

**ZONING BOARD OF APPEALS
VILLAGE OF WESLEY HILLS**

NARRATIVE SUMMARY

**JAY COURT SUBDIVISION
2 Charlotte Drive & 110/116 East Willow Tree Road**

Jay Court subdivision is a resubdivision of three existing tax lots: 41.08-1-34, 41.08-1-44.1, and 41.08-1-44.2 in the R-35 district. As a result of the resubdivision, Lot 34 and 44.2 were merged into New Lot 1 and Lot 44.1 was slightly altered into New Lot 2. The subdivision was approved by the Planning Board on July 24, 2024. As was noted in the approval resolution (attached) no variances were needed. The project had been reviewed by the Village Engineer and the Village's Planning Consultant.

After approval, the applicant sent check prints to be reviewed by the Village's consultants for compliance with the approval. This is a necessary step before the Planning Board Chairman signs the plat.

During the check print process, and for the first time during the review of this subdivision, the Building Inspector determined that Lot 1 did not have sufficient road frontage. See Building Inspector's letter dated March 26, 2025, submitted herewith.

Old Lot 34/New Lot 1 has frontage on the cul-de-sac of Charlotte Drive and on East Willow Tree Road. Prior to resubdivision, Old Lot 34 had road frontage of 86.29 feet. After resubdivision, New Lot 1 had the same road frontage of 86.29 feet. While the Zoning Code generally requires 100 feet of road frontage, there is a special provision for lots fronting a cul-de-sac: "Minimum lot frontage may be reduced by the Planning Board for residential lots fronting on culs-de-sac or on streets with a center-line radius of 100 feet or less, and in the R-15 District minimum lot frontage for such lots may be reduced to 50 feet." (Zoning Code, Table of Dimensional Requirements, Note 2.)

Old Lot 34/New Lot 1's reduced frontage has thus been approved *twice* by the Planning Board: once when the original subdivision was approved, and again when the current resubdivision was approved.

After resubdivision, New Lot 1 has road frontage of 35.02 feet. Since New Lot 1 has conforming road frontage on Charlotte Drive, the East Willow Tree Road frontage is irrelevant for purposes of conforming to the Zoning Code. However, the lot frontage of

Lot 1 has *increased* by ten feet (from 25.02 feet to 35.02 feet) along East Willow Tree Road.

Alternatively, New Lot 1 has total lot frontage of 121.31 feet (86.29 feet on Charlotte Drive and 35.02 feet on East Willow Tree Road), exceeding the minimum 100 feet otherwise required.

The applicant hereby appeals the determination of the Building Inspector. In the alternative, the applicant seeks a variance from the street frontage requirements as they apply to the East Willow Tree Road frontage.

SEQRA and GML Status

This is a Type II action under SEQRA (“area variance for a single-family, two-family or three-family residence”). 6 N.Y.C.R.R. § 617.5(c)(17). No SEQRA review is needed.

The subject parcel is not within 500 feet of a State or County feature. No referral to the Rockland County Planning Department is needed.

A. Appeal

As noted above, the Zoning Code provides that “for residential lots fronting on culs-de-sac or on streets with a center-line radius of 100 feet or less, and in the R-15 District minimum lot frontage for such lots may be reduced to 50 feet.”

The subject lot qualifies for such reduction. It was granted such reduction by the Planning Board when it approved the current resubdivision. It has frontage of 86.29 feet on the Charlotte Drive cul-de-sac.

Notably, the Building Inspector did not raise this issue while the Planning Board was considering the subdivision.

The Building Inspector has provided no reason for his determination.

B. Variance

Criteria for Variance

One of the purposes of a zoning board of appeals, and of the ability to grant variances, is to provide a “safety valve” where the strict application of a zoning code cannot allow an otherwise appropriate use of property because of the peculiar circumstances applicable to that property. For this reason, any municipality that adopts a zoning code must also establish a board of appeals.¹

¹ See, 2 Salkin, *New York Zoning Law and Practice* (3d ed.), §§27:07 – 27:10; *McKinney’s Town Law*, Practice Commentary to § 267-a; Town L. § 267.2; *McKinney’s Village Law*, Practice Commentary to § 7-712-a; Village L. § 7-712(2).

In determining to grant an area variance, a board of appeals “shall take into consideration 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.”² The board must also consider five questions when engaging in this balancing test. The questions, and the applicant’s responses, are set forth below:

(1) “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 “deficient” street frontage is only along East Willow Tree Road. Street frontage requirements are intended to provide appropriate spacing between buildings. This spacing is achieved along Charlotte Drive. The East Willow Tree Road frontage supports a driveway, only, and does not affect building spacing.

(2) “whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance”:

If the full frontage of 100 feet is required on East Willow Tree Road, then the property cannot be resubdivided as approved. The lot lines would need to revert to the prior configuration, which would result in less frontage.

(3) “whether the requested area variance is substantial”:

Whether a requested variance is “substantial” is more than simple arithmetic. It requires an understanding of the general area and of the existing conditions.³

The variance will allow for greater frontage on East Willow Tree Road than currently exists.

(4) “whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district”:

There is no impact as a result of this variance.

(5) “whether the alleged difficulty was self-created”:

The difficulty was created by the interpretation of the Building Inspector.

On balance, therefore, the requested variances are beneficial to both the applicant and the community.

Relief requested

Accordingly, the applicant requests the following relief:

² Town L. § 267-b.3(b); Village L. § 7-712-b.3(b).

³ See, 2 New York Zoning Law and Practice, § 29:15.

- A. Reverse the determination of the Building Inspector that Lot 1 of the approved Jay Court subdivision lacks sufficient street frontage even though it has compliant street frontage on Charlotte Drive.
- B. Alternatively, grant the following variance:

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>
Street frontage	100 ft	35.02 ft (East Willow Tree Road)

Dated: June 9, 2025
New City, New York

EMANUEL LAW P.C.


By: _____

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