



ZONING BOARD OF APPEALS MEETING MINUTES

June 18, 2024, at 7:30 PM

432 Route 306, Wesley Hills, NY 10952

Phone: 845-354-0400 | Fax: 845-354-4097

MEMBERS PRESENT: Jonathan Gewirtz, Chairman
Stefanie Collantes-Bouvry, Member
Richard Weinberger, Member
Randi Marlin, Member (Late)
Stuart Zelmanovitz, Member
Barry Rozenberg, Ad Hoc

ABSENT: Anita Hajioff. Ad Hoc

OTHERS PRESENT: Doris Ulman, Assistant Village Attorney
Alicia Schultz, Deputy Village Clerk

Chairman Gewirtz opened the meeting at 7:30 pm.

ITEM #1 –PUBLIC HEARING – 9 CARA DRIVE- GORELICK

Chairman Gewirtz read the public hearing notice into the record.

Stanley Mayerfeld, the applicant's architect, was present and affirmed. Mr. Mayerfeld stated that they need to amend the application to include a 3rd variance for front yard. They are currently asking for side yard of 12.5 feet instead of the minimum required of 25 feet and Building Coverage of .107 instead of the maximum permitted of .10. Mr. Mayerfeld stated that the multiple decks are the reason the Building Coverage variance is needed, and the front porch is the reason for the additional variance needed. Mr. Mayerfeld stated that he would supply the Village with an updated/amended application with the additional variance prior to the next meeting. Mr. Mayerfeld stated that the side yard variance of 12.5 feet is for the garage, and it is at 12.5 feet at only one point. In addition, the garage cannot be moved because of the location of the driveway.

Chairman Gewirtz questioned if anyone from the public would like to speak.

Nobody from the audience chose to speak.

Stefanie Collantes-Bouvry made a motion to adjourn this application to the July 17, 2024 meeting with a site visit scheduled for July 14, 20224, seconded by Stuart Zelmanovitz. Upon vote, this motion was carried unanimously.

ITEM #2 –PUBLIC HEARING –25 GLENBROOK ROAD- GROSS

Chairwoman Collantes-Bouvry read the public hearing notice into the record.

Nathan Gross, the applicant, was present and affirmed. Mr. Gross stated that he had a fire in his home in 2021 and it was found by the Building Inspector that he had removed the garage. Mr. Gross stated that it had been changed decades ago, after flood damage created mold infestation and he was not aware of the Village Code that states you must keep a minimum of one car garage on the property and could not change the garage without a replacement of some kind. Mr. Gross had a prefabricated garage structure placed in the rear yard.

Doris Ulman questioned if the garage was converted prior to 1987, as the garage Law was not passed until then and he may be grandfathered in, having a preexisting, nonconforming conversion. Mr. Gross stated that any information he had regarding the history of the property was in the fire.

Chairman Gewirtz questioned if anyone from the public would like to speak.

Nobody from the audience chose to speak.

The Deputy Village Clerk stated that the notices of the meeting had not been mailed. Ms. Ulman stated that the hearing could not take place until the notices were sent.

Randi Marlin made a motion to adjourn this application to the July 17, 2024 meeting, seconded by Stefanie Collantes-Bouvry. Upon vote, this motion was carried unanimously.

ITEM #3 – CONTINUED PUBLIC HEARING – 2 ARDLEY PLACE- ROSENFELD

Chairman Gewirtz read the public hearing notice into the record.

Paul Baum, the applicant's Attorney, submitted a request to the Village for an adjournment to the July 17, 2024 Zoning Board meeting.

Randi Marlin made a motion to adjourn this application to the July 17, 2024, seconded by Stefanie Collantes-Bouvry. Upon vote, this motion was carried unanimously.

ITEM #4 – CONTINUED PUBLIC HEARING – 7 ARDLEY PLACE- SCHWARTZ

Chairman Gewirtz read the public hearing notice into the record.

