

**ZONING BOARD OF APPEALS
VILLAGE OF WESLEY HILLS**

**ROCKLAND TREE EXPERT CO., INC.
d/b/a IRA WICKES/ARBORISTS
SPECIAL PERMIT AND SITE PLAN**

NARRATIVE SUMMARY

This application is made in the context of a Planning Board application for site plan and special permit approval pursuant to section 6.9.16 of the Zoning Law, as amended by Local Law No. 3 of 2006. That Local Law added “Arborist Service”, “Landscape Service” and “Wholesale Nursery” as permitted uses by special permit in the R-35 zoning district, subject to certain requirements.

The subject site has been operated as an arborist service, landscape service, and wholesale nursery by the Wickes Family since 1972. In 2001, the Zoning Board of Appeals determined that, despite prior site plan approval by the Ramapo Planning Board, the use had never been a legally permitted use. The matter was settled by the adoption of a stipulation of settlement between the Wickes Family, its corporate presence, Rockland Tree Expert Co., Inc., and the Village Board in 2004.

Existing Conditions

The subject property is located at the southwest corner of McNamara and Union (New Hempstead) Roads in an R-35 zoning district. It has a lot area of 2.2 acres. Located near the southerly border of the property is a two-story concrete block building having a gross floor area of 6,321 square feet. This building, which dates to approximately the 1930s, houses offices, workspace, storage, and truck and trailer parking. A gravel parking area is in front of the building. Access is taken from McNamara Road.

Also on the site is a two-family dwelling, located at its northeasterly corner, with accessory structures. Pursuant to the stipulation, this dwelling is

a valid, prior non-conforming use and a valid, prior dimensional non-conformity for purposes of applying the Zoning Law. An approval of a

Special Permit and site plan for the Premises subsequent to the Amendment, if any, and the implementation of such approved site plan, if any, shall not be deemed to constitute an improvement of a non-conforming use and therefore shall not be subject to the provisions of section 4.3.7 of the Zoning Law.

Stipulation, ¶ 12. Therefore, this application has no zoning impact on the two-family dwelling.

Prior Special Permit and Site Plan Approvals

In May 2010, after extensive public hearings and studies, the Planning Board approved a site plan and special permit for the site pursuant to section 6.9.16 as amended.

The approved site plan and special permit approvals were challenged by a neighbor. By decision dated November 24, 2021, the Appellate Division, Second Department, annulled both approvals.

The special permit was annulled because the court found that the Planning Board had improperly determined that “practical access” to a second major road was unnecessary and that a finding of “potential practical access” was “insufficient”.

The site plan approval was annulled because the site did not conform to the Zoning Code in that it had a maximum gross impervious surface ratio in excess of the allowable 0.25.

The Court did not criticize any other findings of the Planning Board.

To address the Second Department’s determinations, and the applicant re-applied for the required special permit and site plan under section 6.9.16.

Revisions to Site Plan

In response to the concerns raised by the Second Department, the applicant revised its proposed site plan from that which was approved in 2010. It added an emergency access road from Union (New Hempstead) Road into the site. This would give the site “practical access” to a second major road, as required by section 6.9.16.

Subsequent to the initial filing, the Village Board amended the Zoning Code to define “practical access” for the first time. Pursuant to Local Law No. 1 of 2024, adopted July 2, 2024, “practical access” means:

For all necessary uses and special permit uses for which practical access to a major road is a requirement, the phrase "practical access" means that it

must be reasonably possible for actual vehicular access to be designed and constructed along the particular frontage under consideration for that use. It does not require that such access must be constructed or included in an approved site plan if the Planning Board, in the exercise of its discretion, deems it to be in the public interest for the actual vehicular access to be designed along other available frontage.

This amendment meant that the proposed emergency access road was no longer needed to fulfill the “practical access” requirement of the Zoning Code. It was therefore removed from the plans.

As to the impervious coverage requirement, the site is an existing facility. The existing gross impervious surface ratio is 0.48, just as it was in 2010. The applicant, as in 2010, proposes to reduce that ratio to 0.46 (0.41 for the arborist portion of the site and 0.05 for the residential portion).

While the Planning Board took the existing impervious surface ratio and its reduction into account in 2010, the Second Department held that doing so was beyond the Planning Board’s authority. It held that a variance was needed. Hence, this appeal.

