

**Village of Wesley Hills  
Zoning Board of Appeals  
Village Hall  
Wednesday, May 19, 2021**

**MEMBERS PRESENT:**

Mordechai Schwab, Chairman  
Richard Weinberger  
Jonathan Gewirtz  
Dennis Dale  
Carole Anderson  
Stefanie Collantes, Ad Hoc  
Randi Marlin, Ad Hoc

**MEMBERS ABSENT:**

None

**OTHERS PRESENT:**

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

Chairman Schwab called the meeting to order at 7:39 p.m.

**Item #3- Public Hearing – Kluger  
23 Tammy Road**

Chairman Schwab read the public hearing notice into the record.

Todd Rosenblum, the Applicant's Architect, appeared before the Board and affirmed to tell the truth. Mr. Rosenblum stated that his client is seeking variances for a swimming pool, patio, pergola and cabana. The following variances are being requested:

1. Building coverage: .1273 instead of .10
2. Impervious surface .28 instead of .25.

Mr. Rosenblum stated that there are no drainage issues.

The following letter of support were supplied for the record:

Silverman	13 Tammy Road
Rosenberg	25 Tammy Road
Finc	17 Tammy Road
Berkowitz	20 Sherry Lane

Chairman Schwab questioned if anyone from the public wished to be heard regarding the application.

Rita Joachim, 21 Tammy Road, appeared before the Board and affirmed to tell the truth. Ms. Joachim stated that she is not opposed to the construction on the property and only requested that

the homeowner speak with his contractors to ensure that the Village's noise ordinances are followed.

Todd Rosenblum answered that he will ensure that the contractors are aware.

Dennis Dale questioned what is the size of the proposed cabana?

Todd Rosenblum answered 30x13 and the pergola is 8x12.

Jonathan Gewirtz questioned why is the cabana 30 feet wide?

Todd Rosenblum answered that his client wishes to have a home office and a large meeting table.

Carole Anderson questioned if there is a permit for the swimming pool?

Todd Rosenblum answered that there is currently a permit for a swimming pool.

Jonathan Gewirtz made a motion to adjourn the hearing to June 16, 2021 at 7:30 pm, with a site visit on June 13, 2021 at 9am, seconded by Dennis Dale. Upon vote, this motion carried unanimously.

**Item #4- Public Hearing – Schwartz  
7 Ardley Place**

Chairman Schwab read the public hearing notice into the record.

Todd Rosenblum, the Applicant's Architect, appeared before the Board and affirmed to tell the truth. Mr. Rosenblum stated that his client is seeking variances for a new home and cabana. The following variances are being requested:

1. West side- side yard of 20.3 feet instead of the minimum required of 25 feet
2. East side -side yard of 15.9 feet instead of the minimum required of 25 feet
3. Rear yard of 16.2 feet instead of the minimum required of 50 feet
4. Total side yard of 58.4 feet instead of the minimum required of 60 feet
5. Building coverage of .134 instead of the maximum permitted of .12
6. Front yard impervious surface of .28 instead of the maximum permitted of .20

Mr. Rosenblum stated that he feels that the Board Members will get a clear picture of the variances when they conduct a site visit and explained that the driveway layout and architectural features on the home are what triggered some of the variances. The following letters of support were received:

Felberman	5 Ardley Place
Reiss	6 Woodcrest Road
Sternbuch	9 Ardley Place

Panczer	1 Village Lane
Balban	22 Aster Place
Doberman	4 Ardley Place
Haas	8 Woodcrest Road
Markowitz	3 Ardley Place
Markowitz	5 Woodcrest Road
Nachfolger	3 Villa Lane
Katz	13 Astor Place
Kopciel	7 Villa Lane
Rosenfeld	2 Ardley Place
Reider	1 Woodcrest Road
Reider	14 Astor Place

Todd Rosenblum stated that the Applicant's Engineer, CivilTec has confirmed that there will be no water runoff.

Jonathan Gewirtz asked the width of the driveway.

Mr. Rosenblum started 14 feet wide.

Doris Ulman questioned what is the square footage of the cabana?

Todd Rosenblum answered 287 sf.

Doris Ulman stated that if the cabana was moved to be west it would eliminate the need for two variances.

Todd Rosenblum stated that his client and himself have discussed that and by moving the cabana to the west it does not leave any open space/lawn area for the children to play. Mr. Rosenblum also stated that the direct neighbor, Haas, 8 Woodcrest have also requested the current placement of the cabana to add to their privacy.

Carole Anderson made a motion to adjourn the hearing to June 16, 2021 at 7:30 pm, with a site visit on June 13, 2021 at 9am, seconded by Randi Marlin. Upon vote, this motion carried unanimously.

