

**Village of Wesley Hills
Zoning Board of Appeals
Village Hall
Wednesday, November 17, 2021**

MEMBERS PRESENT:

Mordechai Schwab, Chairman
Richard Weinberger
Stefanie Collantes, Ad Hoc
Jonathan Gewirtz
Carole Anderson

MEMBERS ABSENT:

Randi Marlin, Ad Hoc
Dennis Dale

OTHERS PRESENT:

Doris Ulman, Assistant Village Attorney
Tara Roberts, Deputy Village Clerk

Chairman Schwab called the meeting to order at 7:40 p.m.

**Item #3 –Continuation of Public Hearing – Gold
146 Willow Tree Road**

Chairman Schwab read the public hearing notice into the record.

Paul Baum, the Applicant's Attorney, appeared before the Board and affirmed to tell the truth.

Mr. Baum submitted a letter regarding the two historic sugar maple trees, a landscape plan and a support letter from Mr. Gold's neighbor.

Mr. Baum stated that the applicant has applied to the Planning Board and is on their December 1st agenda.

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

No one from the public wished to speak.

Chairman Schwab questioned if anyone from the Board wished to be heard.

Jonathan Gewirtz stated that this is a unique application, as the front yard faces Willow Tree Road, it is a flag lot, there is a boulder in the neighbor's front yard that adds screening and that the property is uphill so the fence will barely be seen.

Richard Weinberger stated that the applicant would be required to comply with all County letters. Paul Baum confirmed that the Applicant would comply with all County letters, in addition to any requirements from the Village Planning Board.

Doris Ulman stated that the County Planning letter stated that pervious pavers should be used wherever possible and asked if there were opportunities on the site for these pavers to be incorporated. Mr. Baum stated that there are not walkways on the plans so there are no opportunities for substitution. A representative from Shimmy Enterprises, the contractor for this project, was present and stated that the sports court is rubber with gravel underneath.

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

Stefanie Collantes made a motion to approve the application subject to compliance with the County letters and approval from the Village Planning Board, seconded by Carole Anderson. Upon vote, this motion carried unanimously.

In the Matter of the Application of
Chana Gold

Premises situated on the north side of Willow Tree
Road approximately 250 feet east of Wilder Road,
Known as 146 Willow Tree Road, designated on the
Tax Map as Section 41.10 Block 2 Lot 47, in an
R-35 Zoning District

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Chana Gold for variances from the provisions of Sections 230-17 Attachment I, 230-14(L)(1),(2),(3) and 230-13(C) of the Code of the Village of Wesley Hills, to permit the construction, maintenance and use of an addition to a single family residence and a sports court having a front yard of 15.2 feet instead of the minimum required of 50 feet, front yard impervious surface ratio of .301 instead of the maximum permitted of .20, impervious surface ratio of .253 instead of the maximum permitted of .25, fence height of 10 feet instead of the maximum that would be permitted of 6 feet in the front yard and 8 feet in the side yard and for an increase in the dimensional nonconformity, and

WHEREAS, after due notice, a public hearing was held by the Zoning Board of Appeals on October 6, 2021, which hearing was continued on October 20, 2021 and November 17, 2021, and

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

That because of the flag lot the driveway is approximately 350 feet long and, when added to the sports court, accounts for the large front yard impervious surface;

That the sports court cannot be moved back from the front yard because of a 48 inch maple tree that an arborist has verified is between 75 and 100 years old and should be preserved and maintained;

That because the existing house is 118 feet from the front property line even if the sports court were moved back there is not sufficient room to move it out of the front yard;

That applicant is proposing landscaping around the sports court so that the sports court will be shielded from adjoining properties;

That because of the shape of the property there is no way to move the sports court out of the side yard; and

WHEREAS, members of the Zoning Board of Appeals visited the site and viewed the tree and the proposed placement of the sports court; 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 application submitted by Chana Gold for variances from the provisions of Sections 230-17 Attachment I, 230-14(L)(1),(2),(3) and 230-13(C) of the Code of the Village of Wesley Hills, to permit the construction, maintenance and use of an addition to a single family residence and a sports court having a front yard of 15.2 feet instead of the minimum required of 50 feet, front yard impervious surface of .301 instead of the maximum permitted of .20, impervious surface ratio of .253 instead of the maximum permitted of .25, fence height of 10 feet instead of the maximum that would be permitted of 6 feet in the front yard and 8 feet in the side yard, and for an increase in the dimensional nonconformity is hereby approved, subject to the following conditions:

1. Approval of the Wesley Hills Planning Board and compliance with any conditions of said approval;
2. Compliance with the Rockland County Planning Department GML review letter dated September 8, 2021;
3. Compliance with Rockland County Highway, Department of Health and other review letters;
4. That the 48 inch maple tree shall be preserved and maintained with respect to any actions within the control of the applicant;
5. That the landscaping plan shall be implemented and all landscaping maintained so as to provide the intended screening;
6. Compliance with the Brooker Engineering letter dated September 17, 2021; and be it further

RESOLVED, that the Zoning Board of Appeals hereby makes the following Findings of Fact:

1. That the fence height is necessary for safety and to prevent errant balls from intruding on adjacent properties;
2. That this property is unique in that the driveway is almost 350 feet long and, when added to the sports court, creates a very large front yard impervious surface ratio;
3. That if the sports court is moved back it will interfere with the 48 inch maple tree the arborist has estimated to be 75 to 100 years old and should be maintained;
4. That the way the project is designed it will not impact any of the adjoining properties and will not be seen from the road;
5. That the benefit to the applicant by granting the variances is substantial whereas no detriment to neighboring properties or to the community has been identified.

