

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, September 23, 2021**

MEMBERS PRESENT: Arthur Katz, Chairman
Martin Kivell
Scott Meier

MEMBERS ABSENT: Richard Berger
Sheldon Mayer
Robin Luchins
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 8:00 pm by Chairman Katz which was followed by the pledge of allegiance and roll call. It was noted that two ZBA Members and two Ad Hoc Members could not attend the additional ZBA Meeting. Minutes will be reviewed at the next ZBA Meeting as only two of the three members this evening were present at the September 9, 2021 ZBA Meeting to approve them. Chairman Katz read the public hearing meeting notice as follows:

Application of 84 N. Lorna Road owner Yoel Lebowitz, for a variance from Article 5 Section 210-15 Table2: R-40 of Airmont's Zoning Code for Total Side Set Back - required 70 ft. provided 60 ft., for a single-family residence to build an addition including a new garage and dining room on the first floor and a new master suite on the second floor. The property is located on the east side of N. Lorna Lane approximately 1,020 feet north of Seth Lane. The lot is designated as Section 55.16 Block 2 Lot 2.5 on the Town of Ramapo Tax Map. The property is located in the R--40 Zoning District and is comprised of 1.33 acres. The street address is 84 N. Lorna Lane Suffern, NY 10901.

Applicants Attorney Kevin Conway noted that the applicant is the existing owner and would like an addition for a new garage as opposed to the existing located in the same location, a dining room on the first floor and a new master suite on the second floor. The lot is rather large 59,313 SF and is the R-40 zoning district which requires 40,000 SF, almost 20,000 sf larger than otherwise required. Acreage is 1.33 acres. They propose placement of the garage to the side which is the only place they can put it and require only one variance. The maximum total side setback required is 70 ft and they only have 60 ft so they are requiring a variance of 10 ft. They do not need the usual variances of minimum lot width or lot area, are at the following: front side setback 109 ft, front yard 109 ft., side yard 10ft, front side setback 25ft, street frontage 197 ft., front yard, are within maximum height or and for developmental coverage as they are well

within the requirements which is usually the biggest variance required. The existing house is 3,670 SF and with the addition it will go to 8,755 SF.

Location of the home is remote as there is an conservatory easement on one side of the property and an emergency access road on the other side of property. Property is quite removed. This addition does not pose any negative impacts as it will increase property values and will benefit the surrounding neighbors. Will not create a negative precedent. One garage is replacing another garage.

The applicants Engineer Tony Celentano the side entry will be a garage addition will be a frontage entry garage. There is an O&R easement with a sewer and conservation easement giving only one option for the location of the home on the parcel. The side set back is the only variance needed as they are short 10 feet but do not need any other variances.

Dan Kraushaar asked the Engineer if he was familiar with the High Voltage Proximity Act which prevents any construction of a structure/s within an O&R Utility Easement. Dan stated he wanted to ensure if any structure is within the proposed additional. Tony Celentano stated that there is no structure within 150 ft. It was suggested and agreed to put a map note on the drawings as such indicating so.

Marty Kivell questioned the square footage of the other homes that exist on N. Lorna since this would be increasing to 8,755 SF with the proposed addition. He noted that most of the homes are approximately 5,000 SF and this addition is quite larger. He noted that the Building Inspector's denial letter indicated they were adding a garage, a kitchen, dining room, master suite, etc. The height elevations don't indicate the total height appears to be 38 ft vs. the code of 35 ft. He asked the Building Inspector what his thoughts were. The Building Inspector commented that the drawings are hand drawn and not drawn to scale. He had issues on the questions as it is hard to ascertain to the height. By taking measurements he could verify the height but the drawings are worthless. They need to be done correctly, to scale, stamped, sealed and certified drawings. He also noted that they are converted part of the garage so that there are two kitchens.

Marty Kivell asked the applicants attorney if he did an analysis on the surrounding neighbors home size. Kevin Conway stated he did not do an analysis on the average size of the surrounding homes. He noted that he was looking at Google Earth while on the meeting and they appear to be 3500 SF – 4,000 + SF perhaps some at 5,000 SF.

Dan Kraushaar requested that the narrative be updated to reflect that the existing garage is going to be converted to two kitchens and that the square footage will go from 3,670 SF to 8755 SF. Kevin Conway agreed to do so and submit.

