

VILLAGE OF NEW HEMPSTEAD
108 OLD SCHOOLHOUSE RD.
NEW CITY, N.Y. 10956

ZONING BOARD OF APPEALS

REGULAR MEETING
WEDNESDAY, AUGUST 26, 2015
7:30 P.M. – VILLAGE HALL

PRESENT

MARTIN LEIBOWITZ, CHAIRMAN
ALLEN FISHKIN
RICK ELL
LEONARD GREENBERG

ABSENT

ADAM POLLACK

ALSO PRESENT

STEVE SILVERBERG, VILLAGE ATTORNEY
CAROLE VAZQUEZ, VILLAGE CLERK-TREASURER

OPEN MEETING

ROLL CALL

Public Hearing – Jacob Eli Schlisselfeld, 26 Pleasant Ridge Road, New Hempstead, N.Y. 10977. The applicant is requesting variances from the requirements of Section 5.2 of the New Hempstead Zoning Law to permit construction, maintenance and use of a pool for his single family dwelling having:

1. A side yard of 10' instead of the minimum required of 35'
2. Having total side yards of 34' instead of 50'
3. Having building coverage of 3119 instead of the maximum permitted of 3000.

The property is located on the south side of Pleasant Ridge Road 710.79 feet east from the intersection of Woodwind Lane. The property is designated on the Town of Ramapo tax maps as Section 41.20, Block 2, Lot 26 in a 1R-25 zone.

Present

Mr. Schlisselfeld
Robert Ball – speaking for the applicant – (builder of swimming pools)
123 Pomona Rd.
New Hempstead, N.Y.

Mr. Ball stated there is an easement for a gas line that runs across the property. This gas line was abandoned in 1960; it was put in in 1949. Even though it is abandoned, they do not permit cutting it. We have to put the pool on the side yard because of this easement. We do not meet the requirements of the R-25 zone in this location. Mr. Ball presented photos of what he proposes to do.

Mr. Ball said they plan to install an automatic cover and a fence around the pool and an alarm. Mr. Ball also explained how he plans to have the drainage taken care of.

Chairman Leibowitz stated nine of the neighbors sent letters stating they have no objection to the pool and its location. Same will be attached to and made a part of this record.

Ms. Vazquez stated the public hearing notice appeared in the Journal News on August 14, and the affidavits were timely.

Mr. Greenberg offered the following motion, which was seconded by Mr. Ell:

Resolution # ZBA 2015-13

Resolved, that the public hearing on application of Jacob Schlisselfeld, 26 Pleasant Ridge Road, is hereby opened.

Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

No one from the public wished to speak.

Mr. Greenberg offered the following motion, which was seconded by Mr. Ell:

Resolution # ZBA 2015-14

Resolved, that the public hearing on application of Jacob Schisselfeld is hereby closed.

Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Mr. Fishkin asked that the resolution be based upon the fact that there is a gas line involved. It is not our intention to create a precedent.

Attorney Silverberg prepared a proposed resolution for this application. He will make some additions based upon the presentation this evening. The addition will be based upon the proposed drainage, which was discussed by Mr. Ball.

Mr. Ell offered the following resolution, which was seconded by Mr. Fishkin:

Chairman Leibowitz read the proposed resolution into the record.

ZONING BOARD OF APPEALS RESOLUTION

Application of Jacob Eli Schlisselfeld ("Applicant")
26 Pleasant Ridge Road, New Hempstead, New York
Section 41.20, Block 2, Lot 26
Zoning District 1R-25

WHEREAS, the Applicant has appealed to this Board for a variance from a determination dated June 29, 2015 made by the Building Inspector, and

WHEREAS, said determination dated June 29, 2015 denied the applicant's request to construct an 15'x36' in-ground pool in the side yard as the proposed development violates Section 5.2 of the Village of New Hempstead Zoning Code ("Zoning Code"), and

WHEREAS, in connection with the Applicant's proposal to construct a 15'x36' foot in-ground pool, the Applicant seeks the following area variances from Section 5.2 of the Zoning Code:

1. Side Yard Variance of 10' instead of the minimum required of 35',
2. Total Side Yards Variance of 34' instead of the minimum required of 50'; and
3. Building Coverage Variance of 119 square feet allowing 3,119 square feet where a maximum of 3,000 is permitted;

WHEREAS, a duly noticed public hearing was held on this application at the regular meeting of the Zoning Board of Appeals ("ZBA") on August 26, 2015,

WHEREAS, the Applicant's Builder testified that he is constrained in his ability to design and construct the proposed pool and unable to locate the pool in the back of his property due to a gas line easement that restricts the portion of the property where the Applicant can construct the proposed pool;

WHEREAS, the Applicant submitted to the ZBA a plan plans prepared by Anthony R. Celentano, P.L.S. entitled "Proposed Pool for Schlisselfeld [sic]" dated July 19, 2015;

WHEREAS, the Applicant submitted a letter of support of the abutting neighbor Darlene Shelly (closest to where the proposed pool is to be located) and another letter of support signed by neighbors given notice of the application;

WHEREAS, after due notice this Board held a public hearing on such application on August 26, 2015 and all parties having had an opportunity to be heard (no members from the public spoke in opposition at the public hearing); and the public hearing having been closed; and members of this Board having made personal inspection of the premises and being familiar therewith; and

WHEREAS, after duly considering all the proofs and evidence before it, this Board determines as follows:

RESOLVED, this is a Type II action under the State Environmental Quality Review Act and therefore no further action is required;

