

Minutes of the Zoning Board of Appeals Meeting held on February 12, 2020 at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Joseph DeVenuto, Gary Kestenbaum
Absent: None
Also, Present: Attorneys: Robert Dickover, ESQ

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on March 11, 2020.

1. Attorney-Client Meeting:

The board went into an attorney client meeting at 7:36 and returned at 8:03. J. DeVenuto made a motion, seconded by K. Abrams to reopen the meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

2. Approval and Acceptance of Previous Minutes:

Motion was offered by K. Abrams, seconded by J. DeVenuto, to approve and accept the minutes of the meeting held on December 11, 2019. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

3. New Business –

4. Action on Decisions –

A. Itskowitz –

Review draft decision for an area variance to permit a 19 ft. x 17 ft. addition to an existing single-family dwelling leaving a rear yard setback of 32 ft. including overhang. Whereas, pursuant to Section 310-6(B) and 310-7 bulk table a 50 ft. rear yard setback is required. Said property is located in the R2A Zoning District at 17 Blueberry Lane, HM SBL 217- 2 - 8.

In employing the balancing tests set forth in Village Law Section 7-712-b (c) and taking into consideration the Board's findings as set forth herein, the Board hereby determines to grant the variance as requested.

(Full decision on file in the Village Clerk's office)

B. The Shops of Woodbury, LLC –

Review draft decision for area variances and/or Code interpretations. Applicant proposes to construct a commercial center and hotel having a lot area of 9.65 acres. 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, CV SBL 225-1-34.1 & 34.2

Interpretation of Village Code § 310-27(C)(3)¹

Village Code § 310-27(C)(3) ("Front landscaped area") provides that in all districts except the HB, there shall be a 25-foot landscaped strip in the front yard contiguous to the front lot line of the property. There shall also be a landscaped area at least five feet wide abutting the front of the building in all nonresidential districts. See Village Code § 310-27(C)(3). The Building Inspector and Applicant agree that the frontage is limited to Locey Lane, as access cannot be obtained from any of the neighboring highways, which requires a fifty (50) foot front yard setback.

The Applicant has requested that the Board permit a retaining wall, sidewalk and portion of the roadway (Locey Lane) within the 25-foot landscaped area.

The Board first discussed Village Code § 310-7.1(D)(4), as it relates to the required buffers specifically within the Hotel Overlay District. This section provides:

Buffer. There shall be a minimum fifteen-foot-wide landscaped buffer along all boundary lines of the property for all hotels not located in a commercial center under common ownership. Only access drives and sidewalks may traverse the landscaped buffer; no other impervious surfaces

may be located in the landscape buffer. The underlying zoning requirements for buffers shall apply to hotels located in a commercial center under common ownership. (Emphasis added.)

The Board discussed how these two provisions of the Code interplay with each other and determined that the provisions of the Code that are specific to the Hotel Overlay District would permit the roadway and sidewalk within the landscaped buffer. The Board further discussed how the retaining wall is necessary for safety due to the topography of the property, and its elevation above New York State Route 17. The Board concluded that these features are permitted in the required landscaped buffer area.

On motion by Member Abrams, seconded by Member DeVenuto:

Chairperson Karen Ungerer	<u>Aye</u>
Member Kevin Abrams	<u>Aye</u>
Member Joseph DeVenuto	<u>Aye</u>
Member Gary Kestenbaum	<u>Aye</u>
Member Craig Brady	<u>Aye</u>

1. Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than area variance.
3. Whether the requested area variance was substantial.
4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the difficulties professed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance, and whether the requested variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The surrounding neighborhood includes Woodbury Common, large retail stores, restaurants and smaller retail establishments. The property and its surroundings are located at the intersection of the New York State Thruway and Route 17, and the project as proposed is consistent with the Comprehensive Plan and the purpose of the IB district. The Board considered how the Applicant would not be requesting this area variance if the State had not taken over 3 acres of its land by eminent domain, but also considered that the Applicant could decrease the size of its proposal. The Board concluded that permitting a greater percentage of lot coverage for this application would not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties, as there was very little landscaping and/or green areas associated with the surrounding developments.

