

New Appeals

ZBA 23-24 – YMCA, 138 Ferris Place, Block: 2504, Lot: 20

Represented by: Blake C. Width of Lindabury, McCormick, Estabrook & Cooper

Witnesses: Joseph Bachi, Civil Engineer; Susan Morton, VP of Operations YMCA Small Child Programs; and, Nicholas Graviano, Planner

Public: None

Exhibits: None Marked

Applicant sought variance relief to construct an ADA-compliant access ramp and shade structure at the outdoor playground area of its property adjacent to Ferris Place, as well as also upgrade the existing playground by installing sensory playground equipment.

Attorney, Blake C. Width, Esq, came forward to describe the application. He pointed out that prior applications for this property do not relate to the current application and the relief being sought. He described the sensory equipment to be installed and explained the addition of the retaining wall height, and the decrease in the minimum offset. He briefly explained the need for the D (3) conditional use variance relief as well as the additional C variances.

Chairman Fusaro indicated to the Board and to the public, that in the interest of time, to please hold any questions or comments until all three witnesses are heard.

Mr. Width called his first witness, Joseph Bachi, a civil engineer. Whereupon, Mr. Bachi was sworn in by Chairman Fusaro and accepted as an expert in the field of engineering. Mr. Bachi began his presentation by referring to the site plan and explained the scope of work and the importance of bringing the area up to ADA-compliant standards along with improvements to the play area. He explained the proposed shade structure, which will be up for eight to nine months during the year, and that the railings for the ADA ramp will match the existing aluminum fence on the retaining wall.

Mr. Width called his second witness, Susan Morton, VP of Operations, YMCA Small Child Programs. Whereupon, Ms. Morton was sworn in by Chairman Fusaro. Ms. Morton reviewed the membership statistics for children (under 18) and the programs available for children at the YMCA. She explained the importance of the subject outdoor area's use for the various child programs throughout the year, and that it's currently not accessible for anyone with disabilities and/or moms with strollers. She briefly described the new inclusive sensory equipment and the need for shade in the playground area. She explained how grant funding is being applied to this project and that there are timing requirements attached to the funding. Chairman Fusaro asked about the new chimes and if they would cause noise after hours. Ms. Morton explained they physically need to be engaged to create noise.

Mr. Width called his third and last witness, Nicolas Graviano, a professional planner. Whereupon, Mr. Graviano was sworn in Chairman Fusaro and accepted as an expert in the field of planning. Mr. Graviano addressed the town planner, Don Sammet's, memorandum. He explained the applicant's scope of work on the playground and how the D and C relief is needed.

Chairman Fusaro asked the members of the public who wished to ask questions of the witnesses or provide comment on the application to please come forward. No members of the public came forward.

Chairman Fusaro closed the public portion of the meeting and opened it up to board discussion.

The Board discussed the application. Chairman Fusaro recapped the application and the relief being sought. He discussed the height of the shade structure, the condition of the ramp railing matching the existing one, the times of operation, the chimes will not produce noise after-hours, and the height of the wall with the fence on top of it.

Vice-chair Masciale supported the application and need for the ADA-compliance. He was concerned about the shade structure affecting the streetscape. Vice-chair Masciale and Chairman Fusaro agreed to include a condition that the shade structure remains open.

Mr. Cohen inquired if there will be a gate at the top or bottom of the ADA-compliant ramp to prevent people from getting into the playground. Chairman Fusaro opened up the meeting again, whereupon, Mr. Bachi confirmed there will be a child-safe latch at the top of the handicap ramp.

Chairman Fusaro proposed application conditions including that the railing be code-compliant and match the existing railing on top of the retaining wall, and that the canopy/shade structure remains open on all sides.

Chairman Fusaro called for a motion.

A motion to *approve* the application with conditions was made by Vice-chair Masciale, and it was *seconded* by Mr. Reisen. The roll call vote was taken as follows:

VOTE: **YES:** Ms. Molnar, Mr. Cohen, Mr. Sontz, Vice-Chair Masciale, Chairman Fusaro,
 Mr. Reisen
 NO: None
 ABSTAIN: None

Mr. Sammet left the meeting.

ZBA 23-01 – Erika Kozolchyk & Jason Schaechter, 41 Moss Ave, Block: 5501, Lot: 5

Witnesses: Erika Kozolchyk, Applicant; and, Tiina Vaska, Architect

Public: Varun Pawar, Neighbor, 37 Moss Avenue

Applicants sought variance relief to add a pergola in their backyard to provide some partially covered outdoor living space.

