

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, October 13, 2016**

MEMBERS PRESENT: MICHAEL BERNSTEIN, CHAIRMAN
LAURIE DIFRANCESCO
ARTHUR KATZ
MARTY KIVELL
CHARLES PICARELLI
PETER BLUNNIE, AD HOC

OTHERS PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
LOUIS ZUMMO, BUILDING INSPECTOR
SUZANNE CARLEY, PLANNING & ZONING CLERK

The meeting was called to order at 8:01 pm by Chairman Bernstein, which was followed by the pledge of allegiance and roll call. Laurie DiFrancesco made a motion to approve the minutes from September 8, 2016. Michael Bernstein seconded it. All in favor. Motion carries.

**Avrohom Drew
28 Besen Parkway
Continued Public Hearing**

Stanley Mayerfeld Architect present with applicants Mr. & Mrs. Avrohom Drew. As per the last ZBA meeting they looked at the surrounding neighborhood and found two homes of similar size, which show a R-15 zone, and bulk table and they received a .2 FAR variance. They submitted photos and plan to support their findings.

Chairman Bernstein swore in both Stanley Mayerfeld and Mr. & Mrs. Avorhom Drew. To recap they are keeping the house the same, proposing an addition at the rear of the house and parking in the rear. This only affects the neighbors on the right and left because only Besen Park is behind them. They reiterated that at the last ZBA meeting many neighbors came out in support of them. The main reason for the variance request is for additional space as they have a very large family with 9 children and the youngest has hearing special needs of which they need a separate quiet area for the child's therapy sessions. They are not expanding any of the bedrooms; the variance will give them additional living space as a family.

Dan Kraushaar noted that they are looking at a 1960 plot plan and one from 7/6/2016 but it appears to be without additions although it looks like it expanded from 1960. Stanley Mayerfeld pointed out that there are a few identical homes the same as the others but that the Drew's home is quite small. Dan Kraushaar pointed out that when the Town of Ramapo approved it even if the bulk table looked at a 1960 zoning code a .25 FAR couldn't be as simple. Stanley said he found no evidence at all from prior years. Laurie DiFrancesco asked if he checked everything in the R-15 zone. Stanley noted he did a lot of research and only found some applications for zoning that were deemed in the R-15 zone and the Drew's would have been in the same zone. Dan Kraushaar noted that the bulk table on the plans states the R-25. Stanley pointed out the denial letter from the previous building inspector indicated he needed to go by the R-25 zone and not the R-15 zone. Stanley, Hudson Search and the applicant all did research and could not find a subdivision map from prior years noting any differences.

Dan Kraushaar – no objection in the variance being sought between the R-15 and the R-25 zone. The notice of the size of the variance being sought is what is under review. Laurie DiFrancesco for the record pointed out that the bulk table for R-15 and R-25 are the same as of March 2012.

Michael Bernstein read in to the record the letter dated 8/19/16 from RCP; a letter from RC Sewer District #1 dated 8/24/16 and a letter from RC Environmental Health dated 8/21/16.

Dan Kraushaar pointed out from the RCP Letter item #3 under the GML states why is the map date the same as the GML that has a vicinity map and a compass. It would have been overridden by virtue as the applicant did submit a map to RCP. It is not a site plan, it's a single family home and its well within the purview of the Board to override it because 1) we have a map that complies with it and 2) it doesn't need all the features of a site plan since it's not an actual site plan.

Dan Kraushaar asked the Building Inspector what they do for large additions in terms of Storm Water Management with the increase in impervious pavement to ensure they comply. Stanley Mayerfeld noted that they have lots of grass and trees in particular with the park behind them. The building inspector indicated it's not something that they have dealt with before. Charlie Picarelli pointed out that there would be a large discharge of water with no ability for it to go anywhere so something needed to be put in. He indicated that soil is noted for its poor drainage and they may need a catch facility.

Stanley Mayerfeld stated that the variance is high as the unfinished basement is charged as living space in terms of increasing the FAR. The building inspector noted that the water has to go somewhere and they can't just have it go into the park. Stanley Mayerfeld said he felt that developmental coverage should take this into account. Again he pointed out that they are only seeking a FAR variance nothing more.

Dan Kraushaar explained that they are talking about the Storm Water Management (SWM) Agreement, which charges them with yearly maintenance responsibilities. He explained that they must have zero run off onto neighbor's property for any coverage with a SWM Plan. Typically it's reviewed by the Village Engineer and requires SEQRA determination in regards to drainage to comply with NY State Storm Water Management. Stanley Mayerfeld noted that it's a total of 1165 sq. footage and asked if all the lots were underdeveloped how would SWM apply. Avrohom Drew stated that there has never been a flooding issue in this area.