Ryan Karben, the applicant's Attorney, as well as Isaac Steinfeld, the applicant's contractor, were present and affirmed. Chairman Gewirtz stated that the Zoning Board received a letter from

the Village Engineer stating that the driveway is made of pervious material, which lowers the impervious surface ratio from .36 to .27, where the required is .25. It also negates the front yard impervious surface ratio that was proposed of .46 where .20 is allowed, and currently it is .108, so it negates the need for that variance.

Chairman Gewirtz questioned if anyone from the public would like to speak.

Sara Felberman, 5 Ardley Place, was present and affirmed. Ms. Felberman stated that in November 2022 they discovered a discrepancy with the filed map for #5 and #7 Ardley Place, and that the lot line in question is the side that the applicant needs a variance on. Ms. Felberman gave packets to the Board that cite similar cases for reference. Mr. Karben stated that there is no boundary dispute as the Zoning Board cannot rule on such.

Doris Ulman stated that the proposed cabana for which variances were granted in 2021 was 452 square feet, and the finished cabana is 645 square feet. Stefanie Collantes-Bouvry stated she is disturbed by the changes made during construction and there is no basis for the contractor's miscalculations and complete ignorance of the contractor ignoring the plans and prior approved variances. Randi Marlin stated that she agreed and added that the contractor/applicant had no regard for the neighbor at 5 Ardley Place when building out the area, as they previously had an agreement to adjust their property survey & lot line prior to finishing the project. Barry Rozenberg stated that these issues & variances were self-created and the whole project is sloppy. Stuart Zelmanovitz stated that the only excuse that was heard by the Board was that the contractor "just messed up" without any reasoning, and knowing you had to go through the Zoning Board process previously, the applicant & contractor really have no excuse as to why the previously approved numbers were completely ignored.

Chairman Gewirtz stated that the impervious surface ratio variance requested for .27 where the required is .25, as long as the porous surface is maintained, is an allowable minor variance. Chairman Gewirtz added that a variance was granted for side yard of 20.3' for the trellis and the finished measurement is 19.9'. That is less than half a foot difference than the approved variance, and after viewing the property you can tell it is not intrusive on the neighbor and the 0.4" is not noticeable. When it comes to the side yard for the cabana however, an 18' variance was granted, 14.8' is the finished project, and that is almost a 50% increase from the originally granted variance which is quite substantial.

Chairman Gewirtz stated that there was recently a proposed cabana Law in front of the Village Board that proposed an allowable 15' from the lot line for a cabana to be built, just as it is with a pool, however the public outcry was so severe that the Law was not passed, and granting variances of 17' and 14.8' is essentially just "slapping our Law in the face".

Chairman Gewirtz questioned if anyone from the public would like to speak. Nobody from the audience chose to speak.

Chairman Gewirtz made a motion to close the public hearing, seconded by Stuart Zelmanowitz. Upon vote, this motion was carried unanimously.

Stefanie Collantes-made a motion, seconded by Stuart Zelmanowitz, to amend the application to delete the variance request for front yard impervious surface ratio, to change the impervious surface ratio request from .36 to .27, to grant the request for impervious surface ratio of .27 on condition that the porous material on the driveway shall always be maintained, to grant the request for side yard variance of 19.9 feet for the trellis and to deny the side yard variance of 14.8 feet, rear yard variance of 17 feet and building coverage variance of .144 for the cabana.

In the Matter of the Application of
Nancy Rubin on behalf of Mark Schwartz and Goldie Slater
Premises situated on the south side of Ardley Place approximately
700 feet west of Wilder Road, known as 7 Ardley Place, designated
on the Tax Map as Section 41.10 Block 1 Lot 24, in an R-35 Zoning District

WHEREAS, application has been made to the Zoning Board of Appeals of the Village of Wesley Hills by Nancy Rubin on behalf of Mark Schwartz and Goldie Slater for variances from the provisions of Sections 230-17 Attachment I and 230-14O(4)(a) of the Code of the Village of Wesley Hills to permit the maintenance and use of a single family residence, inground swimming pool, cabana, circular driveway and other structures having front yard impervious surface ratio of instead of the maximum permitted of .20, impervious surface ratio of .36 instead of the maximum permitted of .25, side yard of 19.9 feet instead of the minimum required of 25 feet, cabana side yard of 14.8 feet instead of the minimum required of 25 feet and the variance previously granted of 18 feet, cabana rear yard of 17 feet instead of the minimum required of 50 feet and the variance previously granted of 18 feet, and building coverage of .144 instead of the maximum permitted of .122 and the variance previously granted of .134, and

