

Village of South Blooming Grove Zoning Board of Appeals Minutes of November 10, 2022 Meeting

A meeting of the Village of South Blooming Grove Zoning Board of Appeals on November 10, 2022 in the Village Hall was called to order by Chairman Yehoshua Bittman at 8:01 PM.

Chairman Bittman led a Pledge of Allegiance by all who attended.

Chairman Bittman also introduced new Thomas J. Shepstone of Shepstone Management Company, Inc., which is now providing planning services to the Village. Shepstone very briefly explained his new role as with the Board of Appeals, including functioning as the Acting Secretary of the board.

Shepstone proceeded to do a roll call of the board. Board Members Yehoshua Bittman, Chaim Goldstein, Sholem Leiberman and Shmaya Spitzer were present for the meeting. Absent was Board member Pete Piampiano. Also present were Board Attorney Tad Barone as well as Isaac Eckstein and Joel Sterner on behalf of the Village. A quorum being present, the meeting was opened for regular business.

Shepstone also further articulates his role as support staff for the ZBA to assist with meeting conduct, application reviews and recommendations, minutes and the like. He also made certain procedural policy recommendations including the following:

- All applications should be submitted 3 weeks prior to meetings and in digital as well as hard copy formats.
- Sign-up sheets should be employed for all public meetings.
- Public comments should be limited to 3 minutes oral with only written accepted during hearing continuations.

Bittman moved and Leiberman seconded a motion to approve the procedural policies proposed by Shepstone. The motion was unanimously carried.

Chairman Bittman indicated the minutes of the September 1, 2022 were not yet complete and, therefore, action on them would need to be deferred for the time being.

379 Lake Shore Drive

Chairman Bittman indicated the public hearing on this application remained open and requested recommendations from Shepstone. The latter noted that, although the new policy will only allow written comments during hearing continuations, this hearing was continued prior, so the Board should entertain any oral comments wished to be offered. The hearing was then resumed at 8:10 PM.

Simon Schwartz, representing the applicant provided a brief overview of the application for those present.

A public comment was offered suggesting the size and proximity of the proposed synagogue was not in keeping with character of the neighborhood.

Attorney Barone noted that, under the provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), the burden is on the Village to prove such a case, as religious land uses are

accorded special treatment under this Federal law.

Shepstone noted no written comments had been received for the public hearing and recommended it be closed.

Chairman Bittman made a motion to close the public hearing on the 379 Lake Shore Drive application. It was seconded by Spitzer and unanimously carried, formally closing the hearing at 8:13 PM.

Shepstone proceeded to note he had examined the record and offered his recommendations as follows, also informing the board of the proper classification of the variance requests under SEQRA:

The applicant, located in a RR District, has requested two area variances. One is a reduction of the 40 feet front yard requirement to 10 feet, 2 inches, which is a SEQRA § 617.5(c)(16) Type II action and the other is a SEQRA Unlisted Action to increase the maximum building height from 35 to 44 feet, although it appears 40 feet, 10.75 inches will be adequate.

The front yard variance is warranted based on the fact the lot adjoins a body of water in the rear where building conditions are restricted by the proximity to water and soil conditions. This restricts the ability to practically use what is a relatively small lot unless the front yard is significantly reduced.

The following findings with respect to the requirements of § 7-712-B of the New York State Village Law are warranted in the case of the requested front yard variance:

1. This variance will not produce undesirable change in the character of the neighborhood or a detriment to nearby properties. It is a proposed religious use that is appropriate to the area. It is, in fact, a permitted use, by Village Board Special Permit in all Village of South Blooming Grove zoning districts, indicating it has been determined to be in general harmony with all other uses.
2. The benefit sought by the applicant in this case cannot be achieved by some other feasible method because the shape, size and proximity to water totally and unreasonably restricts the building area unless the front yard can be reduced. The lot has a rear lot line of only 69 feet, as compared to 215 feet for the front lot line, which forces the building to the front.
3. While the requested variance when viewed as a percentage of what is allowed under the code may be considered to be substantial, the shape of this lot and a 100-year flood zone force building toward the front and, effectively, only reverses the front and rear yards. The existing building on the building also already encroaches on the front yard. Therefore, the variance, considered in context of conditions very specific to the parcel is not substantial.
4. The variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community with a use (a small shul) that will only periodically generate usage and then only produce pedestrian traffic at its busiest. As such, the variance will not cause any adverse impacts.
5. The alleged difficulty was not self-created as the lot was always restricted by the short distance between road and water and its small size as well as the 100-year flood zone.
6. The Village Board regulates religious uses and is obligated to apply the standards of the U.S.

