

**Village of Wesley Hills
Planning Board – January 30, 2019**

The meeting was called to order by Vera Brown, Chairman, at 7:35 p.m.

Present: Vera Brown-Chairman, Rachel Taub, Israel Shenker (left at 9:15 p.m.), Joe Moskowitz-First Alternate, David Katznelson-Second Alternate.

Also Present: Frank Brown-Deputy Village Attorney, Brian Brooker and Matt Trainor-Village Engineers, Janice Golda-Deputy Village Clerk

Absent: Uri Kirschner, Alexandra Wren, Jeff Osterman-Village Planner

CLEARING/FILLING/EXCAVATION PERMIT APPLICATION CONTINUATION OF DONI BRODIE. Affecting property located on the northeasterly side of Soundview Drive approximately 300 feet from the intersection of Marisa Drive. Designated on the Town of Ramapo Tax Map as Parcel ID#41.08-1-47.3.

Doni Brodie of 7 Soundview Drive appeared on behalf of the application. Mr. Brodie informed the Board that he submitted the requested neighbor satisfaction letters for his proposed filling and regrading plan. Janice Golda, Deputy Clerk, confirmed receipt.

Matt Trainor, Village Engineer, confirmed that the required erosion controls were installed or will be installed according to specification as soon as weather permits.

Vera Brown asked the Board if there were any questions. No one had any questions.

Vera Brown motioned to adopt the following resolution. Rachel Taub seconded.

Resolution #19-6

WHEREAS, a formal application from Doni Brodie and Leah Brodie for a clearing, filling and excavation permit for filling and regrading on property located on the northeasterly side of Soundview Drive, known as 7 Soundview Drive and designated on the Town of Ramapo Tax Maps as Section 41.08, Block 1, Lot 47.3, was received by the Planning Board and was referred to the Village Engineer for review and report pursuant to Section 95-4C(1) of the Code of the Village of Wesley Hills (the Clearing, Filling and Excavation Law), and

WHEREAS, the Planning Board has received the report of the Village Engineer and has considered said application,

NOW, THEREFORE, BE IT RESOLVED, that said application for a filling and excavation permit is hereby approved for the creation of the revised topography shown on the

plot plan entitled “Brodie Residence, Wesley Estates, 7 Soundview Drive, Wesley Hills, N.Y.”, dated December 18, 2018, prepared by Robert G. Torgersen, Landscape Architect, subject to the following conditions and modifications:

1. The applicant shall pay a non-refundable application fee in the amount of \$1,125.00, as determined by the Village Engineer.
2. A performance bond or equivalent security (escrow cash or a letter of credit as approved by the Board of Trustees) shall be provided by the applicant in the amount of \$7,000.00, as determined by the Village Engineer, on condition that such security shall be provided to the Village prior to the commencement of any construction activity other than proper installation of the erosion control devices.
3. The erosion control devices proposed on the Erosion & Sediment Control Notes shall be installed to the satisfaction of the Village Engineer no later than February 15, 2019 and continuously maintained until the completion of the project.
4. Certification, to the satisfaction of the Village Engineer, shall be provided to document that the work as depicted on said plot plan has been completed.
5. All work required hereby shall be completed no later than June 15, 2019, as determined by the Village Engineer.

Vote: Vera Brown-Yes, Rachel Taub-Yes, Israel Shenker-Yes, Joe Moskowitz-Yes, David Katznelson-Yes.

Motion Approved

PUBLIC HEARING ON THE WETLANDS PERMIT APPLICATION OF 45 WILDER LLC. Affecting property located on the west side of Wilder Road approximately 594 feet from the intersection of Lime Kiln Road. Designated on the Town of Ramapo Tax Map as Parcel ID#41.06-1-67.

Vera Brown confirmed with Janice Golda that the public hearing notice was published, posted and mailed.

Jack Spaeth of Pomona Enterprises appeared on behalf of the application. Mr. Spaeth stated that as requested by the Board, a revised plan was submitted to include a proposed pool for review and approval. He said there is still some grading proposed within the wetlands and the wetlands buffer for the pool but no construction proposed within the wetlands. Mr. Spaeth explained that Brooker Engineering’s January 25, 2019 report letter will be addressed to their satisfaction.

