compliance, (ii) Building Permit 17-0840 (changing location of/adding windows to 1st and 2nd floors violates BAR approval and requires BAR approval and permit improperly issued same day as CO issuance), and (iii) a CO issued for Building Permit No. 16-0307 (Improper implementation of approval conditions by Building Inspector and alleged noncompliance of home with BAR approved plans, Planning Board Landscape Plan & approved building envelope, setbacks (window wells) and approved grading) all pertaining to construction of a single family home on Lot 2-1019 Grove Street (collectively "Application # 5I-2017"); and

WHEREAS, the public hearings for applications 4I-2017 and 5I-2017 were opened on September 7, 2017 and thereafter consolidated by the Board; and

WHEREAS, at the public hearings, both the Property Owner and Ms. Donat and neighboring property owners submitted supplemental materials in further support of the appeals, with the Property Owner contending that this Board was without jurisdiction to hear the appeals based on (i) mootness and (ii) the October 6, 2016 Resolution; and

WHEREAS, Applications 4I-2017 and 5I-2017 primarily alleged non-compliance of construction with the plans approved by the Building Inspector and the BAR, and also the failure of the Building Inspector to properly enforce and implement the approval conditions of the Final Plat; and

WHEREAS, the Property Owner acknowledged that the original Building Permit plans for Lots 2 and 3 (approved on 3/28/16) did not depict construction detail of the size and location of basement window wells, nor were window egresses shown, which was confirmed by the Building Inspector; and

WHEREAS, it is undisputed that the Building Inspector did not direct the Property Owner to obtain approval from the BAR for plan amendments (approved by the Building Inspector on 6/20/17) and an additionally issued permit (Permit #17-0840), although five windows were added to the home constructed on Lot 2 (1019 Grove Street) and two windows were added to the home constructed on Lot 3 (1017 Grove Street); and

⁷ The appeal of Building Permit No. 17-0833 was withdrawn after the Building Inspector determined that permit did not exist and/or had been rescinded.

WHEREAS, when asked at the hearing why the Property Owner did not get approval from the BAR for additional windows, the Property Owner responded that he did apply but there was opposition to his application when he appeared at an August 18, 2016 BAR meeting and as a result he withdrew his application. He indicated that although there was an error by his architect, the windows for 1019 Grove Street (Lot 2) were originally installed according to the approved plans; and

WHEREAS, on the same day that the Certificate of Occupancy was issued, the Property Owner obtained a permit to relocate/add windows and since the estimated cost was under \$10,000, the Building Inspector did not direct the Property Owner to return to the BAR for approval, and instead the Building Inspector issued Permit #17-0840 (Lot 2); and

WHEREAS, Ms. Donat and the other Appellants contend that the fence installed on Lot 3 blocked required landscaping from the neighbors and that the fence was an “accessory structure” and/or an “improvement” that could not be installed outside of the defined Building Envelope on the Final Plat; and

WHEREAS, although the fence obscures approved landscaping and the Property Owner concedes the fence was not shown on the Final Plat or other plans submitted to the Planning Board and that he did not propose the fence during review of the Final Plat and site development plans, the Property Owner contends he had a right to install a fence on Lot 3 (1017 Grove) as would any other property owner; and

WHEREAS, during the public hearing the Property Owner contended that the installed fence did not violate Final Plat approval, that the Planning Board was without authority to prohibit such installation because there was no site plan approval, that the Final Plat approval resolution did not expressly prohibit a fence, that the fence is not an accessory structure, that the fence met his family’s needs and that nearby properties (not Lots 1 or 2) have similar fences; and

WHEREAS, the public hearing was continued over several months, with further testimony having been provided by Ms. Donat and the Property Owner; and

WHEREAS, after further submissions by the Property Owner, Ms. Donat and other appellants/residents/members of the public in support of the appeals, the public hearing was closed on March 1, 2018;⁸ and members of this Board having made personal inspection of the Premises and being familiar therewith; and with due notice having been given and with the Board hearing all parties and receiving their evidence and proofs; and

WHEREAS, during the public hearing, which lasted over the course of eight months, Ms. Donat, the Property Owner and other appellants/residents/members of the public were given the opportunity to be heard and were heard and such persons also submitted documents, memoranda

