

**Village of Wesley Hills  
Zoning Board of Appeals  
Village Hall  
Wednesday, December 21, 2016**

**MEMBERS PRESENT:**

Jonathan Gewirtz, Acting Chairman  
Jan Hilgeman  
Carole Anderson  
Dennis Dale  
Mordechai Schwab, Ad Hoc  
Randi Marlin, Ad Hoc

**MEMBERS ABSENT:**

Richard Weinberger, Chairman

**OTHERS PRESENT:**

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

Acting Chairman Gewirtz called the meeting to order at 8p.m.

**Item #4**

**Naftali Klein – 73 South Parker Drive**

Acting Chairman Gewirtz read into the record the following public hearing notice:

Application of Naftali Klein for variances from the provisions of Section 130-17, Attachment 1 of the Code of the Village of Wesley Hills, to permit the maintenance and use of a carport having 20.5 feet less than the minimum required side yard of 25 feet and 5.1 feet less than the minimum required total side yard of 60 feet and a shed having 22.2 feet less than the minimum required side yard of 25 feet and 8.1 feet less than the minimum required total side yard of 60 feet.

The subject premises are situated on the south side of South Parker Drive, approximately 75 feet west of Martha Road, known as 73 South Parker Drive, designated on the Tax Map as Section 41.18, Block 1 Lot 45, in an R-35 Zoning District.

Richard Sarajian, Esq. Applicant's Attorney was present on behalf of his client and stated that he believes that the Board is familiar with this application however he provided the following summary. Mr. Klein had a carport on his property that was damaged during a storm. Mr. Klein applied for and received a building permit to reconstruct the carport and then received a stop work order as the Building Inspector mistakenly did not realize that the carport was located in the Village drainage easement. Mr. Klein came to ZBA and the ZBA could not authorize the variance as the structure is located in the Village drainage easement. Mr. Klein has been to the Village Board and has received permission from the Village Board for the placement of the carport in the drainage easement and a new access easement was created at the Village's request. Mr. Klein has also supplied the Village with an indemnification agreement. The Village Engineer has reviewed and approved the newly created easement.

No one from the public wished to speak.

ZBA

12-21-16

At 8:10 pm Jan Hilgeman made a motion to close the public hearing, seconded by Dennis Dale. Upon vote, this motion carried unanimously.

Acting Chairman Gewirtz stated that the Board Members had visited the property and it is a dead end street. The property backs up to the Village of Montebello.

Mr. Sarajian stated that he has also submitted a FOIL request to the Village and the Town on the maintenance records on the drainage easement and there are no maintenance records for this easement.

Acting Chairman Gewirtz made a motion to approve the Application of Mr. Klein subject to:

1. Compliance with the Village Board Resolution approving the agreement and easement.
2. Execution of and compliance with the resolution adopted by the Village Board.
3. Maintenance of the easement and,
4. Filing and recording the easement and indemnification agreements with Village and the County Clerk.

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

**In the Matter of the Application of  
Naftali Klein by the attorney, Richard Sarajian, Esq.  
Premises situated on the South side of South Parker Drive,  
Approximately 75 feet West of Martha Road  
Known as 73 South Parker Drive  
In the Village of Wesley Hills  
Section 41.18, Block 1, Lot 45-R-35**

**WHEREAS**, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills for a variance from the provisions of Section 130-17, Attachment 1 of the Code of the Village of Wesley Hills to permit the maintenance and use of a carport having 20.5 feet less than the minimum required side yard of 25 feet and 5.1 feet less than the minimum required total side yard of 60 feet and a shed having 22.2 feet less than the minimum required side yard of 25 feet and 8.1 feet less than the minimum required total side yard of 60 feet, and

**WHEREAS**, after due notice a public hearing was held by the Board of Appeals on April 15, 2015, which hearing was continued on May 20, 2015, September 21, 2016, November 15, 2016, December 21, 2016, and

**WHEREAS**, the applicant Naftali Klein appeared by his attorney, Richard Sarajian, Esq. who testified as follows:

That the applicant had a carport on his property that was damaged by a storm;

That the applicant received a building permit in 2014 to reconstruct the carport but then received a stop work order when the Building Inspector realized the permit was issued in error since the carport was located in the Village drainage easement;

That the applicant appeared before the Board of Trustees of the Village of Wesley Hills who granted permission for the carport to be located in the easement provided a new access easement be created and the Village be indemnified by the applicant;

That the Village Engineer has approved the newly created easement;

That there is no garage attached to the house;

**WHEREAS**, this application was originally heard on November 15, 2015 but was adjourned to the present so the applicant could seek permission of the Village Board to place the carport in the easement; and

**WHEREAS**, the application with narrative submitted by the applicant states that i) the carport and shed have been on the premises at least since the applicant began living there, i.e., about 19 years, ii) the carport collapsed in the winter of 2014 due to heavy snow, iii) the applicant began rebuilding the carport but was stopped due to the lack of a building permit, which the applicant had been unaware of needing, iv) after obtaining a building permit, the applicant was informed that a new survey showed the construction was on a drainage easement and the side yard was insufficient, v) the applicant was further informed that the existing shed was also on the drainage easement; and

