

Minutes of the Zoning Board of Appeals Meeting held on April 10, 2019 at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Joseph DeVenuto, Gary Kestenbaum
Absent: None
Also Present: Robert Dickover, ZBA Attorney;

1. Executive Session: N/A

2. Approval and Acceptance of Previous Minutes:

Motion was offered by Chairwoman Ungerer, seconded by G. Kestenbaum, to approve and accept the minutes of the meeting held on March 13, 2019. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

3. New Business – n/a

4. Action on Decisions – n/a

5. Public Hearings -

A. The Shops of Woodbury, LLC –

Continuation of Public Hearing for area variances and interpretation. Applicant proposes to construct a commercial center and hotel having a lot area of 9.65 acres. The height of the proposed hotel is 60 ft. high, whereas, pursuant to Section 310-7 bulk regulations, the maximum height permitted is 35 ft. Furthermore, the applicant requires an interpretation as to whether a hotel is permitted as part of a commercial center pursuant to Section 310-49(c)3. In the alternative, the applicant is requesting an area variance from the minimum lot area required pursuant to Section 310-6f. Said property is located in the IB Zoning District off of the intersection of State Route 32 and Locey Lane in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225 Block 1 Lots 34.1 & 34.2.

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to carry over and continue the public hearing to the May 8, 2019 meeting, as per the applicant’s request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

B. Falkowitz –

Continuation of Public Hearing for an area variance and Special Permit for the demolition of an existing non-conforming 3 family dwelling and construction of a 2 family dwelling. The applicant proposes 2 alternate plans. Plan “A” and Plan “B” will both require a variance to permit the expansion of a non-conforming use and Special Permit pursuant to Section 310-43.2(B) 1 and 310-43.C of the Village Code. However Plan “B” requires an additional variance to permit a rear yard setback of 40.1 ft., whereas, pursuant to Section 310-6(B) and 310-7 Bulk regulations a 50 ft. rear yard is required. Said property is located in the R2A Zoning District at 12 Skytop Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 217 Block 3 Lots 4

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to carry over and continue the public hearing to the May 8, 2019 meeting, as per the applicant’s request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

C. ALDI Inc. –

Public Hearing for an area variance to permit wall signage having 5 colors (corporate logo). Whereas, pursuant to Section 310-30D(l)(e) a maximum of 4 colors is permitted. Said property is located in the IB Zoning District within Woodbury Centre at 43 Center Drive in Central Valley and is known on the Village of Woodbury Tax maps as Section 225 Block 2 Lot 1.12.

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to carry over and continue the public hearing to the May 8, 2019 meeting, as per the applicant’s request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

D. Pulver/Rushmore Estate Winery

A public hearing for an area variance to permit the proposed use of a farm winery. Whereas, pursuant to Section 310-39.1(B), winery access must be to NYS Route 32 and applicant proposes access through Quaker Road (Village Road) and Ice House Road (Private Road). Said property is located in the R1A Zoning District at 14 Castleton Drive in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 202 Block 1 Lot 70 & 79.

Chairwoman Ungerer, stated that the applicant wants to build a winery which is a permitted use in this zone, however the applicant doesn’t have direct access to Route 32 and there in-lies why a variance is being requested from Quaker Road to Ice House Road.

Mr. Jay Myrow, the applicant’s attorney stated they propose to construct a 4,000 square-foot building, which will function as a tasting room for the Winery. Access will be from Ice house Road, which intersects with Quaker Road to the east of the Subject Property. The section of Ice house Road to the west is not connected to Castleton Drive. The roadway will be a two-lane, gravel, 24-foot roadway, with appropriate grades, horizontal and vertical alignment to meet current standards. It will be designed to accommodate emergency vehicles of a variety of sizes, such as fire trucks, ambulances and will also serve as the access to the Winery for all patrons, staff and deliveries. It will continue to provide access for six homes. After going back and forth from the ZBA to the Planning board for the past year, Mr. Myrow requested the ZBA to make a SEQRA determination and type up an action towards this application.

The Zoning Board of appeals declared themselves lead agency in an uncoordinated review and they typed it as an unlisted action.

Mr. Mike Galanti, stated based on an evaluation of the proposed improvements to Ice house Road, which will improve it from a narrow private road, to a two-lane gravel road designed to meet current standards will function as an appropriate roadway to accommodate the anticipated traffic to be generated by the proposed Winery on a busy day. The proposed improvements will accommodate this level of traffic with a significant reserve capacity to accommodate additional traffic. It will accommodate emergency vehicles, patrons, and delivery to the Winery, as well as the individual homes located on this road. It is his opinion the improved road will be substantially better than the existing road serving the six homes and the subject property. It was previously noted that the Ice House Road approach to Quaker Road should be controlled with a Stop sign and maintain appropriate Intersection sight distance should be provided. It is also important to note that Ice house Road will be improved to provide a wider pavement and the alignment of the road will be modified to meet current standards. Therefore, it is important to keep in mind that the existing road alignment and width will be modified to address current standards.

