

**Village of Airmont  
Zoning Board of Appeals  
Village Hall  
Thursday, May 9, 2019**

MEMBERS PRESENT: MARTY KIVELL, CHAIRMAN  
ARTHUR KATZ  
CHARLES PICARELLI  
LAURIE DIFRANCESCO  
SCOTT MEIER  
ROBIN LUCHINS, AD HOC

MEMBERS ABSENT: MATT RYAN, 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 Kivell which was followed by the pledge of allegiance and roll call. Chairman Kivell welcomed the new ad hoc member Robin Luchins to the ZBA. He then read into the record the public hearing notice for the application of **Berkovic Site Plan** for Lot Area, Lot Width, Total Side Setback, Street Frontage and Developmental Coverage variances from Article IV, Section 210-28, Attachment 13, Table 10 to permit construction, maintenance and use of a commercial flex-space consisting of 2,500sf of office space and 8,480sf of warehouse/storage with associated facilities. The property is located on the east side of Spook Rock Road approximately 400 feet North of Route 59. The lot is designated as Section 56.09 Block 2 and Lot 3 on the Town of Ramapo Tax Map. The property is located in the LO zoning district and is comprised of .89 acres. The street address is 330 Spook Rock Road, Suffern, NY.

Larry Marshall Mercurio Toli and Norton, was sworn in and is the applicant's engineer. He explained that prior variances were sought and received on 11/23/15 but have expired and represented them back in 2015. There are no significant alterations to the site plan just minor adjustments made by the PB and County regarding the entrance but nothing significant. Majority of the variances being requested are based on a substandard lot and with the changes in the zoning code there is a new variance being requested for developmental coverage which was previously under a 70% maximum and in 2015 had pervious pavement for storm water. At that time the zoning code permitted and recognized the pervious surface and now with the code change it is over the 70% maximum coverage therefore they are seeking a 5.8% developmental coverage variance on the parcel.

All other items on the plan are the same and the variances are still necessary and all approvals were received with the exception of the entrance onto Spook Rock Road. There were applicant hardships and personnel changes in the County which has prolonged the process. The approval lapsed and they have reapplied for site plan approval. Mary Kivell asked about

the previous easement that was required. An easement was provided and recorded and is still active. The PB also asked for it to be re-stated and re-filed to ensure that it is still active and that the owners hadn't changed which it did not. The owner is present at the meeting.

Laurie DiFrancesco asked if they knew the number of units they plan to have. Chairman Kivell swore in Abe Berkovic, applicant from 1244 50<sup>th</sup> Street Brooklyn, NY. Abe advised that at this time he has no tenant speculation. The capability is that is to be divided into 3 maybe 4 businesses which is up to the Planning Board.

Laurie DiFrancesco asked the building inspector if there is a limitation to the number of spaces. Lou said that it is not in the current zoning so it has to be previously stated in the plans or stated in plans going forward to that it is clear. Laurie asked to explain the development coverage change that had been 70% and now 78% coverage. Abe Berkovic explained that the footprint has not changed it had to do with the black top only and the change in the zoning code. Laurie asked Lou Zummo to explain what this will do to drainage. Lou explained that they would need some sort of drainage system for the run off which would be reviewed by the Village Engineer.

Larry Marshall explained that a full analysis had been done, pre, post and after construction. He advised that they did a full drainage analysis reviewed and accepted by the Village Engineer. They provided water storage areas and ensured that they are not increasing any runoff, handle the peak flow and it is a zero net run off analysis. This was designed back in 2015 and was approved by the Village Engineer. The zoning classification doesn't change any drainage. The pervious pavement remains although it counts toward impervious pavement which is a change in classification only. The footprint of the building is completely the same. The PB reinstated SEQRA and has taken all of this into account.

