

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INCORPORATED VILLAGE OF LAUREL HOLLOW  
BOARD OF ZONING  
PUBLIC HEARING  
November 29, 2017  
7:30 p.m.

VILLAGE HALL  
1492 Laurel Hollow Road  
Syosset, New York 11791-9603

PRESENT: RUSSEL MOHR, CHAIRMAN  
NEWTON J. BURKETT, MEMBER  
LOUIS LEBEDIN, MEMBER  
JEFFREY BLUMIN, MEMBER  
CINDY KAUFMAN, MEMBER

ALSO PRESENT:  
HOWARD AVRUTINE, Village Attorney  
JAMES ANTONELLI, Village Engineer

ALSO PRESENT:  
MONROE DIEFENDORF

ZV13-2017 - Hearing on the application of  
Christine E. Diefendorf,  
12 Waylor Lane

MARY ANNE COPPINS  
OFFICIAL COURT REPORTER

1 MR. AVRUTINE: This is the public  
2 hearing on case ZV13-2017, a public  
3 hearing on the application of Christine  
4 E. Diefendorf to maintain a second  
5 flagpole and backstop netting at 12  
6 Waylor Lane in Laurel Hollow where the  
7 backstop netting, i.e., structure in the  
8 nature of a fence, exceeds 6.5 feet in  
9 height in violation of Section 145-18(A)  
10 of the Laurel Hollow Village Code. The  
11 netting is 20 feet in height.

12 In addition, a second flagpole is  
13 located on the property in violation of  
14 section 145-20.2(A) of the Laurel Hollow  
15 Village Code which permits one flagpole  
16 only on any parcel.

17 The flagpole is located at a  
18 distance less than its height from the  
19 front property line in violation of  
20 Section 145-20.2(A) of the Laurel Hollow  
21 Village Code. The flagpole height is 20  
22 feet and the setback is 11 feet.

23 The property under application is  
24 known as Section 25 Block 48 Lot 12 on  
25 the Nassau County Land and Tax Map.

1           The exhibit list in connection with  
2           this application is as follows:

3           First, Notification from the Nassau  
4           County Planning Commission that is dated  
5           September 25, 2017 that the matter is  
6           referred to the Laurel Hollow Board of  
7           Zoning Appeals for action as it deems  
8           appropriate.

9           The next exhibit is a Legal Notice  
10          of Public Hearing dated November 8,  
11          2017.

12          The next exhibit is an Affidavit of  
13          Posting from Nick Porcaro that the Legal  
14          Notice was posted conspicuously on the  
15          bulletin board at the main entrance to  
16          the Office of the Village Clerk on  
17          November 17, 2017.

18          The next exhibit is an Affidavit of  
19          Publication from Richner Communications  
20          stating that the Legal Notice was  
21          published in the Oyster Bay Guardian on  
22          November 17, 2017.

23          The next exhibit is an Affidavit  
24          from the Deputy Clerk stating that the  
25          Notice of Public Hearing was mailed to

1 other interested parties on November 17,  
2 2017.

3 The next exhibit consists of  
4 documents confirming that the Notice of  
5 Public Hearing was published to the  
6 Village of Laurel Hollow website and  
7 sent to NEWS subscribers on November 17,  
8 2017.

9 The next exhibit is an Affidavit of  
10 Mailing from the applicant indicating  
11 that the Notice of Public Hearing was  
12 mailed on November 9, 2017 to the person  
13 named in the affidavit.

14 Mr. Diefendorf, I see you are here  
15 tonight. Please give your name and  
16 address for the record before you make  
17 your presentation.

18 MR. DIEFENDORF: Monroe Diefendorf,  
19 12 Waylor Lane, Laurel Hollow.

20 So, tonight, I am here, we have an  
21 order to correct and remedy the  
22 violations. Those violations were as  
23 follows:

24 Allow two flagpoles to be installed  
25 without first obtaining a building

1 permit.

2 To note, we paid a penalty to the  
3 Village for making that installation  
4 without the permit. The second  
5 violation to remedy is you are allowed a  
6 structure in the nature of a fence to be  
7 installed without first obtaining a  
8 building permit, of which we paid a  
9 penalty in order to rectify that, but in  
10 order to remedy these violations what we  
11 are asking for is a variance on the  
12 flagpoles.

