

Minutes of the Zoning Board of Appeals Meeting held on December 9, 2020 at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Andrew Zoumas, Joseph DeVenuto

Absent:

Also Present: Attorney Robert Dickover, Mayor Timothy Egan

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on January 13, 2021.

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 November 10, 2020. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Zoumas
	NOES	0	
	ABSTAIN	1	DeVenuto

3. New Business –

4. Action on Decisions –

5. Public Hearings –

A. McGinley –

Public Hearing for an area variance to permit the installation of an in-ground pool in a side yard. Whereas, pursuant to Section 310-25(A), a swimming pool shall only be permitted in a rear yard. Said property is located in the R0.25A Zoning District at 14 Smith Clove Road in Central Valley and is known on the Village of Woodbury Tax Maps as Section 230 Block 7 Lot 3.

Chairwoman Ungerer stated that the applicant wants to put an inground swimming pool on the side yard of his house. She then went on to say that she went and looked at the property and there is no way that a pool could be placed in the back yard because it is so steep. She then stated that the map that the applicant gave the ZBA is from 1989 and there is a property boundary line by the garage. She asked the applicant if the property beyond the garage is his. Mr. Trevor McGinley stated that is not his property behind the garage, but he believes she is referring to the old parcel division line. Mr. McGinley stated that the lines were verified a couple of years after he purchased the house. K. Abrams asked if there was a right-of-way or an old easement that goes back behind the applicant's property or is that the right-of-way behind Valley Avenue. The applicant stated he has a right-of-way through the church's parking lot. The board and the applicant then discussed multiple places a right-of-way could be, but then concluded it wouldn't matter if the pool were placed there or not due to the steepness of that specific location. A. Zoumas stated the pool is going to be right up against the church's parking lot, and the applicant stated there will be a 20-foot buffer. Chairwoman Ungerer asked if there was a way to angle the pool instead of having it be perpendicular to the house. The applicant stated there are very old-growth trees towards Peroni land and he didn't want to disrupt the root system. Chairwoman Ungerer then asked if the applicant is planning on putting any more landscaping in that location. The applicant stated he was going to be putting in a fence and additional landscaping. A. Zoumas asked about the safety of having the pool in that location due to the school, daycare, and traffic in that location. He stated it is very close to the final parking spot of the church parking lot and was wondering if rotating the pool to a 90-degree angle would work better or possibly find a pool that is not so big. Mr. McGinley offered to mark it out so that the board could get a better sense of what they are looking at. A. Zoumas, then stated he is still concerned about the location. He stated that due to the pool being on the side yard, the applicant will only be able to put up a four-foot fence. He then asked about the disruption of the root system, the applicant stated it will not disrupt it because the branches hang over Peroni Lane and will not be

damaged by the pools location. J. DeVenuto, stated he was concerned about the right-of-way and would like clarification prior to a decision. Mr. McGinley stated that this is the only option on location because he really would like to have a pool with a deep end, and shrinking the pool eliminates a deep end he also stated that he potentially could move it closer to the house, but he feels that this location is aesthetically pleasing. C. Brady stated that the applicant request for variance is a swimming pool in the side yard, so with what was submitted no other variance is required. There is no side yard setback issue, and the 20 feet meets the requirements. Chairwoman Ungerer stated yes.

Attorney Dickover stated the publication was made on December 4, 2020 to the Times Herald Record and notices were mailed to the affected parcels.

A motion was made by C. Brady, seconded by K. Abrams to open the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

Attorney Dickover stated there were no comments on zoom, Facebook, or the chat feature.

C. Brady stated that a 239 review was sent to the county on November 30th with no response back. Attorney Dickover stated the board will need to wait 30 days to receive a response from the county before rendering a decision.

