

Minutes of the Zoning Board of Appeals Meeting held on February 10, 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 thanked Mayor Egan for being the ZBA's tech advisor and stated that the next meeting will be held on March 10, 2021.

**1. Executive Session:** N/A

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

Motion was offered by C. Brady, seconded by K. Abrams, to approve and accept the minutes of the meeting held on January 13, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**3. New Business -**

**4. Action on Decisions –**

**A. McGinley –**

Review decision 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

In employing the balancing test as set forth in Village Law Section 7-712-b (c), the board hereby grants the variance as requested.

**By roll call a motion to adopt the decision was voted as follows:**

<b>Chairman Ungerer:</b>	<b>AYE</b>
<b>Board Member Abrams:</b>	<b>AYE</b>
<b>Board Member Brady:</b>	<b>AYE</b>
<b>Board Member DeVenuto:</b>	<b>AYE</b>
<b>Board Member Zoumas:</b>	<b>AYE</b>

**B. Falkowitz –**

Review decision for an area variance, per denial of building permit, to permit a proposed garage addition to an existing single 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.

In employing the balancing test as set forth in Village Law Section 7-712-b (c), the board hereby grants the variance as requested.

**By roll call a motion to adopt the decision was voted as follows:**

<b>Chairman Ungerer:</b>	<b>AYE</b>
<b>Board Member Abrams:</b>	<b>AYE</b>
<b>Board Member Brady:</b>	<b>AYE</b>
<b>Board Member DeVenuto:</b>	<b>AYE</b>
<b>Board Member Zoumas:</b>	<b>AYE</b>

**C. Falasca Devito –**

Review decision 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.

In employing the balancing test as set forth in Village Law Section 7-712-b (c), the board hereby denies the variance as requested.

**By roll call a motion to adopt the decision was voted as follows:**

<b>Chairman Ungerer:</b>	<b>AYE</b>
<b>Board Member Abrams:</b>	<b>AYE</b>
<b>Board Member Brady:</b>	<b>AYE</b>
<b>Board Member DeVenuto:</b>	<b>AYE</b>
<b>Board Member Zoumas:</b>	<b>AYE</b>

**5. Public Hearings -**

**A. Agnello –**

Continuation of 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 that the board kept the public hearing open last month because they had not received the 239 back from the county. She then stated that as of January 29, 2021 the building department received the 239 back from the county, where it stated that decision was up to local determination.

Chairwoman Ungerer made a motion, seconded by K. Abrams, to open the application up to public comment. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

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:

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

**B. Abraham –**

Public Hearing for an area variance for the demolition of an existing non-conforming three family dwelling and reconstruction of a 2-family dwelling. Whereas pursuant to Section 310-43.2(B)3, a non-conforming use cannot be changed to another non-conforming use and per Village Code Section 310-43.2(C), a non-conforming use cannot be expanded without Zoning Board approval. Furthermore, per Village Code Section 310-7, the minimum lot size is 2 acres and 0.48 is provided, a rear yard setback of 50 ft. is required and 45.06 is provided and a side yard setback of 30 feet is required and 15.45 is provided. This property is located on a private road and as per Village Code Section 310-8, all new construction must be located on a State, County or Village Highway or Street. Said property is located in the R2A Zoning District at 14 Skytop Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 217 Block 3 Lot 5.

Stephanie Tunic the Attorney and Anthony Mucchio the Engineer were there on behalf of the applicant.

Chairwoman Ungerer then stated that the applicant had a building permit out last November which was denied due to the non-conforming use. She then stated that the application was then filed with the zoning board within that application is the statement of ownership as well as a disclosure form, engineers report and two proposals with an area photo and the environmental assessment form that was completed in January of this year. She then stated the intent of the applicant was to take a three-family dwelling and convert it to a two-family dwelling with a floor expansion and a square footage increase of 10%. She then went on to explain the two possible plans – the current layout would not add any additional non-conformities and the other is to somewhat move the house further back and rotate it which would remove the front non-conformity but create a rear non-conformity. The applicant is seeking relief from the requirement that new construction be located on a state, county, or village road due this being a private road and they are also requesting relief from the two-acre requirement due to this being on a half an acre of land.

