

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

**ZONING BOARD OF APPEALS**

REGULAR MEETING  
WEDNESDAY, SEPTEMBER 16, 2015  
7:30 P.M. VILLAGE HALL

PRESENT

MARTIN LEIBOWITZ, CHAIRMAN  
RICK ELL  
ADAM POLLACK  
ALLEN FISHKIN  
LEN GREENBERG

ABSENT

ALSO PRESENT

KATHY ZALANTIS, VILLAGE ATTORNEY  
CAROLE VAZQUEZ, VILLAGE CLERK-TREASURER

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OPEN MEETING

ROLL CALL

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**Continuation of public hearing of August 26, 2015 – 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.

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

Robert Ball  
123 Pomona Rd.  
Pomona, N.Y. 10970

At the last meeting we were discussing moving the pool 5' from the left and coming down 17' ; actually more than 17' because the property bordering the cemetery is on an angle. We are actually about 19' away from the rear. The reason we put it there are two apple trees so we measured the drip line of the apple trees.

Discussion between Mr. Fishkin and Mr. Ball regarding the drip line of the apple trees.

Chairman Leibowitz read a letter from our Engineer, Glenn McCreedy dated Sept. 16, 2015 He also read a letter from Curtis Landscaping dated September 8, 2015. These will be annexed to and made a part of the record.

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

Resolution # ZBA 2015-18

Resolved, that the public hearing on application of Mordechai Shulman, 5 Woodwind Lane, New Hempstead, N.Y. 10977 is hereby closed.

Chairman Leibowitz called for a vote and the vote was 5-0. The resolution was adopted.

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Attorney Zalantis read the proposed resolution into the record.

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

Resolution # ZBA 2015-19

Application of Mordechai and Riuka Shulman (“Applicant”)  
5 Woodwind Ln., New Hempstead, New York  
Section 41.20, Block 2, Lot 5  
Zoning District 1R-25

WHEREAS, the Applicant has appealed to this Board for a variance 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 to construct a proposed 22’x44’ in-ground pool, patio and shed as the proposed development violated Section 5.2 of the Village of New Hempstead Zoning Code (“Zoning Code”) and in particular the rear yard and side yard setbacks and impervious surface requirements;

WHEREAS, in connection with the Applicant’s proposal to construct a 22’x44’ in-ground pool, a patio and a shed, the Applicant sought the following area variances from Section 5.2 of the Zoning Code:

1. Rear Yard Variance of 29.3’ where a 5.7’ setback is proposed instead of the minimum required of 35’,
2. Side Yard Variance of 4’ where 16’ setback is proposed instead of the minimum required of 20’,
3. Impervious Surface of .30 instead of the maximum permitted of .25;

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, at the August 26, 2015 public hearing, the ZBA members questioned the Applicant as to why the proposed pool needed to be in the proposed location;

WHEREAS, the Applicant testified that their goal was to preserve mature trees on their property (including fruit trees) and further discussed how the rear yard abutted a wooded area that serves as a buffer area for an existing cemetery (owned by Congregation K’hal Torath Chaim) and therefore, the requested rear yard variance will have little to no adverse impacts on the neighboring properties;

WHEREAS, nonetheless in response to the ZBA’s concerns about the location of the proposed pool, the Applicant submitted a new proposed plan prepared by Anthony R. Celantano, P.L.S. entitled “Proposed Pool for Shulman” dated April 29, 2015 last revised September 10, 2015 (“Revised Plan”);

WHEREAS, the Revised Plan negates the need for a side yard variance, decreases the magnitude of the requested rear year variance and slightly increases the requested impervious surface variance;

WHEREAS, on September 16, 2015, the Village’s consulting engineer reviewed the Revised Plan and confirmed that the Applicant needs the following area variances:

1. Rear Yard Variance of 17.5’ where 17.5’ setback is proposed instead of the minimum required of 35’; and
2. Impervious Surface of .31 instead of the maximum permitted of .25.

WHEREAS, after due notice this Board continued the public hearing on such application on September 16, 2015 and all parties having had an opportunity to be heard (no members from the public spoke 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 requested variances. The Applicant submitted the Revised Plan that negated the need for the proposed side yard variance, reduced the magnitude of the requested rear yard variance and only slightly increased the requested impervious surface variance. Further, the subject property's rear yard abuts a wooded area that serves as a buffer zone for an existing cemetery and therefore, as there are no abutting rear yard residential neighbors, the requested rear yard variance and the addition of impervious surface near the rear yard will cause little to no impacts on neighboring properties.
2. Due to the location of existing mature trees and the desire to preserve these trees, including fruit trees, the benefit to the Applicant cannot be achieved by any other feasible means. Further, the existing home has a larger footprint (due to how the home was constructed) and long driveway, which results in a slightly higher than typical impervious surface coverage and 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 and the proposed pool, patio and shed location in relation to other properties, 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 pool, patio and shed are set-back so they abut a wooded area that serves as a buffer zone for an existing cemetery.
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 pool, patio and shed as depicted on the plan submitted to the ZBA prepared by Anthony R. Celantano, P.L.S. entitled "Proposed Pool for Shulman" dated April 29, 2015 and last revised September 10, 2015 ("Approved Plan") and solely for an in-ground pool. As such, the variances granted are only for the pool, patio and shed 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 area between the rear property line and the proposed patio and shed as depicted on the Approved Plan, this rear yard variance grants no authority to the Applicant to extend any other portion of the pool, patio or shed or to extend any portion of the existing residence less than the required rear 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. 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 Resolution invalid.

Dated: As of September 16, 2015.

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

Mr. Greenberg, aye, Mr. Fishkin, aye, Mr. Ell, aye, Mr. Pollack, aye, Chairman Leibowitz, aye. The resolution was granted by a roll call vote of 5-0.

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#### **Approval of Minutes July 22, 2015, August 26, 2015**

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

##### Resolution # ZBA 2015-20

Resolved, that the minutes of the meeting of the Zoning Board of Appeals of the Village of New Hempstead, held on July 22, 2015, are hereby approved and that the reading of the minutes be waived.

Chairman Leibowitz called for a vote and the vote was 3-0. Mr. Ell and Mr. Greenberg were not in attendance at that meeting. The resolution was adopted.

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

##### Resolution # ZBA 2015-21

Resolved, that the minutes of the meeting of the Zoning Board of Appeals of the Village of New Hempstead, held on August 26, 2015, are hereby approved and that the reading of the minutes be waived.

Chairman Leibowitz called for a vote and the vote was 4-0. Mr. Pollack was not in attendance at that meeting. The resolution was adopted.

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

##### Resolution # ZBA 2015-22

Resolved, that the meeting of the Zoning Board of Appeals of the Village of New Hempstead, held on September 16, 2015, is hereby adjourned.

Chairman Leibowitz called for a vote and the vote was 5-0. The resolution was adopted.