

Minutes of the Zoning Board of Appeals Meeting held on August 14, 2019 at 7:30PM

Present: Karen Ungerer, Chairwoman  
Kevin Abrams, Craig Brady, Joseph DeVenuto, Gary Kestenbaum  
Absent: None  
Also Present: Robert Dickover, ZBA Attorney; Timothy Egan, Village Trustee; Sandra Capriglione and Chris Gerver, Planning Board

**1. Executive Session:** The ZBA went into executive session at 7:32 and returned at 7:42.

**2. Approval and Acceptance of Previous Minutes:**

Motion was offered by K. Abrams, seconded by G. Kestenbaum, to approve and accept the minutes of the meeting held on July 10, 2019. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**3. New Business –**

**A. Sofer**

Chairwoman Ungerer, stated the Building Department received a letter from Mr. Sofer at 14 pheasant Run. Mr. Sofer was granted a variance for a white vinyl fence, however the building permit that was issued had a tan insert. Once the fence was installed a complaint was received from an adjacent homeowner and a stop work order violation was issued. Mr. Sofer was given an appearance ticket and is due for a trial on August 29, 2019. Mr. Sofer, wished to modify his variance to permit the tan insert to remain. The board discussed this and recommended that Mr. Sofer submit a new application and to rehear the new application at a public hearing on September 11, 2019 which would allow to public to speak regarding this application. Motion was made by K. Abrams, seconded by C.Brady, Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**4. Action on Decisions –**

**A. Pulver/Rushmore Estate Winery –**

Review decision for decision 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). Property is located at 14 Castleton Dr., HM SBL202-1-70 & 79

In employing the balancing tests set forth in Village Law Section 7-712-b (c), the Board hereby grants the variance as requested upon the following conditions:

In employing the balancing tests set forth in Village Law Section 7-712-b (c), the Board hereby grants the variance as requested upon the following conditions:

1. This approval is not granted in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Village Planning Board on Site Plan and Special Permit approval for the farm winery. As such, this grant of variance is conditioned upon approval of the proposed site plan and special permit by the Village Planning Board. This approval by the Zoning Board of Appeals is intended to do no more than vary the specified strict limitation provision of the Code in its requirement that the farm winery have "access to NYS Route 32"; it is not intended to authorize the use of the premises as a farm winery nor construction of a particular building nor approve the footprint, size, volume or style thereof. The Planning Board remains possessed of all of its power and authority to review, limit, request modifications to, and to ultimately approve (absolutely or conditionally) any application in reference to this project as may come before it. Should the Planning Board require changes in the size, location or configuration from what is shown on the plans before the

Zoning Board of Appeals that require greater or different variances, the applicant must return to the Zoning Board of Appeals for further review and approval.

2. This application is tied to a specific application for site plan approval pending before the Planning Board. Therefore, this approval is conditioned upon the applicant diligently pursuing his application before that board. Should the applicant not have obtained approval from that board within two years from the date of this decision, he must request an extension of this approval from this board. A failure to obtain an approval from the Planning Board or an extension of this grant of variance from this board, shall result without further action, in a lapsing of this approval two years from the date of this decision.
3. This variance is specifically granted subject to and conditioned upon the applicant meeting the following conditions in the development of his property for the proposed farm winery. These conditions are to be met and maintained during the use and operation of the farm winery and in the event these conditions no longer exist this variance hereby granted shall become without further notice null and void. The conditions are as follows:
  - A. With respect to the improvement of Ice House Road it is to be constructed as a two-lane, macadam surfaced, 24-foot wide driveway, graded horizontally and vertically to meet current Village specifications for a private street/roadway together with footpaths or sidewalks installed in the residential portion of Ice House Road to a design acceptable to the Village Planning Board in the context of the site plan approval process,
  - B. With respect to the design of Ice House Road it is to be designed for suitable access by emergency vehicles including fire- fighting apparatus and ambulance. The intersection of Ice House Road at Quaker Road is to be signed with a NYS MUTCD STOP sign and suitable sight distances are to be maintained for traffic exiting onto Quaker Road.
  - C. With respect to the use by others of Ice House Road, though owned by the applicant, legal access and egress to the six properties currently having access via Ice House Road to Quaker Road is to be continued and memorialized by recorded easement suitable to counsel for the Zoning Board.
  - D. The applicant shall file a Declaration of Covenants binding the owner of the subject premises to perpetually maintain Ice House Road to Village private street standards and to grant enforcement authority to the Village and any of the six property owners using Ice House Road for access and egress.
  - E. The applicant shall apply to the Village Board and NYS DOT, if applicable, for MUTCD signage at the intersections of Ice House Road/Quaker Road, Quaker Road/Evans Drive, Quaker Road/Route 32, and Evans Drive/Route 32 and install and maintain such signage as a condition to this variance.
  - F. As part of the applicant's site plan application he shall propose to realign the intersection of Quaker Road and NYS Route 32 so as to create a "T-intersection." The proposal shall be pursued diligently with the Planning Board, Village Board and State DOT. If approved by all the realignment shall be completed as a condition to this variance as approved.
  - G. As part of the applicant's site plan application he shall design and present a plan for directional signage both on and off premises so as to direct the volume of anticipated traffic from the Ice House Road/Quaker Road intersection directly to the Quaker Road/NYS Route 32 intersection so as to avoid to the maximum extent possible traffic along Evans Drive.

