

**Village of Wesley Hills
Zoning Board of Appeals
Village Hall
Wednesday, December 20, 2017**

MEMBERS PRESENT:

Richard Weinberger, Chairman
Carole Anderson
Jonathan Gewirtz
Dennis Dale
Mordechai Schwab, Ad Hoc

MEMBERS ABSENT:

Jan Hilgeman
Randi Marlin, Ad Hoc

OTHERS PRESENT:

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

Chairman Weinberger called the meeting to order at 8:09 p.m.

Item #9

Bassie Hurwitz-89 Spook Rock Road

Doris Ulman stated that the Board approved the application for a subdivision of Bassie Hurwitz of 89 Spook Rock Road. Ms. Ulman stated that she prepared a memo and a draft resolution for the Board's consideration. Ms. Ulman explained that inadvertently she omitted the request for a lot width variance and front yard impervious surface. The requirement is 150 feet and the proposed is 25 feet. The lot width is measured at the front setback and the width of the flag portion of the flag.

Jonathan Gewirtz stated that the request is in line with the previous approvals for the subdivision.

Jonathan Gewirtz made a motion to approve the variance for Bassie Hurwitz of 89 Spook Rock Road, seconded by Mordechai Schwab.

**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**

RESOLVED, that the application submitted to the Zoning Board of Appeals of the Village of Wesley Hills by Bassie Hurwitz is hereby amended by adding thereto a variance to permit proposed Lot No 2 to have a lot width of 25 feet instead of the minimum required of 150 feet and by changing the variance requested for front yard impervious surface ratio from .30 to .38, and be it further,

RESOLVED, that the aforesaid variance for lot width is hereby approved for the reason that the lot width variance is required because the lot width is measured at the narrow flag portion of the lot which has a width of only 25 feet and the variance to permit the front yard impervious surface ratio at .38 instead of .32 has been suggested by the Rockland County Planning Department in its GML review, and be it further

RESOLVED, that the resolution adopted by the Zoning Board of Appeals on November 15, 2017 approving the application submitted by Bassie Hurwitz, together with the conditions and Finding of Fact set forth in said resolution are hereby adopted by reference in this resolution.

Upon vote, this motion carried unanimously.

Item #3

Eliana Braunstein-5 Rochelle Lane

Chairman Weinberger stated that the Board has received a request for an adjournment dated December 20, 2017 from Ira Emanuel, Esq. for the Braunstein application.

Jonathan Gewirtz made a motion to adjourn the application of Eliana Braunstein of 5 Rochelle Lane to the January 17, 2018 Zoning Board meeting, seconded by Mordechai Schwab. Upon vote, this motion carried unanimously.

Item #4

Benjamin & Chana Berkowitz-20 Sherri Lane

Joanne Nelson, West Rock Pools was present and affirmed to tell the truth and stated that all the changes were made on the plan as requested. Ms. Nelson stated that she also provided the requested landscaping plan in writing and in map form for the Board's consideration. There was a site visit on December 10, 2017. Ms. Nelson provided the Board with the following letters of support:

Schwartz, 36 Sherri Lane
Mendelovitz, 31 Sherri Lane
Rosenberg, 7 Skylark Drive
Deitsch, 41 Sherri Lane
Wainhaus, 42 Skylark Drive
Sternberg, 18 Sherri Lane

Jonathan Gewirtz stated that he requested the Clerk to pull the previous variances that were granted in 2013 for the Boards information. Mr. Gewirtz stated that he has reviewed that information and stated that if the lot was 30,000 sf as required no variance would be required. The variance requested is not self created as the lot is an undersized lot due to the subdivision. There will be no net run off as per the NYS requirements and the requested variance is not overly large.

Doris Ulman stated that the 2013 variance was for building coverage and the applicant made a proper showing for that application.

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

Chairman Weinberger stated that if the Board wishes to approve the application he feels that it should be conditioned to the landscaping letter dated 11/16/17 and plan dated 7/2017.

Mordechai Schwab made a motion to approve the application of Benjamin & Chana Berkowitz of 20 Sherri Lane subject to the landscaping letter dated 11/16/17 and plan dated 7/2017, seconded by Dennis Dale.