Scott Meier asked if the plans are not drawn to scale accurately is the height taken care of? The Building Inspector advised he was able to calculate it manually by measuring and that it is. He noted that the existing garage was to become a kitchen yet the plans say to be a kitchen existing. Dan Kraushaar noted that the application needs to be updated as well to reflect this not just the narrative. There was a question on the family size and the applicant's spouse Rachel Ezra

indicated that there are three children and two adults but need to increase the size of dining room etc. as both she and her husband come from extremely large families each of them is one of 15 & 16 children so they have a lot of family that come to visit. She clarified that they are making the kitchen larger and need to take area from the garage. She stated that their dining room is very small and by putting the new dining room behind the new garage it will give them more room. They have three bedrooms upstairs and the master suite will provide more room.

The P& Z Secretary read into the record the following: RC Sewer letter dated 8/26/201, RC Environmental Health dated 8/23/2021, TOR Public Works letter dated 9-8-2021 and noted that no GML was required for this application.

At 8:10pm Marty Kivell opened the public hearing which was seconded by Scott Meier. All in favor motion carried.

Melanie Phillips – 217 Cherry Lane was sworn in and state that she had questions on the kitchen and dining room and mentioned she had concerns with the sewer system with the number of people that could be in the home. She asked if there would be any future hearings on the matter. It was noted that it is dependent upon the public hearing either being continued or closed.

Marty Kivell indicated that the number of people that are in someone else's home at any given time is not for the board to say or determine that is a personal. They only issue the ZBA is charged with is determining the variance for total side setback.

Scott Meier inquired that once they vote will the the proper drawings to scale be submitted before a permit is issued. Kevin Conway confirmed that the blueprints will be confirmed whether or not that they are accurate before anything is submitted to the building department.

Marty Kivell explained that based on the size of the property there is no FAR variance request the box is not changing, the question is the configuration changing? The room size doesn't matter it's the addition and the variance that is being sought.

Danielle Meehan – 18 Ackerman Avenue sworn in and noted that to add to Melanie's comments that there have been a lot of sewer spills on Lorna Lane and she had concerns that it could be close to wetlands as a bigger house provides a bigger use of facilities.

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

Dan Kraushaar confirmed that this application is a Type II Action requiring not further review. Martin Kivell made a motion that in terms of SEQRA this application for 84 N. Lorna is declared as a Type II action and does not require any further review. The motion was seconded by Scott Meier. Roll call vote on the SEQRA:

Member Kivell - Aye
Member Meier- Aye
Chairperson Katz - Aye

Motion passes on the SEQRA 3 to 0.

Items that the applicant needs to take care of are: update application; update narrative to reflect the use of the replacement of the garage; update application page to reflect that Celentano is the Engineer not Rachel Barese, Ultimately application changes and the scaled accurate drawings so that the Building Inspector has something that can be relied on for a Building Permit Application.

Kevin Conway noted that the applicant has no objection contingent on all of these items being completed so not to have them return for an additional meeting. Wetlands are not an issue as the applicant's Engineer gave testimony that the proposed addition will be at least 100 ft away as per Village Code. Arthur Katz asked if it is also far enough away from the O&R Easement, Tony Celentano confirmed that as well.

Kevin Conway agreed to proceed with the three conditions as part of the approval – update narrative, application page and have signed & sealed, accurate to scale drawings to be submitted before putting in for a Building Permit.

Martin Kivell made a motion to the application for 84 N. Lorna Road for Yoel Lebowitz for a variance from Article 5 Section 210-15 Table 2: R-40 of Airmont's Zoning Code for Total Side Set Back - required 70 ft. provided 60 ft. for the residence to put in an addition for a master suite, a dining room, a second kitchen, subject to the above three conditions as stated.

Based on plans from Anthony Celentano, last revised 8/4/2021 and that architectural drawings from Kevin Cieslukowski, PE dated 3/10/2021 will be updated, drawn to scale, sealed and certified and revised as previously noted. Scott Meier seconded it.

Roll call vote:

Member Kivell – Yes, with respect to size the surroundings are similar style for two story homes and this is an oversized lot, it is on a larger piece of property. He noted that what actions and conduct of the number of people visiting the residence is private and for the privacy of the owner it says something about liberty. Private existence is not for the ZBA to verify but given the extent of the variance he votes yes as it is not a great request in of itself.

Member Meier -Listened to the citizens and homeowners. Vote yes although it is kind of large and hope that Kevin comes back with homes in the future that are less than 8,000 sf it is rather large.

Chairman Katz- Yes for the variance. It is a large house but on a large lot. No one has issued any complaints from the neighbors or surrounding areas therefore I agree and vote yes.

