

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

ZONING BOARD OF APPEALS

REGULAR MEETING
WEDNESDAY, JUNE 29, 2016
7:30 P.M. – VILLAGE HALL

PRESENT

MARTIN LEIBOWITZ, CHAIRMAN
RICK ELL
ALLEN FISHKIN
SOL FUERST

ABSENT

A. POLLACK

ALSO PRESENT

DENNIS MICHAELS, VILLAGE ATTORNEY
CAROLE VAZQUEZ, VILLAGE CLERK-TREASURER
LORI BELLO, DEPUTY VILLAGE CLERK-TREASURER

CALL TO ORDER

ROLL CALL

Change in agenda –

Continuation of Public Hearing on Application ZBA 2016-2 – Ateres Bais Yaakov, 286 Cherry Lane, Monsey, N.Y. 10952. Re: property known as 200 Summit Park Road, New Hempstead, N.Y. 10977.

Chairman Leibowitz stated the public hearing was left open from the previous meeting of the Zoning Board of Appeals. He asked if anyone from the public wished to speak.

Lawrence Strack

7 Rovitz Place – Mr. Strack stated this application is for a humungous variance. 10 acres is what the Village has decided to be the area for a school. This is being done on less than 5 acres; this is a 60% variance of the usage of the property. Feels the Board should consider the magnitude of the variance.

Present:

Ira Emanuel, Attorney for the Applicant
Rabbi Fink
Harry Baker, Traffic Engineer
Anthony Celentano, Engineer
Leonard Jackson, Engineer

Attorney Emanuel stated the applicant appeared before the Village Board and obtained a Special Permit. Earlier this month, the Planning Board granted a negative declaration stating there are no significant environmental impacts. This is a re-do application that was granted by this Board back in 2006/2007 on the same piece of property for the same size building, with the same number of students, for the same school. It was not built because of a financial crisis due to the recession. The difference between this project now and what was approved previously is that the orientation of the building has been changed. The change is at the recommendation of the Village's CDC.

Mr. Strack stated it was approved before but with different rules. He feels it is like renovating a house that was built in 1910 not adhering to today's building codes. Would like the Board to ignore the fact that this was approved before.

Chairman Leibowitz stated there are special circumstances granted to schools – Under NYS law you cannot deny a school from being built.

Attorney Michaels stated municipalities are directed to be more flexible with not for profit institutions such as libraries, religious schools, educational needs, etc. in imposing their zoning regulations. Mr. Strack asked again to consider the magnitude of this variance. It is over 50%. Maybe that property would be better for other things such as housing. Also, people who live next to schools see their property value decline.

Attorney Michaels stated that in addition to weighing the magnitude of the variance, you have to consider that NYS and Federal law have deemed that religious institutions are a benefit to a community.

Chairman Leibowitz closed the public portion of this hearing.

Chairman Leibowitz stated the Zoning Board of Appeals is aware that the applicant appeared before the Board of Trustees and that various conditions were placed on the Special Permit that was granted to the applicant. The Board indicated that the Zoning Board would impose conditions on the applicant should they decide to grant the requested variance. Those conditions consisted of no catering in the facility, no public use of the basement for classroom space or for public assembly, no more than 450 students, no parking on certain streets, no synagogue use other than school use.

Attorney Emanuel felt since the applicant was already bound by these conditions under the Special Permit. Do they need to be bound by this Board as well?

Attorney Michaels stated in the considerations that the Zoning Board has to weigh in making a decision as to area variances, they may not address all the issues.

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

Resolution # ZBA 2016-5

Resolved, that the public hearing on application of Ateres Bais Yaakov is hereby closed.

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

Mr. Fishkin stated there does not appear to be any community opposition to the application.

Chairman Leibowitz stated he spoke with people on David Drive and they were mostly concerned with traffic. By eliminating parking on Summit Park Drive and eliminating parking during school hours on David Drive, they seemed to be satisfied.

There was a discussion regarding the unique situation of this application as to the fact that the applicant had received prior approval under different conditions.

Mr. Fuerst stated that even though religious institutions are allowed a lot of leeway, in this situation, the plans were changed at our suggestion, which the applicant did not have to agree to. The change actually made it more aesthetically pleasing than the original plans that were approved years ago.

