



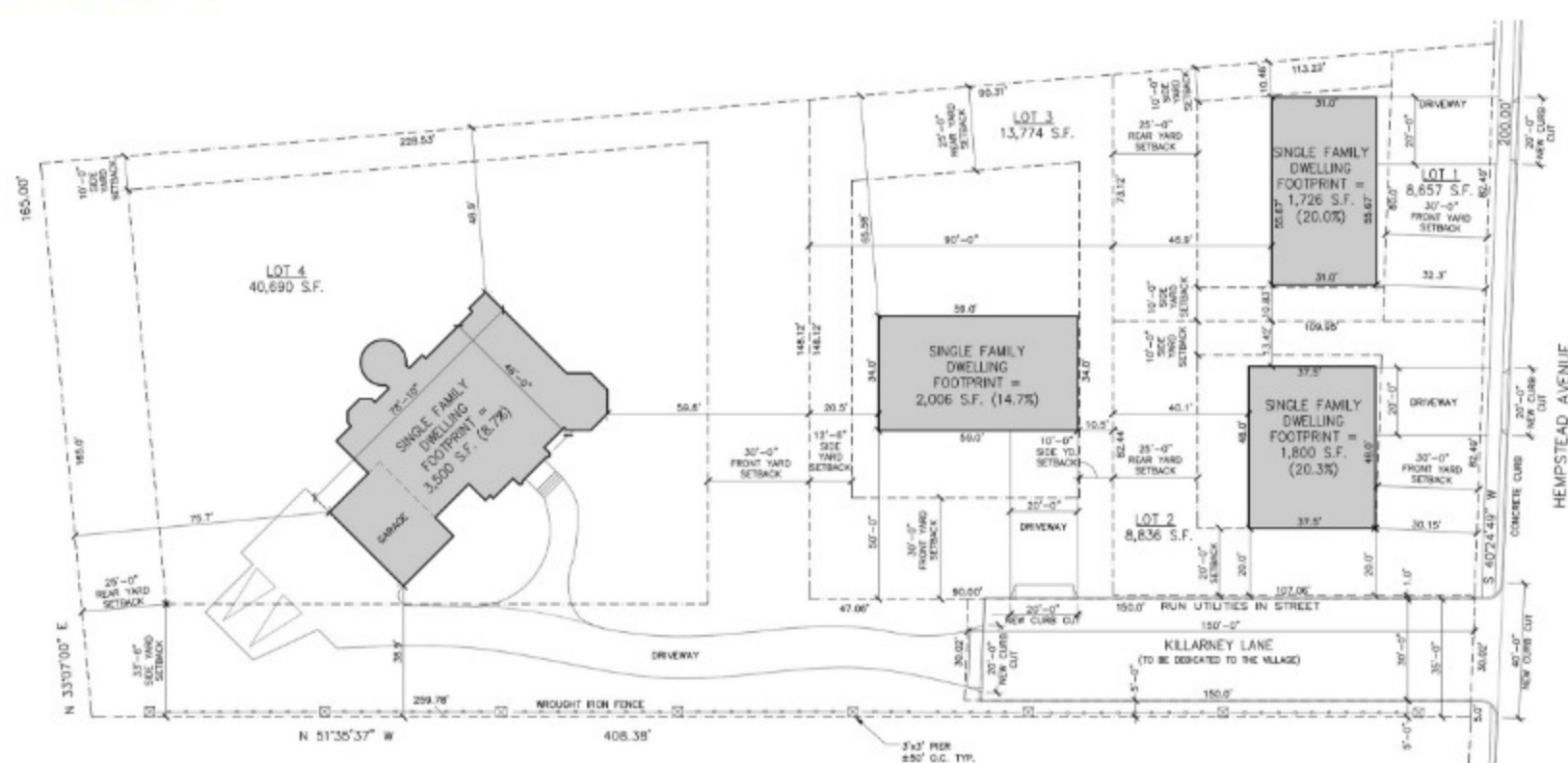
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# Hempstead Ave. owners' subdivision plan in limbo

## Developer challenges village-enacted moratorium

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An Attorney who represents Hempstead Avenue homeowners Jim and Brett O'Reilly, said that a moratorium enacted by the village should not apply to his clients' proposed development, because the street that would be created, Killarney Lane, would not be a private road. Above, the most recent site plan.

