

Minutes of the Zoning Board of Appeals Meeting held on January 13, 2021 at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Andrew Zoumas, Joseph DeVenuto,
Attorney Robert Dickover
Also Present: 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 February 10, 2021.

1. Executive Session: N/A

2. Application Withdrawal:

A. Fedele Holdings –

Continuation of 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.

Chairwoman Ungerer stated that a letter was received from this applicant to withdraw the application due to the COVID pandemic and their ability to obtain the documents and information to support their application. They went on to say that once the data has been gathered, they plan to re-submit their application.

Motion was offered by K. Abrams, seconded by J. DeVenuto, to accept the applicant's withdrawal. 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	

3. Approval and Acceptance of Previous Minutes:

Motion was offered by Chairwoman Ungerer, seconded by K. Abrams, to approve and accept the minutes of the meeting held on December 9, 2020. 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	

4. Action on Decisions – n/a

5. Public Hearings -

A. McGinley –

Continuation of 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 public hearing was kept open due to the proximity to Route 32, she then went on to say that the 239 was received back from the county and it stated it was up to local determination. A. Zoumas stated he saw the stakes the applicant placed in the side yard that was requested from the board. Chairwoman Ungerer then asked where the salt generator would be located. Mr. McGinley stated he does not have that information yet and he is waiting on the landscape architect to finish with the placement. Chairwoman Ungerer, then asked if the applicant had any plans to rearrange his driveway. Mr. McGinley stated that he does have plans in the future to repave, but the driveway that is coming off the church parking lot will stay the same. J. DeVenuto, requested the applicant share some of the plans for landscaping and a possible privacy fence between the pool and the church parking lot. Mr. McGinley stated that he plans to have a required aluminum style black painted fence around the pool and then a wooden fence between the church parking lot and his property line. He then went on to say that he is waiting to see what the landscape architect comes up with, but he needed to wait till he received word that he could put the pool where he wanted it.

Chairwoman Ungerer, then asked the public if they had anything to say about this application. With no comments from the public via zoom or Facebook chat, Chairwoman Ungerer, asked for a motion to close the public hearing. K. Abrams, made the motion, seconded by J. DeVenuto. 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 –

Continuation of 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.

Chairwoman Ungerer stated the variance is basically for a 1.8 percent increase in the lot coverage and it appears that the setbacks would be met. The board kept this public hearing open for the 239 determination and it has been received back from the county as a local determination. Chairwoman Ungerer stated Mr. Nimatko, the applicant's representative, followed up with a note about some questions the board had at the last meeting. Among those questions were if Mr. Falkowitz had been living in the house and the answer was yes, and if there was a building permit issued for the work on the house and the answer was yes with the building permit issued on May 26, 2020. He then went on to say that the work in the house is substantially complete with the finishes remaining and building inspections being up to date. The CO has not been issued since the contract is not ready for the final inspection. Chairwoman Ungerer, then stated a letter was received today from a Mrs. Helen Freeze Callanan stating her concerns about the size of the living space in the house, she believes that it is excessive square footage, and it would exceed the size that is allowed, and she has not seen any drawings or plans on the house. Chairwoman Ungerer, then stated that does not have anything to do with the garage application and if the public would like to see information about this application they could go online and see the documents submitted by the applicant. Chairwoman Ungerer, then stated that in Mrs. Callanan's letter she states she is fine with the garage addition if it is visually pleasing and

conforms with the community guidelines. A. Zoumas stated that last month Mr. Joe Zlata stated that there was already a two-car garage there, that has now been converted which added to the living space of the house. Chairwoman Ungerer, then stated yes that was converted which added to the living space of the house and some are concerned that more people would be living in the home, but this board is not here to decide how many people can live in a home. A. Zoumas asked Mr. Nimatko when the two-car garage was transformed into a living space, were they aware that they were going to request a variance to build an additional garage? Mr. Nimatko, stated no, A. Zoumas asked if he was involved with the project at that time, Mr. Nimatko answered yes.

Chairwoman Ungerer, then asked the public if they had anything to say about this application. With no comments from the public via zoom or Facebook chat, Chairwoman Ungerer, asked for a motion to close the public hearing. K. Abrams, made the motion, seconded by J. DeVenuto. 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 –

Continuation of 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.

The board kept this public hearing open for the 239 determination and it has been received back from the county deemed a local determination. Chairwoman Ungerer stated that this request is for the applicant’s parents that are in their late 80’s with mobility issues and need someone to watch over them. Mrs. Falasca stated they need to be on one floor because they cannot use the steps properly anymore. She then went on to say the addition will not require any additional kitchen or stove. They may have a mini refrigerator, but nothing more due to her mother developing dementia. The applicant then stated she submitted two pictures, one showing the location of the septic tank in the back of the house, the other showing that it was never a two-car garage. Chairwoman Ungerer then asked how the parents would get to the kitchen and the applicant stated they would not that she would bring their meals down to them. The board then discussed in length with the applicant, the location of the septic and how many feet away from the house the septic tank was. They concluded that the septic tank was 15 feet off the deck, and the applicant stated that is how they purchased the house. J. DeVenuto asked the applicant if it was possible to lose the second floor due to the elevation constraints and towering over some of the houses in the area. That if possible, it would bring the footage down quite a bit from 1,470 square feet to less than 1,000 and it would not be so high of an addition. Mr. Devito stated he was told that if he couldn’t do what he wanted that he could add a level to his house that would actually make his house even higher than all of the other houses and he wouldn’t need a variance; however, his in-laws don’t want to look like they are moving to an apartment and it is a visual thing for them, and he would also have to have his whole house handicap accessible and he doesn’t have the money to do that. Mrs. Falasca also stated that it would be difficult for her family to live there during construction of another level to their house. A. Zoumas asked if the board could get a more recent survey done, due to the impact that this variance could have on the neighborhood for quite a long time and he feels that the board should have more accurate information and distinguished lines. He wants to know if there is a