**In the Matter of the Application of
Benjamin and Chana Berkowitz
Premises situated on the south side of Sherri Lane
Approximately 442 feet from Plank Road, known
As 20 Sherri Lane, designated on the Tax Map as
Section 41.16 Block 1 Lot 22, in an R-35 Zoning District**

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Benjamin and Chana Berkowitz for a variance from the provisions of Section 230-17 Attachment I Table of Dimensional Requirements of the Code of the Village of Wesley Hills, to permit the construction, maintenance and use of an in-ground swimming pool with patio and related equipment and lighting having impervious surface of .30 instead of the maximum permitted of .25, and

WHEREAS, after due notice, a public hearing on said application was held by the Zoning Board of Appeals on November 15, 2017, which hearing was continued on December 20, 2017, and

WHEREAS, the applicants appeared in person and by their attorney and landscaper, who testified as follows:

That in addition to the general benefits of a swimming pool, it will be extremely beneficial to their young son's health;

That the placement of the pool is set back sufficiently so that it will not impact the neighboring properties;

That the variance requested is only 20% of the requirement and is not substantial;

That a landscaping plan has been submitted which will not only provide screening for the pool but will enhance the aesthetics of the property;

That a letter from their son's nutritionist has been submitted which states that swimming will be a health benefit to their child who is obese and susceptible to diabetes and other series ailments because of his obesity; and

WHEREAS, no one appeared in opposition to the application and applicant submitted several letters from neighbors approving the project; and

WHEREAS, members of the Zoning Board of Appeals visited the site and viewed the location of the proposed swimming pool,

NOW, THEREFORE, IT IS HEREBY DETERMINED, that the proposed action is a type II action and no SEQRA review is required, and be it further

RESOLVED, that the application submitted by Benjamin and Chana Berkowitz for a variance from the provisions of Section 230-17 Attachment I Table of Dimensional Requirements of the Code of the Village of Wesley Hills, to permit the construction, maintenance and use of an in-ground swimming pool with patio and related equipment and lighting having impervious surface of .30 instead of the maximum permitted of .25 is hereby approved, subject to compliance with the landscaping plan prepared by Curti's Landscaping, dated July 2017 and the letter from Curti's Landscaping dated November 16, 2017, and be it further

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

1. That the variance is not substantial in that it is only 20% of the requirement;
2. That the variance will not impact neighboring properties or effect a change in the character of the neighborhood inasmuch as the swimming pool will be sufficiently set back from the property lines and will be adequately screened from neighboring properties and swimming are a normal use for single family residences and will not change the character of the neighborhood;
3. That there is no feasible alternative to granting the variance since the lot is undersized and any pool would require an impervious surface variance;
4. That the benefit to the applicant is great since the exercise is intended to improve their child's health and prevent disease whereas no detriment to the neighborhood has been identified.

Upon vote, this motion carried unanimously.

Item #5
Mark Mindick – 16 Amsterdam Ave

Stanley Mayerfeld, Architect was present and affirmed to tell the truth. Mr. Mayerfeld stated that this is a corner lot located at Amsterdam Ave & Jodi Court. The Applicant wishes to expand the ranch style home to include additional living space. This lot is an undersized lot of 26,000 sf instead of the 35,000 sf. Mr. Mayerfeld stated that if the lot was 35,000 sf no variances would be needed. Mr. Mayerfeld stated that the following variances are being requested:

1. Front yard on Amsterdam Ave of 40.4 feet instead of the minimum required of 50 feet
2. Front yard on Jodi Court of 32 feet instead of the minimum required of 50 feet
3. Building coverage of .113 instead of the maximum permitted of .10
4. Impervious surface ratio of .33 instead of the maximum permitted of .25

Mr. Mayerfeld stated that the home is situated on an angle and having two front yards caused the need for the requested variances. Applicant has an existing pool with deck which will remain. Mr. Mayerfeld stated that if the lot was 35,000 sf the maximum building coverage would be 8% instead of the 11.3% with the undersized lot. Applicant did explore the possibility of moving to another home but found it difficult to find what they were looking for and wanted to stay within the Village as they love the community. The Applicant currently has 8 children with another one on the way. Mr. Mayerfeld provided the Board with the following letters of support:

Klahr, 18 Amsterdam Ave
Peikes, 3 Jodi Court
Eisenberg, 2 Van Winkle Road
Hershkowitz, 4 Van Winkle Road
Schlisselfeld, 19 Amsterdam Ave
Kram, 15 Amsterdam Ave
Zweig, 5 Amsterdam Ave
Blumenberg, 20 Amsterdam Ave
Koblick, 17 Amsterdam Ave
Schlisselfeld, 11 Amsterdam Ave

Chairman Weinberger questioned if Mr. Mindick is the sole owner of the property?

