

**Village of Airmont  
Zoning Board of Appeals  
Village Hall  
Thursday, June 10, 2021**

MEMBERS PRESENT: CHAIRMAN ARTHUR KATZ  
RICHARD BERGER (arrived late)  
MARTIN KIVELL  
SHELDON MAYER  
SCOTT MEIER  
ROBIN LUCHINS, AD HOC

MEMBERS ABSENT: JACOB SIMINOVITS, AD HOC

PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY  
LOUIS ZUMMO, BUILDING INSPECTOR  
SUZANNE CARLEY, P&Z SECRETARY

The meeting was called to order at 8:03 pm by Chairman Katz which was followed by the pledge of allegiance and roll call. Chairman Katz appointed Robin Luchins Ad Hoc a voting member for the evening until Member Berger joined. Martin Kivell made a motion to approve the minutes from May 13, 2021, which were seconded by Scott Meier. All in favor motion carries. Chairman Katz read the public hearing meeting notice into the record:

Application of **6 Ayr Court** for construction of an elevator with an exterior shaft on the northern side of a single-family residence, with door openings inside the house on the first and second floor. On each floor an existing window will be replaced by an entrance door to the elevator. Variances for side yard and total side setback are required from Article XIII Use Regulations Section §210-133 and Chapter 210 Attachment 5 Table 2 of the R-40 Bulk Table of the Village of Airmont's Zoning Code. The lot is designated as Section 55.16 Block 2 and Lot 53 on the Town of Ramapo Tax Map. The property is located on the east side of Ayr Court approximately 400 feet north of Dawn Lane. The property is located in the R-40 zoning district and is comprised of .6 acres. The street address is 6 Ayr Court Airmont, NY 10901.

The house was built in 1970 and was built on an angle and is a non-conforming lot. The applicant would like to install an elevator on the northern side of the property as it is difficult to climb steps as the homeowners are senior citizens and climbing stairs is getting difficult. The difficulty cannot be alleviated by some feasible method the applicant can pursue. The extension of a nonconforming use requires a variance on the south side of the property. There is no noise impact. No substantial change in the character of the neighborhood will be created. The granting of variances will not create a detriment to any of the adjoining properties. Chairman Katz inquired if the elevator would be visible from the front and Mr. Harpaz explained it will stick out to the right

by 5ft. He explained that there really is no other place to put the elevator without going through the entire home.

Chairman Katz opened the public hearing which was seconded by Mary Kivell. All in favor motion carries. There was an outpouring number of neighbors that were in agreement to grant the variances. There is no adverse impact with traffic or congestion on public roadways.

Marty Kivell made a motion to close the public hearing which was seconded by Scott Meier. All in favor motion carries.

Marty Kivell made a motion that this is a Type 2 Action for SEQRA requiring no further environmental reviews which was seconded by Scott Meier. All in favor motion carries.

Martin Kivell made a motion to approve the 21.4” variance for a total side set back. Sheldon Mayer seconded it.

Roll Call Vote:

S. Mayer – Yes in favor of the variance

S. Meier – Yes in favor and supports the applicant’s request.

M. Kivell – Yes in favor and for the interest of justice to grant.

R. Luchins – Yes whole heartedly approves

Chairman Katz – Yes approves for all the reasons stated for the goal of the applicant to seek his variance for the elevator installation.

The variance for:

Side yard & Total Side Setback Required 70’ Provided 48.6’ was approved unanimously 5 to 0. Mr. Harpaz thanked the Board for their time.

**CONTINUED PUBLIC HEARING** on the Application of **24 S. Airmont Road** for construction of a new single-family residence requiring variances for lot width 160 ft required and 125 ft provided; street frontage 100 ft. required, and 25.07 ft provided; developmental coverage 20% required and 50% provided; and maximum lot area 40,000 sq. ft. required, and 29,539 sq. ft. provided, from Article IV Use Regulations Section §210-29 and Section §210-15 of the Village of Airmont’s Zoning Code. The lot is designated as Section 55.11 Block 3 and Lot 23.2 on the Town of Ramapo Tax Map. The property is located in the R-40 zoning district and is comprised of 1.06 acres. The street address is 24 S. Airmont Road, Airmont, NY. 10901.