SEQRA and GML Status

This matter is an Unlisted action under SEQRA. The Planning Board, as lead agency, granted a negative declaration in 2010 by resolution no. 10-16. While the Second Department did not disturb this negative declaration, the applicant believed that it was prudent to update the negative declaration based upon the proposed minor changes to the plan.

Accordingly, it submitted an updated EAF Part 1 to the Planning Board. The Planning Board issued a new EAF Part 2, requiring updated review of certain potential impacts. The applicant responded with new studies and an EAF Part 3.

Based on these submissions, the Planning Board reaffirmed its negative declaration by resolution no. 25-2 on February 26, 2025.

The project site abuts two Rockland County roads: McNamara Road (Route 67) and Union (New Hempstead) Road (Route 80). It also abuts the municipal boundary with the Village of New Hempstead. Therefore, referral to the Rockland County Planning Department is required under General Municipal Law § § 239-l and -m, and notice must be given to the Village of New Hempstead under General Municipal Law § 239-nn.

Variance Requested

The applicant requests the following variance:

<u>Dimension</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Impervious surface ratio	0.25	0.48	0.46 (0.41 for the arborist portion) (0.05 for the residential portion)

Criteria for Variance

One of the purposes of a zoning board of appeals, and of the ability to grant variances, is to provide a “safety valve” where the strict application of a zoning code cannot allow an otherwise appropriate use of property because of the peculiar circumstances applicable to that property. For this reason, any municipality that adopts a zoning code must also establish a board of appeals.¹

In determining 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.”² The board must also consider five questions when engaging in this balancing test. The questions, and the applicant’s responses, are set forth below:

(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”:*

The impervious coverage has existed at the site since at least 1972, before the formation of the Village and the adoption of its Zoning Code. It is a long-standing component of the neighborhood’s character. As part of the site plan application, the applicant is slightly reducing the amount of impervious coverage while also upgrading on-site stormwater management facilities.

(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”:*

The applicant requires impervious surfaces to maneuver vehicles and equipment around its site. Without the requested variance, it cannot conduct its allowed use.

(3) *“whether the requested area variance is substantial”:*

Whether a requested variance is “substantial” is more than simple arithmetic. It requires an understanding of the general area and of the existing conditions.³

¹ See, 2 Salkin, *New York Zoning Law and Practice* (3d ed.), §§27:07 – 27:10; *McKinney’s Town Law*, Practice Commentary to § 267-a; Town L. § 267.2; *McKinney’s Village Law*, Practice Commentary to § 7-712-a; Village L. § 7-712(2).

² Town L. § 267-b.3(b); Village L. § 7-712-b.3(b).

³ See, 2 *New York Zoning Law and Practice*, § 29:15.

The applicant is slightly reducing the amount of impervious surface from the condition that has existed for at least 53 years. The requested variance reflects the continuation of a legal condition that was conforming at the time of inception.

(4) "whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district":

In considering whether to reaffirm its negative declaration, the Planning Board determined that the mitigation measures approved in 2010 and continued in the current proposal were adequate. The Planning Board did not require new studies of this impact.

(5) "whether the alleged difficulty was self-created":

The difficulty results from the application of new regulations created by Local Law 3 of 2006. Prior to 2006, there was no limitation on the extent of impervious surfaces on this site. Local Law 3 of 2006, while expressly allowing arborist services, landscape services, and/or wholesale nurseries, also limited the impervious surface ratio.

In 2010, the Planning Board and Village Attorney opined that the existing impervious surface ratio was grandfathered. The Appellate Division held otherwise. Thus, this difficulty arose from the court's interpretation of the Village's Zoning Code as applied to the applicant's existing condition.

On balance, therefore, the requested variances are beneficial to both the applicant and the community.

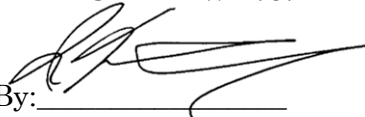
Relief requested

Accordingly, the applicant requests the following variances:

<u>Dimension</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Impervious surface ratio	0.25	0.48	0.46 (0.41 for the arborist portion) (0.05 for the residential portion)

Dated: June 3, 2025
New City, New York

EMANUEL LAW P.C.

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