- H. As a condition of this variance and to be imposed as a condition to any subsequent site plan approval, the Applicant shall not allow large passenger style buses or tractor hauled trailers (18 wheel vehicles) to access the premises via Ice House Road.
- I. The Zoning Board of Appeals recommends to the Village Planning Board that if the applicant's site plans for a farm winery is to be approved that the Planning Board make a recommendation to the Village Board of Trustees to consider designating Evans Drive as a one-way road.
- J. If the applicant's site plan for a farm winery is approved by the Village Planning Board all information disseminated by the applicant related to directions to the winery and/or traffic into or out of the winery shall refer only to access and egress via the Quaker Road/Route 32 intersection and shall not mention in any form or fashion access via Evans Drive.

Motion was offered by C.Brady, seconded by J. DeVenuto, to approve and accept the decision as read granting the variance to the applicant (Full decision on file at the Village Clerks office). Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

AYES	5	Ungerer, Brady, DeVenuto, Kestenbaum
NOES	1	Abrams

**4.Public Hearings –**

**A. The Shops of Woodbury, LLC –**

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 Applicant requires an interpretation of the applicability of Section 310-27C(3) which requires a 25’ landscape buffer in the front yard. In the alternative the Applicant is requesting a variance from the 25’ landscape buffer. The proposed lot coverage is 76% of the site, whereas pursuant to Section 310-7 of the Bulk Regulations, the maximum development coverage is 65%. The Applicant is also seeking relief from Section 310-7 regulating side yard setbacks and Section 310-12B regulating setbacks for commercial centers from state and county roads. 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 C.Brady, seconded by Chairwoman Ungerer, to continue the public hearing to the September 11, 2019 meeting as per the applicant’s request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**B. Cruz –**

Public Hearing for a Special Permit to permit the continued use of a 2nd dwelling unit for an individual family members (mother/daughter) pursuant to Section 310-35 of the Village Code. Said property is located in the R1A Zoning District at 39 Pleasant Drive in Highland Mills and is known on the Village of Woodbury Tax maps as Section 211 Block 1 Lot 53.

Mrs. Kimberly Cruz stated she purchased the home in April 2019, her mother most of the time comes from Friday to Sunday and would like for her to have her own living quarters. A place where she can hang out, make her own meals, she then stated she does not do stairs very well so this separate living area would be good for her. Chairwoman Ungerer, asked if her mother had a home somewhere else and the applicant stated she lives in the city. J. DeVenuto, stated that this was a pre-existing mother-daughter dwelling, and he doesn’t believe it is applicable to a dwelling unit, and he doesn’t believe it would pass the yearly inspection. Chairwoman Ungerer, stated she believes what the building inspector checks is that it is a family member that is listed, because it can’t be rented and if the appliances are there. J. DeVenuto, stated it is supposed to be for a resident that lives there seven days a week or most of the time. K. Abrams, stated not necessarily , that there are no dates that need to be given to live in a mother – daughter house. J. DeVenuto, stated you either live there or you visit there. K. Abrams, stated when she is there, she is living there, her mother wants it to be her space, and it is already set up to be a mother-daughter, he then questioned why we are sitting her telling them how many days they have to live there?

