

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

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Joseph DeVenuto, Andrew Zoumas
Absent: None
Also Present: Attorney Robert Dickover, Timothy Egan, Village Mayor; Desiree Potvin, Village Clerk
multiple members of the public

Chairwoman Ungerer, started the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on September 9, 2020.

1. Executive Session: N/A

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 July 8, 2020. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member DeVenuto:	AYE
Board Member Zoumas:	AYE

3. New Business –

4. Action on Decisions – n/a

5. Public Hearings -

A. Garay -

Public Hearing for an area variance requested due to a denial of a building permit by the Building Inspector to permit the use of an above ground pool (12x24) placed in a side yard. Pursuant to Section 30-25(A) a swimming pool shall only be permitted within a rear yard. Said property is located in the R1A Zoning District at 270 Skyline Drive in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 208 Block 2 Lot 15.12.

Mr. Garay stated that the pool is located on the side yard of the house. The water main runs through the back of his yard and the small space that is left would not leave him enough room for the pool. A. Zoumas asked the distance of the water main to the back of the house. Mr. Garay stated 12 feet. He then went on to say that it is a seasonal pool and could be taken down every year, and that he put it up for his children; so, they could have a place to play. C. Brady stated that it would be a good idea if he did remove it every year otherwise it will just fall apart. The board members agreed. Chairwoman Ungerer asked what the pool dimensions were, and Mr. Garay stated 12x24. Attorney Dickover, stated an anonymous letter was received from someone in the neighborhood that was concerned about the noise level. The board members unanimously felt that kids are kids and there will always be noise.

Attorney Dickover, stated that the 239 was sent to the county and their determination is that this is a matter for local determination, the board should also declare itself lead agency and classify this action as a type 2 action with no further environmental review required.

Attorney Dickover, stated due to this being a public hearing anyone can submit written comments through the chat feature, then went on to explain how to do it, he also stated the board is live streaming to Facebook and there is the ability to ask questions there as well.

Chairwoman Ungerer, voiced concerns about the ladder and the safety of it being in the pool all the time. Mr. Garay stated that it has steps that you can pull up and lock.

A woman by the name of Jasmine (a neighbor of the applicant) stated that there is a house next door to her; their pool is right next to the side of their house and is also visible to the public with no covering on it. . She then went on to say Mr. Garay’s pool is covered and safe and not easily accessible to kids or anyone just jumping in.

Attorney Dickover, stated there were a couple of entries on Facebook. The first being from Aaron Lefton who says he hopes Mr. Garay gets the variance even if its temporary since it is a removable pool. Desiree Potvin was assisting the public and giving directions with the chat feature on zoom.

Mr. Garay stated he appreciates the boards time, and he does not like to rush things, but he felt that with everything going on, this pool would be a simple solution for his kids.

With no further comments received, C. Brady made a motion to close the public hearing, seconded by K. Abrams. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member DeVenuto:	AYE
Board Member Zoumas:	AYE

C.Brady, made a motion, seconded by J. DeVenuto, to declare the Zoning Board of Appeals lead agency and label this application a type 2 action under SEQRA, with no further environmental action required. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member DeVenuto:	AYE
Board Member Zoumas:	AYE

B. Luding –

Public Hearing for an area variance to permit the installation of a 5 ft. high chain link fence in a side yard. Where-as pursuant to Section 146-5(B) a maximum height of 4 ft. is permitted. Said property is located in the R2A Zoning District at 43 DeSanctis Drive in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 218 Block 2 Lot 30.3.

Chairwoman Ungerer, stated she was looking into this application and she sees that there is a different owner’s name listed of the house. Mrs. Luding stated that her parents own the house and a letter was submitted to the building department with their consent to put up the fence.

The applicant stated they are looking for a five-foot fence instead of the four-foot fence that is allowed because their dogs will jump over a four-foot fence. C.Brady, stated she went out to the property and they have a tree boarder as well as the property being set back from the road. Chairwoman Ungerer, then asked if there will be any gates and the applicants stated two gates. J. DeVenuto, asked the applicant if they were going to add any fabric or close off the view or if it was going to be a plain chain link fence. The applicant stated that there will be no fabric. A. Zoumas clarified that it will just be 36x31 square feet on the side of the house, and the applicant stated yes.