⁸ The ZBA commenced deliberations on Appeals 41-2017 and 51-2017 at the April 5th meeting of the Board. To avoid a default denial of their appeals, the Appellants have agreed to extend the period for the Board to decide the appeals beyond 62 days after conduct of the public hearing.

and other correspondence for consideration by the Board and all those materials were considered by the ZBA as part of the record for Applications 4I-2017 and 5I-2017; and

Standard of Review and ZBA Findings on Appeals

WHEREAS, in accordance with Village Law 7-712-b (1) the ZBA's standard of review is de novo, such that the ZBA "shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken." Village Law 7-712-b; and

WHEREAS, after duly considering all the proof and evidence before it and after receiving advice of counsel, the ZBA makes the following determinations, findings and interpretations:

I. Jurisdiction

The Property Owner contended that this Board was precluded from hearing the instant appeals due to findings of the October 6, 2016 Resolution on Board jurisdiction and/or was without authority to hear the instant appeals on grounds of mootness predicated on the court's dismissal of the Donat Article 78 proceeding.

This Board has well-established jurisdiction to hear appeals from the issuance of building permits and certificates of occupancy/compliance as challenged by Ms. Donat and others. Under provisions of the Zoning Code, this Board is authorized to review determinations by the Building Inspector (the administrative official charged by local law with the implementation and enforcement of the Zoning Code), including determinations predicated upon the Building Inspector's failure to enforce terms and conditions of site development approvals of the Planning Board and BAR approvals. New York State's zoning enabling legislation provides as follows:

Unless otherwise provided by local law, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by the administrative official charged with enforcement of any local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the village.

N.Y. Village Law §7-712-a (4) (emphasis added). Similarly and specifically, the Zoning Code provides that the Board has authority to:

"hear and decide appeals from and review from any order, requirement, decision, interpretation or determination

made by any administrative official or board charged with the implementation or enforcement of this chapter and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and make such determination and order as, in its opinion, ought to be made in the premises.”

Zoning Code §342-90. Under the Zoning Code the Director of Building, Code Enforcement and Land Use Administration (“Building Inspector”) is authorized to enforce and implement the Zoning Code, including terms and conditions of specified land use approvals:

It shall be the duty of the Director of Building, Code Enforcement and Land Use Administration to enforce, literally, the provisions of this chapter and of all rules, conditions and requirements adopted or specified pursuant thereto. He shall maintain a current record of all variances and special permits granted by the Board of Appeals, all site development approvals made by the Planning Board and all approvals granted by the Board of Architectural Review and shall enforce the observance and performance of all the terms and conditions of such grants and approvals.

Zoning Code § 342-86 (emphasis added). See generally Village Code §§ 126-1 through 126-7.

In its October 6th Resolution, this Board concluded that it had jurisdiction to hear the consolidated appeals (2I-2015 and 1I-2016) as follows:

Jurisdiction

Except as discussed below, the ZBA has jurisdiction to hear this consolidated appeal. When reviewing determinations of zoning compliance, a zoning board’s jurisdiction is appellate only based on review of determinations of the zoning enforcement officer, typically the Building Inspector. Village Law §7-712-a (4). The Board has jurisdiction to hear the appeal of the Building Inspector’s Memo of Review and Zoning Compliance (dated February 2, 2016) (Appeal 2I-2015 as amended) and the appeal of the Building Permits issued on March 30, 2016 (Appeal 1I-2016). Consistent with established ZBA practices to allow amendment of applications, Appeal 2I-2015 was properly amended to include an appeal of the Building Inspector’s Memo of Review and Zoning Compliance dated February 2, 2016.

See October 6, 2016 Resolution, p. 10.

In the paragraph immediately following, the Board recognized limitations to this Board's authority specifically pertaining to Ms. Donat's attempt to appeal the Planning Board's final subdivision plat approval:

The Board finds that it is not authorized to hear that portion of the Appeal #2I-2015 for an appeal of the Planning Board's approval of the final plat for the 1017 Grove Street Subdivision. Well settled case law confirms that a planning board is not authorized to interpret local zoning code provisions or grant variances and a zoning board does not have jurisdiction to review decisions of a planning board, such as subdivision approval determinations. Nor is the Board authorized to review Property Owner compliance with specific conditions of final plat approval by the Planning Board including compliance with Village Code Chapter 294 (SWPPP) and bond requirements, which are not within the purview of this Board to review.

See October 6, 2016 Resolution, p. 10.