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to close the public hearing and make a decision at the end of the meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**C. Reineke Vite –**

Continuation of Public Hearing for an area variance to permit the construction of a single family dwelling on a preexisting lot having no frontage on a public roadway or suitable roadway improved to the satisfaction of the Highway Superintendent. Said property is located between 97 and 101 Smith Clove Road in the R2A Zoning District and is known on the Village of Woodbury Tax Maps as Section 218 Block 2 Lots 88.

Mr. Justin Kimple stated he is from the law firm that is representing the applicant. He then stated that access to the site will be by an easement through lands owned by the former spouse, who is obligated under the divorce provisions to grant the easement benefitting this property which is otherwise worthless. The parcel was apparently cut off from municipal road frontage with the taking by New York State of the lands of the NYS Thruway (I-87) and they have submitted assessor records showing the lot has been carried on the Woodbury tax rolls at least since 1979. Attorney Dickover, stated that in order to grant this variance, the applicant must show this road to have existed on one of the following

1. An ancient map
2. An improved sub-division map
3. A Street that appears on an official Village Map.

Mr. Kimple then requested a continuation so that his firm could get more information and a memorandum to the board.

Motion was offered by K. Abrams, seconded by J. DeVenuto, to continue the public hearing to the September 11, 2019 meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**C) Schwimmer –**

Continuation of Public Hearing for an area variance to permit the installation of an 8 feet high solid pool curtain around an existing in ground swimming pool. Whereas, pursuant to Section 146-5(A), 146-(B), a maximum height of 6 ft. is permitted and a fence made of cloth or canvas is prohibited. Said property is located in the R2A Zoning District at 21 Vanderbilt Drive in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 245 Block 1 Lots 102.

Chairwoman Ungerer, stated last month the board discussed the black mesh shower curtain with the applicant. She then stated she received the Home Owners Association rule book that explained what is allowed there. She then stated within the HOA hand book it states that the homeowner is supposed to submit for review whatever it is they want to do their house to the HOA, in turn the HOA has 60 days to approve or disapprove what the homeowner is asking for. She then stated, the bottom line is that this is a matter between you and the HOA. Mr. Schwimmer and the board discussed the height difference, and how he came to 8 feet opposed to the 6 feet, he stated it had to do with the terrain of his property. Mr. Schwimmer then stated that the HOA is using the Building Department because the HOA never told him he couldn't do it, they just went straight to the Building Department. K. Abrams, suggested umbrellas. C.Brady, stated that there are other alternatives and that is the job of the Zoning Board of Appeals to suggest alternative ways of obtaining what the applicant is requesting instead of granting a variance. He then suggested large sails that people utilize in the mid-west for shade. J. DeVenuto, then stated that the applicant should do his due-diligence and make sure that what the ZBA is suggesting is allowed with the HOA and the building department.

Motion was offered by K. Abrams, seconded by J. DeVenuto, to close the public hearing and render a decision at the end of the meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
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**6. Building Inspectors Report: N/A****7. Deliberations on closed Public Hearings****B. Cruz –**

K. Abrams, stated he doesn't have any problem granting this special permit. There is nothing in our law that says anything about a person who just spends the weekends. All she is saying is that she wants to designate that part of the house to her mother and as long as the applicant signs the name of who is actually going to live there, he doesn't have a problem granting the special permit. Chairwoman Ungerer, stated being that it is a special permit it gets checked out every year anyway and maybe in the future she will move in permanently. G.

