

VILLAGE OF MAMARONECK ZONING BOARD OF APPEALS FINDINGS AND DECISION

ZBA Case Docket Number: ZON-24-0014
Address: 1011 Greacen Point Road (9-93C-19)
Applicant: Francesca Ortenzio and Jakub "Kuba" Tatka
Zone: R-20
Relief Sought: Appeal
Date of these Findings and Decision: February 5, 2026

RECEIVED
FEB 9 10 27
VILLAGE OF MAMARONECK
NEW YORK

This is an appeal ("the Appeal") filed December 16, 2024 by Francesca Ortenzio and Jakub "Kuba" Tatka ("Appellants") who reside at 1019 Greacen Point Road, Mamaroneck, New York, from the issuance of a building permit dated December 13, 2024 ("the Determination") to Kevin Valles and Madelyn Moelis ("the Owners") who own the real property at 1011 Greacen Point Road ("the Property"). The subject of this appeal ("Appeal") concerns the proposed construction of a single-family dwelling on the unimproved Property acquired by the Owners in July 2023 ("the Project"). The Property comprises approximately 40,689 square feet, a portion of which is in and/or adjacent to a regulated/protected wetland.

I.

In 2024 the Owners applied for a variance of the Floor Area Ratio ("FAR") because the house they proposed to construct on the Property exceeded the allowable FAR, as limited by Chapter 342 of the Mamaroneck Code (the "Code") as determined by the then building inspector. On April 4, 2024, the Board conditionally granted an 8.92% variance "conditioned on" six enumerated conditions (the "April 2024 Resolution").

The conditions included the following:

(The Owners "...shall obtain all *approvals including a building permit from the Village of Mamaroneck*".... "*as otherwise may be required.*" (Condition 2);

The Owners "...*shall obtain a building permit within twelve months of the date of this Resolution*" (Condition 3);

The Owners "*shall complete construction within 18 months of the date the building permit is issued unless otherwise extended by the Board.*" (Condition 4);

"The Project [defined as the "construction of a proposed single-family residence and accessory structures"]...shall be constructed in compliance with..[the April 2024 Resolution] and all Application Materials, including the plans dated February 15, 2024 as prepared by Cardello Architects, except for non-substantial changes that may occur during construction, but which shall not alter the Area Variance as set forth in the Resolution [the April 2024 Resolution]." (Condition 5, emphasis added); and

The granting of the FAR variance does not relieve the Owners "from complying with all other applicable laws and regulations." (Condition 6).

The Owners neither urged that the Board's conditions were arbitrary or capricious, nor sought a review of the April 2024 Resolution pursuant to Village Law Section 7-712(c).

On December 13, 2024, the Owners obtained a building permit for construction of the Project. However, the building permit was based on plans dated August 29, 2024, which are not the plans on which the variance was conditioned. After the filing of the Appeal, the Building Inspector suspended the building permit. Thereafter, the Owners made numerous further revisions to the plans, and during this Appeal the Owners acknowledged their intent to make further modifications to the plans.

On December 16, 2024, the Appellants appealed the issuance of the building permit.

II.

The Appellant argues that the Building Inspector erred in granting the Building Permit because the height of the wall in the side yard setback exceeded the permissible limits. Section 342-14.C of the Zoning Code sets forth the maximum height for walls/retaining walls in the Village of Mamaroneck.

Fences, walls or retaining walls shall be constructed with the finished side facing outward from the property, and shall not exceed six feet in height, except:

(1) On a corner parcel, placed beyond the front or side building lines, they shall not exceed four feet in height.

(2) An additional six inches in height may be allowed, at the discretion of the Building Inspector, to provide for necessary distance between the grade and the bottom of the fence, for greater flexibility in mounting.

(3) Where required pursuant to Article XI.

(4) Where approved in conjunction with a special permit granted under Article X.

The Building Permit allowed for a fence 7.5 feet in height, in violation of the Village Code. As such, the Building's Inspector's determination was incorrect and the Building Permit must be revoked.