**WHEREAS**, the applicant submitted a letter from the Building Inspector denying a Certificate of Occupancy for an existing carport and shed due to insufficient side yard for both structures and due to their location in a municipal drainage easement; and

**WHEREAS**, no member of the public spoke in support or opposition to the application; and

**WHEREAS**, the Rockland County Department of Planning submitted a letter pursuant to GML Sections 239 M and L recommending that the structures be removed from the easement or the easement be relocated; and

**WHEREAS**, the applicant submitted correspondence between his attorney and the Town of Ramapo which resulted in the Town's conclusion that it had no ownership interest in the easement since it did not benefit the Town and thus passed to the Village upon its incorporation; and

**WHEREAS**, several board members conducted a site visit to the premises on May 17, 2015; and

**WHEREAS**, the hearing was adjourned for a lengthy period to allow the applicant to try to resolve the issue with the Board of Trustees of the Village of Wesley Hills and was re-noticed for November 15, 2016 after determination by the Board of Trustees; and

**WHEREAS**, a draft agreement wherein the applicant indemnifies the Village and a draft relocated easement were presented by the Applicant and states to be those approved by the Board of Trustees and the Village Engineer; and

**WHEREAS**, a resolution of the Board of Trustees dated December 6, 2016 was submitted and states that an agreement between Naftali Klein and the Village regarding maintenance of the garage and an easement agreement in favor of the Village were approved provided the within variances are granted and provided all relevant documents are properly recorded; and

**NOW, THEREFORE, BE IT RESOLVED** that the Zoning Board of Appeals hereby determines that this application is a Type II action and no further action under SEQRA is required, and be it further

**RESOLVED**, that the Zoning Board of Appeals hereby grants the application of Naftali Klein for a variance from the provisions of Section 130-17, Attached 1 of the Code of the Village of Wesley Hills to permit the maintenance and use of a carport having 20.5 feet less than the minimum required side yard of 25 feet and 5.1 feet less than the minimum required total side yard of 60 feet and a shed having 22.2 feet less than the minimum required side yard of 25 feet and 8.1 feet less than the minimum required total side yard of 60 feet at premises situated on the South side of South Parker Drive, approximately 75 feet West of Martha Road, known as 73 South Parker Drive in the Village of Wesley Hills designated on the Town of Ramapo Tax Map as Section 41.18, Block 1, Lot 45 in an R-35 Zone, subject to compliance with the Village Board resolution approving the easement and indemnification agreements, subject to execution of and compliance with the agreements adopted by the Village Board, subject to filing and recording the easement and indemnification agreements with the County Clerk and subject to maintenance of the easement, and be it further

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

1. That there will be no major change in the character of the neighborhood nor substantial detriment to nearby properties, the neighborhood, the community or adverse effect or impact on an physical or environmental conditions by the granting of the variance and no neighbors objected;
2. There are no alternatives to variances if the carport is to remain where it was reconstructed and the shed is to be allowed to remain where is has been for years;
3. That a building permit was issued for a carport before the Building Inspector became aware that it was issued erroneously but the applicant had no reason to be aware of the error until informed of it by the Building Inspector after the fact.
4. That taking these factors into account the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community.

**Item #4**

**Aaron Metzger – 398 Route 306**

Acting Chairman Gewirtz read into the record the following public hearing notice:

ZBA

12-21-16

Application of Aaron Metzger for variances from the provisions of Section 230-17 the Table of Dimensional Requirements of the Code of the Village of Wesley Hills, to permit the construction, maintenance and use of a detached garage having a side yard of 5 feet instead of the minimum required of 25 feet, total side yard of 13.20feet instead of the minimum required of 60 feet, rear yard of 27.62 feet instead of the minimum required of 50 feet and impervious surface ratio of 28.5 percent instead of the maximum permitted of 25 percent.

The subject premises are situated on the east side of Route 306 approximately 1,000 feet from the intersection with Grandview Avenue, known as 398 Route 306, designated on the Tax Map as Section 41.15, Block 2 Lot 4, in an R-35 Zoning District.

Francois Nicolas, Architect for the Applicant was present and was sworn in and stated that the Applicant would like to convert an existing garage to living space and add a detached pre-fab garage on the property as required by the Village Code. Mr. Nicolas stated that the lot is a pre-existing non-conforming lot as it does not meet the current code for lot width. Mr. Nicolas stated that the pre-fab garage will placed on the existing driveway.

Jan Ulman stated that in 1989 a variance was granted for side yard, total side yard and impervious surface for the 2 story addition.

John Halter, 137 Grandview Ave was present and reviewed the proposed plan.

Board Members stated that they would like to have a site visit to understand the property. Acting Chairman Gewirtz requested that the Applicant obtain some letters of support from his neighbors.

The site visit was schedule for Sunday, January 15, 2017 at 9am.

At 8:22 pm Jan Hilgeman made a motion to continue the public hearing to January 18, 2017 at 8pm, seconded by Mordechai Schwab. Upon vote, this motion carried unanimously.

At 8:24 pm Mordechai Schwab made a motion to adjourn, seconded by Carole Anderson. Upon vote, this motion carried unanimously.

Respectfully Submitted,

Camille Guido-Downey  
Village Clerk