

**Village of Wesley Hills
Zoning Board of Appeals
Wednesday, April 26, 2022
7:30 P.M.**

MEMBERS PRESENT:

Mordechai Schwab, Chairman
Dennis Dale
Randi Marlin, Ad Hoc (left at 8pm)
Richard Weinberger
Jonathan Gewirtz-Deputy Chair
Stefanie Collantes, Ad Hoc

MEMBERS ABSENT:

Carole Anderson

OTHERS PRESENT:

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

Chairman Schwab called the meeting to order at 7:51 p.m.

**Item #5 –Continued Public Hearing- Hager
2 Deerwood Road**

Stanley Mayerfeld, architect for the applicant, and Rabbi Lipa Hager, homeowner, were present and affirmed to tell the truth.

Stanley Mayerfeld stated that there is a need for the height variance because this is a corner house and because of the slope of the property. Mr. Mayerfeld stated that if this were a flat piece of land, the height variance would not be needed. Mr. Mayerfeld also referred to the Brooker Engineering letter dated April 18, 2022, and the determinations of both the Village Engineer and the Village Attorney regarding highest and largest roof.

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

Richard Weinberger requested that the applicant and his architect review Brooker Engineering's April 18, 2022 letter item by item and confirm that each item will be complied with and/or addressed. The Applicant read each item and responded.

1. Agreed
2. Will have corrected
3. The Applicant agrees that a variance is required and asked for clarification on what the number was and how it was calculated.
4. Rabbi Hager stated that when driving on East Willow Tree Road, between Route 306 and McNamara Road there are eight (8) corner streets, six (6) corner houses have driveways, Two have two driveways. Jonathan Gewirtz asked why one driveway is up and the other is down lower. Mr. Hager stated that he did not want the parking in the front yard. He did not want to have to go up steps to the front door. Randi Marlin asked if there was room to turn a car around. Mr. Mayerfeld responded that there was.

5. Mr. Mayerfeld does not agree that this comment is correct. Chairman Schwab stated that much of the Board agreed.
6. The applicant agreed and stated that he would direct his engineer to take care of this
7. The applicant stated that he had reached out to the Building Inspector for guidance on this matter
8. The applicant clarified that this is not a parking spot, but an area to be used for a turn around. Doris Ulman asked that the applicant agree that he would not add more parking to the front of the site. Rabbi Hager agreed.
9. The applicant agreed that this will be added to the plans
10. Doris Ulman asked if the applicant was requesting that the Board amend the application to reflect this variance. The applicant responded that he was.
11. The applicant requested the Board's input on this matter.
- 12-end of letter-the applicant agreed to all comments

Doris Ulman stated that the following issues are before the Board:

1. Interpretation of Village Code definition of AVERAGE EXISTING GRADE-the applicant has asked the Board to interpret the definition to permit him to average the building heights taken at each street frontage instead of determining each building height separately; alternatively, for a variance to permit building height of 29.8 feet instead of the maximum permitted of 25 feet;
2. Interpretation of Village Code Section 230-34(D)(5)-the applicant argues that this Section is vague and does not prevent him from constructing a driveway on East Willow Tree Road; alternatively, for a variance to permit construction of a driveway onto East Willow Tree Road;
3. A variance to permit front yard steps at 39 feet instead of the minimum required of 50 feet;
4. A variance to permit building coverage of .11 instead of the maximum permitted of .10.

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

Jonathan Gewirtz stated that the applicant has been diligent and forthcoming about responding to questions and comments. Richard Weinberger stated that ten (10) neighbors had agreed and one (1) had disagreed. In addition, Mr. Weinberger requested that approval of the variances before the Board be granted pending compliance with the Brooker Engineering letter dated April 18, 2022, except for those items not agreed to by the ZBA.

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

Jonathan Gewirtz made the following motion:

1. To grant applicant's request to amend the application to change the requested variance for Building Coverage from .1017 to .11;
2. To deny applicant's request to interpret the definition of AVERAGE EXISTING GRADE as permitting the two building heights to be averaged-the language of the definition is not vague and does not leave room for interpretation;

3. To grant applicant's request that Village Code Section 230-34(D)(5) is vague and cannot prevent him from constructing a driveway onto East Willow Tree Road;
4. To grant the variance for building height at 29.8 feet-this variance is not substantial and is required because of the slope of the lot which slopes downward at the Deerwood Road portion of the lot, thereby resulting in a building that is higher on the Deerwood side than on the East Willow Tree side;
5. To grant the front yard variance to 39 feet-this variance is not substantial and is for the front steps, not the building;
6. This motion does not include a variance for a curb cut onto East Willow Tree Road, which will be held in abeyance for further review until the ZBA meeting to be held on May 18, 2022.