The underscored language on which the Property Owner relies to challenge Board jurisdiction pertains solely to the Board's jurisdiction to hear Appeal 2I-2015. In that prior appeal, Ms. Donat's specific challenge to compliance with Chapter 294 stormwater regulations and bond requirements related to the Property Owner's adherence to specific conditions of Final Plat approval, and was not an appeal of building permits.⁹ The October 6th Resolution deciding those prior appeals confirmed that the Board is authorized to review Building Inspector determinations, but is not authorized to hear direct appeals of Planning Board decisions or authorized to review property owner compliance with approval conditions absent a Building Inspector's determination related to implementation or enforcement of those conditions. The October 6, 2016 Resolution does not diminish or limit the scope of this Board's well-established authority to review Building Inspector determinations, such as the issuance of building permits and certificates of occupancy, including those relating to the Building Inspector's implementation and enforcement of the Zoning Code and certain land use approvals and conditions.

As confirmed by the court in Donat v. Board of Appeals, et al (Index#16-3211), this Board has broad authority to review Building Inspector determinations. Here, under the specific circumstances of the current appeals by Ms. Donat, such authority would extend to review of Building Inspector determinations that are contrary to the Final Plat (which incorporated as conditions specific site development features for the construction of new single-family residences on each lot), BAR approvals and approved plans. Applications 4I-2017 and 5I-2017 do not involve challenges to compliance with Village Code Chapter 294 or bond requirements,

⁹ Further this Board has consistently determined that it is not authorized to review compliance with stormwater regulations contained in Chapter 294 which are enforced by the Village Engineer. Similarly bond requirements which are reviewed by the Village Engineer and established by the Board of Trustees would not be subject to review by this Board.

rather the matters appealed are within the scope of the Board's authority. Further, unlike Appeal 2I-2015, the current appeals challenge building permits and certificates of compliance/occupancy issued by the Building Inspector. Accordingly, the cited provision of the October 6th Resolution would not limit the Board's authority to hear the current appeals.

Nor does the Court's dismissal of Ms. Donat's prior appeals on mootness grounds apply to the current appeals. The 2017 plan amendments and subsequently issued building permits were significantly different from Building Permit plans approved by the Building Department on March 30, 2016 which were previously challenged by Ms. Donat (Appeal 1I-2016). Further, the prior appeals challenged Zoning Code compliance of approved building lots and proposed homes and could not address whether the Building Inspector properly enforced and implemented plans that did not exist (including a plan amendment which was approved eight months after the 2016 appeals were decided), conditions of approval imposed by the Planning Board (Final Plat), and BAR approvals prior to the Building Inspector's determination that construction fully complied with these approvals, conditions and plans. (The CO/TCO was issued nine months after the 2016 appeals were decided). Applying the mootness doctrine under these circumstances could undercut land use board decision making by removing any check on a building inspector's implementation and enforcement of approved plans and approval conditions. Further, the building permits now challenged by Ms. Donat were issued several months after the 2016 appeals were decided and therefore were not and could not have been challenged on the earlier appeal.

II. Findings of Fact

A. Fence Permit #17-0429 and Cert. of Compliance (1017 Grove-Lot 3)

Contrary to the Property Owner's contention that Final Plat approval did not and could not prohibit installation of a fence, the Final Plat incorporated as conditions specific site development features for the construction of new single-family residences on each lot which the Property Owner readily accepted and agreed to during the Planning Board's proceedings. The Final Plat includes the following restriction: "all improvements including, without limitation any residential dwellings and accessory structures to be constructed on the property shall be located wholly within the building envelope areas. . ."

At the public hearing the Building Inspector stated that fences were an accessory use under the Zoning Code but that he did not consider fences to be accessory structures which would be subject to required zoning setbacks and he did not view the fence installed as violating the Final Plat.

The word "improvement" is not defined in the Zoning Code or in the Village's subdivision regulations, but its common meaning would include a permanent structure such as the fence installed by the Property Owner under Permit #17-0429. As this "improvement" relates to the approved building envelope delineated on the Final Plat, it has been installed outside the envelope and therefore, contrary to the Building Inspector's determination, is in violation of Final Plat approval. The Property Owner must remove the fence or otherwise obtain an amendment to the Final Plat approval to satisfactorily remedy such non-compliance within the

specified Compliance Period or the Certificate of Compliance shall be revoked. The other issues appealed (whether the fence is an "accessory structure" or violates the approved Landscape Plan) have been rendered academic and/or are denied.

