

John Ledwith
Building & Land Use Officer
Village of Tuxedo Park

Declaration of Hardship for Zoning Relief

September 19, 2025

John,

We are seeking relief from The Village of Tuxedo Park Code section 100-9: Permitted yard intrusions; decks and terraces.

The zoning requirement states that the allowable decks, porches, patios, verandas, terraces and other above-grade exterior space shall be limited to 25% of the enclosed ground floor area of the associated building.

First, we wish to raise an issue of ambiguity with respect to the applicable Code language. The language sets forth a list of structures and areas to be considered, followed by “and other above-grade exterior space”. The placement of this language could be read as relating to the entire list that comes before it, suggesting that only areas that are “above grade”, or above the natural ground level, should be considered in this equation. In fact, and as discussed further below, two prior BAR boards appear to have read this language this way as it related to our property. Read consistently with those decisions, no variance would be required in this situation. New York state law is well settled that zoning ordinances should be interpreted narrowly, resolving ambiguities in against the municipality and in favor of the property owner. This principle is rooted in the idea that zoning laws, being in derogation of common-law property rights, should not unduly restrict those rights without clear language (*Lodge Hotel, Inc. v. Town of Erwin Planning Bd.*, 62 A.D.3d 1257 (2009)). Notwithstanding what we perceive as vagueness in the language, we are proceeding to request a variance out of an abundance of caution and out of respect for the BAR, BZA and the Village of Tuxedo Park.

We understand that when considering a variance, the BZA considers the following five factors:

- 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;
- 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;
- 3) whether the requested area variance is substantial;
- 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- 5) whether the alleged difficulty was self-created.

We address each of the above factors in turn below.

Undesirable Change

We submit that the increase of patio area surrounding our proposed pool will not create any undesirable change in the character of the neighborhood and will not be a detriment to any nearby properties. Our home sits at the end of Brook Road and is surrounded by woods and thick

landscaping on all sides. Only a small portion of the house and none of the back yard is visible from the street. Indeed, it is our goal that the pool area and its surrounding decking will not even be visible to the two adjacent neighbors on the East side of the property and we have no adjacent neighbors on any other side of the house. Additionally, the proposed areas sit within the required setbacks.

Alternate Methods

It is common practice for a pool area to be surrounded by a patio surface. This enables the positioning of lounge furniture around the pool, provides safe entry into the pool and limits grass, small sticks and stones, and other items that could enter a pool if there was no border area present. Unfortunately, there is not a feasible alternative.

Size of Variance

Notwithstanding a property of nearly 2.5 acres, the building area of our home is quite small. The current ground floor total area is only 3,059 SF. While the allowable coverage for the lot is 27,000 SF, the existing coverage for all surfaces is 12,710 SF (11.7% of the lot), well below the permitted amount.

It is notable that the existing deck and patio surfaces were approved by the BAR in connection with our initial renovation in 2004 without any request that we consider “at grade” patios as part of the Deck/Porches calculation. Our 2019 garage addition did not add any patio space to the property or alter the existing patio and deck spaces and no issue was raised by the BAR at that time to suggest that our calculation of Deck/Porches to include only “above grade” decks was incorrect. The fact that two prior BAR boards utilized this interpretation of the Code supports our view above that the language in the Code is vague.

The proposed enclosed building area of this home following the small proposed addition will be 3,508 SF and, using the interpretation of the Code that is currently being suggested, will allow for a maximum of 877 SF of deck surfaces. Our proposed deck and terrace space would be a total of 2,312 SF and will exceed the maximum allowed by 1,435 SF. To reduce any unnecessary impervious coverage, we have elected to install 1,400 SF of permeable pavers. The proposed additional coverage represents a 1% increase to the total lot coverage, bringing the total to 12.7%, remaining well below the total coverage allowed per the zoning code.

Adverse Effect

The proposed additional patio areas will have no adverse physical affect on the property or the neighborhood. The patio is tastefully designed to step down to the pool and maintain all surfaces “at grade” on a property that is substantially sloped. Additionally, we have retained civil engineers to evaluate and address any change in water flow that could be expected by the proposed pool and patio areas so that there will be no environmental impact to the property or neighborhood.

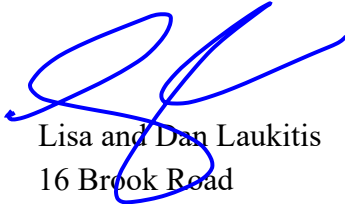
Self-Creation

The existing deck and patio surfaces have been approved of and reviewed by two separate BAR boards without any concern or issue raised. We proceeded to present our requested pool and patio additions to the BAR based on our prior understanding of the Code and were told of this new

interpretation just days before our initial submission was due. We have proceeded in good faith to seek a variance from the BZA.

For these reasons, we respectfully request that the variance be granted. We are happy to answer any questions or address any further concerns.

Sincerely,



Lisa and Dan Laukitis
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Tuxedo Park, NY