Attorney Dickover, stated due to this being a public hearing anyone can submit written comments through the chat feature, then went on to explain how to do it, he also stated the board is live streaming to Facebook and there is the ability to ask questions there as well. He then went on to say that he sees no written comment on either platform.

K. Abrams made a motion to close the public hearing. Chairwoman Ungerer stated she had questions for the attorney prior to closing.

Chairwoman Ungerer stated that they did not need a 239. Attorney Dickover stated that the board should also declare itself lead agency and classify this action as a type 2 action with no further environmental review required.

With no further comments received, Chairwoman Ungerer, made a motion, seconded by C.Brady, to close the public hearing and to declare the Zoning Board of Appeals lead agency and label this application a type 2 action

under SEQRA, with no further environmental action required. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member DeVenuto:	ABSTAIN
Board Member Zoumas:	AYE

C. Woodbury Manor B&B –

Public Hearing for an area variance to permit a proposed Bed and Breakfast. Where-as said use requires a lot area of 3 acres and a rear yard setback of 50 feet pursuant to Section 310-6(B) and 310-7 Bulk Table. Said property has a lot area of .738 acres and a rear yard setback of 44.2 feet. Furthermore, the applicant proposed parking in a front yard (Gregory Lane) and pursuant to Section 310-40(e) no parking is permitted in a front yard. Said property is located in the CR Zoning District at 191 Route 32 in Central Valley and is known on the Village of Woodbury Tax Maps as Section 228 Block 10 Lot 7

Co-Owners Josh, Christy, James Shih, and their attorney Mr. Justin Kimple, were there to discuss the application. Chairwoman Ungerer, stated that Josh and Christy have a Campbell Hall address and if it is a bed and breakfast it has to owner occupied. She then went on to say that it is an eight-bedroom house and five rooms will be reserved for guests. Mr. Kimple then stated the proposal is that they all will be living there; the five rooms will be reserved for guests and the three rooms for the owners of the property.

Chairwoman Ungerer, stated that a bed and breakfast is a permitted use, however it needs an R3A zoning requirement. In the rear yard it is presently an non-conforming pre-existing lot but it's the same requirement as in the R3A. Mr. Kimple pointed out to the board members, when looking at the plans there will be no substantial changes to the area in any event. There is parking that is currently in existence is going to be moved further away from the neighboring properties, because there is a small sliver of parking that exists on a neighbor's property and it will be centrally located. The fence will also be moved to the property boundary line. Chairwoman Ungerer, asked how high the fence is and the applicant stated five feet. Chairwoman Ungerer then said technically there are supposed to be eight parking spots. Two for the homeowners, one for every two employees and the others for the quests, but your knocking out two due to the homeowners being the employees, however you have three homeowners living there so you are missing a parking spot. Mr. Kimple stated that it was there understanding that the parking was sufficient with what the Planning Board and the Building Inspector stated with the requirements. A. Zoumas, stated within a letter submitted by Building Inspector Thomasberger; he saw something about the amount of parking spaces that were allowed. C.Brady stated that ultimately that is a determination of the Planning Board; the Zoning Board has to determine the variance in the context of the placement of the parking on the "side yard" and the existing non-conforming use. Chairwoman Ungerer, referenced the large map and asked about the large black setback line and that the parking spaces drawn behind that line are 40 feet from Gregory Lane. Mr. Kimple stated yes and then said that one of the spots are in a pre-existing area already. Chairwoman Ungerer, then asked if the parking area would be accessible from Route 32 or is it still going to be from Gregory Lane. Mr. Kimple stated that the currently existing driveway is accessible from Gregory Lane and Route 32, but it would only be one-way. What they are suggesting is to come into Gregory Lane, turn into the parking area and exit through Gregory Lane.

Chairwoman Ungerer, then stated that the applicant is asking for a decrease in lot size by 300%, and the lot size impacts where you can do the parking.