Dan Kraushaar pointed out that the BOT is in the process of considering a moratorium for changes to the code and areas such as Storm Water Management may need to be reviewed for pools, tennis courts, etc. It's the amount, the quality and the quantity and their needs to be zero net run off.

Marty Kivell opened the continued public hearing for comment at 8:50pm. Laurie DiFrancesco seconded it. All in favor.

Carol Porchuk- 52 Shuart Airmont she pointed out that a family of 10 used to live there. She was unaware of any drainage and environmental issues.

Arthur Katz asked Dan Kraushaar if Storm Water has any issues to do with FAR. Dan explains yes as the addition relates to environmental impacts on drainage and there is no Storm Water system being contemplated that will occur from the addition. The variance runs with the land and they will need to find a drainage system if the variance is approved and they are allowed to build. He advised that the

Municipality is liable if they don't provide for adequate review of Storm Water Management. Laurie DiFrancesco concurred and agreed that the Board as a whole needs to be cognizant of this as it affects everyone. She also pointed out that the DEC is cracking down. Marty Kivell agreed and Charlie Picarelli pointed out that if the water does not drain there could also be mold problems.

Stanley Mayerfeld asked if the Board would feel more comfortable with an engineer study, a perc study or a proposed system, dry well or whatever is necessary for the water to drain at a slower rate.

Both Laurie DiFrancesco and Charlie Picarelli pointed out that there is a lack of a drain for anything as no french drain was originally put in. Laurie stated that the Board has to discuss the fact that this is a major variance on a small lot and see if there are any alternatives.

Stanley Mayerfeld again noted that a number of neighbors are in favor of the applicant's request. There were two additions put in across the street and the Drew's are willing to do what is necessary and invest in Storm Water Management measures if required. He also mentioned that they are not in a position to move.

Chairman Bernstein indicated that they are entitled to do the storm water studies. Stanley Mayerfeld was looking for confirmation that the water is a major issue. Dan Kraushaar noted that there have been other applications for additions. The recourse is going to the Village BOT to show how to handle these types of Storm Water issues in the future. If the Board is considering granting the variance there is no problem with it being granted as long as its conditioned with Storm Water Management concerns being reviewed and approved by a Village Engineer prior to the Building permit being issued. He noted that going forward the Village Board should address this on a global scale.

Dennis Cohen – 4 Sumnter Road Aumont stated he disagreed with the Attorney and doesn't feel its necessary. Dan Kraushaar noted that he is suggesting that this be part of the review that would take place if the Village Board were planning on making changes since there are no provisions currently in place for drainage for swimming pools, tennis courts or large additions. Dennis Cohen stated he felt this this Board has enough ability and power without the BOT.

Stanley Mayerfeld asked the question if an addition was submitted without a variance would Storm Water Management be necessary? Louis Zummo indicated that the bulk table needs to be fixed as it shows a 50% Developmental coverage. Stanley then stated that if there was vacant land or if you knock down a home and build a ranch within the lot area and it would not need a variance, you do drawings and submit to the Building Inspector for a permit. This would not set off a requirement for SWM. Now we are just seeking variances. The coverage is the same. The Building Inspector noted that an impervious service rationale for a large driveway, tennis courts or a swimming pool might require it.

Marty Kivell made a motion to close the public hearing at 9:10pm Laurie DiFrancesco seconded it. All in favor. Arthur Katz stated that if it meets all the land requirements it should be required but it isn't because the law/code is inadequate.

Michael Bernstein stated that they have other unique circumstances with the family and he is struggling to find hardship. The situation is unique for the family not the property and the hardship cannot be ameliorated by a variance. He asked if there is any chance this addition could be made smaller?

Stanley indicated that the floor plan, garage are required by code. If he takes out the living room, dining room and kitchen dinette there are no extra rooms with a 9 ft. living room.

Laurie DiFrancesco made a motion for the Board to come to a decision on the application and read into the record the public hearing notice on the Application for 28 Besen Parkway.

Laurie DiFrancesco made a motion that we are against the variance based on the GML statement that we are creating over development on a small lot. Thus Laurie DiFrancesco made a motion to disapprove the variance. Marty Kivell seconded it.

Arthur Katz – it is our job to make decision as it is written, it is not a requirement to apply for SWM. He was not in favor of the motion.

Laurie DiFrancesco – the motion is not based on SWM but on FAR as the size of the variance is excessive. We are not voting against it due to SWM.

