

ZONING BOARD OF APPEALS
VILLAGE OF WESLEY HILLS

NARRATIVE SUMMARY

18 ROVEN ROAD
Tax Lot 41.06-1-38

Prepared by: Barnett Brodie

This is an application for the demolition and replacement of an existing house at 18 Roven Road (“plot”), which is one of the nine lots of the J.C. Berd Realty Cluster Subdivision (“Berd Cluster Subdivision”). The applicants (Mrs. Elana Motechin) wish to demolish the existing building and build a new two and a half story home for them and their six children. The applicants also wish to add hardscape and a swimming pool. Because of the undersized nature of the lot (it has a deviated set of density requirements, as explained below), its pie/wedge shape, the depth of the Village of Wesley Hills (“Village”) sanitary sewer main within Roven Road, and the plot topography relative to the street, 4 variances will be required: (1) impervious surface ratio; (2) building coverage; (3) building height (feet); and (4) the accessory structure distance to the side yard.

The precise dimensions of the new home are shown on the plot plan submitted herewith. The original plot plan was submitted to the Village Engineer for review. The application for variances is based on the Village Engineer’s review and comment.¹

The plot was created as part of an average density cluster subdivision, the Berd Cluster Subdivision that was approved on July 6, 1973 and filed on the Town of Ramapo land records on December 21, 1973. (The Village was not incorporated until 1982. The entire Berd Cluster Subdivision is now located in the Village in the R-50 District.) It is therefore a legal non-complying bulk. The subdivision was approved and developed as a cluster subdivision because 40% of the land was donated to the Village in 1973. Upon information and belief, that donated and preserved land is known as 91 Willow Tree Road.

The plot is a pie/wedge-shaped lot on the North side of Roven Road, which ends at a cul-de-sac to the Southeast of the plot. The plot has an area of 25,884 sq. ft. It is improved by a two-story dwelling. The site is in an R-50 zone, which generally requires a minimum lot size of 50,000 sq.

¹ The applicants’ position is that they are not required to obtain a variance for the above listed building requirements because the plot is part of the Berd Cluster Subdivision and there have not been any zoning changes to the subdivision, which is the only manner in which the density requirements could be changed. However, applicants understand the Village’s position and wish to obtain the necessary approvals in the most expeditious manner so they may construct their future residence. Accordingly, applicants submit this narrative in support of their application for variances.

ft. or 40,000 sq. ft. for average density subdivisions. At only 25,884 sq. ft., the plot is well-undersized for that zone.

By virtue of the plot being part of the Berd Cluster Subdivision, it was developed in connection with the donation of common open space that benefits the residents and community at large. See *Kamhi v. Plan. Bd. of Town of Yorktown*, 454 N.Y.S.2d 875, 887 (N.Y. App. Div. 2d Dept. 1982), *rev'd*, 452 N.E.2d 1193 (N.Y. 1983) (internal citations omitted). The donated land has been preserved for its natural and scenic qualities for everyone in the Village to enjoy. The very essence of the plot's existence has been to provide a benefit to other properties and their homeowners.

[T]he essence and concept of cluster development under section 281 is that common open space must be set aside "to preserve the natural and scenic qualities of open lands." By clustering the dwellings, the remaining portion of the tract is available for such purposes without altering existing density requirements of the zoning ordinance. Unlike subdivision approval under sections 277 and 278, the tract itself must provide such common open space as a condition of clustering approval By drafting the statute to mandate conditions "on . . . ownership, use, and maintenance", the Legislature was careful to insert precise terminology designed primarily to address the problems which have arisen in cluster developments. Section 281, therefore, reflects a legislative judgment that such conditions will benefit both the residents thereof, and the community at large, leaving to the planning board the responsibility of balancing the public and private interests involved in the preservation of the common open space.

Kamhi v. Plan. Bd. Of Town of Yorktown, 454 N.Y.S.2d 875, 886 (N.Y. App. Div. 2d Dept. 1982), *rev'd*, 452 N.E.2d 1193 (N.Y. 1983).

