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BY EMAIL AND HAND DELIVERY

Chairperson Robin Kramer
and Members of the Zoning Board of Appeals
Village of Mamaroneck
123 Mamaroneck Avenue
Mamaroneck, NY 10543

Re: Application for an Area Variance
Applicant: Morella Ramirez and Alex Guedez
Premises: 212 Jensen Avenue (Tax Parcel 154.35-2-46)

Dear Chairperson Kramer and Members of the Zoning Board of Appeals:

This letter and enclosed materials are respectfully submitted on behalf of Morella Ramirez and Alex Guedez (together, the "Applicant"), owners of the above-referenced Premises, in furtherance of a second-story renovation to their existing single-family home. The Applicant requests an Area Variance to permit the expansion of the second story within the existing building footprint, to match the front yard setback of the first floor below it.

PREMISES, THE PRE-EXISTING NONCONFORMITY, AND PROPOSED IMPROVEMENTS

The Premises is an approximately 0.20-acre lot located along Jensen Avenue, south of Florence Park and north of Keeler Avenue - listed on the Village's Official Tax map as Tax Parcel 154.35-2-46. It contains a single-family residence with a detached garage. The property is classified in the Village's One-Family Residence R-5 ("R-5") Zoning District. Section 341-21(A) of the Village's Zoning Code ("Zoning Code") provides that single-family dwellings are a principally permitted use in the R-5 Zoning District.

As further detailed in the enclosed Survey and Site Plan Drawings prepared by Mark Fritz Architects, revised through December 8, 2022 (the "Site Plan Drawings"), the existing single-family home does not comply with the front yard setback requirements. The home was constructed in approximately 1936 and as such, predates the Zoning Code dimensional requirements for front yard setbacks.

The Applicant is proposing to alter the existing second floor by extending the front facade of the second floor outwards to line up with the existing outer wall of the first floor, "bumping out" the second floor while remaining within the existing building's footprint. The expanded area on the second floor will accommodate space for an expanded bedroom. No changes to the height of the structure are proposed. The Applicant is also proposing a rear yard addition to the first floor, to permit the expansion of the kitchen area, enclosing a back porch; while the arbor in the rear yard is to be removed.

It is noted that construction on the second-floor expansion has begun, and following correspondence with the Village's Building Department, said construction has paused while this request is being considered.

REQUEST FOR AREA VARIANCE

The Applicant is requesting that this Board grant an Area Variance for the expansion of the second floor so that the wall of its front facade lines up with the existing exterior wall of the first-floor facade below. This expanded second floor, which will remain within the existing footprint of the building, will be setback 14.4 feet from the front property line, where 20 feet is mandated pursuant to the Schedule of Minimum Dimensional Requirements for Residential Districts found at Attachment 2 of the Zoning Code, requiring a 5.6-foot front yard setback Area Variance - as noted in the Building Inspector's Determination signed January 26, 2023 and e-mailed to the Applicant January 27, 2023, found at **Exhibit B**.

A. The Five Factors Balance in Favor of Granting the Area Variance

In considering the granting of the requested Area Variance, New York State Village Law Section 7-712b(3)(b) and Zoning Code Section 3811-77(B)(2)(a) provides that a Zoning Board of Appeals shall consider the benefit 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.

In weighing the aforementioned balancing test the Board shall consider: "(i) 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 area variance; (ii) whether the benefit sought by the applicant can be achieved by some method, feasible to the applicant to pursue, other than the area variance; (iii) whether the requested area variance is substantial; (iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (v) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance."

- i. *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 area variance.*

The home was erected on or about 1936. See Assessment Cards at **Exhibit D**. To the best of the Applicant's knowledge, the front yard setback of the first floor of the home has not been modified since that time, as indicated by the footprint of the home shown on the above-referenced Assessment Cards. The Applicant seeks to renovate the second story of their home squarely within the existing building footprint. See Site Plan Drawings.

Granting the requested Area Variance will not produce an undesirable change in the character of the neighborhood, nor will it create a detriment to nearby properties. The home already exists in its current state and the proposed alteration to the second floor will not further encroach into the front yard setback. Moreover, it is noted that the setbacks of many of the homes along the western side of Jensen Avenue also line up with the approximately current setback of the first floor of the

Applicant's structure, including 122 Jensen Avenue, 126 Jensen Avenue, 200 Jensen Avenue, 204 Jensen Avenue, and 224 Jensen Avenue. There are examples of other structures along Jensen Avenue where the second floor encroaches to the same approximate setback proposed here, as found at 201 Jensen Avenue, 207 Jensen Avenue, and 224 Jensen Avenue. See Photos of Premises and Surrounding Area at **Exhibit G**. Indeed, it is understood that "[g]enerally, when an applicant is seeking variances to conform to that which is prevalent in the neighborhood, absent other overriding considerations, a denial of relief is likely to be found arbitrary. *Daneri v. Zoning Bd. of Appeals of Town of Southold*, 2010 WL 4155289 (N.Y. Sup. 2010).

