

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, September 10, 2015**

MEMBERS PRESENT: MICHAEL BERNSTEIN, CHAIRMAN
MARTIN KIVELL
LAURIE DIFRANCESCO
CHARLES PICARELLI
ARTHUR KATZ
RICHARD SCHONBERG, AD HOC
PETER BLUNNIE, AD HOC (arrived 20 minutes late)

MEMBERS ABSENT: NONE

OTHERS PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
KRISTEN O'DONNELL, VILLAGE PLANNER
SUZANNE CARLEY, CLERK

The meeting was called to order by Chairman Bernstein at 8:05pm which was followed by the pledge of allegiance and roll call. The minutes will be deferred until Dan Kraushaar finishes reviewing them.

Chairman Bernstein read into the record the continued public hearing on the application of Berk Homes. He asked that the applicant and those present identify themselves. The applicant Abe Berkovic and his engineer Larry Marshall of Mercurio, Norton, Tarolli and Marshall responded and were sworn in by Chairman Bernstein.

Larry Marshall noted that since the last meeting they revised the entrance to the site. They worked with the Tallman Fire Department on this revision as well. They provided a wider entrance and revised the front turning diagrams to illustrate vehicles coming into and exiting the site. This was also demonstrated with delivery vehicles entering and exiting the site with a 45 foot vehicle and how that would interact in and out of the facility.

Larry Marshall noted that the following letters have been received in reference to the application:

-A letter from Tallman Fire Department dated 9/8/2015 accepting the proposed entrance and driveway with conditions stated and have been prepared on their plans.

-A letter from County of Rockland dated September 9, 2015. They worked on the traffic analysis and drainage report with Sonny Lin. The County stated that they would like to and have not yet reviewed the new traffic report received 9/4/2015, yet they have no opposition to the ZBA approving variances for the set back and lot width assuming the traffic study is fine with them.

-A letter dated September 4, 2015 willingness to serve from United Water. There are standard conditions noted such as service connections with appropriate codes.

- A letter dated September 2, 2015 from the Thruway Authority indicating they addressed the access into the site and the ability to turn around and exit the site without any issue with traffic on Spook Rock Road. They widened the entrance and made the radii larger which is shown in a right in and right out condition which is the most impactful on the site.

Chairman Bernstein reiterated that their concerns from the last meeting were the emergency vehicle turn around, rain run off issues and a concern with drainage.

Larry Marshall discussed the porous pavement being proposed in the front area to help alleviate some of the run off portion from the site. They looked at the Easterly and Westerly rear portions of the site. The Easterly portion contains a large depression that will be excavated out and will serve as snow storage during winter months and will also be a stormwater detention area for run off from the site into the basin. The outlet of that will be consistent to where water currently drains to which is to the South into the adjoining lands. A drainage analysis was submitted providing the pre and post analysis for the development with no peak increase in flow rate, it actually showed a slight decrease. Porous pavement is proposed to the Westerly portion of the sight to help alleviate some of the run off from that area. There are additional areas that have hard non-porous surface. To alleviate those areas two facilities are being proposed. First a network of underground storage pipes water will flow into then and then out to an outlet which will be a secondary a small excavated area. This is very similar to the storm water structure serving the Goddard school next door out by Spook Rock Road. An analysis of the existing and proposed have been submitted to the Village Engineer for consideration.

Marty Kivell noted that there was a concern about the children at the Goddard School next door getting separated in the parking lot. Larry Marshall indicated that they have proposed a privacy fence and landscaping for the concerns of those at the Goddard School. An offset 6 ft. wooden fence creates privacy and looks good on both sides and a series of white pines will be planted to alleviate some of the removal of existing vegetation. The cars will be completely blocked. A privacy fence will be softened by the white pines.

Chairman Bernstein asked if you can see through the fence. Larry Marshall responded only through an angle. Chairman Bernstein asked if this would be going in the easement. Larry

Marshall responded yes, with the easement of Mr. Remmer. Mr. Marshall noted that there are two easements, one in favor of Remmer and the other is in favor of Berkovic. Chairman Bernstein asked if this was also the right of way to gain to access the property and for emergency vehicles. Larry Marshall indicated yes.