Kestenbaum, asked J. DeVenuto to restate what he said before. J. DeVenuto, stated 310-35 of the code says: a mother-daughter is a special permit use that is granted by the ZBA for an additional dwelling unit for the use of family members. He then stated he went to 310-2 and that says a dwelling is a building or part of a building that is designed or used as living quarters for one or more families. It doesn't say anything about visiting. Chairwoman Ungerer stated it doesn't say anything about temporary or permanent either, there is no distinction and it already exists. K. Abrams stated it is living quarters for family, when she is there, she is there. J. DeVenuto, stated he doesn't think that that is what is was designed for. G. Kestenbaum, stated J. DeVenuto, is looking at vocabulary and specific words and then requested Attorney Dickover for his interpretation of the language that J. DeVenuto, is looking at. Attorney Dickover, stated no. J. DeVenuto, then stated he asked the code enforcement officer what his interpretation was and he said it is for visitation or permanent residence for the person and is basically used as a primary residence. The board debated what a permanent/ primary residence is and J. DeVenuto requested clarification from the Code Enforcement officer before the board makes a decision on it. Attorney Dickover, stated he doesn't see the word residence in the code, he stated it is a legal term that sometimes gets over used. He then stated it is a dwelling and by definition a mother-daughter is a temporary special permit may be granted by the Zoning Board of Appeals for an additional dwelling unit for the use of family members in accordance with the following:

**A.** Additional unit may only be used for up to two additional persons directly related to the owners of the principal dwelling unit;

**B.** The single-family dwelling may be expanded up to 25% to a maximum of 1,000 square feet of the floor area of the principal dwelling unit to accommodate the new unit;

**C.** All bulk dimensional requirements of the zoning district in which the dwelling is located must be complied with;

**D.** In the event the property is either sold or the additional unit is vacated, the permit will become null and void.

The property shall be restored to its original single-family status and permanent cooking facilities (i.e., stove) shall be removed;

**E.** The applicant (property owner) shall provide to the Zoning Board of Appeals names of all persons who intend to occupy the additional unit. Homeowner and intended occupants shall sign the special permit upon its approval by the ZBA; and

**F.** All facilities are subject to an annual inspection by the Building Department.

He then stated he doesn't see anywhere in the code that a dwelling unit be used full time or as permanent residence or as domicile. J. DeVenuto, then stated that everything we have ever done is for a person that has lived there, there has never been anyone that has come before us that is only going to live there on the weekends or sometimes. G. Kestenbaum, stated there are people in town that own houses, and only spend weekends here or part of their time; however they are still functioning as residents and enjoy the privilege of both houses. He then stated he doesn't understand why a mother-daughter can't enjoy that privilege of a part time residence. Chairwoman Ungerer, then said Mrs. Cruz probably bought the house with the intention of her mother living there, her mother having her own space, she can cook, sleep, watch tv. Mrs. Cruz stated yes, that is why she bought the house.

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to grant the special permit of the mother-daughter house to the applicant. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

AYES	4	Ungerer, Abrams, Brady, Kestenbaum
NOES	1	DeVenuto

**C) Schwimmer –**

Chairwoman Ungerer, stated she is having a problem with this application because its cloth, temporary and eight feet high. She then stated that the applicant has not explained to her why eight feet is necessary. G. Kestenbaum stated he has a problem with the eight feet as well, if the applicant arrived at eight feet in an attractive or sensible manner then he would understand. The Board reviewed the following responses that were provided in the “Statement of Ownership and Interest” provided by the applicant for a use variance and the Boards decision on each question follows:

1. *Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?* The applicant stated: No, since this is the back of my property and has no street visibility. The Board Disagrees, with the applicant and stated that he contradicted himself on the questions.
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated: No, 6 foot fence does not cover on lookers from certain areas and bathers are still visible. The Board stated they disagree with the applicant and that there are other alternatives.
3. *How substantial is the variance that you are requesting?* The applicant stated: Minor we are asking for additional feet to increase the fence. The Board Disagrees with the applicant and stated it is substantial.
4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant stated: There is no physical impact or any environmental concern. The Board stated aesthetically there is a however, there is no environmental impacts. .
5. *Is the alleged difficulty self-created?* The applicant stated: No, there is a religious requirement. The Board disagreed, and feels there are alternatives.

Motion was offered by K. Abrams, seconded by C.Brady, to have Attorney Dickover draft a negative decision denying the applicant’s request for the variance. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**8. Adjournment**

With no further business to discuss, a motion was offered by Chairwoman Ungerer, seconded by K. Abrams, to adjourn the meeting at 8:48 PM.

<b>ADOPTED</b>	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

Jessica McClennan, ZBA Secretary