

Minutes of the Zoning Board of Appeals Meeting held on May 12, 2021 at 7:30PM

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

Also Present: Attorney Kelly Naughton, Attorney Richard Golden, Planning Board Chairman Christopher Gerver,  
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 June 9, 2021.

**1. 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 April 14, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**2. New Business –**

**A. Vite** - Discuss letter received requesting extension.

Chairwoman Ungerer stated she spoke to Attorney Naughton and it is her understanding that due to how the law is written the board can not grant an extension. Attorney Naughton then stated that this decision does not preclude the applicant from reapplying because the situation has not changed, but the board would have to go through the process again. The Village code itself specifically limits it to one extension which the board has already given to the applicant. The applicant’s attorney Mr. Kimple stated he did not agree with the decision and threatened an article 78. Attorney Naughton stated that he should just submit a new application. Mr. Kimple stated he would call Attorney Naughton to discuss how to proceed.

**B. 17 Blueberry** – Discuss memo from Building Inspector.

The applicant submitted new plans to the building department and since the drawings have changed the building department asked if it was ok to issue a building permit. The board concluded that the applicant must submit an amended application due to the drawings being changed.

**3. Action on Decisions – N/A**

**4. Public Hearings –**

**A. Abraham** –

Continuation of 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.

Chairwoman Ungerer stated the applicant is asking to either tear down the building that is there and either rebuild it on the same footprint with the 10% expansion or move it to the rear which would require setbacks and variances. At the last meeting, the board requested advice from council. She then stated the problem is either relocating at the rear of the property to create a new building in which that building would then be non-conforming, for it to be conforming would mean that it could only be a single-family house. She then went on to say that the applicant submitted other decisions for variances that were granted as far as precedence. Mr. Myrow then stated that the area variances that they would need would only apply if the alternative submission was granted. He then stated that moving the house back will not be an option. Chairwoman Ungerer then asked if the applicant is just looking to have the board grant allowance to demolish and rebuild on the same footprint with the 10% expansion. She then asked Mr. Myrow where he sees in the code that it says you can demolish and rebuild without losing the non-conforming use. Mr. Myrow stated that 310-43 says that a non-conforming building may be remodeled or reconstructed provided it does not create any new non-compliance that is not permitted in the code. A. Zoumas stated this was one of the questions the board had for council at last month's meeting. He then asked what is the scope of the non-conforming building and does that protection outlast the demolition of the building. He then asked Attorney Naughton her opinion on the non-conforming protection and where it ends. Attorney Naughton stated she is aware of the conversations that transpired at the previous meeting and she did speak to Mr. Myrow regarding the board's concerns. In this section of the code, it does say that the building can be torn down and rebuilt; however, there is also another section that says that it should not happen if it is damaged by fire or other causes such as time and deterioration. She then stated that in her opinion demolishing and rebuilding entirely is taking away 50 percent of the value so it is a more restrictive provision would have to be applied. She then stated that in previous decisions the board recognized this but still allowed other applicants to tear down and rebuild. A. Zoumas then asked if the board had made an error in the past, what is the board's responsibility moving forward and due to a precedence being set would the board then have to continue to come to the same conclusion for every application in the future. Attorney Naughton stated that any decision the board makes has precedential effects, she then went on to say that Mr. Myrow has provided you with decisions that you have made in the past so if you feel a decision was incorrect you must know have to explain why you feel that decision was incorrect and then continue making your decisions based on the new precedent. C. Brady, asked since the precedent was set with the next-door property and given its proximity we would come to a similar decision. We should then request that the Village Board of Trustees clarify the language in that section of the code due to conflicting provisions of certain codes. Attorney Naughton stated she feels that is a good idea and that the Village Board is very progressive and is more than willing to help and assist when asked to do so. The board then requested that Attorney Naughton bring this request to the Village Board.

Mr. Myrow stated he wants to review the minutes on the Falkowitz decision and have the minutes be attached to the decision. The board agreed that that is what they would like to do as well.

Motion was made by K. Abrams, seconded by A. Zoumas to keep the public hearing open and carry it over to the June meeting to review the minutes and the decision of the Falkowitz decision. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**B. Valdes -**

Continuation of Public Hearing for a Special Permit to permit a second dwelling unit for a family member (Priscilla Arias), pursuant to Section 310-35 of the Village Code. Said property is located in the R1A Zoning District at 20 Abrams Road in Central Valley and is known on the Tax Maps as Section 226 Block 1 Lot 37.221.