Vera Brown discussed with the Board and consultants whether the previously cancelled site visit should be re-scheduled. After discussing the pros and cons, it was decided that a site visit would not be beneficial at this time because the pool was relocated out of the wetlands. Mr. Spaeth explained that the houses nearby have pools that are set back much further than the one proposed

for this property. Brian Brooker, Village Engineer, explained that it is not uncommon for federally regulated wetlands not to be flagged, unlike NYS wetlands that are clearly identified. Mr. Brooker explained that the Army Corps of Engineers (ACOE) allows disturbance of up to 1/10 of an acre, and this application is in compliance.

Vera Brown asked if anyone from the public wished to speak.

Yolanda Morales, 43 Wilder Road, stated that when she was building her house in 2007, she was told by the Village that she could not disturb any wetlands in the rear at all. Mrs. Morales said it is unfair that she was told she could not disturb the wetlands when she proposed her dwelling but this application is being considered for approval. The Board asked Mrs. Morales if this application were potentially granted, would she still be interested in disturbing her rear yard within the maximum federal amount allowed of 1/10 of an acre. Mrs. Morales replied yes. Mrs. Morales explained that when she pointed out to the Village at the time of her application that other homes around her did disturb their land much further back on their properties, she was told that most likely when those homes were built, the wetlands may not have been identified. Mr. Brooker said that wetlands laws were not implemented until the mid 1980's and therefore the wetlands laws were not in place for older homes built prior to the 1980's.

Israel Shenker motioned to close the public hearing. Rachel Taub seconded.

Vote: Vera Brown-Yes, Rachel Taub-Yes, Israel Shenker-Yes, Joe Moskowitz-Yes, David Katznelson-Yes.

Motion Approved and public hearing closed.

Israel Shenker motioned to adopt the following resolution. Joe Moskowitz seconded.

Resolution #19-7

WHEREAS, 45 Wilder LLC has applied for a Wetlands Permit for authorization to construct a new house, a portion of which is within 100 feet of the boundary of a freshwater wetland, and to construct a swimming pool within 100 feet of the boundary of a freshwater wetland, on premises located on the westerly side of Wilder Road, known as 45 Wilder Road and designated on the Town of Ramapo Tax Maps as Section 41.06, Block 1, Lot 67; and

WHEREAS, a duly advertised public hearing was held on said application at the Village Hall, 432 Route 306, Wesley Hills, New York on January 30, 2019, at 7:30 P.M., at which time all interested parties present were given an opportunity to be heard; and

WHEREAS, the Planning Board has determined that the proposed action will not have a significant effect on the environment as defined in the New York State Environmental Quality Review Act (SEQRA), for the reasons that the proposed plan allows for the reasonable use of the applicant's property while limiting the amount of disturbance within the 100-foot buffer area to that necessary to allow the proposed construction, there will be no additional net runoff resulting from the proposed construction, and the proposed construction will not have any adverse impact on any wetland;

NOW, THEREFORE, BE IT RESOLVED, that a Wetlands Permit is hereby granted for such construction of a new house, a portion of which is within 100 feet of the boundary of a freshwater wetland, and a swimming pool within 100 feet of the boundary of a freshwater wetland, as shown on the plot plan for such lot entitled "Proposed Single Family, 45 Wilder Rd., Town of Ramapo, Rockland County, Monsey, New York" prepared by Anthony R. Celentano, P.L.S., dated December 27, 2017 and last revised January 23, 2019, subject to the following condition:

1. There shall be compliance with all conditions set forth in the letter of Brooker Engineering, PLLC dated January 25, 2019, a copy of which letter is attached to this Resolution and made a part hereof.

Vote: Vera Brown-Yes, Rachel Taub-Yes, Israel Shenker-Yes, Joe Moskowitz-Yes, David Katznelson-Yes.