WHEREAS, after due notice, a public hearing on said application was held by the Zoning Board of Appeals on December 20, 2023, which hearing was continued on January 23, 2024, February 21, 2024, April 17, 2024, May 15, 2024 and June 18, 2024, and

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

That the applicants previously applied for variances prior to construction in May and June, 2021 at which time they received variances for the cabana, the trellis and building coverage,

That the applicants' contractor did not look at the 2021 ZBA decision and believed the setbacks were 15 feet for side and rear yard;

That applicants used porous asphalt on the driveway believing that this material would be accepted by the Village as pervious pavement, thereby eliminating the need for

the front yard impervious surface variance and greatly reducing the variance for *total* impervious surface;

That all construction has been fully completed and to move any of the structures would be extremely difficult and expensive;

That no evidence has been submitted to show detriment to the community so applicants have met the balancing test requirement and the variances should be granted, and

WHEREAS, the next door neighbor appeared in opposition to the application stating that she has consulted with a land surveyor who told her that the property line between her property and applicants' property as shown on applicants' site plan is incorrect and that the square footage of applicants' property is actually smaller than as shown on the site plan; the neighbor further stated that the cabana is closer to the actual lot line than as shown on the site plan; and

WHEREAS, the applicant argued that the Zoning Board had no authority to consider the neighbor's arguments and that those arguments could only be heard by a court of law; and

WHEREAS, the Village Engineering Consultant issued a letter stating that the porous asphalt is a pervious material and should not be counted in the impervious surface ratio; and

WHEREAS, members of the Zoning Board of Appeals visited the site and viewed the location of the various structures,

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 Nancy Rubin on behalf of Mark Schwartz and Goldie Slater is hereby amended by deleting the request for front yard impervious surface ratio and by changing the request for impervious surface ratio variance: from .36 to .27, and be it further

RESOLVED, that the Zoning Board of Appeals hereby grants the requested variance for impervious surface ratio of .27 on condition that the porous asphalt material on the driveway shall always be maintained and grants the request for a side yard variance of 19.9 feet for the trellis, and be it further

RESOLVED, that the variances requested to permit a side yard of 14.8 feet for the cabana, rear yard of 17 feet for the cabana and building coverage of .144 are hereby

denied, and be it further

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

- i. That the variances for the cabana and building coverage are substantial in that the side yard of 14.8 is more than 40% of the requirement and almost 20% more than previously granted; the rear yard variance is more than 60% of the requirement;
- ii. That there are feasible alternatives to granting the variances in that the cabana can be moved to the locations previously approved in the 2021 Zoning Board decision and the contractor can be required to comply with that decision;
- iii. That the need for the variances is self-created in that the applicants increased the size of the cabana without obtaining the necessary approvals and permitted the contractor to complete construction when they knew or should have known that the 2021 decision of the Zoning Board was being completely ignored;
- iv. That the detriment to the community by the applicants' complete disregard of **Village** setback requirements and compliance with Zoning Board decisions which all residents are required to comply with far outweighs the benefit to the applicants as requested in this application.

Upon vote, this motion was carried unanimously

ITEM #5 – APPROVAL OF MINUTES – APRIL 17, 2024

Richard Weinberger made a motion to approve the April 17, 2024 minutes, seconded by Stuart Zelmanovitz. Upon vote, this motion was carried unanimously.

ITEM #6 - APPROVAL OF MINUTES – MAY 15, 2024

Randi Marlin made a motion to approve the May 15, 2024 minutes, seconded by Stefanie Collantes-Bouvry. Upon vote, this motion was carried unanimously

ADJOURNMENT

Chairman Gewirtz made a motion to adjourn the meeting, seconded by Stefanie Collantes-Bouvry. Upon vote, this motion was carried unanimously.

Respectfully submitted,
Alicia Schultz