13 Again, many of you, some of you  
14 have been out to see our home and see  
15 it. So we have, on the first acre, a  
16 flagpole in front and one in the back  
17 now. The one in the front replaced a  
18 tree which had been there probably -- we  
19 have been there since 1981, so prior to  
20 us being there, and it went down in the  
21 storm. So when the tree was replaced,  
22 we put the flagpole in. The flagpole  
23 was put in according to manufacturer  
24 specs. It has a lightning rod in that  
25 flag pole. It is supposed to stay in

1 winds up to 165 miles-an-hour. I  
2 understand that where that tree was was  
3 closer to the street or actually the  
4 property line. I didn't realize that  
5 was a 3-foot section that was owned by  
6 the Village which makes it closer to the  
7 line.

8 I do have letters in support of the  
9 variance of that from all of the  
10 neighbors: 3 Waylor Lane, 5 Waylor  
11 Lane, 7 Waylor Lane, 11 Waylor Lane, 15  
12 Waylor Lane, on the side of the street.  
13 The only one I don't have is from Mr.  
14 McCarthy, our next door neighbor;  
15 however, his sister, Ruth McCarthy Kelly  
16 is also an owner of the estate.

17 AUDIENCE MEMBER: She is not an  
18 owner of the estate.

19 MR. AVRUTINE: Please, you will  
20 have an opportunity to be heard.

21 MR. DIEFENDORF: Strike that.

22 So, again, I think you have seen  
23 the packages. I don't know how much  
24 detail that you would like me to go into  
25 in terms of what that looks like.

1 Do you need these packages?

2 CHAIRMAN MOHR: Mr. Diefendorf, you  
3 said you have letters of support. Can  
4 you submit those for the record, please.

5 MR. DIEFENDORF: Sure, absolutely.

6 MR. AVRUTINE: I will make all of  
7 these, there are 1, 2, 3, 4, 5 letters  
8 that the applicant has submitted  
9 purportedly in support of the  
10 application. We will mark those as  
11 Applicant's Exhibit Number 1.

12 CHAIRMAN MOHR: Can you read one  
13 into the record?

14 MR. DIEFENDORF: Sure.

15 CHAIRMAN MOHR: Thank you.

16 Are they the same?

17 MR. DIEFENDORF: I put these in  
18 their mailboxes and asked if this would  
19 be okay to them.

20 The Diefendorf family has a  
21 flagpole in the front property. It's my  
22 understanding that the variance being  
23 requested is for two issues, that the  
24 residents of Laurel Hollow may only have  
25 one flagpole and that the flagpole, the

1 front flagpole is too close to the road.

2 As neighbors that have seen this  
3 flagpole every day, I support the  
4 approval of the variance. My reasons  
5 are as follows: I like the fact that  
6 the front of their property has an  
7 American flag flying. I believe the  
8 placement of the flag is strategically  
9 positioned and actually replaced the  
10 tree that was there for 40 years and  
11 went down in a hurricane. While the  
12 flagpole might technically be too close  
13 to the road, I have been told that the  
14 installation was completed to withstand  
15 165 mile-an-hour winds; therefore, I do  
16 not feel unsafe driving down our street.  
17 I hope you will consider this letter in  
18 making your final decision for the  
19 Diefendorf variance.

20 Thank you very much.

21 CHAIRMAN MOHR: Thank you.

22 MR. DIEFENDORF: That's the front  
23 flagpole and the back is -- I would not  
24 call it a fence, but I would call it  
25 more of a mesh backstop to prevent balls



1 from going into the neighbors, so that's  
2 what I am asking for, these variances to  
3 be approved.

4 Thank you.

5 CHAIRMAN MOHR: Are there any  
6 questions from the Board, or, rather, we  
7 will hear from the public.

8 MR. BURKETT: I do have a question,  
9 if I may.

10 THE COURT: Yes.

11 MR. BURKETT: Do you have lights on  
12 the flagpole at all?

13 MR. DIEFENDORF: Yes.

14 MR. BURKETT: On each?

15 MR. DIEFENDORF: On the back one,  
16 there is a solar. The front one is  
17 actually powered by electric.

18 MR. BURKETT: So, the light comes  
19 on at night, then goes off at dawn, I am  
20 guessing, there is always a light on in  
21 the evening hours.

22 MR. DIEFENDORF: Um-hum.

23 MR. BURKETT: And when did you  
24 install it, roughly?

25 MR. DIEFENDORF: I would say in

1 June, probably June and probably the  
2 fall before, a year ago.

3 MR. BURKETT: Okay, thank you.

4 MR. LEBEDIN: You provided these  
5 documents. Does that represent everyone  
6 who can see the flagpole from the  
7 street?