COURTESY CHRIS BROWNE

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 By **Zach Gottehrer-Cohen**

The Rockville Centre village board voted 4-1 on July 10 to institute a six-month moratorium on construction on properties that front private roads. The ruling could delay a plan to subdivide the 1.75-acre plot on Hempstead Ave. adjacent to St Mark's Church. The owners, Jim and Brett O'Reilly, who live in the house that once served as the church's parsonage, plan to demolish it and build four homes on the site, which has attracted opposition from residents in recent months.

The moratorium was immediately applied against the O'Reillys' plan, according to their lawyer, Chris Browne. He said that the house is not conducive to modern living, and in addition to knocking it down and dividing the land, a new street, to be called Killarney Lane, would be constructed perpendicular to Hempstead Avenue, to allow access to the two homes planned for the back of the property.

Browne applied for an injunction on July 13 against the building suspension, claiming that his clients should not be affected, because their plan does not involve a private road — Killarney Lane would be turned over to the village and become a public street. The Nassau County Supreme Court denied the request. How the case proceeds, Browne told the Herald, will hinge on "a matter of legal interpretation over what constitutes a public street."

Village spokeswoman Julie Scully said that the village last year amended its zoning regulations to require that all lots have frontage on public roads, which was why the O'Reillys' plan was turned down by the Building Department and a variance was denied by the Zoning Board of

Appeals last month.

"As part of their litigation, the O'Reillys are seeking to overturn this decision," Scully wrote in an email to the Herald. "The Village will vigorously defend the Board of Appeals' decision, and anticipates that the Court will agree with the Board of Appeals."

The moratorium, she continued, "was done in order to permit time to study this issue, and make appropriate code changes, and to prevent anyone from gaining development rights before the study could be completed." The board of trustees can extend the moratorium for no more than two periods of three months each.

Browne said that his clients sought a variance because their plan did not have the required amount of public-road frontage — a minimum of 80 feet — not because it had no such frontage.

"All we have asked from the village is a fair process, and the O'Reillys are eager to continue the usual legal process that applies to an application for a subdivision," Browne said. "...We don't understand the need for the moratorium, and we don't believe it applies to the O'Reilly application, because the O'Reillys have never proposed to create a private street."

The variance denial came after dozens of residents voiced opposition to the O'Reillys' plan at zoning meetings, citing the historical value of the 19th-century home sitting atop the hilly plot. Others complained of overdevelopment in the village and the precedent the property division would set for other developers looking to subdivide land.

"We appreciate the efforts of the Mayor and the trustees regarding their goal to control positive development throughout the Village," Robert Litt, a local lawyer who represents a number of homeowners who oppose the O'Reillys' plan, said in a statement.

Some residents have been working to establish a committee to designate local sites historical landmarks for preservation. According to Ellen Grossman, treasurer of the Rockville Centre Museum, it is difficult to force homeowners to keep historically important houses they don't want, but the public interest in the O'Reillys' property has "really triggered people's awareness," she said.

Grossman added that she expects the committee to be formed in the next few months, and that it would focus more on properties it identifies in the future.

Browne has filed amended site plans for 220 Hempstead Ave., which included additional strips of land on either side of the subdivision's two rear plots to make them compliant with the frontage requirements, and has asked the village to review it.

John Matthews, counsel to the Zoning Board of Appeals, told the Herald last month that if the O'Reillys could produce a plan that didn't require a variance, it would be difficult for the village planning board to deny them the right to subdivide the property, given the board's record of allowing subdivisions in the past.

Browne and the village's legal representatives are scheduled to appear before Nassau County Supreme Court Justice John Galasso on July 24, at 9:30 a.m., to make their respective cases.

"The Village is confident that it has acted in accordance with long-accepted legal principles of zoning law," Scully wrote in her email, "and that its zoning laws and the moratorium will be sustained by the Court."

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