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24 Avon Road
Bronxville, NY 10708**

Zoning Board of Appeals
The Village of Bronxville
200 Pondfield Road
Bronxville, NY 10708

September 22, 2022

Dear Board Members,

I am writing to express our opposition to the variance under consideration by the Zoning Board regarding 1 Governors Road and the play station that has now come to be situated on the property. We have lived at 24 Avon Road for over 20 years and have had numerous construction projects undertaken around us, some of which required zoning variances, and this is the first letter of opposition that I have written to the Zoning Board.

When you stand on Avon Road in front of 1 Governors, the casual observer may say that it all looks okay, what's the harm? However, if you stand looking out any of our front windows, you will see why the long-established and carefully thought through Bronxville Zoning Code prohibits swing sets in the front yard. A picture of the play station from our home is presented on page two.

The play structure now constructed at 1 Governors does not just offer clear benefits to the applicant and clear detriments to the neighborhood and anyone who walks around the surrounding streets, it also will cause broad negative implications that will ripple across the Village if this gross violation of our zoning laws is not addressed properly. The applicant makes several claims that I would like to refute and have done so below. I also highlight other long range systemic zoning issues for the VOB that will result if this variance is granted.



Yes, a variance will increase the value of the Applicant's home, but at what cost?

If granted a variance, the applicant will have increased the value of their property by successfully changing the use of a major portion of their lot that, heretofore, has largely been denied *every other property owner* in the VOB. Bronxville's homes are generally built on small lots in tight proximity with each other, which necessitates that zoning codes be carefully followed and administered.

These codes and building regulations have existed for over 100 years. Bronxville is not a new subdevelopment and is not uncharted in terms of what is allowed and what is prohibited. When someone assesses the purchase of a home in Bronxville, the value of that home and what it ultimately sells for is directly determined by the specific property's zoning related advantages and disadvantages, pros and cons.

A home on a level, square, large piece of property in the middle of street carries a lot of advantages in terms of what you can do with it, but it may be further away from the school or train or on a busy road, which are its disadvantages. Likewise, a home sitting on a ledge, overlooking the town that is close to school carries that advantage, but it's probably on very small lot with virtually no yard, which are its disadvantages. These are just a few of the many

tradeoffs that are inherent in each property, and each individual buyer must weigh and ultimately put a value on what they want, and what they can live without.

In the applicant's case it's completely obvious that the property is bounded by three roads, as is my property, and that presents challenges and limitations. On the other hand, 1 Governors is a beautiful house that was recently immaculately restored and expanded, and it has truly stunning views and natural sunlight, which are its advantages. The applicant clearly liked the house as they recently purchased it and in doing so, consciously, or not, weighed the pros and cons of this property, both its remarkable strengths and obvious limitations.

Whether they knew of the zoning limitations is irrelevant to the situation that they have put themselves in currently. It is the buyer and homeowner's responsibility to understand the zoning laws and what they can and cannot do within the code. It is best to do this before a home is purchased, but certainly must be done after a property is owned. The applicant claims that they were unaware of the zoning code, which is surprising because one party to the applicant has a masters in architecture, where presumably zoning codes and local ordinances come in to play in land use and building design projects. To me it brings to mind the legal principal that states: being unaware of a law or code does not allow you to escape liability simply by being unaware of it.

It is not the community's responsibility to police, overlook, tolerate, and accommodate a homeowner's neglect or willful ignorance of the zoning code, particularly when we're addressing homes selling in the \$3-4 million price range to sophisticated buyers.

The cost of this variance is the value of every home in the area, and likely the entire VOB . .
Value in real estate is not always a zero-sum game in that a zoning variance that expands the rights and use of one property does not always reduce the value of another property, but it this case it does.

Prior to this play structure's appearance, we had lovely views from our windows, particularly from our second-floor gym and office. We now look out at a swing set that is painted green & orange now and partially blocked by trees, though its appearance will become much more pronounced in the winter with its orange base and green top. And this absolutely is as good as this swing set will ever look. Ever. Swing sets don't get better looking with age.

Yes, the new trees may grow, but from our second floor (and third floor) they will *never* obfuscate the structure. However, the trees may also not grow and could even perish. As far as value, who knows what factors a potential buyer of a house takes into consideration, they may like a swing set, they may not, some may be completely turned off by it. Why should I have to limit the population of buyers of my house, at time we decide to sell our home, to those who like or don't care that their views are of a play station? Why should we be forced to explain away a clear zoning code violation as part of selling my home just because someone failed to read the zoning code before beginning and completing an unpermitted construction project. The selling of a home is an art and pricing is determined at the margin, any change in

the environment is a risk and is one that we should not be asked to bear, which we will if this variance is granted.