Religious Land Use And Institutionalized Persons Act, which ensures the interests of justice will be served by allowing the variance. The variance requested will simply establish, for the record and enforcement purposes, the standard that will be applicable. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

The height variance is de minimis in nature. Indeed, § 235-20.B of the Zoning Law already allows "Parapet walls or cornices which do not exceed the maximum height requirement for the district in which they are located by more than four feet." The additional height of the building itself in this instance would be merely 5 feet, 1¾ inches, while a parapet wall could nearly as high. Therefore, the practical affect on appearances is minimal. Moreover;

1. This variance will not produce undesirable change in the character of the neighborhood or a detriment to nearby properties. It is a proposed religious use that is appropriate to the area. It is, in fact, a permitted use, by Village Board Special Permit in all Village of South Blooming Grove zoning districts, indicating it has been determined to be in general harmony with all other uses.
2. The benefit sought by the applicant in this case cannot be achieved by some other feasible method because economic use of the small lot, given its other specific limitations, including an unusual shape and a 100-year flood zone, requires going higher.
3. The variance is not substantial, amounting to less than a 15% adjustment and the request has already been reduced to the minimum needed.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The alleged difficulty was not self-created as the lot was always restricted by the short distance between road and water and its small size as well as the 100-year flood zone.
6. The Village Board regulates religious uses and is obligated to apply the standards of the U.S. Religious Land Use And Institutionalized Persons Act, which ensures the interests of justice will be served by allowing the variance. The variance requested will simply establish, for the record and enforcement purposes, the standard that will be applicable. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

Shepstone also reviewed Part 2 of Short Form EAF in detail with Board including his reasoning supporting the responses to Part 2 questions, noting the various factors stated above and the fact there are no or only small impacts relating to land use plans, zoning, intensity of land use, critical environmental areas, traffic, infrastructure, energy use, sewage services, water supply, cultural resources, natural resources, flooding, storm drainage or human hazards.

Chairman Bittman proceeded to make a motion to classify the requested front yard variance as a Type II SEQRA Action, classify the requested height variance as an Unlisted Action and to declare the latter would have no significant negative environment impacts. The motion was seconded by Spitzer and unanimously carried, the Negative Declaration adopted being attached hereto.

Chairman Bittman then made a motion to adopt the specific findings suggested by Shepstone and detailed above and to grant the following variances:

1. Front Yard (§ 235-14 Table of Bulk of Bulk Requirements): Reduce from 40 feet to 10 feet, 2 inches.
2. Maximum Building Height (§ 235-14 Table of Bulk of Bulk Requirements): Increase from 35 feet to 40 feet, 10.75 inches.

This was seconded by Spitzer and unanimously carried, the Resolution adopted thereby being attached hereto.

585 Clove Road

Chairman Bittman indicated the public hearing on this application also remained open and requested recommendations from Shepstone. The latter again noted that, although the new policy will only allow written comments during hearing continuations, this hearing was continued prior, so the Board should entertain any oral comments wished to be offered. The hearing was then resumed at 8:22 PM.

Members of the public present expressed concern as to whether there would be stream rerouting and were told the stream would not be touched. Other concerns raised related to possible impacts on Clove Road trees and building height (whether or not 4-stories were necessary).

Shepstone noted no written comments had been received for the public hearing and recommended it be closed.

Chairman Bittman made a motion to close the public hearing on the 585 Clove Road application. It was seconded by Leiberan and unanimously carried, formally closing the hearing at 8:28 PM.

Shepstone proceeded to note he had examined the record and offered his recommendations as follows:

The applicant, located in the RC-1 District, has requested a variance for a SEQRA Unlisted Action to increase the maximum building height from 40 feet to 46 feet. This height variance is warranted based on the fact the lot is sloping and difficult to work with unless there is a more height possible.

The following findings with respect to the requirements of § 7-712-B of the New York State Village Law are warranted in the case of the requested front yard variance:

1. This variance will not produce undesirable change in the character of the neighborhood or a detriment to nearby properties. The RC-1 District encourages mixed-use development.
2. The benefit sought by the applicant in this case cannot be achieved by some other feasible method because the slope, and size of the parcel restrict the building area.
3. The variance is not substantial being only 15% above the standard.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The alleged difficulty was not self-created as the lot was always restricted by size and slope. Visual representations of the proposed building have been produced to document this.
5. The requested area variance is the minimum variance deemed necessary and adequate while, at

the same time, preserving and protecting the character of the neighborhood and the health, safety and welfare of the community and will allow the type of development anticipated for the District.

