

NOTICE OF DECISION

Board of Appeals, Incorporated Village of East Hills

Meeting and Public Hearing of the Zoning Board of Appeals (the "Zoning Board") of the Incorporated Village of East Hills (the "Village") held on Tuesday, June 28, 2011 at the Village Hall, 209 Harbor Hill Road, East Hills, New York.

ROSLYN HIGHLANDS HOOK AND LADDER ENGINE AND HOSE COMPANY

requested variances for the property known as 111 Harbor Hill Road, designated as Section 7 Block 262 Lot 6 on the Nassau County Land and Tax Map (the "Premises") and within the R1 district of the Village. Pursuant to the Village of East Hills Code 214-30, Lot Coverage, the maximum permitted lot coverage is 25 %, proposed is 28 percent. Therefore, a variance is required for 3 %. Pursuant to the Village of East Hills Code 214-32(a), Front Yard Setback, a thirty foot setback is required, proposed is 12.72 feet. Therefore, a 22.28 foot front yard setback variance is sought. Pursuant to the Village of East Hills Code 214-32(b), the minimum side yard setback is fifteen feet, the proposed west side yard setback is five feet. Therefore, a ten foot side yard setback variance is sought. Pursuant to Village of East Hills Code 214-34, the required setback for a generator is fifteen feet, proposed is five feet. Therefore, a ten foot generator setback variance is sought. Pursuant to Village of East Hills Code 214-232, front height setback ratio is 0.6, proposed ratio is 1.69. Therefore, a height setback ratio variance is requested. Pursuant to the Village of East Hills Code 214-235, the maximum floor area allowed is 6,100 square feet, the new proposed floor area is 7,842 square feet. Therefore, a 1,742 square foot variance is requested. Pursuant to the Village of East Hills Code 214-236 (B), front and side walls may not extend beyond a horizontal length of thirty feet without a change or break of at least two feet. The proposed west side wall is 66.8 feet without a break, the proposed east side

wall is 43.4 feet without a break, and the proposed front wall is 33.4 feet without a break. Therefore, 36.8 and 13.4 foot side wall variances and a 3.4 foot front wall variance are requested. Pursuant to the Village of East Hills Code 214-236(D) at least 10 percent of every exterior wall shall be comprised of fenestration (windows or doors). The proposed windows and doors on the west side do not comply with the Code and a variance is sought.

PROCEDURAL HISTORY

On June 28, 2011, the Applicant, by counsel, Michael Sahn, and several witnesses presented its request for variances. The hearing transcript is incorporated by reference. Upon the completion of the Applicant's presentation and all public comment, upon the motion of Stanley Dessen, seconded by David Diamond, the hearing was closed and, upon public deliberations, the application was unanimously granted subject to conditions by all five members of the Zoning Board's affirmative vote.

FINDINGS OF FACT

Background

1. Inspection of the subject property was made by members of the Board.
2. Pursuant to Zoning Board procedures, the owners of the adjacent properties were notified and had opportunity to be heard.
3. For purposes of 6 N.Y.C.R.R. § 617.2 (u), the Board is the "Lead Agency" for this application. Pursuant to the Environmental Conservation Law § 8-0109 (4) and 6 N.Y.C.R.R. § 617.5, the application is for a "Type II" action. At the outset of the hearing, the Applicant's counsel noted that "in addition to the normal and customary disclosure forms" submitted, he was providing to the Zoning Board separate written disclosure and waiver of conflict letters, respectively signed on behalf of the Applicant and the Village. The latter,

“pursuant to a duly adopted Resolution of the Board of Trustees,” highlighted counsel’s ongoing representation of: (a) the Applicant before the Zoning Board; and (b) the Village’s Board of Trustees for the re-development of the Pall Corporation property and related issues. Further, the Applicant’s completed written submission, dated May 7, 2011, to request a hearing before the Zoning Board, disclosed that one member of the Zoning Board, David Diamond, and the spouse of another member, Lisa Blaustein, both serve as volunteer firefighters (*i.e.*, no pecuniary interest) with the Applicant. These submission are part of the public record.