The Applicant, Erika Kozolchyk, was sworn in by Chairman Fusaro. Ms. Kozolchyk explained her application and the need for shade in her rear yard.

The Applicant's architect, Tiina Vaska, was sworn in by Chairman Fusaro and accepted as a professional in the field of architecture. Ms. Vaska described the scope of work by referencing her plans. She explained the hardship of how the lot is very shallow. By using photographs, Ms. Vaska compared the subject property to neighboring properties as well as neighboring streetscapes.

The Board questioned the witness. Chairman Fusaro questioned the trees shown in Ms. Vaska's renderings. Ms. Vaska confirmed they will be planted. Chairman Fusaro asked about the outdoor TV wall. Ms. Vaska described the TV wall and confirmed that the wall is made of steel studs. Chairman Fusaro indicated that should the application be approved; a condition will be added to keep the pergola open on three sides.

Ms. Molnar requested clarification as to whether or not the trampoline and playground will be removed. Ms. Vaska indicated that the playground is being kept and the trampoline is movable.

Vice-chairman Masciale asked if any external speaker system will be installed for the TV wall. Ms. Vaska explained that was not the intent and that any audio would be projected in the back of the house away from the neighbors.

Mr. Cohen inquired if drainage or water flow could be an issue. Ms. Vaska confirmed that there are drainage systems on the pergola and that it would be a detriment to the pergola to keep it closed for any length of time.

Chairman Fusaro asked the members of the public who wished to ask questions of the witnesses or provide comment on the application to please come forward.

Neighbor, Varun Pawar, was sworn in by Chairman Fusaro. Mr. Pawar expressed his support of the application.

Chairman Fusaro closed the public portion of the meeting and opened it up to board discussion.

The Board discussed the application. Chairman Fusaro summarizes the application which included the new pergola, the planned landscaping along the fence line, the existing awning will be

removed, and the TV will have no special audio system and will be mounted on the wall of the home. He also noted that, if approved, a condition be added that the pergola remains open on three sides.

Mr. Sontz showed his support for the application. He clarified that although the Board approves the TV, the Applicant is still subject to noise and nuisance ordinances.

Chairman Fusaro called for a motion.

A motion to *approve* the application with conditions was made by Mr. Sontz, and it was *seconded* by Mr. Reisen. The roll call vote was taken as follows:

VOTE: **YES:** Ms. Molnar, Mr. Cohen, Mr. Sontz, Vice-Chair Masciale, Chairman Fusaro, Mr. Reisen
 NO: None
 ABSTAIN: None

ZBA 23-04 – Rodney Ross, 779 Fairacres Ave, Block: 3501, Lot: 22

Witnesses: Rodney Ross, Applicant, (not sworn); Deborah Enix-Ross, Applicant; and, Steven Majewski, Architect

Public: Scott Lazar, 783 Fairacres Avenue, Neighbor

Applicants sought variance relief to construct a deck and exit stairway in their backyard. The deck will replace a deteriorated on-grade patio and small platform with stairway.

The Applicant, Deborah Enix-Ross, was sworn in by Chairman Fusaro. Ms. Enix-Ross explained her application and the need for the deck to give her and her husband the ability to walk out from their kitchen to enjoy outdoor dining. She indicated that her neighbor was present to support the application.

The Applicant’s architect, Steven Majewski, is sworn in by Chairman Fusaro and accepted as a professional in the field of architecture. Mr. Majewski explained the scope of work proposed in the application. He indicated that the current patio is very deteriorated and the grading changes depth at various points from the house. In support, he used photographs. He indicated that the deck will not be a detriment to any neighbors and will enhance the home and neighborhood. Chairman Fusaro, Mr. Majewski, and Vice-chair Masciale briefly discussed a prior application on the same property from 1994 for a deck which was denied.

Chairman Fusaro asked the members of the public who wished to ask questions of the witnesses or provide comment on the application to please come forward.

Neighbor, Scott Lazar, is sworn in by Chairman Fusaro. Mr. Lazar expressed his support for the application.

Chairman Fusaro closed the public portion of the meeting and opened it up to board discussion.

The Board discussed the application.