A motion was made by C. Brady, seconded by K. Abrams to carry over the public hearing until the next Zoning Board of Appeals meeting is held. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

B. Falkowitz –

Public Hearing for an area variance, per denial of building permit, to permit a proposed garage addition to an existing single family dwelling family dwelling located in the active adult section of Woodbury Junction subdivision in which proposed addition will leave a lot coverage of 36.8% (4204 sq. ft.) Whereas pursuant to Section 310-36(D)(1)(B)(6) a maximum lot coverage of 35% (4,000 sq. ft.) is required. Said property is located in the R1A/SH Zoning District at 33 Stainton Fairway in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 254 Block 2 Lot 82.

Mr. David Niemotko, the representative from the architectural site plan company that has prepared plans on this application and is also representing the applicant. Chairwoman Ungerer asked what the relationship is between Mr. Falkowitz and Station Estates LLC. Mr. Niemotko stated he didn't know but would imagine he is a part of it. Chairwoman Ungerer asked if they could proceed knowing the applicant and the owner are two different entities. Attorney Dickover stated the board would need some sort of endorsement or proxy from the property owner giving the applicant permission to make this application. Mr. Niemotko stated that he is sure something was submitted due to it taking almost a year to get to this point. Attorney Dickover stated that there is a statement of ownership that the applicant submitted with the owner's signature as well as the applicants on the bottom of the page, he then stated that is adequate to proceed.

Chairwoman Ungerer asked if this house is currently occupied and when she visited the site there were construction vehicles there. Mr. Niemotko stated he wasn't sure, he then stated there is working being done within the house, they are enlarging the kitchen along with some minor renovations. The Falcowitz's plan to live there when the house is complete. Chairwoman Ungerer asked if they were senior citizens and that they meet the requirements of the development to live there. Mr. Niemotko stated yes. Chairwoman Ungerer, then stated the reason for the garage is to have direct access to the home so they don't have to walk outside in inclement weather, Mr. Niemotko answered yes. A. Zoumas asked why the applicant can't shrink the width of the garage by a foot and that would get them into compliance, and it would be wide enough to fit in one car. Mr. Niemotko stated it is the thickness of the exterior walls and perhaps the foundation wall that would penetrate the foundation wall that would penetrate or come past the ground and above grade. It would really decrease the interior usable space in the garage. He then stated that a garage door is usually 8 foot wide leaving about three

feet on each side. Chairwoman Ungerer stated so is not feasible to shrink the size of the garage because it would possibly be too tight to fit a vehicle in and get in and out of the car. K. Abrams stated that it's possible that they would need the extra space for a wheelchair. Mr. Niemotko stated the variance area is 215 square feet so they would have to eliminate 215 divided by 25, so they would have to eliminate eight feet of the garage not one foot.

Chairwoman Ungerer stated that a 239 review was sent to the county on November 30th with no response back and the board will need to wait 30 days to receive a response from the county before rendering a decision.

A motion was made by K. Abrams, seconded by J. DeVenuto, to open the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

Mrs. Miriam Reba stated she is a neighbor, and she approves the garage addition for the family.

Mr. Joe Zlata stated that this home is in the senior overlay district and village code dictates the number of people that can occupy such a home. He then stated it is one of the larger homes in the senior overlay district, the house was built as a 2,500 square foot house. There is an additional 867 square foot finished basement and there was a 550 foot two-car garage that has since been converted into what seems to be of the applicants own making. He then went on to say that he would ask the board to consider those things when they make their decision. Chairwoman Ungerer then asked when the house was built, and Mr. Niemotko stated it was built in 2010. Chairwoman Ungerer then asked if the garage was converted and if that was the part that was converted into the kitchen dining area. Mr. Niemotko stated yes. Chairwoman Ungerer then asked if the Falcowitz's were living there during construction and Mr. Niemotko stated he doesn't know if they were there during construction, but it is their intention to live there when it is complete. Mr. Niemotko stated they received building permits from the building department. K. Abrams asked if they received the Certificates of Occupancy and Mr. Niemotko stated they have not finished construction yet, so they did not receive the "CO's". Chairwoman Ungerer state it would be contingent upon this board giving their approval.

Attorney Dickover stated there were no comments on zoom, Facebook, or the chat feature.