6. The Village Board regulates religious uses and is obligated to apply the standards of the U.S. Religious Land Use And Institutionalized Persons Act, which ensures the interests of justice will be served by allowing the variance. The variance requested will simply establish, for the record and enforcement purposes, the standard that will be applicable. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

Shepstone also reviewed Part 2 of Short Form EAF in detail with Board after informing the board the proposed was properly classified as an Unlisted Action. Shepstone furthered reviewed his reasoning supporting the responses to Part 2 questions, noting the various factors stated above and the fact there are no or only small impacts relating to land use plans, zoning, intensity of land use, critical environmental areas, traffic, infrastructure, energy use, sewage services, water supply, cultural resources, natural resources, flooding, storm drainage or human hazards.

Following brief discussion, Chairman Bittman made a motion to table this matter until such time as Board Members had an opportunity to view the site. This motion was seconded by Goldstein and unanimously carried.

Chairman Bittman then made a motion to adjourn the meeting, there being no further business to be considered. This motion was seconded by Goldstein and unanimously carried and the meeting was formally adjourned at 8:35 PM.

Thomas J. Shepstone
Acting Recording Secretary

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - November 10, 2022**

NAME OF APPLICANT: RABBI ZVI BRIZEL
SITE ADDRESS: 379 LAKE SHORE DRIVE
ZONING DISTRICT: RR RURAL RESIDENTIAL
SECTION-BLOCK-LOT: 205-4-18
VARIANCES REQUESTED:

1. **FRONT YARD:** Reduce from 40 feet to 10 feet, 2 inches.
 2. **MAXIMUM BUILDING HEIGHT:** Increase from 35 feet to 44 feet.
-

WHEREAS, an application was submitted to the Zoning Board of Appeals (ZBA) by the above identified Applicant for the variances indicated above; and

WHEREAS, the variances sought to replace the an existing residential structure with a shul, as shown on a site plan prepared by its engineer was reviewed by Fusco Engineering as well as by its planning consultant, Shepstone Management Company; and

WHEREAS, the ZBA determined the application was reasonably complete and, following public notice, held a public hearing thereon on September 1, 2022, at 8:00 pm, which meeting was open to the public via remote means; and

WHEREAS, the hearing was continued to November 10, 2022, and closed on the same date after allowing members of the public to address the board and speak in connection with the application; and

WHEREAS, during the public hearing, the Applicant modified its height variance request to indicate it was now requesting the maximum building height be increased to 40 feet, 10.75 inches, not 44 feet; and

WHEREAS, the ZBA has duly considered public comments received; and

WHEREAS, the ZBA has determined, for the purpose of review under the State Environmental Quality Review Act (SEQRA), that granting a front yard variance is a "Type II" action requiring no further review thereunder, and

WHEREAS, the ZBA has determined, for the purpose of review under SEQRA, that granting a building height variance is an "Unlisted" action thereunder; and

WHEREAS, the ZBA has, of this same date and as Lead Agency, declared that granting of the requested height variance will not have a significant adverse environmental impact on the environment, and

WHEREAS, in considering whether to grant or deny each of the requested variances, the ZBA engaged in a balancing test, weighing the proposed benefit to the Applicant against the possible detriment to the health, safety and welfare of the community, as well as consider the five statutory factors enumerated in the applicable law; and

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - November 10, 2022**

WHEREAS, the ZBA herein has addressed the requisite statutory factors in approving the each proposed variance after a review of the recommendation and advice of its planning and engineering consultants, the ZBA members' knowledge of the location of the site and the relevant surrounding areas and also such material and relevant public input as received; and

WHEREAS, the ZBA considered whether the requested Variance were substantial when compared to the nearby buildings, would improve the physical and environmental condition and character of the neighborhood, and whether the requested variance was the minimum variance required to promote the legitimate interests of the Applicant in due regard to the interests of the general public; and

WHEREAS, the ZBA believes the substantial evidence in the record supports the rationale for the ZBA's determination to grant the requested Variance;

NOW, THEREFORE, BE IT RESOLVED, that the ZBA of the Village of South Blooming Grove finds the Applicant has submitted all required materials, and met all applicable requirements as set forth in the Zoning Code and applicable law for the granting of each requested variance, subject to conditions set forth herein and/or limitations imposed by applicable law, based upon the following findings and determinations:

FRONT YARD VARIANCE

- 1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:**

Determination: No

Reason: This is a proposed religious use that is appropriate to the area. It is, in fact, a permitted use, by Village Board Special Permit, in all Village of South Blooming Grove zoning districts, indicating it has been determined to be in general harmony with all other uses.

- 2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:**

Determination: No

Reason: The shape, size and proximity of the lot involved to water totally and unreasonably restricts the building area unless the front yard can be reduced. The lot has a rear lot line of only 69 feet, as compared to 215 feet for the front lot line, which forces the building to the front. The existing building on the building also already encroaches on the front yard.