Chairman Fusaro summarizes the application including that there is existing screening on both sides of the property and that the rear yard faces a parking lot. Vice-chairman Masciale pointed out that this application is substantially different from the 1994 denied application. He acknowledged the sloping conditions in the yard, and he felt the deck would be a positive for the homeowners without being a detriment to the neighborhood.

Chairman Fusaro called for a motion.

A motion to *approve* the application as submitted was made by Mr. Reisen, and *seconded* by Ms. Molnar. The roll call vote was taken as follows:

VOTE: **YES:** Ms. Molnar, Mr. Cohen, Mr. Sontz, Vice-Chair Masciale,
 Chairman Fusaro, Mr. Reisen
 NO: None
 ABSTAIN: None

ZBA 21-056 – Christopher Osborne, 15 Sunnywood Drive, Block: 201, Lot: 70

Represented by: James Foerst, Esq., Spector Foerst & Associates

Witnesses: Christopher Osborne, Applicant; and, Andrew Cossa, Landscape Architect

Public: None

Exhibits: (A-1) Email Correspondence between J. Foerst and David Battaglia dated 7/7/2023

Applicant sought variance relief to install a paver patio with pergola, raised wall, Koi Pond, and shed in the rear front yard of a through-lot.

Attorney, James Foerst, Esq, came forward to discuss the application. He explained the variances sought and pointed out that this property is a through-lot which fronts on Sunnywood Drive and Fanwood Avenue creating two front yards. Mr. Foerst marked Exhibit A-1, an email correspondence from the town engineer, David Battaglia, which advised that the proposed improvements in the Town’s right-of-way are acceptable to him subject to the understanding that the Applicant understands the right-of-way is the Town’s property and, if the Town needs to take that property for any reason, the Applicant is responsible to move whatever is in their way.

Mr. Foerst called his first witness, the Applicant, Christopher Osborne, who was sworn in by Chairman Fusaro. Mr. Osborne explained the variance relief he was seeking and why these backyard amenities are important to him and his family’s use. He confirmed that he will be moving a shed that’s encroaching on the Town’s right-of-way onto his property. Mr. Foerst explained that the retaining wall variance doesn’t really pertain to a retaining wall but to a wall that surrounds the putting green.

The Board questioned the witness. Chairman Fusaro questioned side yard and rear property line measurements from the Harbor Consultants Plot Plan. Ms. Mance confirmed the required measurements. Vice-chair Masciale asked the Applicant for the shed size, to which Mr. Osborne indicated it measures approx. 10x10. Ms. Mance scaled out the shed to be 11x6 ½. Ms. Razin pointed out that the shed, as indicated on the Plot Plan, will require an additional variance.

Mr. Foerst called his second witness landscape architect, Andrew Cossa, who was sworn in by Chairman Fusaro and accepted as an expert in landscape design. Mr. Cossa walked the Board through the design proposal of the landscape plans. Mr. Foerst asked Mr. Cossa to confirm that no changes are being proposed to anything in the front of the home. Mr. Cossa confirmed. Mr. Foerst asked Mr. Cossa to describe the current conditions of the subject rear yard area. Mr. Cossa described the proposed hardscaping and the pergola. He also described the proposal of the putting green, raised Koi Pond, fire pit, and other amenities. Mr. Cossa indicated that the pergola will be a separate structure to the home. Mr. Foerst asked as to why the Koi Pond is designed as two tiers. Mr. Cossa replied that it was designed that way for visual interest. Mr. Cossa continued his testimony and indicated that they would be installing a 24"x24" drain box to alleviate any pooling. Mr. Cossa confirmed that the Koi Pond, conduit, pumping system, mechanicals, and drainage box all will be on Mr. Osborne's property and not in the Town's right-of-way; with the exception of vegetation, the fence, and the driveway that leads across.

The Board questioned the witness. Chairman Fusaro questioned the current fence material along the rear of the property as to whether it's aluminum per the plot plan notes. Mr. Cossa replied that it's PVC vinyl and that the gate part that slides on Fanwood Avenue is metal. Mr. Foerst indicated that the fence running along the front of the property is a wrought-iron style aluminum fence.

Mr. Foerst recalled Mr. Osborne and had him testify to all the fencing currently surrounding his property as compared to what is proposed. Chairman Fusaro asked Mr. Osborne if he would consider rotating the shed. Mr. Cossa answers for Mr. Osborne and agrees that he can. Vice-chairman Masciale felt that there are too many variances being requested and that most may be self-created hardships. He stated the list of variances being sought and acknowledged the pre-existing conditions. Vice-chair Masciale asked Mr. Foerst how the proposed variance advances the purposes of the Municipal Land Use Law. Mr. Foerst described that by increasing the coverage, they are going to be able to increase the drainage.