4. Since 1905, the Applicant has functioned as a not-for-profit, volunteer fire protection company. Now, the Applicant provides services to the Village and, at least, nine other municipalities. Its main firehouse is at 270 Warner Avenue, Roslyn Heights, New York. At the Premises, there is a sub-station built in or about 1964. The Premises is an irregularly shaped parcel on the north side of Harbor Hill Road, west of Glen Cove Road, directly east of the Village of East Hills Park. The Premises have a total lot area of 28,029 square feet. There is a slope with a retaining wall on the easterly side of the Premises, and partly on the northerly side.

5. The Applicant’s presentation emphasized changes since the mid-1960s in the Village, in other localities the Applicant serves, and in fire equipment used to protect the public. The Applicant provides service to an area estimated to encompass approximately thirteen to fourteen square miles. According to the Applicant’s president, when he began his service, the Applicant responded to about 500 calls for help per year but in more recent years, the Applicant annually receives and responds to more than two thousand calls ranging from fires, to car accidents, to medical emergencies, and other events. The Applicant stated that over 40% of the calls are from Village residents.

6. The existing sub-station has approximately 2,700 square feet of floor area, and two garage doors. The sub-station is one story, having an overall height of approximately eighteen feet.

At the Premises, there is also an existing metal building, encompassing 1,175 square feet of floor area, that the Applicant plans to demolish as part of the construction of a new sub-station. In short, the Applicant proposes replacing two buildings with one larger building. In addition, the Applicant represented that it will remove a practice structure now present in the rear of the Premises.

7. The existing sub-station was described as outdated and insufficient to allow the Applicant to serve the public appropriately. For example, the interior of the existing sub-station lacks a “gear” room. During an emergency, volunteer personnel that respond to the sub-station do not have enough space to dress in their gear and proceed to emergency apparatus and vehicles. The Applicant also explained that the majority of its equipment and trucks are located at the main firehouse on Warner Avenue. According to the Applicant, when calls are received, volunteer members who would otherwise utilize the sub-station now must first travel to the Warner Avenue firehouse and then proceed to the call and this increases response times to emergencies.

8. Also, the Applicant now parks vehicles most of its vehicles at the Premises outdoors but explained that its proposed new sub-station, of approximately 7,842 square feet of floor area with seven (7) garage doors, four (4) in the front and three (3) in back, will have sufficient space to house indoors the vehicles now at the Premises. The Applicant described the vehicles, all of which it plans to move park indoors in the bays of the garage, as: two storage trailers (equipment and materials for a major fire event), a “bus” (*i.e.*, a transport vehicle for multiple individuals), a support van, an EMS tech car, one ambulance, one “mini rescue vehicle,” and an engine/ladder truck referred to as a “Quint.” The Applicant acknowledged that its plans contemplate that an additional space will remain open for a possible second ambulance if needed in the future.

9. The sub-station is located as far as possible from the residential properties along Walnut Drive. The heavy screening proposed along the northerly and easterly property lines

provides a significant visual buffer for these properties. Specifically, there will be a retaining wall and new, substantial landscape screening along these property lines.

10. The interior of the proposed sub-station will include a “bunker” or gear room, a “ready room”, a radio room, office, storage, and maintenance rooms and bathrooms but not a single shower. There are no recreational rooms proposed as part of the construction or otherwise described. The proposed sub-station will be one story in height (as is the existing principal building) and the Applicant described it as architecturally designed to fit in with the residential character of the area. The Applicant represented that the sub-station will remain unmanned and will be utilized by personnel only in emergencies (*i.e.* no twenty four hour personnel at the Premises). In addition, the Applicant represented that it will have installed a traffic safety control device to be manually operated when emergency vehicles are entering or leaving the Premises. (At other times, the device will function as a flashing caution light.)

11. Two residents made brief remarks urging the Zoning Board to be mindful of the safety and general welfare of the community interests. There was also vocal opposition to the application that to a considerable degree, if not entirely, ignored the statutory evaluation criteria. The factors argued to oppose the application were that “there is no boondoggle bigger than the construction of firehouses in Long Island,” the apparent lack of sufficient fires to justify the planned expenditure by the Applicant, there “seems to be adequate delivery of services,” and the lack of a forum for the public to speak to address the application. Other issues raised, clearly off point, involved unhappiness about a neighbor’s house reconstructed after a fire, teacher layoffs, and hospital closings.