Chairman Bernstein indicated that there is a concern with the Wetlands and Environmental impact noted on the plan with this application. He asked if they are doing whatever is required from an environmental perspective. Larry Marshall indicated yes that they are working with the Village of Airmont on this. Under the jurisdiction of Airmont they have their own Local Law. They have been working with the PB on impacts to the wetlands and the concern is a small storage amount of containment. The area east of the site never installed an outlet when the Thruway was installed. The detention area in the rear will serve its purpose to alleviate the impact to the isolated wetlands.

Arthur Katz – noted that the last time there was a concern about turns with trucks and cars going into opposing lanes. Has this been addressed with the wider entrance? Larry Marshall noted that it is shown on sheet 5 of the set which shows three scenario views now – the trucks entry, the trucks exiting and the emergency access into and out of the site. Arthur Katz stated that it appears that the turning radius issue has been addressed.

Larry Marshall mentioned that they used the auto turn software to show the conservative estimate of how the turning ability will be shown. He indicated that there should be no issue with the Thruway as it is shown on auto turn.

Chairman Bernstein read into the record:

- a letter from the NY State Thruway Authority dated 9/2/2015
- a letter from Tallman Fire Department dated 9/8/2015
- a letter dated 9/9/15 from the County of Rockland adequately addressed their issues with the exception of a new traffic report study received 9/4/15 yet to be reviewed by them

Dan Kraushaar noted two other correspondences need to be read into the record since the last meeting. They are both letters received from Mercurio, Norton, Tarolli and Marshall. A letter dated 8/26/2015 to Chris Stevens of Tallman Fire Department and responded to 9/8 letter you just read. The other is a letter addressed both the ZBA dated 9/2/2015.

Chairman Bernstein read into the record:

- A letter dated 9/2/2015 from Mercurio, Norton, Tarolli and Marshall addressed to the ZBA
- A letter dated 9/1/15 addressed to Chris Stevens, Chief of the Tallman Fire Department from Mercurio, Norton, Tarolli and Marshall.

-All the revised drawings we have discussed.

Chairman Bernstein noted the Fire Department is satisfied with their concerns and the letter to the ZBA addresses most of the ZBA concerns. Have they worked with these plans to CDRC with the new plans? Larry Marshall noted they have been working with CDRC since Feb but they haven't seen the revisions since February.

Chairman Bernstein asked what went on at the Planning Board Meeting. Kristen O'Donnell noted that the PB echoed the same concerns as the ZBA – the additional widening of the entrance of the road for access to ensure emergency vehicles and trucks. Chairman Bernstein asked if the PB has seen these plans or just ZBA. Kristen O'Donnell indicated that the ZBA is seeing them first.

Chairman Bernstein noted that it appears there was a vehicle and traffic study done. Larry Marshall noted that the specific report was requested by Abe Berkovic. Abe Berkovic identified himself as the applicant and his mother Goldie is the owner.

Abe Berkovic applicant's met with township highway to go over the revised plan with about how they opened up the driveway. They wanted to see a traffic statement/report that the engineer provided. Larry Marshall feels that the opening is ok in terms of truck turns and mentioned it is in the letter. He mentioned that they can send the Board the analysis the anticipated number of trips per day that develop on a peak hourly basis and overall on Spook Rock Road. They want to ensure that this development wouldn't adversely affect traffic on Spook Rock Road. They provided a 12 page report to the County assuming the worst case scenario for occupancy, as well as the number of employees potentially in the facility assuming the worst case scenario. This amounts to slightly over 100 trips per day both into and out of the facility.

Dan Kraushaar asked about the size of the vehicles and if this was taken into account? Larry Marshall noted that it was on a trip count basis per day only not on the size of the vehicles.

Lori Di Francesco asked if there was a building plan for the number of tenants. Larry Marshall advised that they have no idea as to the number of tenants and that they obviously would prefer one tenant. Lori Di Francesco asked what is being offered. Abe Berkovic responded that he can't split it up. The maximum would be 2-3 tenants based on the way the building is laid out. Lori Di Francesco asked if it is appropriate and are they in compliance with the zoning in regards to number of tenants or will it not make a difference. Dan Kraushaar indicated that the number of tenants won't make a difference. One tenant could have an intense use and maybe 2 or 3 tenants could have minimum use. It relates more to the size of the building as parking is related to square footage. He indicated that perhaps the Board could consider limiting the size of the vehicle.

Concerns expressed when a truck turns into this. MB questioned Assuming they have the variance this is a permitted use in the LO use. So it is already contemplated to have this use. Kristen O'Donnell affirms that it is contemplated that the use could happen.