Chairman Fusaro asked the members of the public who wished to ask questions of the witnesses or provide comment on the application to please come forward. No members of the public came forward.

Chairman Fusaro closes the public portion of the meeting and opened it up to board discussion. The Board discussed the application.

Chairman Fusaro returned to discussing what's being done with the shed and although it took away one variance, it created another. Ms. Razin asked for a confirmation of calculations pertaining to the shed being rotated.

Ms. Molnar asked why there were two driveways. Mr. Cossa returned to the podium and addressed the question by answering that the front driveway is used more for GPS purposes and is not a full driveway and that the rear driveway leads to the garage.

Mr. Sontz questioned the maximum coverage by buildings and above-grade structures and stated that it was too much. Mr. Foerst disagreed because he felt a Koi Pond, putting green, and a pergola are not really a "building." Chairman Fusaro rebutted that according to the way the ordinance is written, they are considered as such. Chairman Fusaro agreed with Mr. Sontz that the coverage was too much. Mr. Cohen asked why can't they lower the wall surrounding the Koi Pond by excavating and making it less than 1' high. Mr. Cossa returned to the podium and replied that it is possible.

Chairman Fusaro returned to the discussion thus far and reaffirmed that the coverage is too much. Vice-chair Masciale indicated his reluctance to approve the application. Mr. Foerst requested to carry the application so that his client can improve the design to be more in compliance. The Chairman and Board agreed.

Application carried to 8/14/2023, without further notice.

ZBA 23-030 – Westlink01, LLC, 507 Westfield Ave, Block: 3003, Lot: 49

Represented by: Gary S. Goodman, Esq., Goodman Law

Witnesses: Christian Cueto, Engineer; Greg Waga, Architect; Gabriel Bailer, Planner; and, Dr. Mehdi Saber, Applicant

Public: None

Exhibits: (A-1) Aerial Image of 507 Westfield Ave

(A-2) Color Rendering of Site Plan

(A-3) Color Aerial Image of Lot

Applicant sought to create two apartments in the second in addition to the existing third-floor apartment. This would create a property with an office on the first floor and three apartments above in a zone which permits only one apartment in the mixed-use building.

Attorney, Gary Goodman, Esq, came forward to discuss the application. He explained the need for the D(1) use variance for this property. It's a large house and his Applicant felt instead of knocking down the structure, the additional apartments are a much better use.

Mr. Goodman called his first witness, engineer, Christian Cueto, who was sworn in by Chairman Fusaro and accepted as an expert in the field of engineering. Mr. Goodman asked Mr. Cueto to walk the Board through the engineering plans. Mr. Cueto presented Exhibits A-1 and A-2, which are marked into evidence. Mr. Cueto confirmed that the only change to the outside of the building

is the addition of one parking space. He indicated that they will also be adding two EV spaces, and the one ADA space will also be EV-ready.

Mr. Goodman called his second witness, architect, Greg Waga, who was sworn in by Chairman Fusaro and accepted as an expert in the field of architecture. Mr. Goodman asked Mr. Waga to walk the Board through his architectural plans. Mr. Waga stated that the first floor is proposed to be divided into two to three professional office rental spaces which includes a common space at the top of the stairs, the second floor is proposed to be divided into two one-bedroom apartments, and the third floor remains as-is; pre-existing. He explained how this is strictly an interior alteration and does not add anything to the existing footprint. Mr. Waga also indicated that they did have to modify windows on one of the apartments to comply with safety. He also explained how the three apartments and ground-level common area will be sprinklered, but not the office areas.

Mr. Goodman called his third witness, planner, Gabriel Bailer, who was sworn in by Chairman Fusaro and accepted as an expert in the field of professional planning. Mr. Bailer presented Exhibit A-3, which was marked into evidence. Mr. Bailer presented proof of the positive and negative criteria for the proposed scope of work. He felt that this site is particularly suited for the use as it's one of the largest lots in the P-2 zone and that it can support the three, one-bedroom units, and that it provides the required parking. Mr. Bailer indicates that the property is located within walking distance of the CDB which helps support the downtown business area. He felt the project supports the goals of the Town's Master Plan, and, in his opinion, does not pose a detriment to the public good.