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

Resolution # ZBA 2016-6

Resolved, that the Zoning Board of Appeals of the Village of New Hempstead hereby approves the variance requested by Ateres Bais Yaakov, 286 Cherry Lane, Monsey, N.Y. 10952 Re: property known as 200 Summit Park Road, New Hempstead, N.Y. 10977 and to override the County of Rockland's May 23, 2016 decision letter, Item 1 only and adopting items 2-11.

Chairman Leibowitz called for a roll call vote and the vote was as follows: Mr. Fishkin, aye, Mr. Fuerst, aye, Mr. Ell, aye, Chairman Leibowitz, aye. The resolution was adopted with a 4-0 vote.

Rockland County Department of Planning's letter of May 23, 2016 is attached to and made a part of this record.

Continuation of public hearing on Application ZBA 2016-1 – Solomon Markstein, 22 N. Rigaud Road, Spring Valley, N.Y. 10977. Re: property known as 575 Union Road, New Hempstead, N.Y. 10977

Present

Kevin Conway, Attorney – 664 Chestnut Ridge Rd., Chestnut Ridge, N.Y. 10977

Anthony Celentano, Engineer

Attorney Conway stated the applicant is here tonight to re-attain the prior approval which Markstein has previously received from the Planning Board and Zoning Board of Appeals in 2013. The subdivision plot was not filed within the 6 months period and the applicant did not request an extension. This is a parcel where the applicant went to a considerable amount of trouble in designing the two single family homes, subdivided accordingly in keeping with the environmental concerns; a single driveway. This builder is approaching this responsibly by having two single family lots next to one another. There should not be a concern that it will turn into something other than two single family homes. The applicant feels it is important for the Zoning Board to see what the Planning Board has approved.

Mr. Fuerst asked if there were any changes.

Mr. Celentano stated there were no changes in the variances.

Attorney Conway stated there were no changes in the plans.

Chairman Leibowitz asked if the applicant would agree that each of these homes would be a single family dwelling only.

Attorney Conway stated the application states that it will be single family homes only.

Chairman Leibowitz closed the public comment portion of the public hearing.

The Board members had no further comments.

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

Resolution # ZBA 2016-7

Resolved, that the public hearing on application of Solomon Markstein is hereby closed.

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

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

Resolution # ZBA 2016-8

ZONING BOARD OF APPEALS RESOLUTION

Application of Landmarks by Klein/Soloman Markstein (“Applicant”)
575 Union Road, New Hempstead, New York
Section 50.09, Block 1, Lot 14
Zoning District 2R-15

WHEREAS, the Applicant previously obtained preliminary and final subdivision approval from the Planning Board in February 2013 and related variances from the Zoning Board of Appeals (“ZBA”) in November 2012 for a two lot subdivision to construct two single-family homes on the proposed lots; and

WHEREAS, the Applicant did not complete substantial construction within one-year of the variance grant and therefore in accordance with the Village Code, the variances granted by the ZBA have expired; and

WHEREAS, the Applicant has appealed to this Board for the related variances from a determination dated July 14, 2015 made by the Building Inspector denying their application on the basis that certain variances were required (“Letter of Denial”);

WHEREAS, the Letter of Denial denied the Applicant’s request for a two lot subdivision to construct two single-family homes as the proposed development violated Section 5.2 of the Village of New Hempstead Zoning Code (“Zoning Code”) and in particular the lot area, street

frontage, lot width, total side yard setbacks, side yard setback, and impervious surface requirements;

WHEREAS, in connection with the Applicant's proposal to construct, maintain, and use two (2) single-family homes, the Applicant sought the following area variances from Section 5.2 of the Zoning Code:

A. Lot 1:

1. Lot Area Variance of 1,918 Square Feet where 13,082 Square Feet is proposed instead of the minimum required 15,000 Square Feet,
2. Street Frontage Variance of 27' where 58' is proposed instead of the minimum required 85',
3. Lot Width Variance of 42' where 58' is proposed instead of the minimum required 100',
4. Side Yard Variance of 6' where 12' setback is proposed instead of the minimum required 20',
5. Total Side Yard Variance of 26' where 24' is proposed instead of the minimum required 50',
6. Impervious Surface of .27 instead of the maximum permitted .25;