Further, the required side-yard setback for the Property is 20 feet pursuant to Village Code Section 342, Attachment 2, Note 11. The Building Permit improperly provides for a wall to be within this setback area. Any proposed use of the side-yard other than as an open space is contrary to both the Code and the prior precedent of this Board. The Code defines "Yard" as an "open space" between the lot line and the building that is "unobstructed from ground upward, except as may be specifically authorized in this chapter [342]."

III.

During the appeal, the Owners raised numerous issues including whether improvements can be located in the required side yard; whether the calculation of the FAR was accurate and Code compliant; whether a proposed wall was Code compliant and more than 6 feet in height; whether the number of stories of the proposed dwelling is Code compliant; whether a certain area is a "basement" or a "cellar" and accuracy of the FAR calculations; whether other variances are necessary for the Project, whether the grade of the land was improperly altered; the need for environmental review concerning water and flooding issues and whether the conditions in the April 2024 resolution were violated. The foregoing issues cannot be determined at this time and are not ripe because final plans have not yet been submitted. The Board cannot speculate on these matters.

IV.

At such time as the Owner's plans are completed, the building inspector can make his determination and ascertain if the proposal is Code compliant or if a variance(s) is(are) needed. If the Owner and building inspector maintain it is Code compliant then the Appellant can appeal if they disagree; and if it is not deemed Code compliant and the Owners seek a variance, the parties can then address their respective positions in the context of an application for a variance(s) based upon the final plans. This preserves all parties with the right to be heard when the matter may be ripe and preserves the integrity of the Code.

The owners applied to the Planning Board for site plan approval during which process the plans were discussed and revised. The discretionary power to grant variances is vested in the Zoning Board of Appeals, and other boards from whom the Owners sought approvals were not authorized to waive or alter zoning ordinances or the determination of the Zoning Board. See *In the Matter of Deon v. Town of Brookhaven*, 824 N.Y.S.2d 768 (Suffolk County 2006); *McEnroe v Planning Bd. of Town of Clinton*, 307 N.Y.S.2d (Dutchess County 1969).

After considering the evidence and the positions of the Owners, Appellants and public, the Board makes the following findings and grants the Appeal as follows:

1. The conditional variance of the FAR dated April 4, 2024 is no longer in effect due to failure to comply with the conditions enumerated in the April 4, 2024 Resolution. The Appeal is also granted on the grounds that the height of the wall and the location of the wall in the side yard are not compliant with the Code.
2. To the extent there are other grounds to grant the Appeal, such as the violation of the side yard setbacks, matters related to the height of improvements, the FAR requirement or any other non-compliance with the Code, these issues are not ripe for review.
3. The Building Permit, to the extent it has not been cancelled, is vacated.
4. The Owners are not precluded from making an application to this Board for a variance(s) provided that any application must clearly itemize and identify each variance(s) sought and contain the factual and legal basis for each.

5. If there comes a time that either party maintains that these issues become ripe for review, then such party shall notify the Board and the other party of this and identify such issue(s) and why they are ripe, whereupon the Board will address such request.

The Zoning Board directs that a complete copy of this resolution be filed with the Village Clerk in compliance with New York State Village Law.

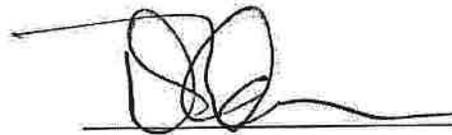
On the motion of Board Member Gretta Heaney, seconded by Board Member Richard Clifford, the foregoing resolution was adopted with all Board members voting as follows:

David Neufeld, Chair	-	YES
Robin Kramer	-	YES
Richard Clifford	-	YES
Gretta Heaney	-	YES
Angelique Shingler	-	YES

RECEIVED
MIB FEB -9 10 2 07
VILLAGE OF MOUNTKINECH
NEW YORK

The motion was carried on a vote of 5-0.

Dated: Feb 10, 2026



David Neufeld, Zoning Board Chairperson

Board Secretary