Mr. Mucchio stated that it was his idea to move the house back to make it less non-conforming, it would also make the new house line up with all the other houses on the block and it would help the new house tie into the septic system which is currently there. Stephanie Tunic then stated the board was given both plans and she was interested in hearing the boards comments and questions.

Chairwoman Ungerer requested clarification on the owner of this property due to the application stating the name Cong, Khal Kedishas Levi and wanted to make sure that if given a favorable decision that this would be a two-family house and not a house of worship or a shul. The applicant's attorney stated, yes that is her understanding that it is going to be a two-family home. Chairwoman Ungerer then stated along with the application, seven prior board decisions were submitted to support the argument that the board has granted permission for demolition and replacement in the past. She then went on to say that every one of those applications had different circumstances and they were not identical to this application and the board always looks at each individual application based on the merits of each application. Ms. Tunic then stated that she can submit a memorandum describing their argument and position on each of those applications and why they believe those other applications hold precedence and are applicable to the application. Chairwoman Ungerer then stated she is not saying they are not applicable; she just wants the applicant to know that the board looks at every application as an individual application and that the current application is not identical.

Chairwoman Ungerer then stated that the engineers report states “the existing crawl space foundation is in a state of disrepair and cannot be salvaged”. She then stated she does not consider that a report, nor does she know what it is based on. She went on to say that she is concerned that if there are structural deficiencies and there are three tenants living in the building does that make it an unsafe dwelling for them. Mr. Mucchio stated he does not believe it to be prudent to build a brand-new house on top of the existing foundation and it would be more work to fix it instead of just removing it. He also stated he is trying to cure the setback deficiency and that would be remedied by the removal of the existing foundation. J. DeVenuto, then asked if this house has been a rental house year-round for the three families or if has been a seasonal house for the three families. Mr. Muccio stated that he has been familiar with this property for the past ten years ever since the Building Inspector Thomasberger reached out to him about a problem with the septic system and the septic system was repaired. He then stated because of the problem with the septic Inspector Thomasberger put a limit of no more than 11 people in that house due to it being a year-round rental and the size of the septic system. Ms. Tunic stated she will confirm with the client and put that in the memorandum that she is going to supply the board with at the next meeting.

K. Abrams stated that regardless of it is a two family or three family that does not necessarily limit the number of people. Chairwoman Ungerer stated the number of people is typically dictated by the state building code and for single family homes there is no limit on the number of people if they are a family unit that share common facilities within the home. Mr. Mucchio stated that the health department has a number, and it is two people per bedroom and that goes into the calculation of how big the septic system is and what it can support. A. Zoumas asked if the septic system was upgraded and Mr. Mucchio stated they had years ago. A. Zoumas then asked why the applicant why they would not just remodel the house under the current footprint without disturbing the current footprint and layout. Mr. Mucchio stated why would the board want him to do that when the applicant is willing to go the extra mile to fix the front setback. A. Zoumas then asked about the increase in square footage, Mr. Mucchio stated 10%. Chairwoman Ungerer stated that is a large increase and the house is angled and not parallel to the road leaving only nine feet from the house to the road. Mr. Mucchio stated that they want to demolish and correct the problem putting the house at 40 feet from the road and then only needing one side yard variance. Ms. Tunic stated that under the Village code the 10% becomes permissible if the board allows the expansion, and the expansion would not be a detriment to the surrounding properties health, safety, and general welfare. She then stated they foresee less people living in the house since they would be changing it from a three family to a two family. Chairwoman Ungerer then stated that the board needs to discuss whether permission will be granted to demolish and rebuild, second, if the board allows this, which plan would be followed, and which variances and conditions would be granted.