Chairman Kivell asked the applicant to discuss the separation and screening with the school. The plan is consistent with a proposed fence between the two facilities, a 6 ft. high privacy fence running the full length of the Goddard school always back to the school property supplemented with white pine trees on Goddard School side of fence. Limited amount of frontage on Spook Rock Road on the southerly portion of the property and is designed an entrance to be as far from the exiting entrance as it can be. All proposed parking will be located in the front and to deal with the drainage on the front portion of the property they have an underground storage facility and a drainage will go onto Spook Rock Road.

Chairman Kivell asked them to confirm the size of trucks entering and exiting the site. Two truck turning analysis's were completed with the Board and the County and nothing larger than a WD-62 which is 48ft trailer is the largest truck for this property. The trailer can be accommodated by the facility turning in/out as demonstrated in the truck turning analysis and requirement of the Fire Department.

Arthur Katz asked if the privacy fence is adequate to keep the children from wandering onto your area and Larry Marshall noted that it was. He indicated that in order to go to from Goddard School you have to walk through the Goddard School storm water basin and its is not an easily navigated area and they a have fence around it, then go out into the right away and

then all away around the proposed fencing. It is not anything that is likely to occur. Laurie also noted that they would be outside with an aide due to the age of the children.

The following letters were read into the record:

RC Planning GML letter dated 5/9/19

Email from the NY State Thruway dated 4/22/19 from Lizzy Philip to the P&Z Secretary

RC Health letter dated 5/7/19

RC Highway letter dated 4/1/19

RC Sewer District #1 dated 4/15/19

Dan Kraushaar noted that most, if not all comments relate to site plan issues. If this Board is to act, make it subject to compliance of all comments and should be listed as conditions and will have to be addressed and directed by the Planning Board. The GML talks about site plan but is addressed to the ZBA. If the applicant proves they are entitled to the variances the next step is to go to PB where the comments follow, need to be addressed and need to be solved there. Abe Berkovic noted that the GML to the PB from 3/28/19 had all the same items it noted for the ZBA as well.

Chairman Kivell opened the public hearing at 8:43pm. Laurie DiFrancesco seconded it. All in favor, motion carries. Chairman Kivell swore in Frank Scataro Upper Saddle River, NJ. Current owner of the Goddard School. Concerns were safety of children since the type of business is vague. Wants to ensure that there are not any chemicals, hazardous materials or anything that would put health at risk short or long term; has 13 classrooms and they each go outside for half an hour each day and he is concerned about the noise and traffic levels; what types of employees and what types of background checks will be conducted since they will work so close to a school; at what point are the number of variances bad and why do they even need to create them; concerned about the traffic light with a warehouse complex across the street concerned with the access; concerned about the aesthetics with new construction, the two story building and a 6 ft. fence; wanted to know who maintains the trees on their side of the Goddard School that they will be planting and who gives the permission on their property; concerned with the flooding and drainage recourse of flooding the parking lot. What is the recourse and how will this impact business long term; and is there a restoration plan beyond the 6 ft. fencing plan? Chairman Kivell advised that many of his questions were the purview of the Planning Board. He advised that that zoning code lists what can or cannot be stored inside or outside; there is no manufacturing and the Planning Board can put limitations or conditions of approval on the site plan. Also asked about noise and debris during construction how is that handled.

Arthur Katz noted that there are a number of variances that have been requested. Dan indicated that need to provide a showing by NY State Law, there are a different set of circumstances to go by then Planning Board. The PB goes by use of what is in the zoning code. He also noted that the Fire Inspector also has a say on what can or can not go into the building.

Steven Klein – sworn in 73 Regina Rd. Airmont, NY spoke about the undesirable change or

detriment to the area.. Concerned with the Spook Rock corridor development and the traffic impact along with drainage and the environment. He discussed the need for no left hand turning at the traffic light. Robin Luchins asked if he lived in the area. Frank Scataro also noted they they may need to look at their disaster recovery plan due to the privacy fencing. Laurie DiFrancesco asked the distance between the two driveways. Larry noted that it is on page 4 of the plan. The distance shown on the plans is approximately double of what the proposed building will be off the proposed easement line. Larry explained that both sides are pushed as far away from the school and Thruway as possible. The side yard is from the proposed building to the property line. There is a 20 ft. easement area not included which shows 35 ft. from school.