Framework

12. The statutory standard to determine whether area variances should be granted requires a zoning board to engage in a balancing test; *i.e.*, to weigh the benefit to an applicant if

the variance is granted, against the detriment to the health, safety and welfare of the neighborhood or community by such a grant. *Village Law* Section 7-712-b 3 (b). In making such determination the Board also considers:

- (i) Whether an undesirable change in neighborhood character or a detriment to nearby properties will be created by granting a requested an area variance;
- (ii) Whether the applicant can achieve the benefit sought by a feasible alternative;
- (iii) Whether a requested area variance is substantial;
- (iv) Whether a proposed variance will have an adverse effect or impact on the physical or environmental conditions in a neighborhood or district; and
- (v) Whether the alleged difficulty was self-created, which the statute states is a relevant consideration but not controlling.

The Requests

13. The Applicant's requests are considered individually and collectively.

(a) Lot Coverage of 28%, Where 25% Is The Maximum Permitted

More than two-thirds of the Premises will not be covered, what was once two buildings will now be one building, and a third structure is being removed. Also, the Premises have long hosted a firehouse sub-station, the Premises front Harbor Hill Road, a Nassau County roadway, and are bordered on the western boundary by the Village's Park. Thus, this request involves neither an undesirable neighborhood character change nor a detriment to nearby properties. Further, the Applicant has agreed to submit a separate landscaping plan involving the replacement of the existing retaining wall and substantial plantings. Given the Applicant's goal of housing its vehicles but not adding vehicles (except for a possible second ambulance), there

does not appear to be a feasible alternative to additional lot coverage other than building a second story. That alternative, however, would involve a jarring departure from the existing condition and is not considered feasible by the Zoning Board. Under the circumstances, the 3% overage is not considered substantial and there is no evidence of an adverse effect or impact on physical or environmental neighborhood condition from this proposed 3% overage. As to last statutory factor, most area variance requests are self-created. Although here that may be the view of some, the Zoning Board is mindful that the Applicant consists of volunteers that protect the lives and property of Village residents and others. In short, the Applicant assists several municipalities including the Village and its need reflects municipal needs. The self-created analysis is the same for each of the requested variances.

(b) A Front Yard Setback of 12.72 Feet, Where Thirty Five feet Is Required

As specifically discussed at the hearing, the Premises front property boundary line is itself set back thirty five feet from Harbor Hill Road. Concisely stated, absent a surveyor's knowledge of the Premises' boundary line, the requested variance is not perceptible. For this reason, this requested variance will not change or be a detriment to a neighborhood condition, makes practical sense, is not substantial, and obviates consideration of an alternative such as upward expansion (which too will require a variance). Further, given that the proposed building will be over forty feet from Harbor Hill Road, a variance from the Zoning Code's precise requirement of a thirty five foot set-back will not have an adverse effect or impact on environmental and physical conditions.

(c) A Proposed Setback of 6 Feet From the Westerly Property Line For The Existing Generator, Where 10 Feet is Required

This variance request reflects the Applicant's effort to mitigate the presence of the substation upon surrounding residences. The generator is being moved closer to the boundary line between the Premises and the Park. Also, the new building will shield the generator from other properties and Harbor Hill Road. This request is an example of how the grant of a variance from strict application of the Zoning Code can enhance neighborhood conditions, have a positive effect or impact on environmental conditions notwithstanding that a substantial variance is sought, and that although an alternative may be feasible, it is not preferable.

(d) A Front Height Setback Ratio of 1.69, Where .06 is Required and A Side Height Setback Ratio of 5.5 on the Westerly Side, Where 1.2 is Required

These variances, similar to the front yard setback variance request, involve departures from the Zoning Code that require careful measurement to notice. Thus, the analysis of each of the statutory factors for these two variances is the same as for the requested front yard setback variance. Further, the Applicant provided depictions of the envisioned completed building which, obviously, has architectural elements designed for a suburban community such as the Village.