**Item #6 – Continued Public Hearing – Berkowitz  
20 Sherri Lane**

Chairman Schwab stated that this is a continued public hearing and read the public hearing notice into the record.

Stanley Mayerfeld, the Applicant's Architect, appeared before the Board and affirmed to tell the truth. Mr. Mayerfeld stated that a site visit occurred on May 9, 2021 at 9am. Mr. Mayerfeld stated that he hopes that the Board witnessed the conditions of the lot as it is undersized lot, and

the minimal impact the variances would create. Mr. Mayerfeld stated that if the lot were regular size no variances would be required.

Richard Weinberger stated that he attended the site visit, and the home and property is taken care of beautifully.

The following letters of support were received:

Lowinger	29 Sherri Lane
Fine	21 Sherri Lane
Schwartz	36 Sherri Lane
Wiederman	22 Sherri lane
Kriesberg	23 Sherri Lane
Mendelovitz	31 Sherri lane
Karoly	35 Sherri Lane
Dembitzer	27 Sherri Lane
Sternberg	18 Sherri Lane

Mr. Mayerfeld stated that the following variances are being requested:

1. Side yard of 18.5 feet instead of the minimum required of 25 feet
2. Building coverage of .146 instead of the maximum permitted of .10
3. Impervious surface ratio of .313 instead of the maximum permitted of .25.

Mr. Mayerfeld stated that this addition to the home is not out of character for the neighborhood and stated that due to the pandemic, the property owner has closed his offices and has begun working from home.

Doris Ulman confirmed that the office use is a use as of right since there is no traffic to the home for the home occupation.

Jonathan Gewirtz stated that when he visited this site, he saw that the addition could not moved to the rear of the house because that would create a safety hazard for emergency vehicles to get to the rear of the property.

Chairman Schwab questioned if anyone from the public wished to be heard regarding the application?

No one from the public wished to speak.

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

Richard Weinberger made a motion to approve the application as presented, 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 335 feet west of 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 variances from the provisions of Section 230-17 Attachment I of the Code of the Village of Wesley Hills, to permit the construction, maintenance and use of an addition to a single-family residence having a side yard of 18.5 feet instead of the minimum required of 25 feet, building coverage of .146 instead of the maximum permitted of .10 and impervious surface ratio of .313 instead of the maximum permitted of .2 and

WHEREAS, after due notice, a public hearing on said application was held by the Zoning Board of Appeals on April 21, 2021, which hearing was continued on May 19, 2021, and

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

That the proposal is to add a one-story den/office to the side of the residence to be used as a home/office;

That applicant has been working from home during the pandemic and continues to do so;

That the lot is undersized and appears to be average density which affected the building coverage and impervious surface ratios;

That there is no feasible place for the addition except where it is proposed;

That the applicant will not see clients at the home/office nor does he keep a stock in trade; and

WHEREAS, members of the Zoning Board of Appeals visited the site and determined that it was not feasible to move the addition to the rear of the residence for safety reasons and that emergency service vehicles would have a difficult time accessing the rear of the residence or the pool; and

WHEREAS, the applicant submitted several letters in support of the application, and no one appeared in opposition;

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 application submitted by Benjamin and Chana Berkowitz for variances from the provisions of Section 230-17 Attachment I of the Code of the Village of Wesley Hills, Wesley Hills, to permit the construction, maintenance and use of an addition to a single-family residence having a side yard of 18.5 feet instead of the minimum required of 25

feet, building coverage of .146 instead of the maximum permitted of .10 and impervious surface ratio of .313 instead of the maximum permitted of .2 is hereby approved, and be it further

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

1. That there is no feasible alternative to the placement of the addition for safety reasons in that to place the addition at the rear of the residence would impede emergency service vehicles access to the rear of the property;
2. That because the lot is undersized the building coverage of .146 appears large in relation to the requirements; and it should be noted that, since the addition and the porches are one story, the maximum permitted building coverage is actually greater than .140 as set forth in the footnote to the bulk table at Section 230-17 of the Code.
3. That the granting of the variance will not adversely affect environmental or ecological conditions in the neighborhood.
4. That the benefit to the applicant by granting the variance is substantial and no detriment to the neighborhood or to the community has been identified.

Upon vote, this motion carried unanimously.

**Item #5 – Continued Public Hearing – March  
174 Grandview Avenue**

Chairman Schwab stated that this is a continued public hearing and read the public hearing notice into the record.

Paul Baum, the Applicant's Attorney, appeared before the Board and stated that the Applicant, Mr. Cheskel March is also present if need be.