Mr. Myrow stated Mr. Pulver purchased property along Ice House Road so he can widen the road to get rid of a “bottleneck” situation. Chairwoman Ungerer, asked if there are easements on the properties that are there? Mr. Myrow stated there will be an easement over Mr. Pulver’s property to accommodate that. Chairwoman Ungerer asked if the road would encroach upon anyone’s property or if it was simply Mr. Pulver’s property that will be used. Mr. Myrow stated yes, it will only be Mr. Pulver’s property. Mr. Myrow stated that the variance they are requesting states that any winery must front directly on route 32. This circumstance they are 450 feet off of route 32. Going north it’s a left turn going south it’s a right turn. Going right they have proposed a turn onto Quaker so they have two ways to get to Quaker if they utilize Evans Drive as well. Mr. Myrow stated that it is a very safe traffic plan with no detriment to the public or residents. Chairwoman Ungerer stated if you make that right on to Evans Drive it is a lot more than 450 feet and it goes through a residential area. K. Abrams asked if there are any lines on the road. Chairwoman Ungerer said no, she doesn’t believe so. After a thorough debate amongst the Zoning Board members, they requested a letter from the Highway superintendent about the unstripped roads.

They are requesting of him in his letter to look at the traffic study and inform the ZBA what he thinks about the maintenance and care of the other roads leading into Ice House Road; specifically the route from Route 32 to Evans Drive and Quaker Rd. to Ice House Road. They also are requesting Mr. Collins the Village's Planning Board traffic consultant to appear at the next meeting to discuss not only the traffic but the safety of the residents on Ice House Road as well as the other roads that connect to Ice House Road. The board also requested that a 239 review be resent to the county, it was sent originally in March of 2018 and they never received any word back.

Chairwoman Ungerer, stated there were concerns from her and the board as to the usage of Quaker onto Ice House Road, and now multiple consultants are stating that you are going to be using Evans Road and that just brings up a whole other set of concerns especially the impact of traffic. She then stated that Mr. Myrow stated last year that if a traffic study came back and it impacted the road he then would amend the EAF, and that has not been amended. Mr. Galanti stated that he was unaware and that he would never say there was not an impact from traffic, because of course there is going to be, however there is not going to be a significant impact. J. DeVenuto, questioned Mr. Galanti thinking in that the roads will be able to handle the traffic. Mr. Galanti stated he is not there to gauge what the impact will be on someone's home, just the traffic on the roads. K. Abrams, stated he would like the Highway Superintendent to look over question #17 on the EAF as well as the water runoff and if roads are being moved and land is being dug up, where is the water going? Will there be an impact to drains and drainage, as well as snow removal. Mr. Torro a consultant for Mr. Pulver stated the final design has not been set and if an issue arises a paved apron can always be installed. G. Kestenbaum, asked if there is a protocol in place for traffic so the traffic can't exit into Brigadoon. Mr. Myrow stated it will be barricaded and there will be no available access through Brigadoon. J. DeVenuto wanted to make sure they were just dealing with the roads and the impact to the roads. He wanted to make sure there was a paved apron and if there wasn't one and the board deemed it necessary that the applicant would install them. He then asked if there were any wetland on the property and Mr. Myrow stated there were not. J. DeVenuto, then stated when he went down Ice House Road, he saw an excavator and was wondering if there were any plans to "break ground"? Mr. Pulver, stated it belongs to a friend and it is just sitting there at the moment.

Mr. Rodriguez, from 7 Ice House Road stated his kids walk down to the bus stop on Ice House Road and he is concerned with the safety of his children, due to all the blind spots on the road, he then stated he does not have good faith in Mr. Pulver. Chairwoman Ungerer, asked since Mr. Pulver purchased the home in 2002, what type of agreement was there with the homeowners? Mr. Myrow stated they have reviewed titles from multiple parcels, and he doesn't believe there is a written road agreement. He then stated there is nothing in record that they have seen, however with the current proposal, Mr. Pulver will do the improvements to the road, and take over 100% obligation for the road maintenance going forward. J. DeVenuto, read in a comment from the Planning Board meeting dated January 2018 where Mr. Myrow stated at that time, "together with the rights of others to use the road" basically stating that the other homeowners have every right to use the road. Mr. Myrow agreed and stated other property owners have every right to use the road to get to their properties, and they don't dispute that at all. J. DeVenuto, then stated that the homeowners have maintained the road at least since Mr. Pulver purchased it in 2002. The homeowners have collectively maintained the road, and plowed the road. Mr. Myrow, stated Mr. Pulver will take over all those responsibilities with no contribution from the other homeowners. J. DeVenuto, then stated he would like a project narrative and a business plan submitted.