B. Finish Basement Permit #17-0838 and Certificate of Compliance issued 12/1/17 (1017 Grove Lot 3); Finish Basement Permit #17-0831 and Certificate of Compliance issued 12/1/17 (1019 Grove Lot 2)

The Building Department's record established that this permit authorized certain interior improvements to the basement which does not violate BAR or Final Plat approvals. This portion of the appeal is denied.

C. TCO for Building Permit #16-0310 issued on 8/14 (Plan amendment approved 6/20/17) (1017 Grove -Lot 3)

1. Window wells/required setback

The Property Owner acknowledged that the original Building Permit plans approved on 3/28/16 did not show construction detail on the size and location of basement window wells and egress(es).¹⁰ This was also confirmed by the Building Inspector. Amended Building Permit plans approved on 6/20/17 provided greater detail of location and size of the window wells and location and size of egress(es) (not previously shown).

The Building Inspector has construed Zoning Code setbacks as not applying to below grade construction. This Board has previously determined that underground structures (covered) do not encroach into required yards. The Zoning Code "yard" definition is as follows:

"An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line and is unoccupied and unobstructed from ground upward, except as may be specifically authorized in this chapter. In measuring a "yard," as hereinafter provided, the "line of a building" shall be deemed to mean a line parallel to the nearest lot line, drawn from a point of a building or the point of a group of buildings nearest to such lot line, and the measurement shall be taken at right angles from the line of the building, as defined herein, to the nearest lot line."

In consideration of the above definition, which would allow basement window wells to encroach within a required yard since a window well is "unoccupied and unobstructed from

¹⁰ The Property Owner relies on the Zoning Code definition of "Building Area" as exempting window wells from side yard setbacks. The Property Owner also relied on the Building Inspector's interpretation that Zoning Code setbacks do not apply to basement window wells since they are "unoccupied and unobstructed from ground upward."

ground upward,” there are safety issues that may arise in other cases if the definition is applied literally (i.e., a trench could be extended to property line without triggering need for setback variance). This would be more appropriately addressed legislatively through amendments to the Zoning Code. This portion of the appeal is denied.

2. Window Wells/Building Envelope

The Building Inspector must confirm that all construction including basement window wells and egress(es) were constructed within the approved building envelope as delineated on the Final Plat. Prior to issuance of the CO the Building Inspector must determine compliance and report to the ZBA. If not compliant, the Property Owner shall satisfactorily remedy such non-compliance within the specified Compliance Period or the TCO shall be revoked.

3. Changes to Building Permit Plans

Revised plans were approved on 6/20/17. These plans included the following changes: detail on size and location of basement windows/wells, the number of basement windows were increased and egress(es) added, a window was moved up to the 2nd floor, floor height was increased (1st to 2nd floor and 2nd floor to attic, 8’ to 9’), a patio added and a beam callout was added.

According to Village Code Chapter 6 (Board of Architectural Review) “[t]he Building Inspector shall forthwith issue an order to stop all work of construction or reconstruction if an applicant proceeds with his work after his application has been disapproved by the Board or if the applicant proceeds with his work in a manner not consistent with the conditions or specifications under which the Board approved the plans for the structure or building. Village Code §6-8(b) (emphasis added). Further, it is the duty of the Building Inspector to maintain a current record of . . . all approvals granted by the Board of Architectural Review” and to “enforce the observance and performance of all the terms and conditions of such grants and approvals.” Village Code 342-86.

Changes to appearance of the home, and changes to plans originally approved by the BAR in February 2016, required BAR re-approval before the Building Inspector could authorize these plan revisions. The Property Owner must satisfactorily remedy such non-compliance within the specified Compliance Period or the TCO shall be revoked. Further, a building permit to relocate/add windows (application for a permit which was made prior to TCO being issued is pending) shall not be granted by the Building Inspector unless the BAR approves the proposed changes to windows.

D. Permit #17-0840/Windows (1019 Grove –Lot 2)

The Property Owner admitted to being directed to the BAR to seek approval for proposed changes to the originally approved plans (approved by BAR in February 2016), for moving/adding windows and framing and he appeared at one BAR meeting on August 18, 2016 but did not return to the BAR when faced with opposition at that meeting. Instead the Building

Inspector authorized him to apply for a separate building permit to move/add windows without requiring him to go to the BAR, which improperly circumvented the BAR approval process.