C.Brady, asked Attorney Dickover that he noticed in the Planning Board submission from one of consultants that it states that this property is labeled a CR, and it is in a CR zone which is a single-family residence which would be one-acre. In the context of zoning terms and the way the zoning law is written it says that a bed and breakfast in the CR zone that everything must follow the R3A requirements. He then went on to say that it is confusing to him, because that is basically saying that for a one-family house; it would be one-acre zoning but because you're going to use it for an alternative use a permitted use it now goes to the R3A setbacks and lot size.

Attorney Dickover stated that he thinks it's consistent with the way they have made the CR uses subject to the area requirements in the R3A zone. He then said the CR uses are more intensive so the area requirements generally would be greater.

Mr. Kimple then stated that the board has to take the wetlands on the side of the house into consideration, because that creates a buffer from a lot of the neighbors as well and what is being proposed will not have an environmental impact on the wetlands. C.Brady, stated that it would be a buffer on Morgan Court, not on Gregory.

Mr. Bill VanWinkle, stated that the owners of the property in the 1990's tried to create a bed and breakfast there and it was shot down because the neighbors were aggressively against it. Chairwoman Ungerer stated that she had not opened this up to the public yet and when the time comes, he may speak.

Chairwoman Ungerer then asked Attorney Dickover to clarify that the board is only deciding if we are allowing parking in the front yard and the Planning Board will handle whether its graded and what size those spaces are. Attorney Dickover answered yes, those are questions for the Planning Board.

Chairwoman Ungerer, then stated that the 239 was sent to the County on July 29th and a decision can't be made until they hear back from the County.

Mr. Kimple stated that it is important to note that the proposed parking area as being in the front yard, being that it is a Route 32 property and it is debatable as whether or not it's the front yard or the side yard and that parking is going to be in there with one space that's in the pre-existing driveway that would certainly be in the front yard which is currently the driveway and access. A.Zoumas stated and that is going to be the exit point in the proposed plan. He then asked Mr. Kimple if they have enough distance to use that as a parking spot and exit on the proposed exiting plan. Mr. Kimple stated, with the discussions they have had with the Planning Board, if that spot is utilized by one of the homeowner's there would be sufficient usage of the Gregory Drive exit as an ingress and egress and they wouldn't need an exit out of that and they could use the exit as a convenience. There would be no reason for a turn around or putting in grass and disturbing the area.

J. DeVenuto, stated since this is a corner lot, it has two front yards so according to our code the front and corner side are considered a front yard. Chairwoman Ungerer said yes and the other side is considered a side yard.

J. DeVenuto, also asked since Route 32 is in the front and this is a one-way exit out to Route 32 do, we must refer this to the State? Attorney Dickover stated that the Planning Board will have to consult the State for a highway entrance permit for this project not the Zoning Board of Appeals. J. DeVenuto then asked if all three people are owners of the house. Mr. Josh Shih stated yes, he and his two siblings are all owners. J. DeVenuto, then asked if there will be any outdoor amenities that would be utilizing the backyard, Mr. Shih stated that there is a porch and a fire pit but that's about it.

With nothing further from the board at this time, A.Zoumas made a motion, seconded by Chairwoman Ungerer, to open the public hearing. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member DeVenuto:	AYE
Board Member Zoumas:	AYE

Mrs. Maria Hunter stated Route 32 has always been the only exit and entrance to that property that she has seen, and she has seen in her 41 years of living in Woodbury. She stated she has no idea when the entrance on Gregory was open but after reading Masers traffic engineers report from the Planning Board and they are saying that the driveway to Route 32 should be closed since its too close to the intersection of Route 32 and Gregory Lane and that Gregory Lane should be widened. Chairwoman Ungerer, stated yes, but that is a Planning Board issue, not a Zoning Board issue. Mrs. Hunter then went on to say she understands that, however she wants to stress that Route 32 has always been the front of that house. The previous owner Mrs. Gloria Melvish who owned that always entered her driveway from Route 32 and her front door faces Route 32. When the enhanced 911 numbering was done, they went off Route 32 because it faced Route 32, not on Gregory, so to me Gregory is the side yard, and she knows this for a fact because she was on that committee. She stated she doesn't want to drive past a beautiful house and see cars parked in front of it. She then stated with eight bedrooms in a single-family home and three family members living there, how does count as a single-family home within the Village of Woodbury's code. She also questioned the south side rear yard that has a pond and wetlands and allow a bed and breakfast to have less than three acres. She stated other bed and breakfasts must go through a bunch of hoops to get proper frontage and lot area to allow a bed and breakfast on a three-acre lot. She also questioned how the board will know if the owners are going to be living there and be there 24/7 when someone stated earlier that