Motion carries 3 to 0 variance approved and granted.

Application of **Mayer A. Kleinman** the owner of a one-family dwelling for an appeal on the determination of the Building Inspector to plan to build a structure by means of a roof on poles or breezeway connecting the proposed accessory garage and gym to the main house. The property is located on the east side of Besen Parkway +/- 1050 ft south of Kenneth Street. The lot is designated as Section 56.14 Block 2 Lot 37 on the Town of Ramapo Tax Map. The property is located in the RR- 25 Zoning District and is comprised of .65 acres. The street address is 39 Besen Parkway Airmont, N.Y. 10952.

The applicant's attorney Joseph Churgin and the applicants engineer Anthony Celentano are here seeking an approval on the Building Inspector's decision on a breezeway that is 40 ft. long and 5 ft wide connecting to serve as a structure or a house and accessory structure. He noted that they are appearing within the 30 days of Building Inspector's determination Section 91-9 code Accessory to Main Building on the lots.

The applicant is seeking to create a breezeway roof that will connect the two buildings. The debate is over the word "substantial" as it is applied. The code does not have a definite substantial definition. Joe Churgin noted he went to Blacks Law dictionary to seek how it would apply.

Joe Churgin noted that he looked around at other municipalities and several other – eight applications have a similar connection smaller to the two here before the ZBA. There were two in the Town of Ramapo, two in Stony Point, one in Haverstraw, one in Spring Valley and one in Wesley Hills. Tony Celentano noted that he found a second one in Wesley Hills that has the same exact definition of a substantial connection. Tony noted that this is how it's determined in other places.

Chairman Katz swore in Tony Celentano 31 Roslyn Road Thiells, NY 10987. Chairman Katz inquired what are the advantages of one structure vs. two structures. Tony explained that sometime the separation is too small and certain accessory structures have different requirements than the principal structure. Sometimes the accessory structure doesn't meet the accessory structure requirement and if the building is connected it can make it a principal building. He also noted that sometimes certain accessories have different requirements than a principal building. For example, in the Town of Ramapo if they had two buildings on a lot and don't allow two buildings on a lot they would use a breezeway as a connection to make it one building. Airmont's code does not have this provision and does not allow for this. In this case the size exceeds the requirements of the code and doesn't reflect this option. The only question is an appeal or interpretation of the drawings & codes.

Building Inspector Lou Zummo read into the record his letter dated 9/23/2021. He went through the submission from Joe Churgin on the other municipalities that have a definition in their code and commented on each of the examples provided which did not provide all the relevant information such as architectural's to see if they were even applicable. He also used Black Laws dictionary for how it would apply. Bottom line is the other municipalities have different rules in their own municipality zoning code.

Dan Kraushaar indicated in reviewing the code of the Village of Airmont it is not totally unrelated to municipalities with regards to a challenge to the Building Inspectors Determination there is no provision for applying a hearing or comment. In essence the Building Inspector makes a determination, and the applicant is free to challenge it.

No public hearing is required as all previous building inspector determinations have been handled exactly the same as this evening. A motion to uphold or dispute in either instance offer your opinion as to why you support or disagree.

Martin Kivell made a motion to support the Building Inspector's determination of relevant building code with respect to definition and desire of breezeway as portions as accessory or freestanding

Scott Meier seconded it.

It was noted that both Joe Churgin and Lou Zummo went to Black's Law dictionary in support of their decision and cited different definitions.

The P&Z Secretary called the roll:

Member Kivell – supports the Building Inspectors determination. He noted that what was presented as desired by the applicant is substantial in nature. Obvious with respect to Airmont's Village Code with Accessory or freestanding not substantial at all, not with a breezeway connection therefore not making it an accessory.

Member Meier – stated he felt that Joe Churgin and Tony Celentano did their homework as well as Lou Zummo as evident in his letter. He would like to support the Building Inspector's determination and definition for Airmont's Zoning Code.

Chairman Katz – vote in support of the Building Inspector's determination as he is knowledgeable about it and also have to go by our Zoning Code not any other municipalities or jurisdiction that may or may not have it applicable in their own Code. A 40-50 ft breezeway support to the Building Inspector of what is required.

3 to 0 in support of the Building Inspector's determination.

It was requested that the applicant and the architect meet to discuss how to make this work for the applicant. Arthur Katz made a motion to adjourn which was seconded by Scott Meier. All in favor meeting adjourned.