B. Lot 2:

1. Lot Area Variance of 2,314 Square Feet where 12,686 Square Feet is proposed instead of the minimum required 15,000 Square Feet,
2. Street Frontage Variance of 27' where 58' is proposed instead of the minimum required 85',
3. Lot Width Variance of 42' where 58' is proposed instead of the minimum required 100',
4. Side Yard Variance of 6' where 12' setback is proposed instead of the minimum required 20',
5. Total Side Yard Variance of 26' where 24' is proposed instead of the minimum required 50',
6. Impervious Surface of .28 instead of the maximum permitted .25; and

WHEREAS, at the July 1, 2015 Planning Board meeting, the Planning Board declared its intent to be lead agency for a coordinated review of this Unlisted Action pursuant to SEQRA and at the March 2, 2016 meeting the Planning Board adopted a Negative Declaration under SEQRA, finding that the proposed project will not have the potential for any significant adverse environmental impacts, which Negative Declaration is incorporated by reference, and

Whereas, a duly noticed public hearing was held on this application at the regular meeting of the Zoning Board of Appeals ("ZBA") on May 25, 2016; and

WHEREAS, at the May 25, 2016 public hearing, the ZBA members questioned the Applicant as to why the proposed project needed to be in the proposed location; and

WHEREAS, the Applicant testified at the November, 2012 ZBA meeting as well the May 25, 2016 meeting that their goal was, as suggested by the Planning Board, to locate the development of the two single-family homes closer to the street so the driveways would take up less of the property and the homes would be located farther away from the existing wetlands at the rear of the property, creating a more substantial buffer between the homes and the wetlands. The side yard variances are required because the lot had to split in the middle to create the two lots; and

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

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 requested variances. The owner will continue to utilize the premises for single-family residences.
2. Due to the location of existing wetlands on the property, the benefit to the Applicant cannot be achieved by any other feasible means. Further, the configuration of the subject property is such that the requested variances are the only practical means of relief, therefore, for this reason also, the benefit cannot be achieved by any other feasible means.
3. The requested variances, when taken together, are arguably substantial, but given the unique circumstances of this property, the substantiality of the variance is not determinative.
4. The proposed variances will not have an adverse effect or impact on the physical environmental conditions in the neighborhood as the proposed located of the development creates a larger buffer zone from existing wetlands. Additionally, there were no adverse reports from local agencies pertaining to environmental issues.
5. The hardship is self-created but is not such a self-created hardship that precludes 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 two (2) single-family homes as depicted on the plan submitted to the ZBA ("Approved Plan"). As such, the variances granted are only for the proposed construction of the two single-family homes 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.
2. The variances are granted subject to the property being used solely as single-family residences. 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 2R-15 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. There shall be no accessory apartments in the basement or kitchens in the basement. The attic is to be used strictly as a storage space.
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. Should the Building Inspector determine that the structures are three stories, further variances will be required and the building permit will not be issued until such time as the variances are granted, if at all.
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. The applicant shall procure a building permit from the Building Department within one (1) year of this variance grant and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance shall be deemed void and of no effect; and any request for extending 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 failure to observe and perform these conditions shall render this approval void.

Chairman Leibowitz called for a roll call vote and the vote was as follows:

Mr. Fishkin, aye, Mr. Fuerst, aye, Mr. Ell, aye Mr. Leibowitz, aye. The resolution was adopted by a vote of 4-0.

Public Hearing on Application ZBA 2016-3 Wayne & Rita Bobrow, 4 Ashlawn Avenue, New Hempstead, N.Y. 10977.

The applicants are requesting variances from the requirements of Section 5.2 of New Hempstead Zoning Law to permit construction, maintenance and use of an addition to their single family home having:

Building coverage of 3900 square feet instead of the maximum permitted of 3000 sq. ft.

Total side yards of 48 feet instead of the required 50 feet.

The property is located on the east side of Ashlawn Avenue 150 feet south of Grandview Avenue and designated on the Town of Ramapo Tax Maps as Section 41.20, Block 1 Lot 15 in a 1R-25 zoning district.