Laurie DiFrancesco asked if the maximum capacity of the number of companies and units can be better defined. There is a concern on the amount of traffic and storage that could be affected by the number of units. Dan Kraushaar explained that the ZBA could approve this, but that the ZBA could make it a request of the PB and state for the record in their voting if they are concerned about the maximum number of users when it comes to site plan review. You can strongly recommend that they analyze the maximum number of occupants at the space as they ultimately determine it. It is ok for ZBA to point PB concerns but they can't condition it.

Charlie Picarelli pointed out that based on the velocity of roadway in the back, the proximity of the drainage area that if you introduce any water into the system it will go to the lowest point. All drainage has to be taken care of in a closed system. Larry Marshall, applicant's engineers explained that it has been designed with an underground storage facility and it is referenced in the storm water basin. If they did a separate for some reason there is a separate open dry basin and it would be similar to Goddard's basin on their facility. Their basin is approximately 500 ft. (499 is sea level). The base of our site is at 495ft. so they are actually at a higher elevation then they are. This is a sealed system.

Larry Marshall discussed the variances and that they are essentially the same as what was previously approved. They are now seeking 5 variances, 4 of them are due to the fact that the property does not meet the standards of a pre-existing non-conforming lot. These 4 variances are for lot area, lot width, total side setback and street frontage. They would be required whether you put a farm stand in or put in an 8,000 sq. ft building regardless. The only other variance as we discussed is the developmental coverage due to the change in the zoning code. Laurie DiFrancesco asked if there is a way to utilize the property with a smaller building possibly less threatening to the community. The applicant noted that the same variances would be required. Lot width, lot area and street frontage are basic requirements required in order to use the property. Developmental coverage and total side setback has to due with the size of the building. Laurie is asking if there is any way to minimize these variances. Her point is that the variance would not be as great of the building was made smaller for developmental coverage and total side setback.

Arthur Katz made a motion to close the public hearing at 9:31 pm. Scott Meier seconded it. All in favor motion carries. SEQRA for the record was re-instated at that the last PB Meeting the applicant attended.

Laurie DiFrancesco made a motion to approve the variances previously granted for lot area, lot width, total side setback and street frontage subject to all agency requirements. Recommend that the PB review the total maximum amount of occupants that can occupy based on the limitations of the size and business entities and in regard to traffic flow take into consideration the school and the children. PB take into consideration that the property next door is occupied by children and that certain Arthur Katz seconded the motion.

Roll Call Vote:

Member DiFrancesco – yes for all the reasons she stated in her motion

Member Picarelli – yes because of the approvals required due to the size of the lot and where it is located in order to utilize for construction.

Member Meier – yes, although he was not here in 2015 when it was previously approved, as long as the conditions and recommendations are adhered to.

Member Katz- yes for reasons already stated to the PB.

Chairman Kivell- yes, for all the previous reasons provided and that these were approved in the past. Would like to add to the record that the applicant return to PB for its a revised site plan approval.

Motion 5 to 0. All in favor.

Laurie DiFrancesco made a motion to approve for developmental coverage subject to storm water, updated report filed with PB indicating the proposed use of coverage will not affect the neighboring properties. Marty Kivell asked that be attached with original motion and produce a zero net run-off and in peak flow. Arthur Katz seconded the motion.

Roll Call Vote:

Member DiFrancesco – Yes

Member Picarelli – Yes

Member Katz – Yes

Member Meier – Yes

Chairman Kivell – Yes

Motion 5 to 0. Variances approved.

New Business – discussion on next months possible submission. Also a discussion of moving the meetings to 7:30pm which will not work for everyone so the meetings stay at 8:00pm.

Scott Meier made a motion to adjourn the meeting. Chairman Kivell seconded it. All in favor. Meeting adjourned at 9:47pm.