8 MR. DIEFENDORF: None of that --  
9 well, they can see the one in the front.

10 MR. LEBEDIN: I'm talking about the  
11 one in front.

12 MR. DIEFENDORF: Only one, the two  
13 neighbors, empty lot, empty house, and  
14 my neighbor, Phil McCarthy.

15 CHAIRMAN MOHR: Any questions  
16 before we get to the public?

17 MR. AVRUTINE: I have one question.

18 Is there a reason why, with respect  
19 to the second flag pole, the front  
20 flagpole, that couldn't be relocated to  
21 a point that would not violate the  
22 front-yard setback?

23 MR. DIEFENDORF: It certainly can  
24 be moved.

25 MR. AVRUTINE: Relocated to --

1 MR. DIEFENDORF: It could be  
2 relocated anyplace in the front, so that  
3 it was replacing that one tree which  
4 happened to be with all the pachysandra  
5 around it and et cetera, that's why we  
6 put it there.

7 MR. AVRUTINE: Thank you.

8 MS. KAUFMAN: I do have a question.

9 I would like to hear what the  
10 neighbor has to say, but what is the  
11 necessity of the lights?

12 CHAIRMAN MOHR: You have to take  
13 the flag down --

14 MR. LEBEDIN: It's a legal --

15 MR. BURKETT: It's not a legal  
16 issue, you're not going to be arrested.

17 MR. LEBEDIN: When you buy the  
18 flag, you understand that those are --

19 MR. AVRUTINE: There is a --

20 MR. BURKETT: There is an  
21 understanding, I think, and a gesture of  
22 patriotism that it not be flown in the  
23 dark, but I don't think there is a law  
24 and ordinances.

25 MR. AVRUTINE: Essentially, the way

1 works is if you have a flag that is not  
2 lit, then you're obligated to take it  
3 down at the end of the day. You remove  
4 it, then put it back in the morning, or  
5 you can have it up.

6 MR. BURKETT: It's a matter of  
7 protocol.

8 MS. KAUFMAN: Flag etiquette.

9 MR. BURKETT: Flag etiquette,  
10 that's the phrase I was looking for.

11 MS. KAUFMAN: That was my question.

12 CHAIRMAN MOHR: Would anybody like  
13 to speak on that?

14 Your name and address for the  
15 record.

16 MR. McCARTHY: Phillip McCarthy, I  
17 reside at 8 Waylor Lane, I am a neighbor  
18 of Mr. Diefendorf right next door.

19 I have to say as far as the  
20 flagpole in the front, I don't have a  
21 problem with the flagpole in the front.  
22 The one in the back I just question why  
23 are there two flagpoles, why is it  
24 necessary?

25 The one in the back, the only

1           problem I have with it is when I let my  
2           dog out and it's windy, my dog will bark  
3           at the flagpole. Then I have a two year  
4           old. We bring the dog in, the dog is  
5           barking, it wakes up my two year old.  
6           That can be difficult.

7                    I guess I have more of an issue  
8           with the backyard fence since I'm the  
9           one that sees it, I'm the only one.  
10          These other neighbors are on the other  
11          side of the street.

12                   As far as the letter from my  
13          sister, the house is in the estate of my  
14          mother, Ruth McCarthy. She is neither  
15          the owner, neither the resident of that  
16          house, so I would think that her letter  
17          would be invalid, I am the resident of  
18          house.

19                   As far as the back fence, I guess I  
20          have more of a problem with the back  
21          fence since it's 20-feet high, it's a  
22          black fence, it's 20-feet high. I see  
23          it all the time. I'd rather see the  
24          trees in the backyard, rather than a big  
25          20-foot fence. I believe that it is a

1 fence because if you look at the  
2 definition of a fence it's a barrier.  
3 Netting is something that can either be  
4 stepped over, definition of stepped over  
5 or walked under. This one is a barrier.  
6 It's pretty long. I don't know the  
7 length of it. It has to be maybe 40  
8 feet from one side to the other and 20  
9 feet high.

10 I did call up. My concern was  
11 since Mr. Diefendorf had cut so many  
12 trees in his backyard and my property is  
13 designated as a Wildlife Sanctuary, I  
14 was concerned about the birds of prey.  
15 There is a marlin there. There is a red  
16 tail hawk.

17 I called up the Audubon Society --  
18 not the Audubon Society, and they said  
19 there is chance these birds can get  
20 caught and die in the netting,  
21 especially in the winter where they can  
22 get hypothermia and die. That's my  
23 concern. I don't like to see the fence,  
24 and then also the birds could get caught  
25 in it. They may not, but they could. I

1           felt that was a concern. So, I'm glad I  
2           had this opportunity to say this about  
3           the fence, and there is one on each  
4           side. Since this was built in the back,  
5           this soccer field, it's almost like a  
6           professional soccer field a little bit,  
7           I jut wondered why this was.