This motion was seconded by Chairman Schwab and, upon vote, carried unanimously.

In the Matter of the Application of

Lipa Hager

Premises situated on the east side of Deerwood Road

0 feet from the intersection with East Willow Tree

Road, known as 2 Deerwood Road, designated on

The Tax Map as Section 41.12 Block 1 Lot 4, in an

R-35 Zoning District

WHEREAS, application has been made to the Zoning Board of Appeals to the Village of Wesley Hills by Lipa Hager for an interpretation of Section 230-5 of the Code of the Village of Wesley Hills, the definition of AVERAGE EXISTING GRADE, for an interpretation of Section 230-34(D)(5) of said Code and/or for variances from the provisions of Sections 230-17 Attachment I, 230-34 (D)(5) and 230-31A of said Code to permit the construction, maintenance and use of a single family residence having a front yard of 39 feet instead of the minimum required of 50 feet, building coverage of .1017 instead of the maximum permitted of .10, building height of 29.8 feet instead of the maximum permitted of 25 feet and to permit a single car garage with a driveway onto East Willow Tree Road instead of a two car garage onto Deerwood Road, and

WHEREAS, after due notice, a public hearing on said application was held by the Zoning Board of Appeals on March 15, 2022, which hearing was continued on April 13, 2022 and April 26, 2022, respectively, and

WHEREAS, the applicant appeared in person and by his architect, and testified as follows:

That this is a corner lot which slopes downward from the East Willow Tree frontage to the Deerwood Road frontage;

That he does not agree with the Village Engineer's interpretation of the Code definition of Average Existing Grade because the definition does not include corner lots, which should be considered differently than interior lots;

That he does not agree with the Village Engineer's disallowing of a driveway onto East Willow Tree Road and requiring only one driveway;

That the variances requested are not substantial, the front yard variance is not required for the building but only for the steps leading from the house to the street and the height variance is required only if the definition of AVERAGE EXISTING GRADE also applies to corner lots; and

WHEREAS, several neighbors sent letters of support and two neighbors appeared in favor of the application, and one neighbor objected to the driveway onto East Willow Tree Road; and

WHEREAS, members of the Zoning Board of Appeals visited the site and viewed the slope of the lot and the proximity of the driveway onto East Willow Tree Road to the intersections as well as the close proximity of driveways on other lots to intersections along East Willow Tree Road,

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 Lipa Hager for interpretations of certain sections of the Village Code or, in the alternative, for variances from the provisions of the Code is hereby determined as follows:

1. That applicant's request to amend the application to change the Building Coverage variance from .1017 to .11 is hereby granted;
2. That the definition of AVERAGE EXISTING GRADE in the Village Code is not vague and cannot be interpreted to permit corner lots to average the building height at each lot frontage;
3. That Section 230-34(D)(5) of the Village Code is vague and cannot be interpreted to prohibit driveway access onto East Willow Tree Road-the law gives us no standard by which to interpret the word "practical",
4. That the variances to permit front yard of 39 feet instead of the minimum required of 50 feet, building coverage of .11 instead of the maximum permitted of .10 and building height of 29.8 feet instead of the maximum permitted of 25 feet are hereby granted, subject to applicant's compliance with the letter from Brooker Engineering dated April 18, 2022, paragraphs 1, 2, 6, 8, 10, 12, 13, 14, 15, 16 and 17, and on condition that there shall be no parking on the driveway in front of the garage on the East Willow Tree Road, side, and be it further

RESOLVED, that the request to permit a curb cut onto East Willow Tree Road is hereby adjourned to May 18, 2022, and be it further

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

1. That the variances are not substantial in relation to the requirement, the front yard for steps being 22%, the building coverage being 10% and the height variance being less than 20%;
2. That there will be no change in the character of the neighborhood in that the single family residence is similar to other residences on corner lots on East Willow Tree Road;
3. That there will be no adverse environmental or ecological impacts on the neighborhood or on the community;
4. That although some members of the Zoning Board of Appeals questioned the safety of the driveway exiting onto East Willow Tree Road, there is no legal prohibition against such driveway and there are many other corner lots with driveways onto East Willow Tree 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.

The issue of the driveway will be resolved at the May 18, 2022 meeting to allow time for research of the Code of Wesley Hills. Chairman Schwab made a motion to adjourn this matter to May 18th at 7:30 PM, seconded by Randi Marlin. Upon vote, this motion carried unanimously.

Respectfully submitted,
Tara Roberts