This swing set is closer to our property than it is to the front door of the 1 Governors home and the applicant's home has a substantial height advantage, which obscures the playset for the applicant, but puts it at eye level for us . . .

Yes, the swing set is closer to my property than it is to the applicant's front door, or at least equidistant, and we have a much better view of the orange and green structure! Given the substantial elevation difference between our two homes, the view from 1 Governors looks out over our home and has incredibly nice vistas. Standing on the patios of 1 Governors one must look down to see the play structure, whereas all we need to do is open our front door. And the view of the large structure gets worse inside from all our windows.

It is a hard to imagine a more clearcut case of a neighbor violating a zoning law . . .

If this is approved, expect a lot more applications for front yard play structures – just on Avon Road, Park Avenue, Prescott and Ridge alone, many houses do not have adequate backyards or backyards at all. If this variance is granted, the VOB Trustees might as well adopt an amendment to the zoning code to remove the provision prohibiting front yard play structures, because if it is granted here, the VBO is essentially proclaiming that any front yard structure *is* permitted.

With this application, if granted, a precedent or safe harbor will be set such that any homeowner will just have to waive this case in front of the ZBA to justify virtually any type of structure or apparatus in their front yard. The three factors that future applications will point to will be:

- (i) size and scope of the structure at 1 Governors,
- (ii) the structure's proximity to the road, and
- (iii) the distance of the structure from the dwelling unit.

The precedent here for the Zoning Board is momentous and substantial, will have broad implications across the VOB and will be used *forever* by future ZBA applicants to justify heretofore unimaginable requests for front yard variances. It will be no small irritant to future VOB Zoning Boards.

Just because it is built, doesn't mean it should remain . . .

In the normal course of adding a structure to a property, a homeowner is required to obtain a permit. If applicant is denied a permit, they may then pursue a variance and are required to put their neighbors on notice prior to commencing this project. Whether it was a result of ignorance or willful disregard, the applicant did not come to the community before beginning and completing the project. Perhaps with input from the community we could have scaled it back to a manageable size and found accommodations, but the applicant did not give us the opportunity. The fact that it is now constructed and in use should be irrelevant in determining its future existence.

The applicant stated that there were not many complaints . . . but actually there were many

I read in the applicant's submission that they did not receive many complaints over the past six months as they were constructing the illegal orange fence and swing set. Let me say that as soon as the orange fence went up, there were pictures taken and circulated by neighbors and the VOB was contacted immediately to see what was going on. We contacted the VOB in April 2022. In May 2022 I read through Paul Taft's emails which indicated that he and Kevin Doyle were in contact with the homeowner to notify them that they were in violation of the VOB zoning code. I had then, and have now, great confidence that the VOB building code infrastructure, comprised of our well-respected building inspector, Paul Taft, and our esteemed Zoning Board, would acquit itself in the usual manner and that the offending actions by our neighbor would be properly handled.

Let me say that in the VOB it is not the normal course of action to unilaterally build as many and as big of structures and fences as possible on your property until your neighbors complain! For nearly 100 years we have had a zoning and building code that spells out steps to be taken *before* beginning construction projects to ensure that a project complies with the laws of the VOB. And if the project does not, and a variance is to be requested, the long proven and tested process gives the neighbors a chance to review the project and comment either in person with the neighbor or before the Zoning Board *before* the project is undertaken. This was not done in this case.

And, I would say, I don't think the lack of complaints should be the standout here, but rather what should be noted here is the lack of civility by our neighbor at 1 Governors and their utter disregard for the VOB zoning code and the views and opinions of their neighbors, which were not sought. Had they followed proper building code procedures before putting a shovel in the ground, perhaps an accommodation could have been reached regarding the type of fence, the size, height and color of the swing structure, etc. thereby gaining the support of a majority of their neighbors and saving them money in process, not to mention the time and aggravation we've have all had to endure these past six months and now writing letters to the ZBA. I have seen that process work very well before in the VOB. But in this case, we'll never know what could have been; the applicant's actions have brought this on themselves and us all.

The applicant claims that there are other swing sets in front yards . . .

The applicant points out that there are many other swing sets in front yards in the neighborhood. I would quibble with the word "many" and say that the vast majority or nearly all the front yards on Avon, Governors and Leonard Roads are well landscaped and clear of objects and structures specifically prohibited by the zoning code. Be that as it may, the front yard swing sets that are there in actual front or side yards are generally (i) much closer to the home unit (ii) substantially smaller and lower profile than the applicants, (iii) have nearly see-through, low-profile fences, and (iv) are made of natural wood that blends in far more naturally than the orange and green structure now situated at 1 Governors.