A motion was made by K. Abrams, seconded by J. DeVenuto, to carry over the public hearing until the next Zoning Board of Appeals meeting is held. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

C. Falasca Devito –

Public Hearing for an area variance to permit the proposed construction of a 22 ft. x 30 ft. addition and 10ft 15 ft. sunroom leaving a side yard of 10 ft. Whereas pursuant to Section 310-6(B) and 310-7 (district regulations) a 30 Ft. side yard is required. Said property is located in the R1A Zoning District at 29 Tiros Avenue in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 235 Block 2 Lot 1.

Chairwoman Ungerer asked the applicant if this was going to be a mother daughter house. The applicant stated that his wife's parents are older and are selling their house in skyline so that his wife can take care of them. Due to both parents not being able to climb stairs they are going to convert part of the house to be a little apartment for them; there will be no stove or kitchen, they will use what is already part of the house. Chairwoman Ungerer asked why this needs to be converted, why can't a room that already exists be used. The applicant stated they want the house to look uniformed and the sunroom would give them a little more room. Chairwoman Ungerer asked if there was any way to put this addition in the rear so that they wouldn't need a side yard variance. The applicant stated they have a septic tank 15 feet off the back of their house. Chairwoman Ungerer then asked if there was once a garage attached to the house or if it was converted. The applicant stated there was never a garage at the end of the driveway. Chairwoman Ungerer asked what was going to be on top of the addition and the applicant stated a living room. He then went on to say that the bottom floor would be where his wife's parents would be with a bedroom, a tv/living room. He also stated that their house in skyline is 2,600 square feet and they are just trying to make them more comfortable and give them a little freedom.

A motion was made by J. DeVenuto, seconded by A. Zoumas, to open the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

Chairwoman Ungerer then stated that she has two letters from neighbors. One from Mr. & Mrs. William Mulvihill, who face the applicant's property being 10 feet away, the other from Mr. Ronald Walls who live directly next door. They both go into detail opposing the granting of the variances for the following reasons. The addition will directly face both of their properties and have negative impacts. They also feel like this would be overbuilding of the side yard of the property. They feel that this would alter the character and charm of the neighborhood and that is the reason they moved to this area for the rural character of the neighborhood. They feel that it would set a precedent that would allow other property owner's to possibly build and have large homes that would result in higher occupancy and have a negative impact on the neighborhood. They also feel that the variance is significant and at 67 percent it should be denied and would negatively affect their quality of life. This would also diminish the open space that is next to their home and the other homes in the neighborhood. They also feel like it would negatively affect their property value and hamper their ability to sell in the future. They also submitted 11 photos of the space between their home and the DeVito's and stated that it is an unmaintained property which includes weeds, construction, and a block retaining wall on a falling won stockade fence.

Ms. Judith Blatt stated she is directly across the street from the applicant and she doesn't oppose the variance.

Mr. Walls, the applicants next door neighbor stated he opposes the request of the variance. He went on to say that zoning regulations are in place for a reason; to protect property owners and allowing this addition to the property would have an adverse effect on the well-being of he and his wife. He also went on to say that the DeVito's did have a two-car garage on the left side of the driveway and it just recently was closed off.

Mr. Mulvihill stated he wrote a letter and wanted to re-emphasize the granting this variance is setting a very dangerous precedent in the neighborhood and he also reiterated everything that he stated in his letter. He stated he moved here 30 years ago for the rural look and doesn't want his neighborhood to look like it was over built.

Mrs. Susan Bluwashri, asked how high the addition will be in relation to the house that exists already. Mr. DeVito stated that it will be the same roof level as the existing house.