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - November 10, 2022**

3. Whether the requested variance is substantial:

Determination: No

Reason: While the requested variance when viewed as a percentage of what is allowed under the code may be considered to be substantial, the shape of this lot and a 100-year flood zone force building toward the front and, effectively, only reverses the front and rear yards. The existing building on the building also already encroaches on the front yard. Therefore, the variance, considered in context of conditions very specific to the parcel is not substantial.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood:

Determination: No

Reason: The variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community with a use (a small shul) that will only periodically generate usage and then only produce pedestrian traffic at its busiest. As such , the variance will not cause any adverse impacts.

5. Whether the alleged difficulty was self-created:

Determination: No

Reason: The requested area variance merely switches front and rear yards as a practical matter for a use permitted in all zoning districts.

6. Whether the variance will comply with other Village variance criteria.

Determination: Yes

Reason: The Village Board regulates religious uses and is obligated to apply the standards of the U.S. Religious Land Use And Institutionalized Persons Act, which ensures the interests of justice will be served by allowing the variance. The variance requested will simply establish, for the record and enforcement purposes, the standard that will be applicable. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

BUILDING HEIGHT VARIANCE

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - November 10, 2022**

Determination: No

Reason: This variance will not produce undesirable change in the character of the neighborhood or a detriment to nearby properties. It is a proposed religious use that is appropriate to the area. It is, in fact, a permitted use, by Village Board Special Permit in all Village of South Blooming Grove zoning districts, indicating it has been determined to be in general harmony with all other uses.

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:

Determination: No

Reason: The benefit sought by the applicant in this case cannot be achieved by some other feasible method because economic use of the small lot, given its other specific limitations, including an unusual shape and a 100-year flood zone, requires going higher.

3. Whether the requested variance is substantial:

Determination: No

Reason: The variance is not substantial, amounting to less than a 15% adjustment and the request has already been reduced to the minimum needed.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood:

Determination: No

Reason: The variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community with a use (a small shul) that will only periodically generate usage and then only produce pedestrian traffic at its busiest. As such, the variance will not cause any adverse impacts.

5. Whether the alleged difficulty was self-created:

Determination: No

Reason: The alleged difficulty was not self-created as the lot was always restricted by the short distance between road and water and its small size as well as the 100-year flood zone.

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - November 10, 2022**

6. Whether the variance will comply with other Village variance criteria.

Determination: Yes

Reason: The Village Board regulates religious uses and is obligated to apply the standards of the U.S. Religious Land Use And Institutionalized Persons Act, which ensures the interests of justice will be served by allowing the variance. The variance requested will simply establish, for the record and enforcement purposes, the standard that will be applicable. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

Upon the foregoing reasons and evidence in the record of the proceedings before the ZBA, the ZBA further finds that the foregoing variances are the minimum variance that should be granted to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The ZBA, therefore, hereby makes the following findings in connection with its granting the variances set forth above:

- (a) That the variances are not substantial in relation to the requirement and to other factors set forth herein and otherwise made applicable by relevant law.
- (b) That the effect of any increased population density which may thus be produced upon available services and facilities is not significant.
- (c) That a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties will not be created.
- (d) That the difficulties cannot be alleviated by some method feasible for the applicant to pursue other than variances or that lesser variances cannot alleviate the difficulty.
- (e) That, in view of the manner in which the difficulties arose and considering all of the above factors, the interests of justice will be served by allowing the variances.
- (f) That the variances will not cause adverse aesthetic, environmental or ecological impacts on the property or on surrounding areas and will not harm the general health, safety or welfare.
- (g) The difficulty addressed by the variances are not self-created,

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - November 10, 2022**

The ZBA did not identify any detriment that would result to the neighborhood or community by reason of allowing the land to be developed with the variances requested. Moreover, the ZBA, taking into consideration the above factors, finds that the benefit to the Applicant outweighs any potential detriment to the neighborhood or community, and, therefore the requested variances are hereby granted. Nonetheless, the granting of the requested variances shall not relieve the Applicant from obtaining any other necessary approvals, permits, etc. for the use and development of the site.

NOW, THEREFORE, BE IT FURTHER RESOLVED

On a motion by **Chairman Bittman**, seconded by **Member Spitzer** and carried by a vote of 4 Ayes, 0 Naes, with one member being absent, that the Zoning Board of Appeals makes the foregoing findings and determinations, and it hereby grants the above-stated variances, which are subject to any conditions stated herein, and the within does not relieve the Applicant from obtaining any other permit, approval, and/or license required in connection with the proposed use of the site.

Dated: November 10, 2022

Zoning Board of Appeals
Village of South Blooming Grove

Hon. Yehoshua Bittman, Chairman

The original of this resolution was filed with the Village Clerk on _____, 2022

A copy of this resolution was filed with:

- (a) the Village Building Dept. on _____, 2022
- (b) the Village Planning Board on _____, 2022

A copy of this resolution was mailed to the Applicant on _____, 2022