

**Village of Wesley Hills
Zoning Board of Appeals
Village Hall
Wednesday, November 15, 2017**

MEMBERS PRESENT:

Richard Weinberger, Chairman
Carole Anderson
Jonathan Gewirtz
Dennis Dale
Randi Marlin, Ad Hoc

MEMBERS ABSENT:

Jan Hilgeman
Mordechai Schwab, Ad Hoc

OTHERS PRESENT:

Doris Ulman, Assistant Village Attorney
Camille Guido-Downey, Village Clerk

Chairman Weinberger called the meeting to order at 8:10 p.m.

Item #3

Bassie Hurwitz-89 Spook Rock Road

Mark Kurzmann, Esq. stated that he has done some research on the topic and provided the Board Members with the following items:

1. Copy of the County of Rockland base tax map which shows a number of other existing flag lots in the area.
2. Copy of the Village of Wesley Hills tax map indicating the flag lots in the area.
3. 1968 Steffens 3-lot Subdivision.
4. Mr. Kurzmann stated that in 1987 there was a 2-lot subdivision called Rosner which created Oren Court; however he did not have enough time to obtain the map.

Jonathan Gewirtz questioned if Mr. Kurzmann was able to obtain the square footage of the proposed driveway?

Mr. Kurzmann answered no, that he was not able to obtain that information.

Mr. Kurzmann stated that in 1995, 89 Spook Rock Road was subdivided into 2-lots and could have been subdivided into a 3-lot subdivision. Mr. Kurzmann pointed the #82 & #83 Spook Rock Road are flag lots. Mr. Kurzmann mentioned the following showing:

1. The character of the neighborhood would not change as there are many flag lots in the area.
2. There is no other alternate method to investigate.
3. The Application has been engineered and review by numerous professionals and the variances requested are the minimum variances required.
4. By granting the variances, the ZBA is benefiting the applicant.

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Alan Deyong, 4 Oren Court was present and affirmed and stated that he remembers that there being a condition of approval for his subdivision that one house was required to be R-50 and why does Mr. Kurzmann's application not have to abide by that rule? Mr. Deyong questioned what other subdivisions were granted in the past for lot size?

Doris Ulman, Esq answered that there were 5 subdivisions for lot area variances in the R-50 zone.

Chairman Weinberger stated that there are three agency review letters submitted, is the Applicant willing to accept those letters as conditions of approval?

Mr. Kurzmann answered yes; his client will comply with all the conditions of approval in those letters.

Chairman Weinberger stated that the RC Drainage Agency memo dated 8/18 mentions stormwater requirements, does the ZBA address that concern?

Doris Ulman answered no; the Planning Board will address that concern.

Randi Marlin made a motion to close the public hearing, seconded by Dennis Dale. Upon vote, this motion carried unanimously.

Jonathan Gewirtz made a motion to approve the Application of Bassie Hurwitz of 89 Spook Rock Road based on the following information:

1. As noted by the Chairman, the distance between houses and adjacent properties is quite large and this may be the largest parcel in the area. All measurements to houses on adjacent lots were provided and in most cases they are over 100 feet.
2. There are a number of flag lots in the surrounding areas.
3. This request fits into the neighborhood and is not out of character for the area and fits uniformly with the size of the surrounding properties.
4. Flag lots are common in this area.
5. All above are based on the balancing test performed by the Zoning Board.

Subject to the following conditions:

1. Compliance with all agency requirements submitted.
2. Planning Board to determine the ownership of the existing fence.
3. Planning Board to review for safety the placement of the well and septic tank.

**In the Matter of the Application of
Bassie Hurwitz
Premises situated on the west side of Spook Rock
Road approximately 700 feet north of Grandview
Ave, known as 89 Spook Rock Road, designated**

**On the tax map as Section 40.16 Block 1 Lot 10.2,
In an R-50 Zoning District**

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Bassie Hurwitz for variances from the provisions of Section 230-17 Table of Dimensional Requirements Attachment 1 of the Code of the Village of Wesley Hills to permit a two lot subdivision, proposed Lot 1 having lot area of 44,097 square feet instead of the minimum required of 50,000 square feet, side yard of 20.9 feet instead of the minimum required of 30 feet, total side yard of 51.5 feet instead of the minimum required of 75 feet and impervious surface ratio of .26 instead of the maximum permitted of .20 and proposed Lot No. 2 having lot area of 45,227 square feet instead of the minimum required of 50,000 square feet, lot frontage of 28 feet instead of the minimum required of 100 feet and front yard impervious surface ratio of .37 instead of the maximum permitted of .15 and,

WHEREAS, after due notice, a public hearing on said application was held by the Zoning Board of Appeals on August 16, 2017, which hearing was continued on September 27, 2017, October 25, 2017 and November 15, 2017, and

WHEREAS, the applicant appeared by her attorney, who testified as follows:

This application is before the Zoning Board on referral from the Wesley Hills Planning Board;