Mr. Baum stated that he has received the Building Inspector's letter dated 5/11/2021 and stated that this letter/decision is arbitrary, and the letter does not indicate what structure the Building Inspector is speaking about. Further, Mr. Baum stated that the letter does not state what the word "unoccupied" means to the Building Inspector or in what content it is referred to. He stated that the Building Inspector's letter does not indicate if he went inside, what he saw, was there furniture there, and how it was unoccupied. The structure was used as a guest home for visitors on the weekend or 1-2 times per month. The facts that the Building inspector supplied in this letter are insufficient to establish a complete secession of the use. Mr. Baum stated that it is the Village's responsibility to demonstrate with a paper trail the secession of the use and not the applicant. Mr. Baum stated that the non-conforming use never totally ceased and there is not enough evidence to prove that. Mr. Baum stated that non-conforming uses are constitutional uses and are legal and date back to 1989. Mr. Baum stated that last month he provided testimony from two neighbors that the apartment was always in use.

Doris Ulman questioned if Mr. Baum has any evidence as to who resided in the apartment from August 2010 to May 2011?

Paul Baum answered no, the current owner has only owned the home since 2015 and cannot get in touch with the previous owner and he has no records.

Doris Ulman stated that in the file as part of the record, the Building Inspector a C of O dated 11/2011 which states that the garage shall be a garage and only for storage. There is nothing further in the file from the homeowner that appealed his decision.

Dennis Dale stated that if it was a rental, there should be lease information, tax documents, etc.

Paul Baum stated that it was not a lease or rental, it was a guest home for relatives and friends and not a landlord tenant issue.

Richard Weinberger stated that Mr. Baum is an experienced attorney, and he should be responding to the Village Building Inspector's memo in writing to the Village.

Paul Baum disagreed with Mr. Weinberger and stated that it is not his job to play letter writing games with the Building Inspector. Mr. Baum stated that the Building Inspector should have attended tonight's meeting.

Doris Ulman stated that the burden of proof is on the Applicant and not the Village.

Paul Baum disagrees with Ms. Ulman's statement.

Jonathan Gewirtz questioned if there is a parking space in the lower level of the garage?

Cheskel March, 176 Grandview Ave was present and affirmed to tell the truth. Mr. March answered no, the lower level is storage space.

Doris Ulman stated that the Applicant has submitted an architectural plan for the renovation of the garage building which converts the garage into living space. The Applicant has already done the work and has expanded the prior non-conformity by changing the garage area to living space. Paul Baum answered that his client did not expand the non-conformity and there is case law that demonstrates that. Mr. Baum stated that his client did not increase the footprint of the structure.

Doris Ulman read aloud Village code sections 230-13 (B)(2) and 230-13(B)(3). There was discussions among the Board Members.

A letter was received from the Rockland County Sewer District #1 dated 5/10/2021.

Paul Baum stated that he has no objections to that letter.

Randi Marlin questioned who has the burden of proof.

Doris Ulman requested that the Applicant provide the Village with a legal memorandum about the following:

1. Burden of Proof
2. Expansion of a non-conformity

Ms. Ulman asked that the memo be submitted at least a week before the next meeting.

Jonathan Gewirtz made a motion to adjourn the hearing to June 16, 2021 at 7:30 pm, seconded by Randi Marlin. Upon vote, this motion carried unanimously.

**Item #7 – Continued Public Hearing – Shimmy Enterprises  
59 S Parker Drive**

Chairman Schwab stated that this is a continued public hearing and read the public hearing notice into the record.

Chairman Schwab stated that there was a site visit on 5/11/2021.

The following letters of support were received:

Rotberg	61 S Parker Drive
Neuhaser	55 S Parker Drive
Beren	18 Judith Lane
Reider	17 Judith Lane
Rieder	15 Judith Lane
Lifshitz	67 S Parker Drive
Rosenberg	10 Judith Lane
Levy	65 S Parker Drive
Leitman	71 S Parker Drive
Deutsch	14 Judith Lane

The following letters were received and read into the record:

1. RCSD#1 memo dated 5/10/2021
2. RC Highway memo dated 5/5/2021

Paul Baum stated that he has no objections to the letters.

Paul Baum stated that his client is seeking the following variances from the Village:

1. Impervious surface coverage ratio of .29 instead of the maximum permitted of .25
2. Front yard impervious surface ratio of .28 instead of the maximum permitted of .23
3. Building coverage of .167 instead of the maximum permitted of .1245

Paul Baum stated that his client is also seeking an interpretation of the definition of building coverage.



Mr. Baum stated that the homeowner would like to construct an addition to a single-family residence consisting of a garage and an underground swimming pool.

Doris Ulman stated that in the Village Code book the definition of Building Coverage is, “that percentage of the land area covered by the combined building area of all the buildings excluding any buildings or structures located completely below ground”.