Mark Mindick was present and affirmed to tell the truth and answered yes he is the sole owner of the home located at 16 Amsterdam Ave.

Stanley Mayerfeld questioned if a pool is counted in the building coverage?

Doris Ulman answered no.

Stanley Mayerfeld stated that he miscalculated the building coverage and will redo the calculation as he counted the existing pool as coverage area.

Chairman Weinberger requested that the applicant review his numbers and submit before the site visit.

Board Members scheduled the walk thru for Sunday, January 7, 2018 at 9am.

Jonathan Gewirtz made a motion to continue the public hearing to January 17, 2018 at 8pm regular meeting of the ZBA, seconded by Mordechai Schwab. Upon vote, this motion carried unanimously.

Item #7

Martin Sabel – 2 Charlotte Drive

Stanley Mayerfeld, Architect was present and affirmed to tell the truth. Mr. Mayerfeld stated that this application is for an existing home located in a cul-de-sac and the proposed shape of the home is on an angle. The proposed variances are as follows:

1. Building coverage of .117 instead of the maximum permitted of .10
2. Front yard impervious surface of .333 instead of the maximum permitted of .20.

Mr. Mayerfeld stated that due to the position of the home he designed the addition to be located out of the front yard. My. Mayerfeld and Doris Ulman discussed the existing pool and the pool being incorrectly included in the calculations. Mr. Mayerfeld will revise the plan with the revised calculations and narrative as requested by Ms. Ulman.

Chairman Weinberger questioned if Mr. Sable is the sole owner of the property?

Mr. Sable answered no jointly with his wide.

Chairman Weinberger requested that the Applicant revise their application to include that information.

Village Clerk read into the record the following email from Ms. Weiss of 4 Charlotte Drive dated 12/18/17.

Board Members stated that Ms. Weiss is welcome to come to the Village Hall and view the plans that have been submitted.

Board Members scheduled the walk thru for Sunday, January 7, 2018 at 9am.

Jonathan Gewirtz made a motion to continue the public hearing to the January 17, 2018 at 8pm regular meeting of the ZBA, seconded by Dennis Dale. Upon vote, this motion carried unanimously.

Item #6

Joel & Miriam Goldberg – 2 Cambridge Road

Ryan Karben, Esq was present on behalf of the application and stated that his client is seeking a minor variance for an existing condition that was only recently discovered. The Goldberg's were notified of the condition when seeking a building permit to connect the home to the garage and took immediate action to remedy the situation. The allowable impervious surface ratio is .25 and

the property currently has .28. The proposed connection does not need the variance as the area under the connection is already paved. Mr. Karben stated that the Goldberg's installed a pool 15 years ago with a patio and obtained a C of O. It is the existing patio that has pushed the request for the impervious surface variance. Removing the existing pool and/or patio would be a hardship and further disturb the property unnecessarily. The lot does not experience drainage challenges related to this small increase in impervious surface which is a long standing condition. There is no detriment to the character of the neighborhood attributed to this small increase in impervious surface ratio. The applicant ensures zero net runoff from the site. The home remains an attractive suburban residence with a pool and suitable grounds which is of value to the homeowners and contributing to the well-being and stability of the broader community. There is no means for the homeowner to retain present conditions without obtaining the variance sought, which is the minimum required. No additional nonconformity is sought by the instant application. The applicants property is attractive and well maintained and its continue use in its present fashion does not necessitate impacts on surrounding properties. Weighing the balance it in the favor of the applicants need, which does not conflict with the needs or interests of the community at large.

Doris Ulman questioned if the pool received a C of O?

Ryan Karben answered yes and the Clerk provided a copy of the C of O.

Doris Ulman stated that the variance requested in a 12% variance. The following letters were read into the record:

1. Rockland County GML dated 12/11/17
2. Rockland County Highway Department memo dated 11/22/17.

Ryan Karben stated that his client has no objection to the review letters submitted.

Chairman Weinberger and Board Members discussed the agency memos and especially the GML dated 12/11/17.

Ryan Karben stated that he has photos of the property when the pool was built and the patios were always in place. Mr. Karben can only guess that 15 years ago there was limited review of impervious surface calculations and reminded the Board that his client is trying to rectify a condition as soon as they were notified which demonstrates they are responsible residents of the Village.