The proposal is for a flag lot for proposed Lot No. 2, the Fire Inspector has required that the driveway to proposed Lot No. 2 be 25 feet in width, which results in a side yard of only 20.9 feet for proposed Lot No. 1;

That the front yard impervious surface ratio for proposal Lot No. 2 is high because of the long driveway from the street to that lot;

That proposed Lot No. 1 will have an easement for ingress and egress over the proposed driveway for proposed Lot No. 2;

That there is an existing house on proposed Lot No. 1 and the impervious surface variance for proposed Lot No. 1 is for existing structures;

That the existing lot is 2 acres which is larger than all other properties in the neighborhood; that the subdivision will create proposed Lot No. 1 having just over 1 acre and proposed Lot No. 2 having 1.1 acres, similar to most other properties in the neighborhood;

That the Village Engineering Consultant has required the design of the driveway for proposed Lot No. 2 and has approved the drainage plan for proposed Lot No. 2 and;

WHEREAS, one neighbor appeared in opposition to the application, having concerns that the drainage and septic system caused by locating a house on proposed Lot No. 2 will have impact on his property; and

WHEREAS, members of the Zoning Board of Appeals visited the site;

NOW, THEREFORE, IT IS HEREBY DETERMINED that the proposed action is an unlisted action and will not have a substantial adverse impact on the environment for the reasons that any drainage issues have been and will be addressed by the Wesley Hills Planning Board, the construction of a residence will not impact the adjoining properties because there is a substantial distance between the proposed residence and existing residences on adjoining properties and the use of the property will not change, and be it further,

RESOLVED, that the application submitted by Bassie Hurwitz for variances from the provisions of Section 230-17 the Table of Dimensional Requirements Attachment 1 of the Code of the Village of Wesley Hills, to permit a two lot subdivision, proposed Lot 1 having lot area of 44,097 square feet instead of the minimum required of 50,000 square feet, side yard of 20.9 feet instead of the minimum required of 30 feet, total side yard of 51.5 feet instead of the minimum required of 75 feet and impervious surface ratio of .26 instead of the maximum permitted of .20 and proposed Lot No. 2 having lot area of 45,227 square feet instead of the minimum required of 50,000 square feet, lot frontage of 28 feet instead of the minimum required of 100 feet and front yard impervious surface ratio of .37 instead of the maximum permitted of .15 is hereby granted, subject to the following conditions:

1. Compliance with Rockland County Planning Department letter dated September 28, 2017;
2. Compliance with Rockland County Highway Department letter dated September 1, 2017;
3. Compliance with Rockland County Drainage Agency letter dated August 18, 2017;
4. That the Zoning Board of Appeals recommends that the Wesley Hills Planning Board requires that ownership of the fence at the northerly property line be determined and indicated on the subdivision plat;
5. That the Zoning Board of Appeals recommends that the Wesley Hills Planning Board reviews the safety and placement of the well and septic system on the proposed lots and require whatever mitigations are necessary so that these systems do not impact the adjoining property of Dr. Deyong, and be it further.

RESOLVED, that the Zoning Board of Appeals hereby makes the following **FINDINGS OF FACT**:

1. That Zoning Board of Appeals has reviewed other lots in the neighborhood and has determined that the proposed lots will not change the character of the neighborhood because they are similar in size to other properties in the neighborhood;
2. That although the impervious surface ratio variances are substantial, the variance on proposed Lot No. 1 is caused by existing structures and the variance on proposed Lot No. 2 is caused by the long driveway creating the flag lot, neither of which can reasonably be changed;
3. That this property is unique in that the existing houses on adjoining properties are more than 100 feet from the building envelope on proposed Lot No. 2 so that construction of a residence on proposed Lot No. 2 will not impact any of the adjoining properties;

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4. That the only potential detriment to nearby properties could be the effect of drainage and other systems which will be addressed and mitigated, where necessary, by the Wesley Hills Planning Board;
5. That the benefit to the applicant by granting the variances is great whereas any detriment to neighboring properties or to the community is minimal and can be alleviated.

Seconded by Dennis Dale. Upon vote, this motion passed unanimously.

Item #4

Eliana Braunstein-5 Rochelle Lane

Ira Emanuel, Esq. was present for the applicant and stated that the revised plans were not delivered in time due to an unforeseen issue with the Engineer. His client has revised their plan to eliminate the pool house/cabana and pergola and the variance for the fence. The fence is being moved in 4 feet and will be 6 feet in height. His client will apply at a later date for the pool house/cabana and pergola.

Doris Ulman requested that the updated plan be delivered to the Village so that she can review the actual new numbers for the variance reductions. Ms. Ulman questioned why can't the generator be moved closer to the home?

Ira Emanuel answered that the installation was done as per manufacture specifications and the generator is tested once per week. The Applicant has received a temp C of O from the Building Inspector. Mr. Emanuel provided the following letters of support:

Schwartz, 4 Rochelle Lane
Norman, 6 Rochelle Lane
Mammon, 8 Rochelle Lane
Adler, 10 Rochelle Lane
Fishkind, 11 Rochelle Lane
Eisenreich, 12 Rochelle Lane
Messner, 15 Rochelle Lane
Horowitz, 21 Rochelle Lane
Hook, 6 Deerwood Road
Zupnik, 7 Rochelle Lane

Ms. Braunstein was present and affirmed to tell the truth and stated that it would cost approximately \$5,000 to have the generator moved.