In exchange for J.C. Berd Realty's donation of 4.468 acres of land (approximately 40% of the subdivision) to the Town of Ramapo in 1973 for use as a local park, each parcel of property within the Berd Cluster Subdivision, including the plot, was assigned the following density requirements:

Minimum Lot Area:	25,000 sq. ft.
Minimum Lot Width:	125 feet
Minimum Front Yard:	35 feet
Minimum Side Yard:	20 feet, Total 50 feet
Minimum Rear Yard:	35 feet

No other zoning requirements were assigned to the plot. In accordance with the above deviated density requirements, the plot's lot area is 25,302 sq. ft. As stated above, the plot is approximately 15,000 sq. ft. smaller than other average density subdivision lots in the R-50 zone

and one half of all other lots in the R-50 zone, making current zoning specifications nearly impossible to meet. Accordingly, variances are required.

Criteria for Variance

In deciding to grant an area variance, a board of appeals “shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.” Town L. § 267-b (3)(b); Village L. § 7-712-b.3(b). The board must also consider the following:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

N.Y. Town Law § 267-b (McKinney).

Reasons why each variance should be granted are set forth in detail below. Each of the above criteria will be discussed for each variance.

Variance Nos. 1 and 2– Impervious Surface Ratio and Maximum Building Coverage

A variance should be granted for the impervious surface ratio and maximum building coverage because, as explained above, the plot is part of the Berd Cluster Subdivision, in which 40% of the subdivision was donated to the Village to be preserved as a park. This directly impacted the size of the plot. It is substantially smaller than other plots in the R-50 zone. The R-50 average density subdivision zone requirements are based on lots that are at least 40,000 sq. ft.

The impervious surfaces of the proposed plans consist of a modest driveway leading to a two-car garage, a small front entrance terrace and walkway, a sunken side property terrace, a backyard terrace, House and a pool. The impervious surface ratio of the proposed plan is .43 of the 25,884 sq. ft. lot and the maximum impervious surface ratio for homes in average density subdivisions in the R-50 zone is 0.25 for 40,000 sq. ft. lots.

The building coverage for the proposed home is .34 of the 25,884 sq. ft. lot and the maximum building coverage for 40,000 sq. ft. lots the R-50 zone (in average density subdivisions) is .10.

Allowing the variance to the impervious surface area and maximum building coverage will not create an undesirable change in the character of the neighborhood. Instead, it will permit the plot to resemble other nearby plots in the same subdivision and zone. As with other areas of the Village, the Roven Road area is undergoing a change. Houses built in the 1970s and 1980s are being replaced with much larger homes. Many of these new homes also have swimming pools, terraces, and other outdoor amenities. A portion of the proposed impervious surface area of the plot is for a swimming pool and terraces. As such, the variance for impervious surface ratio will permit the plot to resemble other nearby plots.

No undesirable change will be created, and it will not be a detriment to other properties. Permitting applicants to include all desired impervious surfaces will increase the value of nearby properties. Also, this plot is significantly smaller in size than all other Zone R-50 properties (which have minimum lot areas of 40,000 and 50,000 sq. ft.) because 40% of the entire subdivision was donated to the Village to be permanently preserved and undeveloped. Had the land not been donated, the plot could have been at least 50,000 sq. ft. and the proposed home would sufficiently comply with the .10 maximum building coverage.

The benefit of an increased impervious surface and building coverage ratios cannot be achieved by some method, feasible for applicants to pursue, other than an area variances. To build a home comparable in size to other nearby homes, while also permitting applicants to construct a beautiful outdoor space for their family to enjoy, applicants require these variances. The applicants are limited by the number of stories they may build. Accordingly, the only way to achieve a home that is comparable to other nearby homes is to cover more ground, both with the building and other outdoor amenities.

The requested area variances are not substantial considering the amount of land donated to the Town of Ramapo to be permanently preserved and the size of the plot, which was a direct result of the land donation. If the impervious surfaces were being built on 40,000 sq. ft., it would result in an impervious surface ratio of .22, which is only .12 greater than the minimum. If they were built on a 50,000 sq. ft. lot (which are also in the R-50 zone), it would result in an impervious surface ratio of .17. Also, the actual building coverage is only .19. However, because the rear patio will be elevated, it is included in the building coverage calculation.