Arthur Katz – we need to go with the law as it provides especially when there is a hardship. There have been bigger variances.

Laurie DiFrancesco – the variance is too large for the area and I don't see a need for a large excessive variance.

Charlie Picarelli – yes I agree to vote against the variance for the excessive size. I also did not hear enough justification for such a large addition.

Marty Kivell – vote yes that I also agree with Ms. DiFrancesco & Mr. Picarelli as I believe the variances in the past that were equal or substantially justified.

Arthur Katz – already voted no against the motion to deny

Chairman Bernstein – Regrettably votes yes to agree not to provide the applicant the variance. This is a self-created one. There were no balance tests or other means of reducing the size of the variance, whether or not emergency and traffic, whether or not this can be stopped by any other means. The use of the hardship – the intention does not meet the standards. He did ask the applicant if they could reduce the size of the variance.

Stanley Mayerfeld – asked for a re-vote for the hardship.

Chairman Bernstein indicated that they could re-visit it if the size of the variance was reduced.

Dan Kraushaar – asked Mr. Mayer if rather than a formal denial did they want to withdraw and re-submit.

Chairman Bernstein stated they needed to continue with their motion and he found that they could not grant approval for the variance for all the reasons previously discussed including drainage. He is in favor to deny the motion.

Motion carries 1 No and 4 Yes. Variance not granted.

**82 Stuart Rd
Public Hearing**

Jim Licata attorney for the applicant Nanuet, NY. Here for a 2 lot subdivision. Both lots are more than 40,000 sq. ft. and there is a dedication for a street line for a municipality balance. The lots are 39,714 and 39,715 sq. ft. in the R-35 zone. There is a 4700 sq ft addition on each lot. Lot 1 – requires variance with the exception of contemplating keeping the existing home and renovating it and keep the existing home. Lot 2 will have a new home built on it. The additional home on lot two will be larger than required. Asking for approval and to file a subdivision map. Chairman Bernstein commented that these are substantial variances.

Jim Licata noted that they would only need one variance for lot width but they need the variances for a pre-existing home. The current home is in good shape and is not to be knocked down.

Laurie DiFrancesco – asked if any other properties on that street have 100 ft. vs. 150 ft. from the road. Jim Licata noted that on the eastside there are similar lots. Chairman Bernstein noted that is less than 150ft. lot width and Jim Licata explained its exiting .08.

Chairman Bernstein asked about the barn structures. Jim Licata noted to look at the plan -section 2 to be removed : a barn and all the buildings are uninhabitable. It used to be pre-existing for a family but the covenant expired and ceased once it was sold. It is not part of the application and do not contemplate it to be due it its expiration. The building pre-dates the Village as it was built in 1840.

Arthur Katz asked if there were pre-existing conditions and why do they need variances. Jim Licata indicated that they are requesting to subdivide the lot and need to go by 2016 regulations. If the building is destroyed nothing could be built there without them. It's a pre-existing nonconforming situation.

Chairman Bernstein asked him to confirm that he is asking for the variance to keep the home where it is. What about the other structures? Jim Licata explained that three accessory structures are to be removed; there is a framed 2-car garage, an uninhabitable barn and a now a second uninhabitable barn. The use for the second barn is for storage.

Marty Kivell asked what they would due with the second lot. Jim Licata advised build a 4,000 – 5,000 sq. ft. home. Arthur Katz asked there not being any setback for the house. Jim Licata explained that there is frontage, and the county has asked that they dedicate a piece of property. Probably in case they ever expand the road.

Arthur asked if the house is destroyed why not build. Laurie DiFrancesco explained that where the house is now it is grandfathered in. Once they subdivide the lot the variance is lost. She noted that the variance must be granted with the property not with the land. Arthur asked if we have a covenant and Dan Kraushaar confirmed that we did. Chairman Bernstein asked the Building Inspector about the rules of Accessory. Louis explained that they are allowed three however he also noted that it didn't appear to be calculated correctly the other three buildings may trigger a variance. Chairman Bernstein indicated that a rule with accessory is side setback and distance. Louis noted the only issue he can see right now is the garage and asked about the uninhabitable structure. Chairman Bernstein asked the applicant's

representative if the three accessories can be taken down. Jim Licata explained that they need the garage. Chairman Bernstein asked about the other 2 accessories. Louis Zummo noted that the middle one has a gas line and a power line yet its inhabitable. Dan Kraushaar noted that there is a covenant that indicates no two houses on one piece of property however it was never filed with the county.