Present

Ryan Karben, Attorney, 11 Tara Dr., Pomona, N.Y.

Attorney Karben made the presentation. This is an addition to a single family home on an irregular lot. He presented a petition signed by neighbors in support of the application. Same will be attached to and made part of the application.

A copy of a fax from the Village of Wesley Hills stating the addition to the house does not impact the houses in the Village of Wesley Hills is also attached.

Attorney Karben explained that the family has 6 children and they need additional room. Also, Mrs. Bobrow's family is from California. They visit often and need quarters to stay. Therefore, the family is seeking to expand their home as they do not have sufficient space. There are a limited number of options where you could add on to the house because of the shape of the lot.

Ms. Vazquez stated the notice of public hearing appeared in the Journal News on June 15, 2016. The notices and postings were timely.

Attorney Michaels read the following correspondence into the record:

Application of Wayne & Rina Bobrow dated June 28, 2016
Correspondence from Rockland County Sewer District #1 dated 5/5/16
Rockland County Planning Department dated 4/22/16
Memo from Doris Ulman dated 5/23/16
Same will be attached to and made a part of this record.

Mr. Bobrow made the presentation. The house has 7 bedrooms, the family has 6 children. His wife comes from a large family; some are in Canada, some are in California. They have become a "hub" for the family. Whenever there is a holiday or a family occasion, the in-laws come to stay. The 96 year old grandma stays on the main floor. They have a lot of company. The children need a place to play in the winter. They just need more room. Back in 2009 they took half the garage to make another room. It is just not enough.

Chairman Leibowitz stated his concern is that the applicant is increasing the maximum coverage of 3000 sq. ft. by 30%.

Attorney Karben stated it is the applicant's obligation to mitigate the drainage problem if one exists as a result of the increase in coverage.

The Board reviewed a set of drawings, 3 pages, signed and sealed by David Mayerfeld, Architect, dated Nov. 30, 2015.

Chairman Leibowitz opened the hearing to the public.

Lawrence Strack

7 Rovitz Place – Wanted to know how many square feet of living space they were talking about. He is having a hard time justifying the number of bedrooms. Felt the addition could be done without the side variance. Feel that one day the neighborhood will change and the neighbors will not like the fact that the house next door is so close.

Chairman Leibowitz closed the public comment portion of the hearing.

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

Resolution # ZBA 2016-9

Resolved, that the public hearing on application of Wayne & Rita Bobrow, 4 Ashlawn Avenue, New Hempstead, N.Y. is hereby closed.

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

Mr. Fishkin stated that initially he felt the house would be too big for the property.

Discussion of other houses in the area.

Mr. Fuerst offered the following motion, which was seconded by Mr. Fishkin:

Resolution # ZBA 2016-10

Resolved, that the Zoning Board of Appeals of the Village of New Hempstead hereby approves the variances requested by Wayne & Rita Bobrow, 4 Ashlawn Avenue, New Hempstead, N.Y. subject to the conditions listed in the Rockland County Planning Department's letter of April 22, 2016, the Rockland County Sewer District's letter of May 5, 2016, the removal of the side yard variance, the removal of the shed from the existing location, the unfinished basement to remain unfinished, and the approval of a total side yard of 48' instead of the required 50'.

Chairman Leibowitz called for a roll call vote and the vote was as follows: Mr. Fishkin, aye, Mr. Fuerst, aye, Mr. Ell, aye, Chairman Leibowitz, no. The resolution was adopted by a vote of 3-1.

GML Laval, LLC

This is a proposed 4 story bldg. on Route 45 – Over an area that is currently garages. The individuals have stated that the property can be used for nothing else, however, the property is surrounded on three sides by single family homes.

It was suggested that the Board make a referral that we request information on the environmental issues. Traffic is definitely an issue.

Approval of Minutes of May 25, 2016

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

Resolution # ZBA 2016-11

Resolved, that the minutes of the meeting of the Zoning Board of Appeals held on May 25, 2016 are hereby approved and the reading of said minutes be waived.

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

Motion to adjourn

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

Resolution # ZBA 2016-12

Resolved, that the meeting held by the Zoning Board of Appeals of the Village of New Hempstead on June 29, 2016 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