Chairman Weinberger requested that the applicant provide a written proposal of the proposed landscaping.

Ira Emanuel answered that he objects to the request of the Chairman as the pool house/cabana and pergola have been removed from the plan and the original extensive landscaping that was proposed is not needed at the current time.

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Chairman Weinberger stated that the neighbors are concerned with the view and the landscaping would mitigate that concern.

Ira Emanuel respectfully denied the Chairman's request and stated that the structures of concern have been eliminated and therefore there is no landscaping being planned at the current time.

Mr. Zupnik, 7 Rochelle Lane was present and affirmed to tell the truth and stated that he supports the project as he has provided a letter of support but he has concerns that the revised plans were just submitted today and he cannot offer any comments and he is not ready to comment tonight as he has not had time to review the revisions along with the revised narrative. Mr. Zupnik stated that the height of the structure is not a concern any longer as the structure has been eliminated.

Jonathan Gewirtz stated that he agrees with Mr. Zupnik in reference to the lack of time to review the updated items, however, he stated for the record that the surrounding neighbors do not dictate to the Zoning Board the procedure or the direction of an application.

Chairman Weinberger reminded the public that the revised plans and narrative are available at the clerk's office for review.

Mr. Emanuel stated that the revised plans were emailed to Mr. Zupnik's attorney and Mr. Loebenberg.

Chairman Weinberger stated that he may consider leaving the generator in the location installed if the Applicant installs landscaping as discussed at the site visit.

Mr. Emanuel disagreed and stated that landscaping may not be an appropriate condition of approval from the Zoning Board.

Mr. Loebenberg was present and affirmed and stated that he did not review the revised plans that were emailed to him after 4 pm today. Mr. Loebenberg stated that he is concerned with the generator location as it is on the property line, the noise it will generate each week or when it is used and the view of it.

Chairman Weinberger stated that landscaping should be installed around the generator.

Ms. Braunstein stated that they have every intention to install landscaping on their property however she is not prepared to decide on specific species of bushes or trees at the current time. Ms. Braunstein stated that they will install landscaping around the generator and the pool area as she wants her backyard to look as beautiful as possible.

Randi Marlin stated that the Applicant is in agreement to landscape and there should be a general note on the plan and the Zoning Board does not need to be worried about the specifics of the landscaping.

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Chairman Weinberger stated that he wants something in writing in reference to the landscaping for everyone's protection.

Ira Emanuel questioned a specific landscaping plan?

Jonathan Gewirtz suggested that the Applicant provide a general landscaping plan for the property with highlighted areas with the proposed landscaping example of 3 feet high.

Chairman Weinberger stated that he does want to see a specific plan in writing for the landscaping.

Jonathan Gewirtz made a motion to continue the public hearing to the December 20, 2017 at 8pm, seconded by Carole Anderson. Upon vote, this motion carried unanimously.

Item #5

Benjamin & Chana Berkowitz-20 Sherri Lane

Samuel Silverman, Esq was present on behalf of the Applicant. Mr. Silverman stated that his client is seeking a variance for impervious surface ratio of .25 to .30 as they would like to install a pool and patio. Mr. Silverman submitted the following letters of support:

Dembitzer, 27 Sherri Lane

Egert, 25 Sherri Lane

Kluger, 23 Tammy Road

Fine, 21 Sherri Lane

Gamzeh, 22 Sherri Lane

Mr. Silverman stated that the pool is to assist their child with physical therapy. Mr. Silverman stated that there is no undesired change to the character of the neighborhood as this pool would enhance the beauty of the area. There is no other way to achieve this goal other than not installing a pool which would be a deterrent to the family. There is no substantial change to the neighborhood.

Doris Ulman stated that she has requested items from the Applicant's engineer and she has not seen them.

Joanne Nelson, West Rock Pools was present and affirmed to tell the truth and stated that she believes all the changes were made.

Ms. Ulman stated that the Applicant needs to review the letter and report back with the requested items.

A site visit was scheduled for December 10, 2017 at 9am and the Board Members requested that the pool area be staked out for easy visibility.

Chairman Weinberger stated that the Applicant should also provide a landscaping plan.

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David Gamzeh, 22 Sherri Lane was present and affirmed to tell the truth and stated that he fully supports the plan of the Berkowitz.

Jonathan Gewirtz made a motion to adjourn the public hearing to December 20, 2017 at 8pm, seconded by Randi Marlin. Upon vote, this motion carried unanimously.

Item #6

Adoption of Minutes- October 25, 2017

Carole Anderson made a motion to approve the Zoning Board of Appeals Minutes of October 25, 2017 seconded by Jonathan Gewirtz. Upon vote, this motion carried unanimously.

Respectfully Submitted,

Camille Guido-Downey