Motion Approved

CLEARING/FILLING/EXCAVATION PERMIT APPLICATION OF NORTH WESLEY HILLS ESTATES LLC. Affecting property located on the southeast side of Soundview Drive approximately 300 feet from the intersection of Marisa Drive. Designated on the Town of Ramapo Tax Map as Parcel ID#41.08-1-47.2.

Jack Spaeth of Pomona Enterprises appeared on behalf of the application. Mr. Spaeth explained that 6 Soundview Drive has a significant dip in the natural grading when the subdivision was approved, and he is looking to level the property. He submitted letters of satisfaction from neighbors to the proposed plan.

Mr. Spaeth discussed the proposed performance bond and explained that he presently has \$11,000 now on file with the Village and would like to apply this amount to the calculation for 6 Soundview since it is part of the North Wesley Hills Subdivision. The Village engineering consultant was in agreement. Mr. Spaeth will meet with Matt Trainor on site to go over all the requirements noted in his January 29, 2019 report.

Matt Trainor, Village Engineer, explained to the Board the reasons for requiring a drainage easement between Lots 2 and 4.

David Katznelson motioned to adopt the following resolution. Israel Shenker seconded.

Resolution #19-8

WHEREAS, a formal application from North Wesley Estates LLC for a clearing, filling and excavation permit for filling and regrading on property located on the southeasterly side of Soundview Drive, known as 6 Soundview Drive and designated on the Town of Ramapo Tax Maps as Section 41.08, Block 1, Lot 47.2, was received by the Planning Board and was referred

to the Village Engineer for review and report pursuant to Section 95-4C(1) of the Code of the Village of Wesley Hills (the Clearing, Filling and Excavation Law), and

WHEREAS, the Planning Board has received the report of the Village Engineer and has considered said application,

NOW, THEREFORE, BE IT RESOLVED, that said application for a filling and excavation permit is hereby approved for the creation of the revised topography shown on the plot plan entitled "Plot Plan for Lot #2 of North Wesley Hills Est., LLC Located in Village of Wesley Hills, Town of Ramapo, Rockland County, New York", dated December 2, 2018, prepared by Steven M. Sparaco, P.E., subject to the following conditions and modifications:

1. The applicant shall pay a non-refundable application fee in the amount of \$1,150.00, as determined by the Village Engineer.
2. A performance bond or equivalent security (escrow cash or a letter of credit as approved by the Board of Trustees) shall be provided by the applicant in the amount of \$14,000.00, as determined by the Village Engineer, in addition to the existing letter of credit filed in connection with the construction of the North Wesley Hills Estates Subdivision, on condition that such security shall be provided to the Village prior to the commencement of the construction activities approved by this resolution.
3. There shall be compliance with all conditions set forth in the letter of Brooker Engineering, PLLC dated January 29, 2019, a copy of which letter is attached to this Resolution and made a part hereof, with condition 5 thereof deemed to require the drainage easement referred to therein.
4. The erosion control devices proposed on the said plot plan shall be installed prior to the commencement of construction and continuously maintained until the completion of the project.
5. Certification, to the satisfaction of the Village Engineer, shall be provided to document that the work as depicted on said plot plan has been completed.
6. All work required hereby shall be completed no later than June 15, 2019, as determined by the Village Engineer.

Vote: Vera Brown-Yes, Rachel Taub-Yes, Israel Shenker-Yes, Joe Moskowitz-Yes, David Katznelson-Yes.

Motion Approved

CLEARING/FILLING/EXCAVATION PERMIT APPLICATION OF ISAAC

KASSIRER. Affecting property located on the east side of Carefree Lane approximately 200 feet from the intersection of Lime Kiln Road. Designated on the Town of Ramapo Tax Map as Parcel ID#41.07-2-6.

James Licata, Esq., Anthony Celentano, engineer, and Ben Silber of Silber Construction appeared on behalf of the applicant.

Mr. Licata explained that one of the various construction activities on his client's property was installation of a pool along with some fill. He informed the Board that the construction activity was not coordinated properly with the multiple contractors which resulted in the lack of acquiring the clearing/filling/excavation permit. Mr. Licata referenced the Village engineering consultant's January 14, 2019 and January 29, 2019 reports and stated that all requirements will be complied with to their satisfaction.