AND IT IS FURTHER RESOLVED, based upon the facts set forth above, the findings of this Board are as follows:

1. There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variance. The property owner who abuts the Applicant's property on the side yard where the proposed pool is to be located has expressed approval of the Application.
2. Due to the constraints to the property caused by the fact that he gas line easement that bisects the property, the benefit to the Applicant cannot be achieved by any other feasible means.
3. The requested variances, when taken together, are arguably substantial, but the lot area variance is minor and the side yard and total yard variances are limited to only the portion where the proposed pool will be located.
4. The proposed variances will not have an adverse effect or impact on the physical environmental conditions in the neighborhood as the Applicant is proposing to construct the pool a considerable distance from the existing gas easement.
5. The hardship is not self-created to the extent that the property is constrained by the the gas easement that bisects the property and to the extent the building coverage variance is self-created, such self-created hardship does not preclude the granting of this Application.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. The variances are granted solely in connection with the proposed in-ground pool depicted in the plan prepared by Anthony R. Celentano, P.L.S. entitled "Proposed Pool for Schlisselfeld [sic]" dated July 19, 2015 ("Approved Plan") and solely for an in-ground pool. As such, the variances granted are only in connection the in-ground pool in the exact location as depicted on the Approved Plan. If any changes are made to the Approved Plan, this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances. With the exception of the 35' long portion of the proposed in-ground pool as depicted on the Approved Plan, this variance grants no authority to Applicant to extend the pool or any portion of the existing residence less than the required side yard setback.
2. The variances are granted subject to the property being used solely as a single-family residence. If the Applicant uses the property, or seeks approval to use the property, for any other purpose, regardless of whether that use is permitted in the 1R-25 zoning district and regardless of whether the use is in addition to or instead of a single-family residential use, this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances.

3. Any work done hereunder shall be in strict compliance with the Approved Plan, except as may be expressly modified by the conditions herein or as approved by the Building Inspector.
4. The granting of this application shall not be deemed to relieve the applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the plans or construction or any other phase of the project.
5. That the applicant shall procure a building permit from the Building Department within one (1) year and all work shall be completed within one (1) year from the date of the building permit, otherwise this application is denied; and any request to extend the time within which to obtain said building permit shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.
6. The drainage shall be designed so as to not cause drainage to run off onto neighbor's property
7. The failure to observe and perform these conditions shall render this resolution invalid.

Dated: August 26, 2015.

Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Public Hearing – Mordechai Shulman, 5 Woodwind Lane, New Hempstead, N.Y. 10977. The applicant is requesting variances from the requirements of Section 5.2 of the New Hempstead Zoning Law to permit construction, maintenance and use of a pool for his single family dwelling having:

1. A rear yard of 5.7' instead of the minimum required of 35'
2. Side yard of 16' instead of the minimum required of 20'
3. Impervious surface of .30 instead of the maximum permitted of .25.

The property is located on the west side of Woodwind Lane, 382' from the intersection of Pleasant Ridge Road in the Village of New Hempstead. The property is designated on the Town of Ramapo Tax Map as Section 41.20, Block 2, Lot 5 in a 1R-25 zone.

Present

Mr. Shulman

Robert Ball – speaking for the applicant

Ms. Vazquez stated the public hearing notice appeared in the Journal News on August 14, 2015 and the notices and Affidavits were timely.

Mr. Ball stated this application has very little impact on the area. Behind the property is the Orthodox cemetery. There are no neighbors in the back. This application includes a patio and a new shed to replace the old one. There is a buffer, after the stone wall, of woods. We plan to clean that up a little with the permission of the owners of the cemetery.

Attorney Silverberg asked why this cannot conform with the setbacks? The zoning laws and case laws state that in order to grant the variance you have to demonstrate that there is not a practical way to comply with the zoning.

Mr. Shulman stated he wanted to keep the pool as far from the building as possible. The property has several apple trees. He also wants to improve the property with more trees. He wants to have trees Instead of a large fence.

Mr. Fishkin pointed out that trees make a mess of the pool.

Discussion as to where the pool could be placed.

Attorney Silverberg suggested that the applicant could get away with a variance of 10' and still locate the pool away from the apple tree.

Attorney Silverberg stated the zoning indicates what the setbacks are – You can't put it just where you would like it; then everyone else wants the same and the zoning doesn't mean anything. Zoning needs to have a reason under the law to give you the variances. It would appear you could do with less of a variance.

Further discussion.

It was noted that for religious reasons you cannot destroy a fruit bearing tree unless it is dead.

Chairman Leibowitz suggested the applicant come back to the Zoning Board with revised plans; moving the pool south a few feet and then east toward the house.

Consultation should be made with the Architect to support the application.

Chairman Leibowitz offered the following motion, which was seconded by Mr. Ell:

Resolution #ZBA 2015-16

Resolved, that the public hearing on application of Mordechai Shulman, 5 Woodwind Lane, is hereby adjourned until a date certain of September 16, 2015 at 7:30 p.m.

Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Approval of minutes of July 22, 2015

The approval of minutes was put on hold as there was not a quorum.

Chairman Leibowitz offered the following motion, which was seconded by Mr. Greenberg:

Resolution # ZBA 2015-17

Resolved, that the meeting of the Zoning Board of Appeals of the Village of New Hempstead, held on August 26, 2015, is hereby adjourned.

Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Respectfully submitted – Carole Vazquez, Village Clerk-Treasurer LPM