A. Zoumas asked on the schematic that the board has does it show the 30 feet from the back of the house to the 750-gallon septic tank. Chairwoman Ungerer stated that is the only document we have. A. Zoumas then asked if he was reading it correctly where it states that there is a four by six concrete slab with a one-foot overhang, so is the septic tank 30 feet behind the house. Mr. DeVito stated the septic tank is about 15 feet away from the house because before the house was purchased the house had a deck. The deck was then created into a family room, so now the family room is 15 feet away from the septic tank. He then said the survey that the board has is not a current survey. Chairwoman Ungerer then asked what the applicants need a sunroom for. Mr. DeVito stated that the sunroom is to keep his mother-in-law happy. She currently has a sunroom in her house now and she doesn't want to move out of her house now, but they must. Chairwoman Ungerer then asked if the sunroom would be flush with the house, and Mr. DeVito said that he thinks it will be a few feet past the addition of the house. Chairwoman Ungerer then asked when the house was purchased, and the applicants said 2003.

Mr. Walls stated that he has lived there for 26 years and there were always garage doors. Chairwoman Ungerer asked the applicants if they had anything to say to Mr. Walls claiming that there was a garage there. Mr. DeVito stated that when his wife purchased the house it was a room already and that is on the deed of the house, it was never a two-car garage, it was a one car garage, but he closed off the garage and made it living space and put a normal door in its place. Mr. Walls then said within the past few years there were garage doors there. Mrs. DeVito said it was always living space and she used it for her children's playroom, there was always a garage door, but it wasn't used as a garage.

Chairwoman Ungerer then asked instead of going out they could build up. Mrs. DeVito stated that her parents can't go up and down stairs. Mr. DeVito said that initially they were going to go up, but his mother-in-law

didn't want it to look like an apartment, so that is why they are adding the second level. Chairwoman Ungerer asked if the living space that is there now, needs stairs to get up to and the applicants stated yes, they did. Mr. Devito stated his house sits higher than his two neighbors next to him, he is not ripping any trees down he is simply asking to add additional space so that his in-laws feel at home within their house. Mrs. Devito then stated her father needs to go backwards down the stairs. Mr. Devito stated that his wife is an only child and needs to take care of her parents, they are both 88 years old. He doesn't understand why this would ruin the look of the neighborhood due to his house always being well maintained. He then went on to say that they have had multiple offers on his house, but they don't want to leave, they raised their children here and the bottom line is that he is trying to help his wife's parents and give them a sense of normalcy after having to leave the house that they have know for most of their life.

Mr. Mulvihill stated he is sympathetic to their elderly parents, but his big concern is that this will set a precedent that this variation will make because houses get bought and sold every day in their neighborhood and what is to prevent other people from asking for a 70% variance on one side of the yard and an 80% variance on the other, and once one is allowed others will follow.

J. DeVenuto, then asked Mr. Devito for clarification as to where his in-laws will be living. J. DeVenuto, then stated this house is being pitched as a two-story house, and the in-laws will be living on the first level. Mr. Devito stated yes, the second story that is going up is going to be living space, they were not going to add it, but his mother-in-law insisted on making the house look uniformed.

Chairwoman Ungerer stated that a 239 review was sent to the county on November 30th with no response back and stated the board will need to wait 30 days to receive a response from the county before rendering a decision. She also stated the publication was made on December 4, 2020 to the Times Herald Record and notices were mailed to the affected parcels.

Attorney Dickover stated there were no comments on zoom, Facebook, or the chat feature.

A motion was made by K. Abrams, seconded by C. Brady, to carry over the public hearing until the next Zoning Board of Appeals meeting is held. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

D. Fedele Holdings –

Public Hearing for area variances to permit the proposed construction of a new single-family dwelling on an existing lot area of 10,191 with lot width of 75ft, a proposed side yard of 20ft and both side yards of 40ft with road frontage of 75ft. on a public road. Whereas, pursuant to 310-43.1(c)(1) a minimum lot area of 15,000 square ft. is required and pursuant to 310-43.1(D) a minimum of 100 ft. of lot width is required. Pursuant to 310-43.1(c)(5) and 310-7 a minimum side yard of 30 ft. (60 ft. both yards) is required. Pursuant to 310-12(a)(2) a minimum frontage on a public road of 100 ft is required. Said property is located in the R1A Zoning District at 5 Olympus Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 209 Block 2 Lot 13.