Paul Baum stated that the addition to a single-family residence consisting of a garage will not have an undesirable change in the character of the neighborhood or any detriment to the Village and the benefit sought by the Applicant cannot be achieved by any other method. There is limited impact to the neighbors as the pool is underground and the addition with the garage is consistent with the neighborhood. The percentage of the variances is 16% for the impervious surface coverage ratio, 34.7% for the front yard impervious surface ratio and 34% for the building coverage. Mr. Baum requested that the Board review this case in its totality and not in a vacuum. As per the EAF this is a type II action under SEQRA with no negative impacts.

Jonathan Gewirtz questioned if the Applicant would be willing to install pavers in the blue shaded area on the plan which would reduce the variance being requested.

Paul Baum answered that that can be done.

Jonathan Gewirtz stated that he supports the application as the Applicant is proposing a fully underground pool so that building coverage variance is not required that requires no variances and is adding pavers to reduce the requested impervious surface variances.

Chairman Schwab questioned if anyone from the public wished to be heard regarding the application?

No one from the public wished to speak.

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

Jonathan Gewirtz made a motion to approve the application of Shimmy Enterprise for the property located at 59 S Parker Drive, subject to the following conditions:

1. Compliance with the County Planning GML
2. Compliance with letter from the Town of Ramapo
3. Addition of pavers on the proposed plan (blue area) to reduce the requested variances
4. New plan to be submitted with the new paver location and reduced variances

Seconded by Dennis Dale.

In the Matter of the Application of  
Shimmy Enterprises, Inc. for Rieder  
Premises are situated on the south side of Parker

Drive approximately 100 feet east of Pilgrim Lane, known as 59 S Parker Drive, designated on the Tax Map as Section 41.18 Block 1 Lot 39, in an R-35 Zoning District

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Shimmy Enterprises Inc. on behalf of Rieder, for variances from the provisions of Section 230-17 Attachment I of the Code of the Village of Wesley Hills to permit the construction, maintenance and use of an addition to a single family residence consisting of a garage and an underground swimming pool having impervious surface coverage ratio of .29 instead of the maximum permitted of .25, front yard impervious surface ratio of .28 instead of the maximum permitted of .23 and for an interpretation of the definition of “Building Coverage” or, in the alternative, for a variance to permit building coverage of .167 instead of the maximum permitted of .1245.

WHEREAS, after due notice, a public hearing on said application was held by the Zoning Board of Appeals on April 21, 2021, which hearing was continued on May 19, 2021, and

WHEREAS, the applicant appeared by its principal and by its attorney, who testified as follows:

That the swimming pool will be completely underground, and the surface covered with a patio that is less than 3 feet above grade;

That pursuant to the definition of “Building Coverage” in the Village Code any structure that is completely underground is not considered in the calculation of Building Coverage;

That the impervious surface variances are not substantial, and all water will be retained on site;

That the applicant is willing to install additional pervious pavers to reduce the impervious surface ratio; and

WHEREAS, the applicant submitted a color-coded plot plan to show existing versus proposed construction; and

WHEREAS, members of the Zoning Board of Appeals visited the site and viewed the location of the proposed underground pool and other construction; and

WHEREAS, the applicant submitted several letters in support of the application, and no one appeared in opposition;

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

RESOLVED that the Zoning Board of Appeals hereby determines that the building coverage variance is not required because the swimming pool is to be constructed completely below ground and the ceiling of the pool will be at ground level, and be it further

RESOLVED, that pervious pavers shall be installed in the area coded blue on the color-coded plot plan and variances for impervious surface ratio and front yard impervious surface ratio in the numbers required after deducting for installation of the pervious pavers are hereby granted, subject to the following:

1. Compliance with Rockland County Planning Department GML review letter;
2. Compliance with any comments received from the Town of Ramapo;
3. Installation of pervious pavers in the area marked in blue on the plot plan;
4. Revised plot plan to be submitted showing additional pervious pavers and remaining variances granted herein, and be it further

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

1. That the remaining variances are not substantial in relation to the requirement;
2. That there will be no adverse impacts to the environment or to neighboring properties since all water created by the construction will be retained on site.
3. That the benefit to the applicant by granting the variances is substantial whereas no evidence of detriment to the neighborhood or to the community has been identified.

Upon vote, this motion carried unanimously.

### **Approval of Minutes- April 21, 2021**

Village Clerk has received a request from Rita Joachim, 21 Tammy Road to make minor changes to the minutes.

Mordechai Schwab made a motion to approve the amended minutes of April 21, 2021, seconded by Dennis Dale. Upon vote, this motion carried (5 ayes, Anderson/Marlin abstained).

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

Respectfully submitted,  
Camille Guido-Downey