The same day as the CO was issued for the single family home, the Building Inspector issued Building Permit 17-0840 to enable the Property Owner to move/add windows without BAR approval because the work under the individual permit was estimated to be less than the \$10,000 threshold for BAR jurisdiction. However, Permit 17-0840 amended plans for home construction (which exceeded monetary triggers for BAR review) which were originally approved by the BAR in February 2016. This resulted in a different window configuration for the newly constructed home than authorized by the BAR. By manipulating the regulatory process and engaging in this scheme to segment construction costs, the Building Inspector improperly allowed the Property Owner to evade BAR review when this was actually an amendment to previously approved plans for home construction.

Accordingly, BAR re-approval was required under these circumstances. See Village Code §6-8(b) (“The Building Inspector shall forthwith issue an order to stop all work of construction or reconstruction ...if the applicant proceeds with his work in a manner not consistent with the conditions or specifications under which the Board approved the plans for the structure or building.). Further, it is the duty of the Building Inspector to maintain a current record of . . . all approvals granted by the Board of Architectural Review” and to “enforce the observance and performance of all the terms and conditions of such grants and approvals.” Village Code §342-86.

As Permit 17-0840 amended plans for home construction (and was used to circumvent BAR authority), it was erroneously issued by the Building Inspector. BAR re-approval is required for moving the location of and adding windows. The Property Owner must satisfactorily remedy such non-compliance within the specified Compliance Period or the permit shall be revoked.

E. CO for Building Permit 16-0307 (1019 Grove-Lot 2)

1. Windows relocated/added

The same day the CO was issued, the Building Inspector also issued a building permit for the Property Owner to move/add windows. As Permit #17-0840 related to construction of the home and was used to circumvent the BAR approval process, BAR re-approval is required for moving the location of and adding windows. See D, above. The Property Owner must satisfactorily remedy such non-compliance within the specified Compliance Period or the CO shall be revoked.

2. Window wells/required setback

The appeal is denied for reasons set forth in C. 1, above.

3. Window Wells/Building Envelope

The Building Inspector must confirm that all construction including basement window wells and egress(es) were constructed within the approved building envelope as delineated on the Final Plat. Within 30 days of filing of this resolution, the Building Inspector must determine compliance and report to the ZBA. If not compliant, the Property Owner shall satisfactorily remedy such non-compliance within the specified Compliance Period or the CO shall be revoked.

4. Changes to Building Permit Plans

Revised plans were approved on 6/20/17. These plans included the following changes: detail on size and location of basement windows/wells, the number of basement windows were increased and egress(es) added, floor height was increased (1st to 2nd floor and 2nd floor to attic, 8' to 9'), a patio added and a beam callout was added. Changes to appearance of the home required BAR re-approval before the Building Inspector could authorize these plan revisions. See also C.3, above. The Property Owner must satisfactorily remedy such non-compliance within the specified Compliance Period or the CO shall be revoked.

F. Landscape Plan Compliance

Prior to issuance of the CO for Lot 3 (1017 Grove) the Building Inspector must confirm compliance with the Final Plat Landscape Plan and report to the ZBA. For Lot 2 (1019 Grove), within 30 days of filing of this resolution, the Building Inspector must determine compliance and report to the ZBA. If not compliant, the Property Owner shall satisfactorily remedy such non-compliance within the specified Compliance Period or the CO shall be revoked.

NOW THEREFORE, on motion of Ms. Kramer, seconded by Ms. Wenstrup:

BE IT RESOLVED, in accordance with the records, proceedings and above findings, Application #4I-2017 and Application #5I-2017 Appeals are granted in part in accordance with the aforementioned findings with the remainder of those appeals denied;

BE IT FURTHER RESOLVED THAT the named TCO/CO, permits, and certificates of compliance shall not be revoked for a period of 120 days from the effective date of this resolution (date of filing with Village Clerk) ("Compliance Period");

AND BE IT FURTHER RESOLVED THAT this determination does not have any effect on the current or future development of Lot 1 or to the Certificate of Occupancy issued for a single-family home constructed on that parcel.

In Favor: Weprin, Neufeld, Wenstrup, Kramer, Yergin

Opposed: None

Absent: None

Dated: May 3, 2018
Mamaroneck, N.Y.



Chairman



Secretary