As a result, the proposed expansion of the second floor will not have a negative impact on the surrounding community, as it will conform with that community's character. Following the proposed improvements, the home will remain otherwise zoning-compliant. Further, it is noted that the existing landscaping in front of the home, including a tree on the Premises and a tree along the public right-of-way, will minimize any visual impact from this expansion, while the expansion will match the façade in terms of colors, materials, and style – additionally avoiding any visual impact.

This Board has previously determined that second-floor renovations to a residential building with pre-existing nonconforming yards will not result in an undesirable change to the character of the neighborhood when the enlargement of the existing structure is within the pre-existing building envelope, the proposed expansion is within the height permitted by the Zoning Code, and the Variance will not result in development closer to any lot line. See **Exhibit F** - Zoning Board of Appeals ("ZBA") Resolutions for: 1260 Flagler Drive (June 2, 2022); Case 3A-2021, 732 The Parkway (Sep. 2, 2021); Case No. 1A-2021, 506 Claflin (July 22, 2021); Case 5A-2021, 413 Soundview Avenue (July 22, 2021); Case No. 5A-2020, 600 Lorraine Street (Dec. 3, 2020).

The Applicant's proposal is consistent with those prior cases because the second-story renovation is within the existing building envelope, within the height permitted by the Zoning Code, and will not result in any development closer to the lot lines than what currently exists. "[A] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious." *Knight v. Amelkin*, 503 N.E.2d 106, 106 (N.Y. 1986). When considering applications for variances, this Board must comply with this rule and cannot make decisions inconsistent with its prior determinations. *Id.*

For the reasons previously stated, the granting of the Area Variance will not produce any adverse impacts on the surrounding community, given that the proposed second-floor renovation will maintain the existing dimensions of the home, mirror the size and scale of surrounding homes, and is within the height restrictions provided for in the Zoning Code.

- ii. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*

The proposed Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. In fact, there will be no at-grade disturbance associated with the requested Variance, no increase in impervious surface associated with the Variance, and no change to the existing footprint of the home (with the exception of the

rear yard addition, which is not a part of this Application). Therefore, the proposed Area Variance will not adversely impact the environment.

Accordingly, the requested Area Variance constitutes an action exempt from the New York State Environmental Quality Review Act ("SEQRA"), because it is a Type II Action in that it involves the rehabilitation of a structure, in kind, on the site. *See* 6 NYCRR Section 617.5(c)(2). Notwithstanding, and for the benefit of the Board, we have included a Short Environmental Assessment Form ("EAF"), enclosed as **Exhibit C**.¹

iii. Whether the requested area variance is substantial.

Upon consideration of the facts and circumstances in this situation, the requested Area Variance is not substantial. The second-story renovation will not be closer to the front yard property line than the existing home. *See* Site Plan Drawings. Indeed, there will be no change to the existing building envelope, with the exception of the rear yard addition, which is not a part of this Application.

The Applicant is merely seeking to increase livable space on the second floor of their home within the existing building footprint, consistent with other homes in the area. The substantiality of a variance cannot be judged solely by a comparison of the percentage deviation from the mandated requirements of the Zoning Code. Indeed, the overall effect of granting the relief is the appropriate inquiry.

This Board previously determined that yard variances for second-floor renovations to pre-existing nonconforming residential structures were not substantial when the proposed height was within the maximum permitted by the Zoning Code and the renovations did not further encroach into the yards. *See Exhibit F - ZBA Resolutions*. Similarly, the requested Area Variance for the proposed renovation is within the existing footprint and complies with applicable height restrictions, and therefore the alteration must also be deemed insubstantial.

In considering whether a variance is substantial, this Board shall examine the totality of the circumstances within an application. *See Friends of Shawangunks, Inc. v. Zoning Bd. of Appeals of Town of Gardiner*, 56 A.D.3d 883, 886, 867 N.Y.S.2d 238, 241 (3d Dep't 2008) (although variances were substantial the zoning board of appeals properly determined area variances will not have a substantial impact on the community); *see also Schaller v. New Paltz Zoning Bd. of Appeals*, 108 A.D.3d 821, 824, 968 N.Y.S.2d 702, 705 (3d Dep't 2013) (upholding zoning board of appeals' determination that an area variance was not substantial when compared to the nearby buildings).

To the extent that this Board may believe otherwise, we respectfully remind this Board that the mere fact that a variance may be deemed "substantial," or fails to meet one of the other five factors, does not preclude application of the *overall* balancing test. *See Church of Jesus Christ of Latter Day Saints v. Zoning Bd. of Appeals of Town/Village of Harrison*, 296 A.D.2d 460 (2d Dep't 2002) (determination that a request that was deemed "substantial" did not excuse Zoning Board of Appeals from applying the overall balancing test).