way to add the same square footage without impacting the septic. Mr. Devito stated it is not possible because regardless of which direction you go, the leech fields would be affected.

Chairwoman Ungerer, then asked the public if they had anything to say about this application. With no comments from the public via zoom or Facebook chat, Chairwoman Ungerer, asked for a motion to close the public hearing. J. DeVenuto, made the motion, seconded by C. Brady. 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. Agnello –

Public Hearing for an area variance to permit the demolition and reconstruction of a detached garage (accessory structure) leaving a 0.3-foot side yard setback. Whereas pursuant to Section 310-6(B), 310-12(c)(3) a minimum setback of 6 ft. is required. Said property is located in the R0.25A Zoning District at 10 Ford Avenue in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 220 Block 5 Lot 31.

Chairwoman Ungerer stated the applicant is asking to demolish the existing garage and rebuild on the same foundation, same size, and same footprint. The applicant stated everything will be staying the same, the house was built in the 1800's and the garage is unsafe and structurally falling apart. Chairwoman Ungerer asked if there was going to be two doors or one, being that it looks like it would be a two-car garage. The applicant stated he is going to still have one big door. Chairwoman Ungerer asked if it were possible to move the garage closer to the house, and the applicant stated he could not do that because of how his driveway lines up with the garage's location now.

Chairwoman Ungerer then stated that a 239 review was sent to the county on December 31, 2020 and the board has not received an answer from them. The board will not be able to close the public hearing, however they decided to go over the five factors and render a decision at then next meeting.

Chairwoman Ungerer, then asked the public if they had anything to say about this application. With no comments from the public via zoom or Facebook chat, Chairwoman Ungerer, made a motion to keep the public hearing open which was seconded by C. Brady. 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	

6. Building Inspectors Report – N/A

7. Deliberations on closed Public Hearings

A. McGinley –

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 pool is aesthetically pleasing and in ground with trees lining the property obscuring most of the view from outside the property line, a finished landscape will be completed as well. The Board Agreed.

2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no, due to the existing grade, access points and lot lines, the placement of the pool in the rear yard would require substantial and costly means. The board agreed; however, J. DeVenuto, stated he has a slight reservation due to the location of the church parking lot. He then stated he would like to see a privacy wall and asked if that were something the board could request. C. Brady stated he thinks that the applicant will be in front of the board again in the future for a fence. At that point maybe request a privacy fence.
3. *How substantial is the variance that you are requesting?* The applicant stated it was minimal. The board agreed with the applicant.
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, a salt or mineral chlorine generator will be used with an energy efficient heat pump. Water consumption will be minimized with the use of a fiberglass pool. The board agreed.
5. *Is the alleged difficulty self-created?* The applicant stated no, the house and landscape grade with the surrounding properties have been established for over 100 years. The board stated technically it is self-created due to him wanting a pool.

A motion was made by K. Abrams, seconded by J. DeVenuto, to have the Board enter into the record the acknowledgement and the receipt of a Short Environmental Assessment Form and to declare itself Lead Agency. They labeled this application a type 2 action and requested that the Attorney draft a favorable decision consistent with the facts and findings of the Zoning Board of Appeals. Chairwoman 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 -

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 granting of this variance will allow a garage addition for the existing single-family house, a characteristic that most nearby houses already possess. The garage design will be contextual with the surrounding residential neighborhood. The board agreed.
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated the benefit that is sought cannot be achieved because the request is for an enclosed space to house one car, and that results in an increase in lot coverage. The board agreed.
3. *How substantial is the variance that you are requesting?* The applicant stated this variance requested is very small in nature. The garage addition results in a lot coverage increase of about 2 percent over the required limit. In return it provides a substantial benefit for the lot’s senior residents who have trouble using their vehicles in inclement weather. 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 the proposed action has no adverse impact on the neighborhood because it improves the land value of the property without adding a substantial amount of impervious or building area and is contextual in design with the residential neighborhood. The board agreed.

5. *Is the alleged difficulty self-created?* The applicant states the difficulty is self-created in asking to apply for an improvement that requires an area variance due to lot coverage. This request is to improve the quality of life of the properties residents while altering a minor area of a mostly impervious area. The board agreed.