The applicant's attorney Mr. Barrone stated he is here to represent the applicant. He also stated that a Mr. Joe Pfau, and a Mr. Vince Petrazak, were on the line in case questions arise.

Chairwoman Ungerer stated that this lot was purchased ins 2006 and the applicant came in front of the board in 2007 for relief from the lot with and the road frontage requirements. At that point in time those variances were denied for various reasons. The decision that is now in front of the board are for the same variances plus two more, so the board has two different options. So, the decision for the board is to either rehear the applicant and vote on it then or vote against not rehearing it. Either way the vote needs to be unanimous. Attorney Dickover reiterated what Chairwoman Ungerer stated and said he would like to hear what the applicant's attorney would like to say.

Mr. Barrone stated one of the relevant factors that has occurred since the board last had this property before it was the rezoning within the Village. The rezoning is what triggered the need for the additional variances and that he would like to proceed without the vote and have the board rehear this as an entirely new application. He then went on to say that if anyone would want to challenge this determination then of course the applicant

would pick up defense and challenge with an article 78 proceeding if that would be necessary. Chairwoman Ungerer then stated that she has a letter from Building Inspector Thomasberger that the zoning has not changed. Attorney Dickover then stated he would like to hear what Mr. Barrone is referring to about the Building Inspectors opinion being otherwise.

Mr. Joe Pfau stated there are changes in the Zoning Code from the original site plan. In the original site plan the minimum side yard was 10 feet and now its 20 feet for both side yards. The lot area was back and on the original application there was a 10,000 square foot minimum that was not a required variance, so those two items had to be changed completely. He then stated to his knowledge the road frontage was removed from the bulk requirements in the new zoning and the only thing that stayed the same was the lot width. Chairwoman Ungerer then stated that there were not side yard variances requested in 2007, however it is up to her board if they want to rehear this application.

J. DeVenuto stated he would like to rehear the application. He then stated he agrees that the two original variances from 2007 are the same and that they need to go to a rehearing. A. Zoumas asked Chairwoman Ungerer if she could explain what would happen if a vote is not unanimous in each direction. Chairwoman Ungerer then stated if the board takes a vote to rehear and the vote is not unanimous, we do not rehear the application. If we vote to rehear it and come up with a decision to grant the variances and its not unanimous then the application is denied. Attorney Dickover stated the applicant does have the right to have the two new variances heard. He then stated that the applicant may want to submit a written statement with respect to this request to issue the board to consider if the applicant thinks they are not going to get a unanimous vote. K. Abrams stated he doesn't think the board should rehear it, there are too many variances, and nothing has changed.

Mr. Barrone stated that in 2012 a house was constructed and given the variances that they had been denied in 2007. Mr. Joe Pfau argued that it was the Town of Woodbury that rendered the previous decision and now they are requesting the Village of Woodbury to make a decision. Chairwoman Ungerer stated the previous decision was rendered by the Village as well. It was not the Town at that point. C. Brady wanted clarification from the Building Department about any zone changes that happened between then and now that would affect this application. J. DeVenuto, stated the decision was made in 2007 by the Village of Woodbury and signed by then Chairman Richard Cataggio. He feels that it is a moot point due to both cases being a Village of Woodbury matter. He then went on to say that two variances are the same and two are new but are even more restrictive.

Chairwoman Ungerer stated the board needs to do more research before they decide to entertain rehearing the application. A. Zoumas asked if a decision could be rendered tonight. Chairwoman Ungerer stated they really should get confirmation from the Building Department before making a decision.

Chairman Ungerer, stated that the public hearing was never opened, so if anyone from the public was here to speak, they must wait until the next meeting.

A motion was made by C. Brady, seconded by K. Abrams, to table the decision until the applicant can get more information for the board. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Zoumas
	NOES	1	DeVenuto

6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings

8. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by J. DeVenuto, to adjourn the meeting at 9:16 PM.

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

Jessica McClennan, ZBA Secretary