Matt Trainor informed the Board that this application was a long time coming and that all the construction activity has been completed. Mr. Trainor explained that there have been drainage complaints from 4 Baker Lane and 6 Baker Lane and that the proposed plans should mitigate the new water drainage issues.

Mr. Louis Gotlieb, 4 Baker Lane, asked to speak. Although not a public hearing, Vera Brown accommodated the resident's request.

Mr. Gotlieb said his property is perpendicular to Carefree Lane. He said that after the construction and filling work at 4 Carefree Lane and 6 Carefree Lane, where the land was already sloped and some water used to collect on his property after storms, the water runoff now has increased significantly onto his property. He submitted pictures to the Board for review. He said this increased water now freezes on his driveway and by the mailbox which did not occur in the past. Mr. Gotlieb said he informed the Village of the situation and after the engineering consultant inspected both 4 Carefree Lane and 6 Carefree Lane, he determined that 4 Carefree required a clearing/filling/excavation permit and that there should be zero net additional runoff.

Ben Silber of Silber Construction explained that a significant amount of old brush was also removed in the rear of the properties between 4 Carefree Lane and 6 Carefree Lane and that the water table is very high this year due to the above average rainfall. Brian Brooker explained that there always was water running through neighboring properties onto low spots, but now it is running differently. The applicant's proposed plan will reverse the flow of water back to the original flow and add some additional drainage. Mr. Gotlieb said it would help if another catch basin were added on the street to collect this flow of increased water on Baker Lane. The Village engineering consultant discussed the option of Carefree Lane and Baker Lane residents establishing an easement to tie into the storm system in the street as a private improvement but stated it would not be at the Village's expense because the Village is not permitted to spend public funds for private improvements.

Maurice Klugman, 6 Baker Lane, submitted pictures of his property which he believes is due to the additional land fill and landscaping done on Carefree Lane. He also said that there is an above-ground sump pump piping water towards his property. Mr. Klugman said he has been at this location since 1987 and experienced many rainy seasons and a wet yard but never had this excessive water issue before where he cannot use his backyard or mow the lawn because it is all muddy and saturated. Mr. Klugman said he is exasperated and looking for relief as a victim of

work having been done without a Village permit resulting in drainage issues affecting his quality of life.

The applicant's representatives and the Village consultants discussed the proposed mitigation plan, and Brian Brooker explained that the plan's goal is to mitigate the increased net runoff and return the flow of water back to the original conditions that existed prior to the construction and additional landfill. Planting of trees for absorption was discussed and Mr. Silber stated about 100 trees were planted to reduce standing water.

The Board asked Mr. Gotlieb and Mr. Klugman approximately when the increased water issues surfaced. They both confirmed that there was always some water on their properties after storms but never to this level or degree which only surfaced after the work done on Carefree Lane. Mr. Klugman said getting the drainage back to the way it was before the landfill was added on Carefree Lane would be satisfactory.

Frank Brown explained that this permit application is for approval of the proposed (although after-the-fact) landfill deposited on 4 Carefree Lane. Any other activities not involving filling, e.g., sump pumps, leader and gutter systems, etc., do not involve the Planning Board. Frank Brown also stated that the Village cannot mandate drainage improvements outside its jurisdiction which do not require permits or remedy clearing of land done by a resident on his/her property which is not prohibited by the Clearing, Filling and Excavation Law.

Israel Shenker motioned to adopt the following resolution. Joe Moskowitz seconded.