Motion was made by Chairwoman Ungerer, seconded by K. Abrams, to keep the public hearing open and carry it over to the June meeting so that the applicant can get the information that the board has requested she submit. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**C. Yitzchok Stein/Ideal Design –**

Continuation of Public Hearing for an area variance based on a denial of a building permit by the Code Official to permit the expansion of a non-conforming seasonal dwelling. Proposed expansion of 87 sq. ft. will exceed the maximum 10% square feet of the existing dwelling (751 sq. ft.) pursuant to Section 310-432.2(c) of the Woodbury Zoning Code. Said property is located in the R2A Zoning District at 31 Seven Springs Road (Carmel Park) in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 216 Block 5 Lot 1.1.

Chairwoman Ungerer stated the applicant resubmitted and adjusted the drawing which brings the extension to less than 10%. J. DeVenuto, stated that the architects stamp on the new submission was dated May 6<sup>th</sup> and then submitted to the Building Department on May 7<sup>th</sup>. With no further comments from the Board or the public a motion was made by K. Abrams, seconded by J. DeVenuto, to close the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**D. Ross –**

Continuation of Public Hearing for a Special Permit to permit a second dwelling unit for a family member (Martina Espana), pursuant to Section 310-35 of the Village Code. Said property is located in the R1A Zoning District at 6 Carroll Drive in Highland Mills and is known on the Tax Maps as Section 202 Block 1 Lot 46.

Chairwoman Ungerer stated the applicant was not present nor did she show up to the last meeting. She then stated she will ask that the building department reach out to the applicant one more time and if they do not show up next month, she will have to withdraw her application. With no comments from the Board or the public a motion was made by A. Zoumas, seconded by K. Abrams, to carry over the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**E. Marin –**

Public Hearing for a use variance to permit the existing accessory structure (16 ft. x 16 ft. storage shed) to remain on a vacant unoccupied lot. Whereas, pursuant to Section 310-11(A) “no accessory building or structure shall be erected prior to any principal building.” Said property is located in the IB Zoning District at 28 Falkirk Avenue in Central Valley and is known on the Village of Woodbury Tax Maps as Section 226 Block 1 Lot 63.

Chairwoman Ungerer asked if the applicant was present and if he was the owner of the vacant lot. Mr. Marin responded yes. Chairwoman Ungerer then stated that the applicant was not allowed to have a shed there without a house. She then went on to explain that a use variance is very different from the variances the board had been discussing throughout the rest of the meeting. She then went over all the criteria of a use variance and what he needed to supply to the board prior to going forward with the application. She explained that the applicant must show the board that by not allowing a shed there that it would create an unnecessary hardship and at the same time show every other use that is permitted in the zoning district for that property using real dollars and cents. She explained that use variances are usually very hard to get, and she wanted the applicant to be aware of everything he needed. Attorney Naughton then stated use variances are very hard to obtain and nothing like the special permits or the area variances. She stated unlike area variances that have five different factors that are state mandated, there is no balancing when trying to obtain a use variance. She then explained the use variance to the applicant and stated it would be up to him if he was going to proceed. The applicant then stated he was not going to proceed. Attorney Naughton stated that the board should keep the public hearing open until the June meeting and that she will write a letter to the applicant so that he is fully aware of what he needs to submit; giving him time to look it over and decide if he would like to pursue or withdraw.

With no comments from the Board or the public a motion was made by A. Zoumas, seconded by K. Abrams, to carry over the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**5. Building Inspectors Report: N/A**

**6. Deliberations on closed Public Hearings**

**A. Yitzchok Stein/Ideal Design**

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, it is just a small boxout of the existing unit to add some living space. The Board Agreed
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no, since property is existing none conforming. The Board Agreed
3. *How substantial is the variance that you are requesting?* The applicant stated no, it is just a small boxout of the existing unit. 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, it is just a small boxout of the existing unit. The units outline stays the same with the same use and the same character. The Board Agreed
5. *Is the alleged difficulty self-created?* The applicant stated no, he is looking to create some more living space within the unit. The Board Disagreed.

A motion was made by A. Zoumas, seconded by C. Brady, to have the Board enter 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 with no further SEQRA review and requested that the Attorney draft a favorable decision consistent with the facts and findings of the Zoning Board of Appeals.

**6. Board Member Comment:**

The board discussed the need for an Attorney /Client executive session in which they went into at the end of the meeting.

The board then authorized Attorney Naughton to draft a letter to request the Village Board to clarify certain codes and provisions especially pertaining to specific wording in the Zoning code.

The board collectively thanked Mr. Joseph DeVenuto for the time he served on the Board. Chairwoman Ungerer stated it was a pleasure to work with him and she appreciates all the research he has done and his attention to detail, his professionalism she then wished him nothing but good things and good health in the future. Attorney Naughton thanked him for his service to the Village. Mr. Joseph DeVenuto thanked everyone for their kind words.

**8. Adjournment**

With no further business to discuss, a motion was offered by C. Brady, seconded by Chairwoman Ungerer, to adjourn the meeting at 8:53 PM.

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

Jessica McClennan, ZBA Secretary