their addresses are in Campbell Hall. She also brought up the fact that that corner is used as a bus route and utilizing that as a driveway is going to have an impact.

Mr. Van Winkle stated he doesn't want to be redundant because he agrees with everything Mrs. Hunter said. He then said that years ago they tried to make this a bed and breakfast and they didn't get the variance. He then stated it would have been back in the 90's prior to Mr. Kevin Brody owning it. Mr. Kimple stated that it would have been before the incorporation of the Village, the board stated yes.

Attorney Dickover stated that there were a few comments online. See the following:

Mr. Aaron Lefton writes: I hope you get the variance; how does restrictive parking areas help the public in this case anyway? If you don't get the parking lot variance you can install some very large bouncy houses and use them for the bed and breakfast.

Mrs. Robin Crouse stated that the area variance requested is substantial and should not be granted. The three acres should be adhered to. She also states that parking on Gregory would impact the neighborhood.

Mrs. Iana Manatelli stated she agrees with Mrs. Hunter that the front driveway was always on Route 32.

Chairwoman Ungerer, stated that there was a comment from a unanimous person that states if we allow one person an exception to the existing rules we set a precedent for all to know create parking lots on front or side lawns. It undermines the beauty of our residential area and allows for future degradation to our area. The home is currently being used as an Air B&B. What are the differences between a Bed and Breakfast and an Air B&B? Chairwoman Ungerer, stated she doesn't know the difference, but that is not what the board is here to decide, and no decisions can be made at this point, due to not receiving word back from the county.

J. DeVenuto asked if the applicant owns the property and is allowed access to Gregory Lane. Mr. Kimple stated there is an existing driveway. J. DeVenuto then asked how long the driveway had been there since people are saying it hadn't been there in the past. Mr. Kimple stated he can't speak past the ownership of his clients who have owned it for the past two years and since they purchased it, the driveway has been there.

Mrs. Hunter, stated since this is an eight-bedroom home, shouldn't it be listed in the assessor's office as such? Also, she stated as J. DeVenuto stated wouldn't the county have to give someone permission to use the road for their driveway and in that case, where is the approval. She then suggested that this board or the Planning Board needs to investigate when the county gave permission to cut into Gregory Lane and make a driveway there.

Mr. Justin Kimple stated the house was built in 1770 and its been in substantially the same interior design for some time and those eight bedrooms have been in existence for quite some time. J. DeVenuto stated that Planning Board Chair Gerver brought up at the Planning Board that the house is listed as a five-bedroom house on the County level, why is there a discrepancy? Mr. Kimple stated he was not aware that there was a discrepancy, due to being retained by the applicant recently.

Mrs. Grove from 9 Morgan Court stated the interior of the home has been redesigned and she echoes all of Mrs. Hunters comments. The applicant stated that they changed the study and the dining room and made them into bedrooms.

Mayor Timothy Egan typed in the Village code for a bed and breakfast and Attorney Dickover read it : A private owner-occupied dwelling in which at least one and not more than five rooms are offered for transient, overnight lodging and breakfast is offered to such occupants. No public restaurant shall be maintained, he then added Air B&B's are not permitted.

Mr. Lional Penatelli stated the driveway was always on Route 32 and she agrees with all that Mrs. Hunter stated.

Mrs. Norma Fennel of 12 Morgan Court stated she is very concerned about the whole thing, especially the flood zone and the fire pit. She indicated that every time it rains an inch or more it floods drastically in that area. She stated the area is always inundated with flood waters and this is a quality of life issue due to the noise level that has been generated from there in the past when they were operating an Air B&B.