¹ Any new addition to the rear of the home would be considered a Type II Action under SEQRA as well. *See* 6 NYCRR Section 617.5(c)(11): "construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections...."

As mentioned above, the requested variance will not have a substantial impact on the community given that the Applicant is proposing a renovation that fits squarely within the existing building footprint, and does not include improvements any closer to the property line than already exists. The second-floor alteration will also not have a substantial impact on the neighborhood because they will mirror several surrounding homes. Thus, the requested relief is not substantial when looking at the totality of the variance application.

iv. Whether the benefit sought by the applicant can be achieved by some method, feasible to the applicant to pursue, other than the area variance.

New York State Village Law Section 7-712-b(3)(b)(2) requires the Board to consider “whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.” The range of appropriate alternatives is limited by two standards: First, the alternative must still provide the benefit sought by the applicant and, second, it must be feasible for the applicant to pursue. A zoning board of appeals may not deny a variance and attempt to relegate an applicant to an alternative design that is a “profound departure” from, or substantially more costly than, the design proposed in the variance. *See Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Zoning Bd. of Appeals of Town/Village of Harrison*, 296 A.D.2d 460 (2d Dep’t 2002). *See also Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep’t 1998) and Salkin, New York Zoning Law & Practice § 29:36 Administrative Relief from Zoning Regulations: Variances.

The benefit of increased habitable space on the second floor of the home sought by the Applicant cannot be achieved by any other feasible method besides the requested Area Variance. The pre-existing nonconforming front yard renders any exterior alteration to the front façade of the home, even within the existing footprint- as proposed here, nonconforming.

This application proposes a practicable design to expand the second floor that falls squarely within the existing building envelope and complies with the applicable maximum height requirements. The proposal is designed in a sensitive manner that allows for meaningful use of the second floor within the original building footprint to avoid any at-grade disturbance or increase in impervious coverage onsite. *See Site Plan Drawings*. We note that the proposed alteration does not create any additional nonconformities than what currently exists on the Premises.

Therefore, due to the pre-existing nonconforming side yards, it is respectfully submitted that there are no feasible alternatives to accommodate additional habitable space on the second floor.

v. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The Area Variance requested herein is not self-created, but instead is the result of the Applicant’s proposal to renovate an existing home with a pre-existing nonconformity. Furthermore, the requested Area Variance would be required for any change to the first or second story along the front façade.

To the extent that the Board may believe that the need for the Area Variance is self-created, we respectfully remind the Board that this factor is not dispositive pursuant to New York Village Law

§ 7-712-b(3)(5). *See Daneri v. Zoning Bd. of Appeals of Town of Southold*, 98 A.D.3d 508, 510 (2d Dep't 2012) (self-created nature of difficulty is not preclusive of the ability to obtain an area variance).

CONCLUSION & MATERIALS ENCLOSED

For the reasons set forth above, and as will be further discussed with the Board, the Applicant respectfully requests that the Board provide relief from the Zoning Code by granting the requested Area Variance. It is respectfully submitted that the benefit to the Applicant if the Area Variance is granted clearly outweighs any possible detriment to the health, safety, and welfare of the neighborhood or community by such grant.

In support of this application, enclosed please find two (2) checks in the amounts of \$150 and \$1,500, representing the application fee and escrow fees, and six (6) hard copies and one electronic version of the following documents:

- Exhibit A: Zoning Board of Appeals Application;
- Exhibit B: Zoning Compliance Determination, signed January 26, 2023 and e-mailed to the Applicant January 27, 2023;
- Exhibit C: Short Environmental Assessment Form;
- Exhibit D: Village of Mamaroneck Property Assessment Cards for the Premises;
- Exhibit E: Certificate of Occupancy Number 22-1079 and dated August 10, 2022;
- Exhibit F: Prior Zoning Board of Appeals Resolutions granting area variances for similar renovations to pre-existing nonconforming buildings; and
- Exhibit G: Photographs of Premises and the Surrounding Neighborhood.

Also enclosed are six (6) copies and one electronic version of Survey and Site Plan Drawings prepared Mark Fritz Architects, entitled "Ramirez Residence, 212 Jensen Ave., Mamaroneck, NY," revised through December 8, 2022.

The Applicant looks forward to appearing before the Board on April 13, 2023 to discuss this matter. Should the Board or Village Staff have any questions or comments in the interim, please do not hesitate to contact me.

Thank you for your time and consideration in this matter.

Very truly yours,



Maximillian R. Mahalek
Enclosures
cc:

Carolina Fonseca, Village Building Inspector
Lucia Chiochio, Esq.
Client