Applicant’s Attorney Kevin Conway recapped that they were before the Board last month and made the requested changes to the plan, non-habitable basement, two car garage and reduced the lot area variance and developmental coverage. Mr. Demitizer the applicant spoke and indicated that they are not building larger than what they are

permitted, and this is a flag lot. They need a large family home.

It was noted that when they looked at the prior site plan and it indicated a house of 3500 – 3800 sf and this is 8200sf. It was noted that the law is older than that and that particular home was never approved. Mr. Conway asked that the screen be shared so that they could discuss the site plan and the architect. The architect is present to answer any questions.

Scott Meier asked if the overall house could be reduced, and he noted it was the third request. He felt it was oversized for the lot and the area.

Marty Kivell tended to agree with Mr. Meier and indicated it was more about the surrounding area than the larger home. It's the size of the lot and more of what is surrounding it.

Mr. Demitizer noted that you can not see it. He chose a private lot which you can not see from the street and not comparing it to any other homes. On S. Airmont closer to Campbell and Church there is a ranch home a one story that is very large. Its at least 4800sf has a courtyard and three bedrooms.

Kevin Conway noted that the historical record from 2005 granted two variances. A flag lot requires that the variances be interpreted differently but it complies with the total size of the lot. He felt it was a strong argument to grandfather the flag lot and subdivision.

Dan Kraushaar inquired as to whether they couldn't reduce the size and scope of the variances. The developmental coverage relates to the size of the house. Mr. Demitizer indicated that the long driveway is counting toward his variance. He inherited the flagpole lot. The Building Inspector indicated that the developmental coverage is unavoidable because its there, its paved. The house on the lot has to be included. Kevin Conway indicated that since it cannot be eliminated, he is asking the Board to keep this in mind.

There was a review and discussion on the drainage report. Discussion on the screening. Martin Kivell made a motion to open the continued public hearing which was seconded by Scott Meier. Chairman Katz swore in Danielle Meehan – 18 Ackerman Avenue. She noted that they should not use the house on Madison Hill in the comparison of the nearby homes as it is a shul and is not a private home. The soil is another concern, should be tested along with the supply of water. The Village has a consequence for any additional run-off issues that may occur.

Marty Kivell made a motion to close the public hearing which was seconded by Scott Meier. All in favor motion carries.

Reviewed Kevin Conways letter dated 5-12-2021 along with his request to override item #1 where her indicated that the RC Planning GML is not a denial letter but a recommendation with modifications. He noted that the undersigned on behalf of the

applicant objects and would recommend that the board override such a description of the application as wither setting a undesirable land use precedent or would result in increased residential density. The Department of Planning ignores the previous historical record if this site including that I was previously granted approval in 2005 for subdivision, for lot width and street frontage as a flag lot. This application is in keeping with the prior approvals and the lot site can properly support the construction of this proposed single-family residence which is permitted as of right in the R-40 zone.

Marty Kivell made a motion to override item #1 of the RC Planning GML dated 12/4/2020 based on Mr. Conway's explanation of the override and explaining why it cannot be done and they did what they could to ameliorate their concerns. They can't come up with an alternate solution equal or better on what to recommend. Motion was seconded by Scott Meier. Roll Call vote all in favor of the override and motion carries.

Marty Kivell made a motion deeming this a Type II for SEQRA not requiring any further review. Scott Mayer seconded. Roll call vote all in favor motion carries.

Martin Kivell made a motion to approve the variances for the application for a single-family residence at 24 S. Airmont. The applicant is to file a Road Maintenance Agreement which is to be filed with the RC Clerk and supply same and proof of recording to the P & Z Secretary. He also noted that all the other items previously discussed at the prior ZBA meetings, compliance with the RC GML and other agency comments which was seconded by Robin Luchins:

Lot Width - Required 160 ft; Provided 125 ft. for a 35 ft. variance  
Street Frontage- Required 100 ft.; Provided 25.07 ft. for a 74.93 variance  
Developmental Coverage - Required 20%; Provided 50% for a 30% variance  
Lot Area – Required 40,000; Provided 29,539 for a 10,461 variance

Roll Call Vote:

Luchins – Yes in favor as it was presented fairly with valid points under the circumstances, and I don't think that there is strong evidence to the contrary.