Dan Kraushaar noted that one of the things the Board is charged with are the environmental impacts, health and welfare. He noted that the question is whether or not a bunch of 18 wheelers turning into the property can exit in and out safely.

Chairman Bernstein noted that if this is a permitted use for that then whoever made this zoning regulation took into account what potentially could occur in the LO Zone. He stated that he is struggling with the idea that it is a permitted use in that very area.

Marty Kivell asked if it is a permitted use on a much larger piece of property. PB largely echoed that the concerns of the ZBA and requested to widen the entrance. Can they limit the number of trucks or size of trucks? This is difficult to enforce.

Kristen O'Donnell stated that the concern is that are making it very limited for any business to be economically feasible if you limit the size of the truck. How do you really delineate the difference.

Marty Kivell asked where the ZBA considerations stop and then the PB begin on various issues. Dan Kraushaar noted sometimes there is fine line and this is one of them.

Dan Kraushaar reminded the ZBA that they need to look at the variances they are applying for. Chairman Bernstein stated that the ZBA is charged with lot area, lot width and street frontage – vehicle emergency aspect has been addressed.

Larry Marshall noted that the site itself is limiting in the number of vehicles and the size overall. They demonstrated the use with up to a 48ft ability to turn around; the size is limited. The number of the vehicles is also limited with the number that can come in out. This site won't accommodate a larger vehicle and was never intended to do so.

Chairman Bernstein asked what happens if another truck comes in while another is unloading or loading as Spook Rock Road clearly is no road for trucks to idle while waiting for other trucks to clear out. It is a concern but not sure there is anything we can do about that.

Larry Marshall noted that he believes the question is what is the second truck, is that is what the Board is concerned with knowing? Is it a box truck or is it another 48ft truck. We have demonstrated the ability of the 20ft. access drive. If a tractor trailer is unloading in rear of the site another tractor trail could come in, they do not need to wait on Spook Rock Road. There is

ability for the driveway to be a staging area within the site if it should occur. They want to illustrate to the PB that it can accommodate it but want a smaller truck use for the building.

If a vehicle were staged it would not prohibit any emergency vehicle access to the start. The access aisle being 20 feet wide allows for the two way traffic. Arthur Katz asked how long the driveway is. Larry Marshall noted that the narrowest part of the access width is 20ft wide. The length is approximately 320 feet long.

Marty Kivell asked how the vehicle drop-off would work. Larry Marshall noted that it's in the timing because there will be no parking signs you can't park and leave your vehicle. The size of the sight doesn't dictate 5-7 tractor trailer deliveries. Smaller delivery vehicles with box trucks can accommodate that and that is what this facility is planned to be used for.

Marty Kivell -What will the hours of operation be? Abe Berkovic replied whatever the Village permits.

Lori DiFrancesco asked if we have any letters from Goddard School opposing this. Clerk advised that there was a gentleman at the PB public hearing from the school but nothing was submitted in writing.

Chairman Bernstein asked the applicant to get to the heart of the application describe why you need these variances and what else have you done to seek a lesser size variance?

Larry Marshall noted he provided this in the narrative to the Board on page 2 going into page 3 uses that would require lesser variance than the use they applied for. There are two uses – a child day care center and a public utility. He briefly went through the utilization of these two. A public utility building such as public water facility, waste water treatment, or a substation. To utilize this site in that manner probably wouldn't be an adequate infrastructure for the vicinity. A day care center being right next to the Goddard school it wouldn't be lucrative to have the 2 competing businesses for the same business usage.

Dan Kraushaar advised Chairman Bernstein that once you look into the minutes not yet adopted you'll see that there was back and forth on this very issue.

Larry Marshall noted that while the lot is nonconforming, the easement that is provided by the Remmer's eliminates a lot of the significance of the variances that are there. He doesn't own the land but widens the utilization. It widens the lot by 14ft and adds an additional 4,000 sq. feet in land. Don't own them but will obtain an easement over them. The lot therefore in theory is larger than it really is.

Kristen O'Donnell advised that they have demonstrated one of the tests. The applicant has tried and taken measure by reaching out to the neighbor to try to reduce the amount of the variance.

Dan Kraushaar noted that the other items that need to be demonstrated are:

- Will the application impose a hardship on the emergency vehicles in the community
- Have you approached any of your neighbors
- Are there any other means for building this project for not needing or reducing the size of the variance s you are seeking
- Will this project have a negative impact on the surrounding areas

Michael Bernstein opened the Public Hearing at 9:08pm. Laurie Di Francesco seconded it.