This Board of Appeals regularly grants variances for impervious surface ratios above the allowable ratios. *See Exhibit 1* (on May 15, 2024, applicant was permitted an impervious surface ratio of **.30**); *see Exhibit 2* (on February 15, 2023, applicant, owner of a 15,000 sq. ft. lot, was permitted an impervious surface ratio of **.28**); *see Exhibit 3* (on February 17, 2021, applicant was permitted an impervious surface ratio of **.316** and another applicant was permitted a ratio of **.24**); *see Exhibit 4* (on November 18, 2020, applicant was permitted an impervious surface ratio of **.335** and another applicant was permitted a ratio of **.251**); *see Exhibit 5* (on September 16, 2020, applicant was permitted an impervious surface ratio of **.32** and other applicants were permitted ratios of **.28** and **.26** respectively); *see Exhibit 6* (on April 18, 2018, applicant was permitted an impervious surface ratio of **.36** and another applicant was permitted a ratio of **.282**).

The Board of Appeals also regularly grants variances for maximum building coverage ratios above the allowable ratios. *See Exhibit 1* (on May 15, 2024, applicant, owner of undersized 24,914 sq. ft. lot, was permitted a building coverage ratio of **.125** and another applicant was permitted a building coverage ratio of **.122**); *see Exhibit 7* (on September 20, 2023, applicant was permitted a building coverage ratio of **.13** and another applicant was permitted a ratio of **.132**); *see Exhibit 2* (on February 15, 2023, applicant, owner of 15,000 sq. ft. lot, was permitted a building coverage ratio of **.21**); *see Exhibit 3* (on February 17, 2021, applicant was permitted a building coverage ratio of **.15** and another was permitted a ratio of **.1293**); *see Exhibit 4* (on November 18, 2020, applicant was permitted a building coverage ratio of **.231**); *see Exhibit 5* (on September 16, 2020, applicant was permitted a building coverage ratio of **.135**); *see Exhibit 6* (on April 18, 2018, applicant was permitted a building coverage ratio of **.18**).

The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. As explained above, the proposed variance is requested to improve the property, increase nearby home values, and maintain the desirability of the neighborhood. Moreover, 40% of the entire subdivision land was previously donated to the Village to be preserved as a park and used by the community. It remains preserved and has had a positive impact on the environmental conditions of the neighborhood.

The alleged difficulty in complying with the current impervious surface and building coverage ratios was not self-created but was the result of a significant donation to the Town of Ramapo by J.C. Berd in 1973.

Variance No. 3– Building Height (Feet)

The applicants seek to build a home that is 28.9 feet high, a mere 3.9 feet taller than the R-50 maximum building height of 25 feet. A variance should be granted for the building height in feet because the property is sunken in - the existing grade at the front right (East) building corner is about 5 feet below the road elevation and the left corner is about 3 feet below the road at that location.. The variance is needed so that the applicants can construct their home with gravity sewer connections – ensuring that the sewer and sewage travels down to the street to avoid the installation of a sewage pipe pump and to avoid a potential pump issue and backup into the home. The proposed home will be elevated to ensure that the sewage pipe runs downstream to the street. Moreover, in the Roven Road area of the Village of Wesley Hills, 11-foot ceilings are typical. To construct a home with two and a half stories, 11-foot ceilings, and leaving sufficient room for the HVAC equipment in the ceiling, the variance is necessary. The Village sewage pipe is not deep enough to account for the two and a half stories, 11-foot ceilings, and sufficient room in the ceiling for the HVAC equipment. It would be a hardship not to permit this variance.

No undesirable change will be produced in the character of the neighborhood, and it will not be a detriment to neighboring properties because the properties across the street from the applicant's plot (4, 6 and 8 Roven Road) are presently significantly higher than applicants' property because

of the topography. The proposed plans for 18 Roven Road would result in a home that would still be significantly lower than the home at 8 Roven Road.

The benefit sought by applicants cannot be achieved by some method feasible for applicants other than the variance because applicants cannot change the location of the Village sewer pipe. And, to permit applicants to have plumbing in their basement and ensure gravity sewer connection, the house basement must be raised slightly above the sewer main, which dictates the overall height of the building.