A motion was made by C. Brady, seconded by J. DeVenuto, to have the Board enter into the record the acknowledgement and the receipt of a Short Environmental Assessment Form and to declare itself Lead Agency. They labeled this application a type 2 action and requested that the Attorney draft a favorable decision consistent with the facts and findings of the Zoning Board of Appeals. Chairwoman 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 -

The following responses were provided in the “Statement of Ownership and Interest” provided by the applicant for a use variance and the Board’s 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 it will not produce an undesirable change to the neighborhood. When completed it will continue into the conformity with the existing home. The Board does not agree for multiple reasons, including this extension to be a detriment to most of the surrounding neighbors and properties. They also feel without proper drawings of what the elevation would look like, they are weary to agree with the applicant. It was then brought up by J. DeVenuto, that the ZBA can grant the minimum variance necessary to achieve the results, and he feels that the second story would not be a necessary part. The board agreed that it would be preferable that it be one story instead of the two.
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no, the benefit cannot be achieved by some other feasible method. The applicant stated the home is currently occupied by her husband and three children. The board feels that there are other alternatives, and that this addition would be too much for that piece of the property.
3. *How substantial is the variance that you are requesting?* The applicant stated it is not substantial as it will increase the length by 20 feet. C. Brady agreed with the applicant and stated that he does not see how to avoid a such a substantial variance with all the other constraints of the location of the house. C. Brady agrees with the applicant. J. DeVenuto, stated he feels that it would create a detriment for the next-door neighbors, the rest of the board agreed with J. DeVenuto.
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, the granting of the variance will not have an adverse effect or impact on the neighborhood. J. DeVenuto, stated it would create negative impacts on the neighbors due to the pitch of the house and possible runoff. C. Brady, agreed with the applicant, and stated that the building inspector would suggest that the runoff to be downhill away from the neighbors and does not feel like there are any significant environmental effects or physical change. The Board was in a 3-2 disagreement with the applicant with A. Zoumas and C. Brady, in agreement with the applicant.

5. *Is the alleged difficulty self-created?* The applicant stated no, this request is necessary as it would be the only way to care for the applicants aging parents and maintain her current home. The Board all agreed that it was self-created.

A motion was made by A. Zoumas, seconded by Chairwoman Ungerer, to have the Board enter into the record the acknowledgement and the receipt of a Short Environmental Assessment Form and to declare itself Lead Agency. They labeled this application a type 2 action.

A motion was made by A. Zoumas, to have council draft a decision pending the boards facts and findings. – **The motion was tabled due to more board discussion.**

J. DeVenuto, asked if the applicant was willing to have one story. Attorney Dickover stated that it is the ZBA's job to grant a minimum variance if the board is going to grant one at all. He then went on to say that the setbacks would remain the same, but a condition could be stated to only allow one story instead of the two. K. Abrams, stated he would rather they reapply for that, not grant a variance reducing the size of the building and have the applicant resubmit if that is their wish to do so. C. Brady, then stated that the problem there would that it would be a rehearing and the board would have to vote to rehear and the applicant would have to get a unanimous vote from the ZBA. Attorney Dickover stated that if the applicant would submit an entirely new application than it would not require a unanimous vote because it would not be a re-hearing although the variant and the variance being requested would be the same, the project would have changed.

K. Abrams made a motion, seconded by A. Zoumas, to deny the request of the variance, consistent with the facts and findings of the Zoning Board of Appeals. Chairwoman 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:	NAY
Board Member DeVenuto:	AYE
Board Member Zoumas:	AYE

Motion Carried for the denial of the variance as requested from the applicant.

The board then discussed an alternative to the variance and requested the allowance of the applicant to only build one story. C. Brady, made a motion, seconded by J. DeVenuto, to have council draft a decision granting the variance based on a limiting factor of being at a one story rather than a two-story addition with the sunroom included. Chairwoman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED BY ROLL CALL AS FOLLOWS:

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

Motion Failed

D. Agnello -

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 if the variance is granted there will be no undesirable change in the character of the neighborhood. The garage will not be in a different location. It will be located where it currently is, and it will be the same size. The Board agreed.
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated he would need the variance to be able to complete his garage the correct way. The Board agreed.
3. *How substantial is the variance that you are requesting?* The applicant stated the condition of his garage is unsafe and unable to store his vehicles in the garage. 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 it will not, the garage is not moving from the spot it is already located. The Board agreed.
5. *Is the alleged difficulty self-created?* The applicant stated it is not self-created. He had purchased the house with the garage in its current location. The Board felt that they could argue both sides; however, it does not matter because the condition that it is in now is unsafe.

A motion was made by C. Brady, seconded by Chairwoman Ungerer, to have the Board enter into record the acknowledgement and the receipt of a Short Environmental Assessment Form and to declared itself Lead Agency. They labeled this application a type 2 action. Chairwoman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

A motion was made by C. Brady, seconded by K. Abrams, to request that the Attorney draft a favorable decision consistent with the facts and findings of the Zoning Board of Appeals and to be voted on at the next meeting once they receive the 239 review back from the County. Chairwoman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

8. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by C. Brady, to adjourn the meeting at 9:08 PM.

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

Jessica McClennan, ZBA Secretary