**Item #4 –March
174 Grandview Avenue**

Paul Baum, the Applicant's Attorney, appeared before the Board.

The public hearing on this application was closed at the last meeting.

Jonathan Gewirtz stated that there is no longer a garage.

Doris Ulman stated that there are two issues before the Board: whether the non-conforming use was discontinued and an expansion of the structure doing away with the garage.

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

Doris Ulman stated that if the application is approved, the applicant will need to apply for a building permit.

Carole Anderson stated that she was against two family housing because the Zoning Law prohibits it. Ms. Anderson went on to say that the previous owner was given three opportunities to respond to the Village but did not. In addition, Ms. Anderson was concerned that Mr. March had not obtained a building permit prior to the renovation of the space. With these facts in mind, Ms. Anderson stated that she would be voting against this application.

Jonathan Gewirtz reiterated that it was concerning that the letters to the previous owner had gone unanswered and that a file search during the sales process would have brought out the discontinuance of the non-conformity.

Stefanie Collantes stated that she believes that this issue should have been raised by the applicant and rectified before having to be heard by the Zoning Board. Ms. Collantes further stated that

the non-conformity happened before zoning laws and that she believes that work should have been done to rectify this situation prior to the renovation of the structure.

Jonathan Gewirtz stated that when residents come to the Board after the fact, the situation is inherently uncomfortable. Mr. Gewirtz does not condone building without a permit and stated that the one important question before the Board is whether or not there was a 6 month cessation of the use of the dwelling unit. Mr. Gewirtz acknowledged that the Building Inspector cited the potential cessation and the prior owner failed to respond to the communication from the Village. Mr. Gewirtz also wanted to clarify that construction on the primary structure is what originally brought the building inspector to the property. Mr. Gewirtz believes that logically residence at the second structure would stop if there is work being done on the primary. Mr. Gewirtz stated he is inclined to grant the application, understanding that the garage in the secondary space has been converted to living space. However, if there have been any structural changes to the structure expansion would be illegal.

Carole Anderson stated that although Mr. Baum has stated that the structure will only be used for guests, there are no guarantees.

Jonathan Gewirtz made a motion to approve the application with the belief that the condition had not been discontinued and with the understanding that the expansion was within the original structure. Chairman Schwab stated that the Board has been put in a difficult position to decide if the structure lost its non-conformity and because there has been work done without a permit. Chairman Schwab requested that Mr. Baum and Mr. March make it a priority to do all they can to do the right things moving forward and work with the Village in the future. Chairman Schwab stated that the next step for the applicant will be to apply for a building permit and then have the Building Inspector come out to the property for an inspection. If it is found that there has been expansion to the structure, Chairman Schwab stated that this approval will be voided. Chairman Schwab then seconded the motion. Upon vote, this motion was carried with Chairman Schwab, Jonathan Gewirtz and Stefanie Collantes voting for and Richard Weinberger and Carole Anderson voting against.

In the Matter of the application of
Cheskel March

Premises situated on the south side of Grandview
Avenue approximately 200 feet west of Forshay
Road, known as 174 Grandview Avenue, designated
On the Tax Map as Section 41.14 Block 1 Lot 51, in
An R-35 Zoning District

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Cheskel March on appeal of a determination made by the Building Inspector of the Village of Wesley Hills denying an application for a building permit to renovate a structure and expand it into an existing garage on the grounds that the alleged dwelling unit that was the subject of the building permit had lost its non-conformity and could not be used as a dwelling unit and could not be expanded into the garage area, and

WHEREAS, after due notice, a public hearing on said application was held on March 17, 2021, which hearing was continued on April 21, 2021, May 19, 2021, June 16, 2021, July 21, 2021, August 18, 2021, October 20, 2021, and November 17, 2021, and

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

That it is disputed that, prior to the adoption of the Ramapo Zoning Law, there were two dwelling units on the subject property, i.e. the main single family house and a second dwelling unit in a separate two story building that housed a garage used for storage space;

That the prior owner stated that the second dwelling unit was used by guests that visited approximately once a month;

That Cheskel March purchased the property in 2015 and was told by the former owner that the dwelling unit was legal because it was always used by his guests at least once per month;