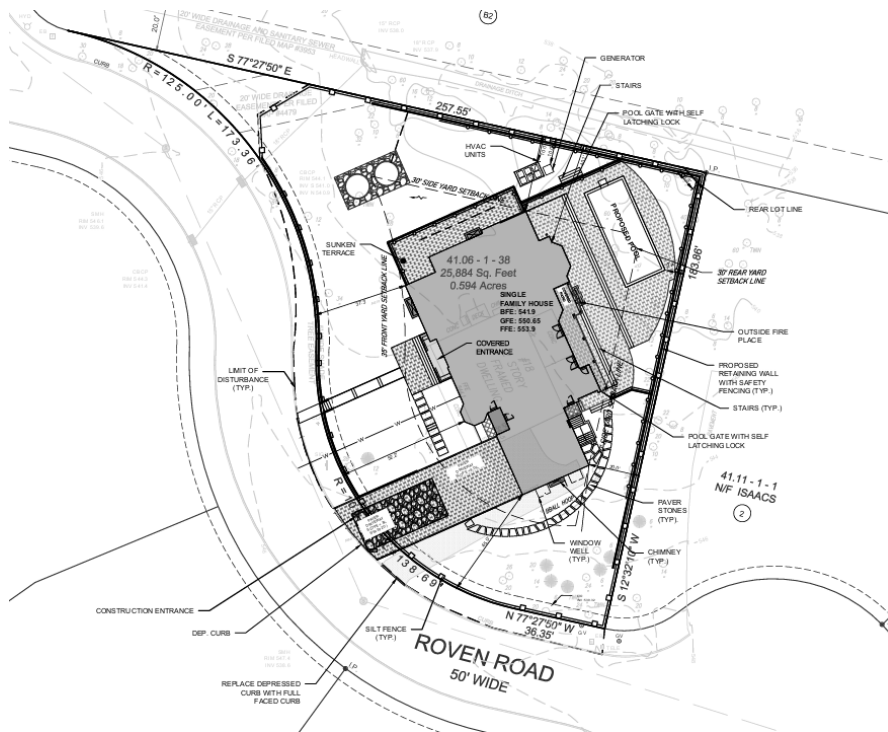
The requested variance is not substantial – it is a mere 3.9 feet greater than the maximum. And, as explained above, when constructed, the home will still be shorter than at least one of the homes across the street (8 Roven Road), which sits on a hill. The other home that is visible online (4 Roven Road) appears to be a one-story home and is not an appropriate comparison to the proposed 2.5 story home.

The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Applicants are not aware of any physical or environmental conditions in the neighborhood or district that will be impacted by permitting the additional 3.9 feet to the home height.

Finally, the alleged difficulty was not self-created but is a result of the current location of the Village sewage pipe and natural topography of the plot.

Variance No. 4 – Accessory Structure (Pool) Distance to the Side Yard

A variance should also be granted for the accessory structure, the pool's, distance to the East Side Yard because, as explained above, the plot is part of the Berd Cluster Subdivision, making it substantially smaller than other plots in the R-50 zone. Also, as depicted below, the plot plan is the shape of a pie. Because of the pie shape, applicants are at a disadvantage in installing a pool in the backyard that is not within 15 yards from the side yard.



Allowing this variance will not create an undesirable change in the character of the neighborhood. Instead, it will permit the plot to resemble other nearby plots in the same subdivision and zone. As with other areas of the Village, the Roven Road area is undergoing a change. Many of these new homes on and near Roven Road have swimming pools, terraces, and other outdoor amenities. As such, the variance for the pool's distance to the side yard will permit the plot to resemble other nearby plots.

The benefit sought by applicants cannot be achieved by some other method. To permit applicants to have a usable backyard patio before the pool area, applicants need the pool to be set back closer to the rear and side yard. Moreover, the requested area variance is not substantial considering the shape of the property. The pool is currently 6.7' from the side lot line. However, applicants plan to construct a retaining wall and fence along the side of the plot where the pool is 6.7' from the side yard. As such, the pool will not impinge upon the neighboring property because the retaining wall and fence will enclose the backyard and any view of the pool.

The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Pools are permitted and the size of the pool is permitted. The only reason for seeking the variance is because one corner of the pool is not 15 feet from the side lot line. However, as stated above, the retaining wall and fence will prevent any issues with the abutting property.

The alleged difficulty was not self-created. The plot is significantly smaller than other plots in the R-50 zone because 40% of the land was donated to the Town of Ramapo in 1973. As such,


the plot is a smaller size and the shape of a pie, limiting the land on which applicants may construct an outdoor space, including a pool.

Relief requested

Accordingly, applicants request the following variances: (1) impervious surface ratio; (2) building coverage; (3) building height (feet); and (4) the accessory structure distance to the side lot lines, all as set forth on the site plan drawing submitted herewith.

Dated: December __, 2024

Village of Wesley Hills, New York

A handwritten signature in black ink, appearing to read "Barnett Brodie", is written over a solid horizontal line.

Barnett Brodie