ZBA Attorney Dickover, stated prior to the board’s discussion and possible decision, he has requested that the board wait to hear back from the applicant on the questions that arose in their discussions tonight. The board then discussed the documentation that was submitted with this application comparing other houses that were granted variances in the area and on Skytop road. The board collectively feels that the other applications had extenuating circumstances and should not be compared to this house that currently has tenants and is in decent shape. C. Brady stated he agrees with Chairwoman Ungerer that he would also like to see a more detailed engineers report, and the report with one sentence that was submitted is insufficient. He would also like to see a report from the Building Inspector agreeing to the comments from Mr. Mucchio that states the foundation is beyond repair he also stated he will submit pictures for the next meeting. The board then discussed what year

the house was built, and Mr. Mucchio answered it was built in 1900, and year inspected was 1931. K. Abrams, then asked if the Building Inspector was ok with the location of the septic tank and Chairwoman Ungerer asked if each homeowner owned a portion of the road. Mr. Mucchio stated he would move the septic tank back with the house and it would no longer be near the road. J. DeVenuto, then asked how long the present owner has owned the house. Mr. Mucchio stated it was sold March 29, 2017 to the current owner and the previous owner prior to 2017 was the one that fixed the septic system.

K. Abrams made a motion, seconded by Chairwoman Ungerer, to open the application up to public comment. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

Ms. Gemma Torcivia stated she is an attorney from Florida and her daughter is one of the tenants in the building that is being discussed. She stated her daughter was not informed about the potential demolition of this property prior to today. She went on to say that her daughter lives there with her family and they have a young child. She then stated that she is sure the board is aware that there is a moratorium on evictions in New York and although her daughter found out today, she has been diligently trying to find another place to live, unfortunately due to the moratorium on evictions she has been unsuccessful. This also puts her and the other tenants in a difficult position because they have not had any notice. She then went on to say that there were a few things that the attorney, applicant, and engineer said that were upsetting and troubling to her and she has concerns about the intention of the application. She then pleaded with the board to not give the applicant a permit and if they do to wait at least 6 months or at the very least wait until the residential eviction moratorium in New York State has been lifted allowing time for her daughter and the other tenants to find another place to live.

Mr. Lipa Deutsch stated he is involved in the application with the owner and stated that the plan is to have the owner move into the house, with a family member using the apartment on the other side. He also informed Ms. Torcivia that the owner would give the tenant fair warning and does not plan on demolishing the house tomorrow. He then stated he was involved in the renovation of 12 Skytop and the owner from 14 Skytop approached him and asked him how he could improve this current application.

Ms. Tunic stated that the owner would of course follow any current New York State and Federal eviction rules and would not evict tenants at this time.

K. Abrams made a motion to carry over the meeting to the March 10, 2021 meeting.

**Motion was tabled.**

A. Zoumas stated that the engineer described the desire to have a two-family house that was going to be more appealing to rent, yet it seems that Mr. Deutsch is telling us that this is not going to be a rental at all, and that the owner is going to live on one side and a family member is going live on the other side. He then asked someone to clarify on the intention and need for this variance. Chairwoman Ungerer then stated that the variances does not address who will live in the dwelling. The variances are for setbacks and lot size; however, the board needs to go by the five factors regardless of what was said in public comment. A. Zoumas stated he was just looking for clarification, because if these improvements were being done just for rentals the five factor questions could be swayed depending on their answers. C. Brady stated that the code does not make any differentiation based on rental or owner occupied and the context for the variances is strictly a matter of setbacks and code interpretation and the clarification must come from what the attorney and the client has provided and indicated.

K. Abrams, made a motion, seconded by C. Brady, to carry over the public hearing until the next meeting of the board. There were no comments from the public via zoom or Facebook chat. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**6. Building Inspectors Report**

**7. Deliberations on closed Public Hearings**

**A. Agnello –**

Continuation of 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 deliberations for this application were held on January 13, 2021.

In employing the balancing test as set forth in Village Law Section 7-712-b (c), the board hereby grants the variance as requested.

**By roll call a motion to adopt the decision was voted as follows:**

<b>Chairman Ungerer:</b>	<b>AYE</b>
<b>Board Member Abrams:</b>	<b>AYE</b>
<b>Board Member Brady:</b>	<b>AYE</b>
<b>Board Member DeVenuto:</b>	<b>AYE</b>
<b>Board Member Zoumas:</b>	<b>AYE</b>

**8. Adjournment**

With no further business to discuss, a motion was offered by K. Abrams, seconded by J. DeVenuto, to adjourn the meeting at 8:35 PM.

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

Jessica McClennan, ZBA Secretary  
, ZBA Secretary