Mr. Taporn of 23 Quaker Road stated what is preventing them from using Brigadoon Blvd. Mr. John Kuklis of Ice House Road stated he agrees with Mr. Taporn and he would like to know the sight distance of all the lefts and rights out of Ice House Road. He also stated that Ice House Road is supposed to stay closed. J. DeVenuto, asked how long the gate has been up and Mr. Kuklis stated it has been there since he moved in, in 1984.

Mrs. Rodriguez, from 7 Ice House Road stated that the road widening is good, however the alcohol consumption mixed with a speed of 55 mph on Route 32, will just lead to a lot of accidents. She then went on to say that it is very difficult to make a left off of Evans as well as a left off of Quaker onto route 32. She then brought up a point about the possibility of someone on Ice House Road needing medical attention and the traffic is built up and an ambulance wouldn't be able to get through. Bottom line her major concern is the safety of her children and the residents that live on Evans, Quaker, and Ice House Road.

Motion was offered by K. Abrams, seconded by Brady, to carry over and continue the public hearing to the May 8, 2019 meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

E. Brach –

Public Hearing to appeal violation order #2019-012 issued by the Building Inspector for exceeding the permitted height and location limitations for fencing placed in the side and front yard. In the event the ZBA upholds said violation, the applicant seeks an area variance to permit a portion of the solid 48 inch high fence in the front yard to remain. Pursuant to Section 146-7(A) of the Village code, fencing in the front yard shall be uniformly less than 50% solid. Furthermore, the applicant has erected 6 ft. high solid fencing in a side yard, whereas pursuant to Section 146-5(B) and 146-79(A) fencing in a side yard shall not exceed 4 feet high and shall be less than 50% solid. Said property is located in the R2A Zoning District at 273 Seven Springs Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 213 Block 1 Lot 67.

Mr. Charles Gottlieb, the applicant’s attorney referenced a document that the board did not have, without said document they decided to continue the public hearing however they could not render a decision at this time due to missing documentation.

Mr. Gottlieb, the applicants attorney stated that on behalf of Sigmond Brach, the owner of the property located on 273 Seven Springs Road, he would like to appeal to dismiss a violation that was issued to the applicant, as well as requesting an area variance. The applicant is seeking relief from Village Code 146-5(B), which requires side yard fences to be no more than 4-feet in height, due to only a portion of the fence being 6-feet in height. The fence is 4-feet in height from its point adjacent to Seven Springs Road spanning and traveling 100 feet into the property. From that point and approximately 100 feet into the Property, the subject fence is 6-feet in height to the rear of the property. The fence complies with the Village Code in the area nears the roadway and there are no adverse visual impacts that occur from the requested area variance. He then stated that he believes there is a bit of confusion from the building official as to code, he doesn’t understand why the violation is in the notice of violation since the fence is about 5 feet off the property line. He then stated that his appeal is for the ZBA to appeal that allegation. He then stated that they do not have an active allegation in front of them for 146-7(A) so they would like for the ZBA to not entertain that at this time. Chairwoman Ungerer, stated due to the composition of the fabric material in the fence it appears solid. Mr. Gottlieb stated just because it appears solid, doesn’t mean it is, and he and his client still believe that it is less than 50% solid. J. DeVenuto stated he went to fence places and looked at actual fences. He then stated that he went up and looked at the fence on Mr. Brach’s property and he has one filled and one open and so forth, if you put it all together it is more than 50% which makes it solid. He then went on to say if you get a slot that is 2 inches followed by an opening that is 2 inches then that makes it 50% solid. What our code is looking for is a 2 inch opening and a 1 ½ inch solid piece that would be a less than 50%.

Mr. Brach stated he believes that he is so far back from the road, it shouldn’t matter. There is no obstruction from traffic, and it is an illegal law, and he will go to court and fight it. He continued to have an out - burst and the board decided they can’t make a decision without the missing documentation from the building department, so until they receive all of the information they would continue the hearing.

Motion was offered by K. Abrams, seconded by C. Brady, to carry over and continue the public hearing to the May 8, 2019 meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings: N/A

8. Adjournment:

With no further business to discuss, a motion was offered by K. Abrams, seconded by G. Kestenbaum, to adjourn the meeting at 9:35 PM.

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

Jessica McClennan, ZBA Secretary