Meier – I have been with this from beginning and have heard the public comments, seen the letters from the public and the Building Inspector, and feel that the applicants Attorney & Engineer did a great job. At this time, I feel that you have been listening but not hearing us and think that this house is way too big and would have preferred that you came back with a smaller house so at this time I vote no and decline the variances and do not agree with the application.

Kivell – Yes in favor but have appreciated a smaller house. In looking at the calculations with a smaller lot and a flag lot and the impervious square footage realizing that flag lots are a rarity I am bending toward an approval as I don't feel it would detract from the character of the neighborhood.

Mayer – Yes in favor for the reasons stated by Mr. Kivell, as I would have also liked to see it smaller and felt that the applicant worked hard to comply with the Engineer’s requests. The applicant was dealt a difficult deck and is in a catch 22.

Chairman Katz - yes in favor as the applicant is in a catch 22 and by the changing of the laws and with the strange calculations of a flagpole lot the applicant made serious attempts to comply with the requirements I vote yes.

The above variances approved 4 yes to 1 no.

Application of **Mechon L’Horyroa**, a religious corporation for variances from Article IV Section 210-8 of the Village of Airmont’s Zoning Code for a variance for maximum developmental coverage where the required bulk dimension is 3% and the proposed bulk dimension is 9% for establishment of a cemetery. The plan provides for the formation of approximately 10,200 +/- grave sites in 20 sections and provides for 48 vehicles and ancillary driving lanes and walking paths to gravesites. The property is located on the north side of Hillside Avenue +/- 1730 ft west of Saddle River Road. The lot is designated as Section 62.14 Block 2 Lot 1 on the Town of Ramapo Tax Map. The property is located in the RR-50 zoning district and is comprised of 19.23 acres. The street address is 44 Hillside Avenue Airmont, N.Y. 10952.

Paul Baum Attorney for the applicant re-presented the project. It is a 19.3-acre parcel proposing 10,200 gravesites in 20 sections with 6 groups involved including parking for 48 vehicles with circulation and a walking path. A large section of the property will be left alone. There are no proposed structures or signs. No extensive paving a very passive use. All services will take place at the synagogue and this property will be used for the gravesite only no other services. Looking to coordinate the process within 3 months. The environmental review needs to be done and to receive a variance for developmental coverage. The PB sent out the NOI and on 5/27 the PB granted SEQRA as an unlisted action. The variance they are seeking is for developmental coverage, required 3% and providing 9%.

The applicant’s attorney pointed out that the requested variance will not create an undesirable change to the character of the neighborhood. A 9% developmental coverage is significantly less than the developmental coverage requirements applicable to other uses in the RR-50 Zoning District that are permitted by right or by special permit. The variance will not have any impact as any surface water runoff will be appropriately controlled with a stormwater management plan. The granting of the variance will not adversely impact or change the character of the neighborhood or create any detriment to the neighboring properties. The plan provided for minimal disturbance for

the use. The developmental coverage is limited to the required parking spaces and ingress and egress driveways and the internal road circulation for vehicles and pedestrian walkways which are the minimum required elements needed in order to utilize the site for a cemetery. There is no other method to reduce the development coverage to avoid the need for the variance. The variance is not substantial as the coverage would have far less impact than uses permitted by right. The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. A stormwater control plan has been developed to provide for any increase in surface water runoff over the 3% permitted. Although the variance is self-created, the applicant can avoid the need for the variance by not establishing a cemetery use although the use is consistent with the zoning district and special permit requirements and will not detract from the community. The project shows that the use would contribute to overall preservation and protection of the character of the neighborhood without any impacts to the health, safety and welfare of the community and is a less intense than the many uses permitted by right. The benefit to the applicant from granting the variance significantly outweighs any detriment to the health, safety and welfare of the neighborhood.