Arthur Katz opened the Public Hearing at 10:09pm. Marty Kivell seconded it. All in favor

Scott Meier – 53 Shuart Road Airmont has done zoning rules and understands that all variances will change the character. Feels the homes should be at least 60 ft. apart or more. There are fire concerns with the old and the new structure if they ever catch fire and then the neighbors. There are too many variances expressed for the board to vote against and leave as one piece of property. The entire home in the area are spread apart now so please keep the character the same.

Laurie DiFrancesco asked if this is a contract vendee. Jim Licata responded no the owner of the home.

Pat Hyler 74 Shuart Rd Airmont. Has the easement next door to the property. Asked for them to explain the number of trees coming down and what the numbers represent circumference or radii? Asked about the plans for 5 ft. evergreens along the property line and asked about the wall planned on the site along the south side. What will it be made of and how high. Chairman Bernstein asked what the purpose of the wall was. Pat Hyler noted it would catch all the rain no longer to be caught by the trees that will be cut down. Does not want the rain on her property and would rather have dry wells. Laurie DiFrancesco asked Pat to explain her easement.

Randi Khan – 81 Shuart Rd Airmont -lives directly across the street. Has serious concerns about traffic safety. The drive way is 100 ft at the crest of a hill. Concern is that you cannot see and will be on top of the driveway. Asked if any traffic safety or analysis were done. She noted cars go every fast on the double lined road.

Marty Kivell indicated that her questions are part of the Planning Board and in order to get to the ZBA they needed to approve a Negative Declaration under SEQRA.. Environmental studies already have had to be reviewed and approved by its consultants. Dan Kraushaar noted that PB did a base environmental review. PB couldn't consider the layout of the road or driveway or shared driveway.

Tricia Yaniga – 68 Shuart Road Airmont- discussed the many variances requested and asked the Board to consider the open feel and character of the neighborhood as providing the variances would be a detriment to their area. She discussed how it would affect the elevations and how aesthetically it would not be appealing. The trees they are proposing as a buffer would take many years to grow and she's concerned with the number and size of the 7 significant trees that they plan to remove. She asked about the tree law where no more than 3 significant trees can be removed in a 12-month period. Will PB approve this or will additional variances be requested for this as well? She also discussed how she went to the open house for this property and gave a copy to the Clerk for the record and the file. She noted how the back house that is "uninhabitable" had a new refrigerator, on septic, fresh paint and the realtor even noted it could be rented out. It's clear that the applicant has no plans to

remove the structure. She is very concerned about this. She also discussed her concerns for drainage and the issues are larger than they appear. She noted that this is an open door to over development in a very rural, quiet and serene area. Noted that another method to alleviate the plot plan was to subdivide parallel and have them share a driveway. It fits the square footage better as the current proposal does not.

Dan Kraushaar indicated that they need to amend the application, as different aspects need to be signed by the current owner not the previous owner. Jim Licata said he would and re-file immediately.

Suzanne Mednick 49 Shuart Road Airmont. Has lived in Airmont her entire life and has concerns about privacy settings, trees and safety concerns. If the Board approves this, the board is allowing crowding and over development, fire safety issues, a precedent for others to subdivide. She asked how they keep the dwelling that is supposed to be uninhabitable actually uninhabitable.

Dan Kraushaar asked the approximate time they noticed anyone living there. Pat Hyler noted that the last person was the owners Salicido husbands father who was in a wheel chair after 2009 hence the ramp that exists. They had a covenant. Dan noted that they complied even though it was not on filed.

Trish Yaniga stated that she was speaking as a combined effort of everyone present and not present from the neighborhood. No one wants to see over development and they would like to keep the neighborhood as it is. The reason everyone moved to this area was for the rural ness and they don't want to see row houses. All the beautiful trees will be destroyed, seven large significant trees which are very beneficial for the environment, oxygen, water and making the area a lovely place to live. We don't want the area to look like a parking lot with a house. She asked that they consider everyone's testimony this evening.

Chairman Bernstein read into the record two emails dated 10/13/16 to the Planning & Zoning Clerk from 81 Shuart. One email was from Andrea Khan and one from Kathleen Khan. He also read into the record a letter from RC Environmental Health dated 9/22/16 and the Town of Ramapo dated 9/29/16. The PB already completed SEQRA.

Chairman Bernstein indicated that it is after 11:00pm and he made a motion to continue the public hearing until Thursday November 10, 2016 at 8:00pm at Village Hall. Marty Kivell seconded the motion. All in favor, motion carries. Arthur Katz made a motion to adjourn the meeting at 11:10pm. Marty Kivell seconded it. All in favor. Motion carries and the meeting adjourned.