(e) A Floor Area of 7,842 Square Feet, Where 6,100 Square Feet Is the Maximum Permitted

The requested floor area reflects the Applicant's desire to house vehicles and equipment used to respond to emergencies in an orderly, safe fashion, and indoors. The alternative is the existing condition of leaving vehicles and equipment that need to be counted upon exposed to the elements and requiring volunteer fire-fighters to continue to travel back and forth between fire

houses, depending upon the circumstances, before heading to the scene where help has been requested. Given the size, shape, and location of the Premises, this variance request does not involve an undesirable neighborhood character change or a detriment to nearby communities, and there will not be an adverse effect or impact on physical or environmental conditions. This is another example of how the grant of a variance from strict application of the Zoning Code can enhance a community notwithstanding that a substantial variance is sought and demonstrates that although an alternative may be feasible, it is not preferable.

(f) **The Proposed East and West Building Walls Having 43.4 and 66.8 Linear Feet, Respectively, Without Having A Change or Break of 2 Feet and The Proposed West Building Wall With Less Than The Required 10% Fenestration**

These variance requests reflect that for over forty years a fire house sub-station has existed in a residential community. As the Applicant's counsel readily offered, without any changes, the Premises likely involve pre-existing, non-conforming conditions. A functioning fire house may not have all the amenities, including wall jogs and evenly spaced windows and doors. Instead, the firehouse should be functional. The Applicant's presentation included testimony by a registered architect that highlighted the Applicant's effort to meet its needs to store equipment, safely park emergency vehicles to allow efficient egress when needed, and provide volunteer firefighters a safe environment. Further, the Applicant agreed to submit a detailed landscaping proposal and to create a fake window look to mitigate any change in neighborhood conditions. Given the existing condition, the proposed new structure, even without the offered mitigation, should either be consistent with existing neighborhood conditions or be an improvement. As to whether there is a feasible alternative and if these variance requests should be considered substantial under the circumstances, given the proposed building's purpose, an insistence upon

additional windows and/or doors will be counter-productive and require a larger building to accomplish the benefit sought. The mitigation offered is preferable.

14. Even considered collectively, the Applicant's requests demonstrate that the choice is either to continue to rely upon a facility inadequate for its purpose when measured by changes over more than four decades in the Village, in emergency vehicles and equipment, and in community expectations for municipal services in times of emergency. On the other hand, there is no meaningful evidence in the record before this Zoning Board to show a detriment to the health, safety, and welfare of the Village community and/or neighborhoods if the application is granted, especially if mitigating conditions are imposed. Moreover, the benefit to the Applicant will inure to the Village and its residents and, upon the record, this benefit to Village residents will be considerably funded, in part, by the other municipalities that the Applicant serves. The Applicant expressed willingness to accept, as conditions, modifications to the plans submitted including: (a) pursuing permission from Nassau County to landscape in front of the Premises on Nassau County property to provide some screening of the contemplated building, (b) to submit for approval to the Village's Building Department a detailed landscaping plan with: (i) dense evergreen screening on the slope to the rear of the property and (ii) additional plantings along the northerly and easterly borders of the Premises, taking into special account the three homes in closest proximity to the easterly border.

DETERMINATION

15. The requested variances are granted subject to and conditioned upon:

- (A) The Applicant requesting from Nassau County permission to landscape in front of the Premises to the extent possible without creating traffic safety issues or limiting the functionality of the contemplated new building;

- (B) The Applicant involving and coordinating with the Village's Building Department its discussions and efforts with Nassau County;
- (C) The Applicant submitting to the Village's Building Department a detailed landscape plan for approval consistent with paragraph 14 of this Decision;
- (D) The Applicant not beginning demolition and/or construction work until receipt of approval by the Village's Building Department of a submitted detailed landscaping plan;
- (E) The new building to be constructed to house the vehicles (and/or their replacements but not additional vehicles) described in paragraph 8 of this Decision and not being used to house additional vehicles; and
- (F) The Applicant removing the existing metal building and the existing practice structure described in paragraph 6 of this decision.

IT IS SO ORDERED.



Michael J. Kosinski
Chairman
Zoning Board of Appeals
of the Incorporated Village of East Hills

Dated: August 12, 2011

Filed: August 22, 2011

Donna Gooch, Village Clerk