Jonathan Gewirtz stated that the requested variance is 12% which is minimal and the impact to the homeowner to remove over 1,000 square feet of patio area as requested by the County is a hardship as it is been present for years. To remove and install pervious pavers on 1,000 sf of patio as there is no drainage concerns by the applicant or their neighbors seems excessive.

Jonathan Gewirtz made a motion to override County GML letter dated 12/11/17 item #3 only, and stated that the variance requested in minimal, seconded by Mordechai Schwab. Upon vote, this motion carried unanimously.

Jonathan Gewirtz made a motion to waive the site visit, seconded by Dennis Dale. Upon vote, this motion carried unanimously.

Jonathan Gewirtz made a motion to approve the application of Joel & Miriam Goldberg of 2 Cambridge Road for the follow reasons:

1. The requested variance is minimal at 12%.
2. The Board considered the installation of pervious pavers and they are not required at the current time as the condition has existed for many years.
3. If the increase in impervious surface was self created it was unintentional on the residents behalf and Applicant is seeking the correct avenue for relief and sought that relief in a timing manner.
4. Applicant will comply with the County GML and the Rockland County Highway memos.

Seconded by Carole Anderson.

**In the Matter of the Application of
Joel and Miriam Goldberg
Premises situated on the east side of
Cambridge Road at the intersection with
Grandview Avenue, known as 2 Cambridge
Road, designated on the Tax Map as Section
41.15 Block 1 Lot 41, in an R-35 Zoning District**

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Joel and Miriam Goldberg for a variance from the provisions of Section 230-17 the Table of Dimensional Requirements Table I of the Code of the Village of Wesley Hills, to permit the maintenance and use of existing pool and patio having impervious surface ratio of .28 instead of the maximum permitted of .25, and

WHEREAS, after due notice, a public hearing was held by the Zoning Board of Appeals on December 20, 2017, and

WHEREAS, the applicants appeared by their attorney, who testified as follows:

That the pool was constructed about 15 years ago and received a certificate of occupancy;

That, at that time, no one, including the Building Inspector, realized that the impervious surface was slightly over the maximum;

That the problem came to light when applicant applied for building permit to connect the existing residences to the existing garage;

That applicant immediately applied to the ZBA for the variance;

That the variance requested is minimal, only 12%;

That County Planning's recommendation to remove the existing patio and replace it with pervious pavers is onerous in that the cost is excessive;

That there has been no drainage problem caused by the pavement over the past 15 years;
and

WHEREAS, no one appeared in opposition to the application;

NOW, THEREFORE, IT IS HEREBY DETERMINED that the proposed action is a Type II action and no SEQRA determination is required, and be it further

RESOLVED, that the Zoning Board of Appeals hereby waives the site visit, and be it further

RESOLVED, that the application submitted by Joel and Miriam Goldberg for a variance from the provisions of Section 230-17 the Table of Dimensional Requirements Attachment I of the Code of the Village of Wesley Hills, to permit the maintenance and use of swimming pool and patio having an impervious surface ratio of .28 instead of the maximum permitted of .25 is hereby approved, subject to the Rockland County Planning Department letter dated December 11, 2017 paragraphs 1 and 2 and the Rockland County highway Department letter dated November 22, 2017, and be it further

RESOLVED, that the Zoning Board of Appeals overrides Paragraph 3 of the Rockland County Planning Department letter for the reason that removal of the existing pavement and replacement with pervious pavers would be extremely costly and is not warranted because the variance is minimal at 12 percent, and be it further

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

1. That the variance is not substantial in relation to the requirement;
2. That there is no feasible alternative because replacing 1,000 square feet of pavement with pervious pavers is expensive;
3. That granting the variance will not result in detriment to neighboring properties or to the neighborhood inasmuch as the pool and patio have been in existence for 15 years and there has been no drainage problem or complaints by neighboring property owners;
4. That the variance is extremely beneficial to the applicant and no detriment to the community or the neighborhood has been identified.

ZBA
12/20/17

Upon vote, this motion carried 4-0-1 abstention (Schwab abstained).

Jonathan Gewirtz made a motion to adjourn, seconded by Dennis Dale. Upon vote, this motion carried unanimously.

Respectfully Submitted,
Camille Guido-Downey