8                     I found out, when I went to Google  
9           Maps and I googled my house, 8 Waylor  
10          Lane, I see Mr. Diefendorf's property.  
11          His backyard is designated as a  
12          historical site, it's named Heritage  
13          Field and it's designated as a  
14          historical place, and I don't think it  
15          would be designated as a historical  
16          place and why there are so many flags  
17          and a professional soccer field in the  
18          back, I just don't know.

19                    I have it copied off if you want to  
20          take a look at this. I did my property,  
21          8 Waylor Lane. Here is 12 Waylor Lane.  
22          If you want to pass it around, that's  
23          his property there. Historic Heritage  
24          Field. When you click on it, it comes  
25          up as Heritage Field, a historical

1 place, that's 12 Waylor Lane. It even  
2 has two reviews, so I don't know why  
3 your property would be listed as a  
4 historical place and what would be the  
5 purpose of that.

6 MR. AVRUTINE: Is this something  
7 you would like to submit as a exhibit  
8 for the record?

9 MR. MCCARTHY: Yes, sure.

10 MR. AVRUTINE: It's a two-page  
11 document indicating Google Maps.

12 We'll mark that as Opposition  
13 Exhibit Number 1.

14 MR. BURKETT: Howard, is that an  
15 appropriate line of inquiry for us? Is  
16 that a relevant question for the  
17 homeowner?

18 MR. AVRUTINE: Which question are  
19 you referring to?

20 MR. BURKETT: The question about  
21 the historical designation of the  
22 property.

23 MR. AVRUTINE: It's something.

24 MR. BURKETT: Is it relevant?

25 MR. AVRUTINE: It is relevant. The



1 weight to be given to it, in terms of  
2 the entire application, is within the  
3 discretion of the Board.

4 MR. BURKETT: I understand that,  
5 but it is not irrelevant to the  
6 discussion.

7 MR. AVRUTINE: No, it is not  
8 irrelevant.

9 MR. BURKETT: I didn't want to ask  
10 a question if it was inappropriate or  
11 irrelevant to the discussion.

12 MR. AVRUTINE: No, it is not  
13 irrelevant.

14 MR. LEBEDIN: I wasn't sure, did it  
15 have some kind of commercial purpose? I  
16 don't know why it would be listed as a  
17 historical site.

18 MR. BURKETT: Is that a question  
19 you can answer, sir?

20 MR. DIEFENDORF: I have no idea  
21 what he is talking about. We call it  
22 Heritage Field for our kids, it's sort  
23 of fun.

24 May I see that document?

25 MR. BURKETT: So it's a name that

1                   you've given to the property.

2                   MR. DIEFENDORF: I am just curious.  
3                   If anything, it was probably one of my  
4                   kids fooling around putting something on  
5                   it.

6                   MR. BURKETT: Thank you for  
7                   clarifying that for us. Since it was  
8                   put on the record, it was appropriate  
9                   for you to respond and I appreciate  
10                  that.

11                  MR. DIEFENDORF: Okay.

12                  CHAIRMAN MOHR: Anything else from  
13                  the public?

14                  MR. McCARTHY: This is the fourth  
15                  code that Mr. Diefendorf has broken in a  
16                  year. We had an issue with the trees.  
17                  He was cutting down a lot of trees. One  
18                  neighbor, after two days of tree  
19                  cutting, walked over and asked the guy,  
20                  do you have a permit for cutting these  
21                  trees down. He said no. He said, I  
22                  don't think you should be cutting these  
23                  trees down. Then I guess he came to the  
24                  Board and it became an issue. So that  
25                  was something else. That was within a

1 year.

2 CHAIRMAN MOHR: Any questions from  
3 the Board?

4 MR. LEBEDIN: No, thank you.

5 MR. AVRUTINE: At this time,  
6 entertain a motion to close the public  
7 hearing.

8 MS. OTTO: They're not going to  
9 hear from me?

10 CHAIRMAN MOHR: I asked if there  
11 was anyone from the public.

12 MS. OTTO: We are together, but not  
13 related.

14 CHAIRMAN MOHR: I asked if there  
15 was anyone else from the public.

16 MR. McCARTHY: She didn't --

17 MS. OTTO: I have to explain.

18 MR. BURKETT: Please give your name  
19 and address.

20 MS. OTTO: My name is Wilma Otto.  
21 I live at 4 Woodvale Drive. My property  
22 and Mr. Diefendorf's property, the two  
23 back ends touch, that's why I am  
24 involved in this.