Chairwoman Ungerer asked the applicant on his EAF form he answered yes to a question that asks if the house is adjacent to an area designated that is sensitive for archaeological sites on the New York State historic preservation office archaeological site inventory and asked him to explain why he answered yes. Mr. Kimple stated that the house was built in 1770 and is a historic building. He then asked Mr. Shih if he knows if this house is in fact listed. Mr. Kimple stated there is not a state or federal designation.

The applicant then stated he and his family appreciate the boards time and really appreciate all the concerns that have been raised by the public. He then went on to say that he and his family really love the historic nature of the home. The property has been around for a long time and he thinks the best way to preserve it is to be able to

do the bed and breakfast so that they can continue to take good care of the house. They really want to maintain the integrity and beauty of the property. K. Abrams informed the applicant that people used to say that George Washington's men used to stay in that house as they were building the chain across the Hudson river. Mr. Shih then stated that one of the rooms has a seal on the wall it looks like a colonial seal from that time period.

K. Abrams made a motion, seconded by Chairwoman Ungerer, to carry over the public hearing until the September 9, 2020 meeting. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member DeVenuto:	ABSTAIN
Board Member Zoumas:	AYE

The board then requested documentation and survey information from the building department regarding the house and requested information if available from old town records from the 1990's; specifically, the variance that was requested then. They also discussed a special permit that was given to the Schonberg Law office on Route 32 and requested to see the special permit specifications that were given to that specific variance.

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6. Building Inspectors Report: No Report Submitted

7. Deliberations on closed Public Hearings

A. Garay

The following responses 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 that the pool will have no change to the neighborhood or nearby properties. **The Board Agreed.**
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no. He can't do it in any other location due to the water main and the terrain in the back of the house. It would be almost impossible to do without compromising his house or his neighbors. **The Board Agreed.**
3. *How substantial is the variance that you are requesting?* The applicant stated due to the terrain and location it is very important that the pool location is not in the back of the house. The only possible location is in the side yard. **The Board Agreed.**
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 will be no effect or impact on the neighborhood or the district. **The Board Agreed.**
5. *Is the alleged difficulty self-created?* The applicant stated he bought it on eBay put it together by himself and it can easily be taken apart every year. **The Board stated that they felt it was a creative solution.**

K. Abrams made a motion to allow the applicant a side yard pool. C.Brady, then stated after two seasons it will be destroyed, and it should really be taken down every year. The applicant stated that he will remove it every year to protect his investment. K. Abrams withdrew his original motion.

K. Abrams, made a motion, seconded by J. DeVenuto to have council direct and prepare a decision consistent with the findings of the board this evening granting the applicant the variance requested. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer: AYE
Board Member Abrams: AYE
Board Member Brady: AYE
Board Member DeVenuto: AYE
Board Member Zoumas: AYE

B. Luding

The following responses 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, the house is set so far back from the road that a fence on the side would not be noticeable from the road. There are also no neighbor's that would see the fence from their properties as most of the property is wooded and on the side of the house. **The Board Agreed.**
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated No, as their dogs would be able to jump a four-foot fence. **The Board Agreed.**
3. *How substantial is the variance that you are requesting?* The applicant stated the zoning laws state a four-foot fence may be built on the side of the house, but they are requesting a five-foot fence. **The Board Agreed.**
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, no, as none of the neighbors will see the fence. **The Board Agreed.**
5. *Is the alleged difficulty self-created?* The applicant stated Yes, as my dogs could jump over a four-foot fence. **The Board Agreed**

Chairwoman Ungerer, made a motion, seconded by K. Abrams, to have council direct and prepare a decision consistent with the findings of the board this evening granting the applicant the variance requested. Chairman Ungerer, conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer: AYE
Board Member Abrams: AYE
Board Member Brady: AYE
Board Member DeVenuto: AYE
Board Member Zoumas: AYE

9. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to adjourn the meeting at 9:09 PM.

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

Jessica McClennan, ZBA Secretary