Chairman Katz opened the continued public hearing which was seconded by Scott Meier. Many people spoke and the main concern was run-off and drainage. Paul Baum explained that there will be a stormwater management agreement and a swale put in which is part of the PB approval. They received all the agency responses within the 30day time frame. There are two GML overrides required. The ZBA reviewed the GML. Marty Kivell made a motion to close the public hearing which was seconded by Scott Mayer. All in favor motion carried.

Martin Kivell made a motion to override GML item #3 which was seconded by Scott Meier and was carried by a unanimous vote of 5 to 0. The GML stated- Since a portion of the site is located within federal wetlands, a review shall be completed by the United States Army Corps of Engineers and any required permits obtained.

The project does not disturb the wetlands or the 100 ft. buffer areas. It is located more than 200 feet from the identified regulated wetlands. No permit is required from the Army Corps of Engineers for this project. The project has been sent to the Army Corps for review, but they have not commented. In the event that the Planning Board should disagree with the variance and the GML ZBA override that they have the opportunity to express the option to the contrary. Martin Kivell made a motion to override GML item #4 which was seconded by Scott Meier and was carried by a unanimous vote of 5 to 0. GML #4 stated -To help reduce the extent of the development coverage variance required for the site, pervious pavers and/or other porous materials must be used whenever possible.

The Village's code does not permit the use of pervious pavers or other porous materials to reduce the maximum coverage and would not include it towards the impervious coverage calculation.

Martin Kivell made a motion to approve the variance of 9% for developmental coverage was and was seconded by Scott Meier.

Roll Call Vote:

S. Mayer – Approve for all the reasons Mr. Baum stated and the 9% variance is not a large variance compared to other variances for other developments that would be allowed to be built on this site.

R. Berger – Yes feel what they are asking for is appropriate. Feel for the neighboring people with concerns in regard to buffers and know that will be handled with the Planning Board and the applicant’s attorney mentioned they would be meeting with the neighbors in regard to the screening and all is being addressed appropriately. I approve.

M. Kivell – Yes given that RC Government has given approval for this, and it is permitted in the zone and am confident that PB will do it’s best to accommodate and stipulate the terrain be properly screened to residential housing. Also because the 9% request is a minimal request compared to what could be built here.

S.Meier– Vote yes a 3% to a 9% as Marty Kivell pointed out and I have the confidence in the Planning Board and taking the neighbors’ concerns and what could be built there this is appropriate and vote yes,

Chairman Katz – Vote yes for the issue of a ZBA variance of 3% to 9% as it is not significant, and all other issues will be dealt with by the Planning Board as discussed.

Motion carries unanimously 5 to 0. Variance approved.

**CONTINUED PUBLIC HEARING** -Application of **V3 Real Estate** for approval to add to a small drive-thru to the existing Dunkin Donuts and a small addition to the rear of the existing building, with a drive-up window, a walk-in box, additional signs for the drive-up service, and additional plantings and fencing. The application is considered a fast-food restaurant which will require a special permit and will require variances from Article III Section 210-21-E (11); Article IV Section 210-28 attachment 11 Table 8; Article VI Section 210-56- A (19, 21 & 25) for the following variances: Minimum Lot Area, Lot Width, Front Setback (N DeBaun), Front Yard (N. Airmont), Front Yard (N. DeBaun), Side Setback, Total Side Setback, Side Yard, Rear Setback, Rear Yard, Developmental Coverage, Buffer from Residential Areas, & Parking Spaces (Parking Waiver). The property is located on the west side of North Airmont Road at the intersection of North DeBaun Avenue. The lot is designated as Section 55.07 Block 2 Lot 8 on the Town of Ramapo Tax Map. The property is located in the VC zoning district and is comprised of .74 acres. The street address is 14 N. Airmont Road Airmont N.Y. 10901.

Due to the late time in the evening Marty Kivell made a motion to continue the Continued Public Hearing to the July 8, 2021, ZBA Meeting either via zoom as per the executive order or in person at Village Hall 251 Cherry Lane if the executive order is no longer in effect. Sheldon Mayer seconded the motion. All in favor motion carried.

Chairman Katz made a motion to adjourn the meeting at 11:30pm. Scott Meier seconded it. All in favor motion carries. Meeting adjourned.