With that said, let's go for a minute with the logic that there are many swing sets in other front yards. How many of them received variance to allow for a properly permitted structure? Most of these structures are now sitting as aging, uncared for relics of a time long gone by and are a blight on the neighborhood. My understanding is that most if not all of these structures were not permitted outright or via a variance. In these cases, the proper course of action is for the VOB to notify each homeowner and point out that a non-conforming structure situation exists and that they should remove the non-compliant structure forthwith, or apply for a variance and then, if denied, the property owner should immediately remove the offending structure.

The incorrect course of action in this case is to say: well, since there are so many other unpermitted swing sets in the neighborhood, let's approve the variance at 1 Governors so that it too will have, in just a few years, an aging, uncared for relic of a time long past that will add to the assorted other detritus left to blight the neighborhood.

Screening with trees fixes everything . . . but maybe it does not

I believe it is a slippery slope to believe that any structure or situation that is in violation of the VOB Zoning Code can be ameliorated by simply planting greenery. Question: is there a requirement to maintain such plantings for all eternity? And if they are not maintained, what leverage does the VOB or neighbors have to ensure that it is maintained to cover up the offending situation that gave rise to the variance in the first place. And what if a future owner of the property takes the trees down, what happens then? Or in the case of 1 Governors, Avon Road is a double yellow lined road which receives a heavy salting each winter before impending storms and receives a lot of plowing that then pushes that salted ice and snow onto the properties of 24 Avon and 1 Governors. I have lost trees due to this. What happens if the trees on 1 Governors are lost for this reason or any reason, and a future owner of 1 Governors does not have the financial wherewithal to replace them, or simply does not want to? Then we are left with no greenery and an unsightly orange fence, and an orange and green aging swing set prominently situated at the corner of Governors and Avon Road.

Again, variances are *permanent*, and a decision should not be based on what it is today, but rather what it will become or could become in just a few short years. It would be an interesting study to go around a look at past variances granted on the belief that they will be properly screened by greenery. I can point to two in the neighborhood that have failed or are failing, one is the fence on Plateau Circle East and another is the fence on Red Oak, which is truly an eyesore.

Painting it green fixes everything . . . but that can't be true

First, we had a sea or orange, now we have half orange and half green. My question is what happens once winter comes, and the leaves fall, and the grass turns brown, and even the conifer trees become a muted shade of green and shrink in the winter or are pulled down by snow and ice? What is going to be done then to properly camouflage the offending orange and green structure? What will be required? Should it be repainted depending on the season? And what happens if a future owner of 1 Governors thinks it would delight his or her children to paint the swing set red or perhaps make it an art project and paint it all the colors of the

rainbow? Or what happens if the applicant or a future owner decides to illuminate the play station, for safety let's say, as the days become shorter. How could we prevent any of these things from happening? And how will any of this look, particularly as it ages and deteriorates?

This time is always different . . . but somehow families have been raised here for decades

We have known the three previous families who lived at 1 Governors and there has not been a play structure in the front yard. Perhaps they did not see the need, or perhaps they knew it was not permitted. I am pretty familiar with the property at 1 Governors, and I believe the applicant could have found an alternative place for some type of swing set. It might not have been as grand as the one they built, and it is truly grand scale and color. An alternative location may have required rock removal, which is expensive, but doable. Our immediate neighbor on Plateau Circle East spent two weeks and a lot of money blasting 2,000 sq. ft of rock to make a level, grassed front yard. An alternative location at 1 Governors might have been smaller, but it would have been more than sufficient and maybe even closer to the house where the children would have been able to use it in a safe, protected, unsupervised manner. The applicant makes a point of saying the play structure will be used for supervised play, which leads me to the question of why go through all this when there is a very nice, recently redone park on Sagamore Road not more than 300 yards from the applicant's home.

We do know a few things about raising children and believe that it is one of the most important activities going on in Bronxville, but that it is not the only productive activity happening here. We have continued to live in this same house for over ten years since our youngest child graduated from Bronxville High School. It's a great village to live in regardless of whether you are raising school age children. We also understand that play sets are an activity that children enjoy for a while and move on quickly to other activities, but that the play station remains nearly forever, as the applicant has proven with his walking tour of village swing sets and trampolines.

We do believe the applicant is doing what they believe is in *their* best interest at this time, but we also believe that they have pursued their interests in an extremely cavalier manner with no regard for their neighbors and without any respect for the foundations that have made Bronxville an amazing community for people of all ages for well over a century.

Thank you to the members of the Zoning Board for your service to the community and for carefully considering this issue, it is very much appreciated. You have my full confidence, and I will respect whatever decision you reach on this matter.

Sincerely,



Dave Harris