Resolution #19-9

WHEREAS, a formal application from Isaac Kassirer for a clearing, filling and excavation permit for filling and regrading on property located on the easterly side of Carefree Lane, known as 4 Carefree Lane and designated on the Town of Ramapo Tax Maps as Section 41.07, Block 2, Lot, was received by the Planning Board and was referred to the Village Engineer for review and report pursuant to Section 95-4C(1) of the Code of the Village of Wesley Hills (the Clearing, Filling and Excavation Law), and

WHEREAS, the Planning Board has received the report of the Village Engineer and has considered said application,

NOW, THEREFORE, BE IT RESOLVED, that said application for a filling and excavation permit is hereby approved for the creation of the revised topography shown on the plot plan entitled "Post Condition for 4 Carefree Ln., Town of Ramapo, Rockland County, Wesley Hills, New York", dated October 5, 2018 and last revised January 23, 2019, prepared by Anthony R. Celentano, P.E., subject to the following conditions and modifications:

1. The applicant shall pay a non-refundable application fee in the amount of \$2,100.00, as determined by the Village Engineer.

2. A performance bond or equivalent security (escrow cash or letter of credit as

approved by the Board of Trustees) shall be provided by the applicant in the amount of \$10,000.00, as determined by the Village Engineer, on condition that such security shall be provided to the Village prior to the commencement of construction activities.

3. There shall be compliance with all conditions set forth in the letter of Brooker Engineering, PLLC dated January 29, 2019, a copy of which letter is attached to the Resolution and made a part hereof.

4. The erosion control devices proposed on the Details and Profiles Plan shall be reinstalled to the satisfaction of the Village Engineer prior to commencement of construction and shall be continuously maintained until the completion of the project.

5. Certification, to the satisfaction of the Village Engineer, shall be provided to document that the work as depicted on said plot plan has been completed.

6. All work required hereby shall be completed no later than June 15, 2019, as determined by the Village Engineer.

Vote: Vera Brown-Yes, Rachel Taub-Yes, Israel Shenker-Yes, Joe Moskowitz-Yes, David Katznelson-Yes.

Motion Approved

PUBLIC HEARING ON THE APPLICATION OF EMILY BURNBAUM TO REVISE A PREVIOUSLY APPROVED SPECIAL PERMIT FOR AN ACCESSORY STRUCTURE IN EXCESS OF 2500 SQUARE FEET (LIGHTED TENNIS COURT). Affecting property located on the westerly side of East Lane at the intersection of Pomona Lane. Designated on the Town of Ramapo Tax Map as Parcel ID#32.20-1-37.

Vera Brown confirmed with Janice Golda that the public hearing notice was published, posted and mailed.

Aaron Cohen, Esq. appeared on behalf of the applicant. Mr. Cohen questioned the applicability of the Zoning Law limitation on the height of light poles in Section 230-14Z(4) of the Village Zoning Law used in his previously approved application for a sports court. Vera Brown explained to the Board that at the applicant's last appearance before the Planning Board, the application was referred to the Zoning Board of Appeals and she was informed that the ZBA public hearing was adjourned in January with no decision granted.

Mr. Cohen submitted a written memo to the Board explaining his interpretation that the light poles he installed are allowed by Zoning Law Section 230-54B(2) which applies to special permit uses.

Vera Brown opened the public hearing and asked if anyone wished to speak. No one wished to speak.

Joe Moskowitz said that he twice spoke to the neighbor(s) regarding the lighting. The first time the nearest neighbor signed an acceptance letter to the proposed lighting plan. The second time the same neighbor indicated it was unclear what the plan was proposing but she does have an issue now with all the lighting installed on Ms. Burnbaum's property which illuminates beyond the property line.

Frank Brown stated his opinion that Mr. Cohen's memorandum of law is incorrect. He explained that Mr. Cohen is relying on the sentence in Section 230-14Z of the Zoning Law, which states that "Exterior lighting for special permit uses . . . shall be regulated by the requirements of Section 230-54B(10) of this chapter." However, that section does not apply to this application. Although Section 230-14O(4)(b) requires the issuance of a special permit for construction of an accessory structure (such as a sports court) exceeding 2,500 square feet in ground floor area, an oversized accessory structure is not a "special permit use". Zoning Law Section 230-18 states that "Special permit uses are listed in Articles V and VI of this chapter." A large accessory structure is not included in the list of "special permit uses", and the special permit requirement is imposed in Article IV of the Zoning Law, not Article V or VI. Not every application for a special permit is an application for a "special permit use". Furthermore, Section 230-54B(10), upon which Mr. Cohen is relying, only regulates lighting intensities, not the maximum height of light poles.