Eugene Parker -12 Dix Hill Road New City. He was sworn in by Chairman Bernstein. He is the VP of Spook Rock Road 1. He has concerns about large trucks going into and out of the property and is very against the use of the property. People send whatever size trucks they want. He doesn't fell the Board is taking into account everything that occurs in the property. Concerned about what type of business will be in there. Met with Paul Palumbo owner of Goddard School next who also went to the PB meeting. They have a concern about the driveway entrance right next to the parents pick up lot. Does not agree that trucks should be allowed near them and a fence won't stop a truck from barreling through. The PB asked that he put his concerns in writing as he represents Spock Rock Road 1. He recommends that the DOT review it. Dan noted that NY State does not have jurisdiction it is Rockland County. Chairman Bernstein indicated that the Government charged has reviewed this and has no opposition to the variances.

Arthur Katz voted to close the public hearing at 9:16 pm. Marty Kivell seconded it.

Arthur Katz noted confirmed that SEQR is already completed by the PB and the ZBA has nothing to do with them.

Dan Kraushaar – suggests that the easement of the neighbor that has been proposed be a required condition if the Board is looking to make any approvals this evening.

Kristen O'Donnell went over the conditions of the variance items for the record:

- Differences between variances and PB waivers; variances that are necessary
- Related to development coverage calculated must be on the site plan with porous pavement
- Storm Water Management Report shows a calculation
- Evaluation of utility Systems – letter from sewer and United Water willingness to serve
- Rockland County Highways

- Applicant has revised plans to note Village Wetlands not Federal Wetlands not
- Plans have been sent to Town of Ramapo
- State Fire and Building Code Requirements
- the Access onto Spook Rock Road which has been addressed with the widening of the entrance

Dan Kraushaar pointed out that only number one needs to be overridden which requires a super majority because our code is mis-interpreted and the PB is charged with the bulk of the waivers not ZBA. ZBA is only charged with lot area, lot width and setback.

First act set up a resolution to override the county GML dated July 23, 2015 in that the Board

- 1) access has been widened
- 2) a review was done by Tallman FD evidenced 9/8/2015 from Chris Stevens Chief that the change in width satisfactory addresses their previous comments

Arthur Katz makes a motion to adopt the resolution as to the override. All the comments have been addressed or will be addressed by comments. Lori DeFrancesco seconded it. All in favor aye. Motion Carries unanimously.

Marty Kivell makes a motion to approve the application for granting the variance from lot area requirements of 60,000 sq. ft. to 39,052 sq. ft. 20,948. Also lot width requirement of 200 feet hereby granting a variance 129.44 feet and for the frontage requirement being 100 feet granting 37.88 feet.

Dan Kraushaar suggested that the approval be subject with all correspondence received by various agencies, subject to the actual grant of the easement as shown on site plan last dated 9/11/15 from Mr. Remmer to the applicant or to the applicant and/or the property owner and if items that you think PB look into put that in the record as well.

Therefore the motion is subject to the following conditions:

- compliance with all correspondence received by various agencies
- Review and approval of the County Department of Highway finish their review.
- The actual execution of an easement of Mr. Remmer in the form previously presented
- A recommendation to the PB to limit the size of the vehicles up to a 48ft ft. trailer which is the maximum tested capacity shown to be able to navigate.

Marty Kivell makes the motion of the above. Laurie DiFrancesco seconded the motion.

For the record:

Mr. Bernstein – in favor subject to all qualifications and recommendations

Mr. Kivell – in favor although feels request is quite substantial the applicant has done a great deal of work and follow through on the application

Mr. Katz- in favor for all reasons previously stated

Ms. Di Francesco - in favor noted that road frontage variance is non-issue, area variance agree is huge but with the conditions stated she is in agreement

Mr. Picarelli – in favor based on the comments of all the other Board members

Motion carries unanimously. Variances are approved.

Michael Bernstein makes a motion to approve the minutes. Marty Kivell seconds the motion.

All in favor. Motion carries unanimously.

New Business- an old letter in regards to a variance that will be brought up at the BOT Workshop.

Chairman Bernstein makes a motion to adjourn meeting at 9:45 pm. Lori DiFrancesco seconded it. All in favor. Motion carries and meeting is concluded.