The Applicant, Dr. Mehdi Saber, was sworn in by Chairman Fusaro. Dr. Saber gave a brief introduction regarding himself and his practice. He described to the Board his desire to repurpose this building instead of demolishing it, and to expand the use to include one more apartment on the second floor. Chairman Fusaro asked about the businesses that previously occupied the building. Dr. Saber confirmed the first floor had a law and physician's office, and the second floor had a law office, and the third floor was an apartment.

Chairman Fusaro asked for the members of the public who wished to ask questions of the witnesses or provide comment on the application to please come forward. No members of the public came forward.

Chairman Fusaro closed the public portion of the meeting and opened it up to board discussion. The Board discussed the application.

The Board discussed the application. Chairman Fusaro summarized the application and applauded the Applicant for not tearing down the existing building. Chairman Fusaro noted the testimony regarding meeting the parking requirements and the reasoning as to why the Applicant has proposed two one-bedroom apartments instead of one large three-bedroom apartment. Chairman Fusaro stated his support of the application. Vice-chair Masciale noted that the planner

did an excellent job justifying the D use variance request and felt that the use fits the neighborhood.

Chairman Fusaro called for a motion.

A motion to *approve* the application as submitted was made by Mr. Reisen, and *seconded* by Mr. Sontz. The roll call vote was taken as follows:

VOTE: **YES:** Ms. Molnar, Mr. Cohen, Mr. Sontz, Vice-Chair Masciale,
 Chairman Fusaro, Mr. Reisen
 NO: None **ABSTAIN:** None

Mr. Reisen and Mr. Sontz left the meeting.

Application Continued from 6/12/2023

ZBA 23-09 – Ben & Laura Pearlman, 304 Roanoke Road, Block: 406, Lot: 35

Represented by: James Foerst, Spector Foerst & Associates

Witnesses: Burns Benson, Landscape Architect; and, Benjamin Pearlman, Applicant

Public: None

Exhibits: (A-1) Photograph Packet Color Images, Three Sheets

(A-2) Photograph Packet Color Images, Six Photographs taken by B. Benson

Attorney, James Foerst, Esq, pre-marked Exhibits A-1 and A-2, and came forward to discuss the application and the changes that have been made from the originally proposed application.

Mr. Foerst called his first witness, landscape architect, Burns Benson, who was sworn in by Chairman Fusaro and accepted as an expert in the field of landscape architecture. Mr. Foerst questioned Mr. Benson about the newly marked photograph exhibits. Mr. Benson described the new landscape design which will provide adequate coverage with shrubbery to screen the view into Mr. Pearlman’s yard/pool area. Mr. Benson noted that the majority of shrubbery will be green giant arborvitae. He explained the horticultural standard to plant them 5 feet apart and they will grow substantially over the next couple of years.

The Board questioned the witness. Chairman Fusaro asked questions about the photographs presented. Vice-chair Masciale wanted assurance that should the vegetation die, the Applicant would maintain the proposed plantings. Mr. Foerst confirmed that the request can be added as a condition to approval. Mr. Cohen expressed his concern that the proposed landscaping plan doesn’t solve the original problem.

The Applicant, Benjamin Pearlman, was sworn in by Chairman Fusaro. Mr. Pearlman affirmed that all the surrounding neighbors are in favor of the project as they all have the same style of fence.

The Board discussed the revised application. Vice-chair Masciale noted that, as requested, the Applicant came back with a professional landscape plan and reminded the Board that a directly affected neighbor spoke in favor of the application at the previous meeting.

Mr. Pearlman also added that a newly installed irrigation system is ready to go with the Board's approval of the revised plans.

Ms. Mance asked for clarification on how she should interpret the vegetation screening upon inspection.

Chairman Fusaro called for a motion.

A motion to *approve* the application as submitted was made by Mr. Reisen, and *seconded* by Mr. Sontz. The roll call vote was taken as follows:

VOTE: **YES:** Ms. Molnar, Mr. Sontz, Vice-Chair Masciale, Chairman Fusaro, Mr. Reisen
 NO: Mr. Cohen
 ABSTAIN: None

Meeting Adjourned

With there being no further business, a motion to adjourn the meeting was made, seconded, and passed by all board members present. The meeting concluded at 11:35 p.m.

Maria Rose Breien, Board Secretary