Additionally, the Board weighed whether the 17% variance, from the maximum 65% coverage permitted was substantial. The Board determined that the variance was not substantial, considering that if the proposal included only a hotel, without the additional uses, it would be permitted to have 75% lot coverage under the Village Code.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. It determined that the issue of the alleged difficulty being self-created is an arguable one. On one hand, the Applicant is aware of the Village's Code requirements, and is requesting to exceed the permitted lot coverage; on the other, if the State had not taken the Applicant's property, this request would not be necessary. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board discussed how the overall lot size has been reduced, and that the Applicant would have to remove buildings from the proposal to comply with the Village Code. The Board determined that the benefit sought by the Applicant could not be achieved by some alternative method.

On motion by Member Abrams, seconded by Member DeVenuto:

Chairperson Karen Ungerer	<u>Aye</u>
Member Kevin Abrams	<u>Aye</u>
Member Joseph DeVenuto	<u>Aye</u>
Member Gary Kestenbaum	<u>Aye</u>

Village Code § 310-7 ("Schedule of Zoning District Regulations"): Side Yard Setback – Area Variance

The Village Code provides that the side yard setback be thirty (30) feet or 1.5 times the building height, whichever is greater. See Village Code § 310-7. Additionally, the Village Code provides that both side yards must be twice the side yard requirement. *Id.* The Applicant is proposing to construct a mixed-use development with retail, restaurants and a hotel, which locates the hotel structure 38.1 feet from the northerly property line (only side yard setback). The hotel is proposed to be no greater than sixty (60) feet in height, resulting in a required side yard setback of ninety (90) feet and both side yards being 120 feet.

The Board again began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance, and whether the requested variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The surrounding neighborhood includes Woodbury Common, large retail stores, restaurants and smaller retail establishments. The property and its surroundings are located at the intersection of the New York State Thruway and Route 17, and the project as proposed is consistent with the Comprehensive Plan and the purpose of the IB district. The Board considered how the Applicant would not be requesting this area variance if the State had not taken over 3 acres of its land by eminent domain, because the location of the proposed hotel would have been located a sufficient distance from Applicant's original property line. The Board acknowledged that the purpose of the setback in this instance was likely to provide a buffer and protect the adjacent neighbor from the hotel use. However, the 'neighbors' to the hotel in this application is a park and ride parking lot, Route 17 and Route 6. The Board concluded that these variances would not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties, as the property is almost entirely surrounded by State-owned highways and a State-owned parking lot.

Additionally, the Board weighed whether the variances requested were substantial. The Board determined that numerically the variances appeared substantial; however, in evaluating the totality of the circumstances, the Board determined that functionally it is not a substantial request.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. As noted *supra*, the Board determined that the issue of the alleged difficulty being self-created is an arguable one. On one hand, the Applicant is aware of the Village's Code requirements, and is requesting to construct the hotel building within the required side yard setbacks; on the other, if the State was not taking the Applicant's property, this request would not be necessary. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board discussed how the overall lot size has been reduced, and also that the Applicant could rotate the hotel building. However, the Board determined that rotating the hotel would not be aesthetically pleasing and would impact the remainder of the proposed development. The Board also recognized that the Applicant reduced the footprints of other proposed structures on the site to comply with the side yard setbacks in those instances.² Therefore, the Board determined that the benefit sought by the Applicant could not be achieved by some alternative method.

On motion by Member Brady, seconded by Member Kestenbaum:

Chairperson Karen Ungerer	<u>Aye</u>
Member Kevin Abrams	<u>Aye</u>
Member Joseph DeVenuto	<u>Nay</u>
Member Gary Kestenbaum	<u>Aye</u>
Member Craig Brady	<u>Aye</u>

CONCLUSION

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variances described and discussed above, subject to the aforementioned conditions, to the extent noted above, and hereby finds that the variances as granted are the minimum variances necessary to preserve and