That Mr. March has continued to use the second dwelling unit for occasional guests;

That in 2019 Mr. March renovated the dwelling unit and expanded it into the balance of the garage building without obtaining a building permit;

That the Village Code Inspector issued an appearance ticket for constructing without a permit and when Mr. March applied for the building permit, it was denied on the grounds that the second dwelling unit had lost its non-conformity and could not be used or expanded;

That this application appeals the Building Inspector's denial of the permit;

That in 2011 the Building Inspector issued a letter to the prior owner that the second dwelling unit had lost its non-conformity and could no longer be used as a dwelling unit;

That the Building Inspector gave no reason for his determination that the non-conformity had been lost; therefore, the determination has no validity and was, in fact, incorrect;

That the prior owner continued to use the second dwelling unit for guests and no one on the Village complained or issued violations until Mr. March renovated the property;

That the second dwelling unit has not lost its non-conformity and, pursuant to Section 230-13B(3) of the Village Code it can be extended or enlarged to include any parts of the building which were obviously or manifestly arranged or designed for the use.

That the garage was obviously and manifestly designed for the use of the second dwelling until when it was built and so the extension into the garage complied with the Village Code;

That the non-conforming second dwelling unit had not lost its non-conformity and was permitted to extend into the balance of the building and a building permit for the extension should have been issued by the Building Inspector; and

WHEREAS, members of the Zoning Board of Appeals visited the site and viewed the location of the second dwelling unit; and

WHEREAS, no one appeared in opposition to the application and two neighbors appeared and testified that they saw people using the second dwelling unit on many occasions; and

WHEREAS, members of the Zoning Board of Appeals viewed the following:

1. The Building Inspector's letter of May 19, 2011 to the former owner advising him that the second dwelling unit had lost its non-conformity because of disuse for a continuous period of six months;
2. The C.O. issued by the Building Inspector on November 21, 2011 stating that the rear building was to be used for storage only;
3. Letter from the Building Inspector dated June 8, 2021;
4. Letter from Moshe Lapchinsky, former owner of the property, dated August 10, 2021;
5. Sections 230-13(A)(1), 230-13(B)(5) and 230-13(B)(1) of the Code of the Village of Wesley Hills;

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 application submitted by Cheskel March on appeal of a determination of the Building Inspector denying the issuance of a building permit for the renovation and extension of a dwelling unit at premises known as 174 Grandview Avenue is hereby granted, and be it further

RESOLVED, that the Zoning Board of Appeals hereby makes the following Findings of Fact:

1. That the second dwelling unit in the garage building at premises known as 174 Grandview Avenue was constructed prior to the adoption of the Zoning Law of the Town of Ramapo and was a legal non-conforming use;
2. That the Zoning Board of Appeals is not convinced that the Building Inspector had sufficient evidence to determine that the non-conformity had been lost due to a discontinuance of use in May 2011 and where there is insufficient evidence the determination must be made in favor of the property owner;
3. That the Zoning Board of Appeals determines that the non-conforming use of the second dwelling unit had not been discontinued for a continuous period of six months;

4. That because the non-conforming use continues to exist it is permitted to extend into the balance of the building pursuant to the Village Code because the garage and other areas were obviously intended to be used with the dwelling unit when it as constructed and prior to the adoption of the Village Code;
5. That the Board recognizes and does not condone the fact that the prior owner of the property had an opportunity to appeal the determinations of the Building Inspector in May 2011 and November 2011 and failed to do so; that the Board recognizes and does not condone the fact that the current owner, prior to his purchase and as a prudent purchaser, should have asked for a copy of the C.O. and would have learned that the Building Inspector had limited the use of the accessory building;
6. That the Board recognizes and does not condone the fact that the current owner renovated the second apartment and extended its use into the balance of the building without obtaining a building permit, which was not only illegal but could have safety implications;
7. That notwithstanding the above, the Board believes that justice requires that the application be granted in all respects.

**Item #5 –Public Hearing – Schlesinger
19 Moccasin Place**

Chairman Schwab read the public hearing notice into the record.

Todd Rosenblum appeared before the Board and affirmed to tell the truth.

Mr. Rosenblum stated that the pool was constructed previously in the font yard and a certificate of occupancy was issued. There is a shed that is over 100 square feet and eight (8) foot hedges have been installed so that you are unable to see this from the street.

In addition, Mr. Rosenblum stated that the Village did not ask for a bulk table at the time of the previous construction. This is leading to the need for variances.

Mr. Rosenblum stated that a site visit would be informative.

Jonathan Gewirtz made a motion to adjourn this matter to the December 15th meeting, with a site visit scheduled for December 12th at 9am, seconded by Chairman Schwab. Upon vote, this motion carried unanimously.

Approval of Minutes- October 20, 2021

Carole Anderson made a motion to approve the minutes of October 20, 2021, seconded by Richard Weinberger. Upon vote, this motion carried unanimously.

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

Respectfully submitted,
Tara Roberts