Joe Moskowitz motioned to adopt the following resolution. Vera Brown seconded.

Resolution #19-10

WHEREAS, Emily Burnbaum has applied for approval of revision of certain of the conditions of a special permit granted on September 27, 2017, by Resolution #17-19, for an accessory structure in excess of 2,500 square feet (a sports court) for property located on the westerly side of East Lane and the southerly side of Pomona Lane, known as 18 East Lane and designated on the Town of Ramapo Tax Maps as Section 32.20, Block 1, Lot 37; and

WHEREAS, the applicant's attorney has appeared at the public hearing being held by the Planning Board on such application and has questioned the determination previously made by the Planning Board in Resolution #18-41 that one of the variances required for such proposed revisions is for the maximum height of light poles (15' and 20' instead of 12' as required by Section 230-14Z(4) of the Code of the Village of Wesley Hills); and

WHEREAS, the Planning Board has considered the Memorandum submitted to it by the applicant's attorney and also has considered the advice provided to it by the Deputy Village Attorney that, contrary to the applicant's position, the aforementioned variance is required because the application is governed by Section 230-14Z(4) of the Code of the Village of Wesley Hills and not by Section 230-54B(2) of said Code for the reason that although a special permit is required because of the size of the sports court, the application is not for one of the "special permit uses" as set forth and referred to in Sections 230-16 (list of special permit uses) and 230-18 of said Code;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby confirms its prior determination that a variance for the maximum height of the light poles is necessary, and therefore the Planning Board declines to take final action on the application until after a determination on the pending application for such variance shall have been made by the Zoning Board of Appeals.

Vote: Vera Brown-Yes, Joe Moskowitz-Yes, David Katznelson-Yes, Rachel Taub-Abstain.

Motion Approved

REQUEST FOR EXTENSION OF TIME FOR FILING OF THE HURWITZ

SUBDIVISION. Affecting property located on the west side of Spook Rock Road approximately 700 feet north of Grandview Avenue. Designated on the Town of Ramapo Tax Map as Parcel ID#40.16-1-10.2.

Frank Brown informed the Board that due to a problem with acceptance by Rockland County of the road widening strip on Spook Rock Road, which is outside the control of the applicant, an extension of filing time for the expired subdivision plat is requested. Mr. Brown explained the details of the problem.

David Katznelson motioned to adopt the following resolution. Vera Brown seconded.

Resolution #19-11

WHEREAS, on March 28, 2018, by Resolution #18-7, the Planning Board approved the final plat entitled “Subdivision Plat for Hurwitz Located in Village of Wesley Hills, Town of Ramapo, Rockland County, New York”, and

WHEREAS, the filing of the said plat was delayed due to problems with acceptance by Rockland County of the road widening strip on Spook Rock Road, which was necessary in order to comply with condition 1 set forth in the letter of the Rockland County Highway Department dated November 30, 2017, which condition subsequently was incorporated into the letter report of the Rockland County Department of Planning dated December 11, 2017 as condition 2 thereof, and

WHEREAS, the said delay was beyond the control of the applicant, but during the said delay the conditional approval of said subdivision plat expired,

NOW, THEREFORE, BE IT RESOLVED, nunc pro tunc, that the period of conditional subdivision approval heretofore granted to the said subdivision is hereby extended until February 28, 2019.

Vote: Vera Brown-Yes, Joe Moskowitz-Yes, David Katznelson-Yes, Rachel Taub-recused.

Motion Approved

APPROVE 1/9/19 PLANNING BOARD MINUTES.

Vera Brown motioned to approve the 1/9/19 Planning Board Minutes. David Katznelson seconded.

Vote: Vera Brown-Yes, Joe Moskowitz-Yes, David Katznelson-Yes.

Motion Approved

David Katznelson motioned to close the meeting. Joe Moskowitz seconded.

Vote: Vera Brown-Yes, Joe Moskowitz-Yes, David Katznelson-Yes

Meeting adjourned 10 p.m.

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