25 This is the first time is 51 years

1 of being a resident of this community  
2 that I have come to a hearing, not  
3 because I wasn't interested, but because  
4 I wasn't involved at the time.

5 My concern also is the fence that  
6 was put up, which Mr. Diefendorf calls a  
7 netting. I love birds and, again, the  
8 fact that the birds could fly into this  
9 netting, which is easy for them to do,  
10 they don't see it, it's something that  
11 was just raised in the past month or two  
12 or whatever the time limit is, and they  
13 aren't aware that it is there and when  
14 they hit and get caught, they die and  
15 they die a very horrible death because  
16 they can't get away from the netting.  
17 They can't eat, they are subjected to  
18 the weather and so that's not fair.

19 As I say, I am very enamored of the  
20 birds and I just feel they have to be  
21 protected because birds pollinate. I  
22 understand that it's a possibility that  
23 since there are bats in the area that  
24 they will fly into it and bats eat  
25 insects and this all helps us as

1 individuals. So this is what my concern  
2 is. Thank you very much.

3 CHAIRMAN MOHR: Thank you, we  
4 appreciate your coming down.

5 MR. BURKETT: Thank you.

6 MR. DIEFENDORF: May I just add  
7 something?

8 MR. BURKETT: Please.

9 MR. DIEFENDORF: I appreciate what  
10 you said and let me just note that that  
11 netting is on pullies and can be lowered  
12 and remain down.

13 MS. OTTO: But do you lower it,  
14 sir?

15 MR. AVRUTINE: Folks, we can only  
16 have one person at a time.

17 MR. DIEFENDORF: So what we can do  
18 to accommodate is lower it, if we are  
19 going outside, and bring it back up, and  
20 when we're done lower it back down.  
21 That would be my suggestion.

22 MR. AVRUTINE: When it is brought  
23 down, what is the height of it?

24 MR. DIEFENDORF: It sits on the  
25 ground.

1 MR. AVRUTINE: It goes to the  
2 ground.

3 MR. BURKETT: How often would you  
4 anticipate that netting or fence,  
5 depending on how one defines it, how  
6 often would it be fully extended?

7 MR. DIEFENDORF: Hopefully, every  
8 Sunday afternoon if I can get my  
9 grandchildren out.

10 MR. BURKETT: But you're talking  
11 about one afternoon a week.

12 MR. DIEFENDORF: Um-hum.

13 MR. LEBEDIN: How often, actually,  
14 is the field used by your grandchildren?

15 MR. DIEFENDORF: Twice a month.

16 MR. LEBEDIN: During these months,  
17 the winter months, is there any reason  
18 why it could not be left down most of  
19 the time during this time period?

20 MR. DIEFENDORF: Not a problem.

21 MR. LEBEDIN: One person can lower  
22 the net?

23 MR. DIEFENDORF: Oh, yes.

24 MR. AVRUTINE: Is the net up now?

25 MR. DIEFENDORF: I left it up, yes.

1 MR. LEBEDIN: How long has the net  
2 been up? How long have you had it?

3 MR. DIEFENDORF: Since, I'd say,  
4 probably June, July maybe.

5 MR. LEBEDIN: Have you ever found  
6 anything caught in there, the net, dead  
7 birds?

8 MR. DIEFENDORF: No.

9 CHAIRMAN MOHR: Reserve decision  
10 and talk about it afterwards?

11 MR. AVRUTINE: Motion to close the  
12 public hearing -- does anyone else have  
13 anything to add before we close the  
14 public hearing?

15 (No response.)

16 Motion to close.

17 MS. KAUFMAN: So moved.

18 MR. AVRUTINE: By Member Kaufman.

19 MR. BURKETT: I'll second.

20 MR. AVRUTINE: Member Burkett.

21 All in favor?

22 MR. LEBEDIN: Aye.

23 MR. BLUMIN: Aye.

24 MS. KAUFMAN: Aye.

25 CHAIRMAN MOHR: Aye.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. AVRUTINE: The Board will reserve decision. It's not going to make a decision at this time. Everyone who is here will be informed when the Board renders its decision.

MR. BURKETT: Thank you folks for coming.

\* \* \* \* \*

C E R T I F I C A T I O N:

I, Mary Anne Coppins, Court Reporter, hereby certify that the above transcript is a true and accurate copy of the minutes taken by myself stenographically in the within matter.

-----

Mary Anne Coppins  
Court Reporter