

Minutes of the Zoning Board of Appeals Meeting held on June 9, 2021, at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Andrew Zoumas, Evan Yan

Also Present: Attorney Kelly Naughton, Timothy Egan, Village Mayor; Andrew Giacomazza, and Christopher Graziano, Village Board Trustees

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board, welcomed new member Evan Yan, and stated that the next scheduled meeting is on July 14, 2021, however; it may not be held due to a quorum issue.

1. Executive Session: N/A

2. Approval and Acceptance of Previous Minutes:

Motion was offered by K. Abrams, seconded by C. Brady, to approve and accept the minutes of the meeting held on May 12, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

3. New Business –

4. Action on Decisions –

A. Yitzchok Stein/Ideal Design –

Review decision 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. Said property is located in the R2A Zoning District at 31 Seven Springs Road (Carmel Park) in HM SBL 216-5-1.1.

DECISION:

Village Code § 310-43.2(C) ("Nonconforming Uses"): Expansion of Nonconforming Use - Special Permit

"[T]he nonconforming use of buildings or land lawfully existing on July 11, 1990 .., or the nonconforming use of buildings or land lawfully existing on the day immediately preceding the effective date of any amendment to this chapter affecting such use, regardless of change of title possession or occupancy or right thereof, may be continued indefinitely, except that such use... [s]hall not be enlarged, altered, extended or restored...." Village Code § 310-43.2(B)(I). However, pursuant to Village Code § 310-43.2(C), the Board "may issue a special permit for the expansion of a nonconforming use of a building by up to 10% of the floor area of the principal structure, provided it finds that: (i) Said expansion of the use is not detrimental to surrounding properties or to the health, safety and general welfare of the immediate neighborhood; and (ii) No need for an expansion of off-street parking or traffic generation will occur in a residential district as a result of such an expanded use."

As stated above, the use of property as seasonal dwellings is not permitted in the R-2A district; however, the Building Inspector has determined that this is a legally pre-existing, nonconforming use.

In connection with the first element, whether such "expansion of the use is not detrimental to surrounding properties or to the health, safety and general welfare of the immediate neighborhood," the Board found that the enlargement is very small and adds some living space. The Board determined that the modest expansion does not alter the character of the community and is not detrimental to surrounding properties.

As to the second element, whether there would be a "need for an expansion of off-street parking or traffic generation will occur in a residential district as a result of such an expanded use," the Board determined that granting the special permit would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood and would not require any additional off-street parking. The Board considered the character of the neighborhood and the size of the proposed addition to the existing residential structure. The Board concluded that the addition is extremely small and would enhance the existing home, and that the proposed additional square footage raised no adverse environmental impacts.

The Board further found that the proposed addition of 73 square feet to the existing 751 square foot dwelling as presented in the application is an increase of 9.7%, which complies with the requirement in Village Code § 310-43.2(C) that an expansion of a nonconforming use by special permit not exceed 10% of the floor area. However, the Board conditioned the granting of the special permit upon (1) the Code Enforcement Officer verifying the square footage of the existing structure, and (2) approval of an application for a building permit and presentation of architectural renderings for the addition to the Building Inspector to confirm that the structure does not exceed the 9.7% expansion of square footage proposed.

Because of the Board's discussions the Zoning Board of Appeals hereby grants the Applicant's request for a special permit to enlarge the nonconforming use of land as a seasonal dwelling, as stated and described herein, subject to the conditions set forth above. Motion was offered by K. Abrams, seconded by C. Brady, to approve the decision. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

5. 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 that the applicant has taken off the movement of the structure to the rear of the property and that now your request is that the applicant be allowed to demolish the three-story building, rebuilding in the same footprint building a two-family house and expand the square floor area by ten percent. My Myrow stated yes, that is correct. She then stated that at the last meeting the board requested that the applicant supply the minutes of the Falcowitz decision to the board, due to that application requesting and receiving what this applicant is requesting. She then stated that within the minutes the board recognized that the applicant would lose the non-conforming use with demolition; however, the board still approved it.

Mr. Myrow stated his observations being that it has been less than two years since the Falcowitz decision and he feels like this is remarkable similar and despite the Falcowitz decision being an error or a mistake, that decision was not made in haste, there were multiple meetings and requests from the board. He also stated that since the board made their decision there has been no evidence or facts that have come forward that would indicate that the board made a mistake or made an error in law. He then stated there is a big difference between making a mistake and changing your mind. If the board were to change their mind, it would not be an appropriate way to deal with precedent, then there would be no such thing as precedent.

E. Yan, stated he was not around for the deliberations but he did catch up while reading the minutes and in the Falcowitz decision the board says that essentially once you demolish and raise that existing non-conforming structure you loose the right to maintain a non-conforming use and it was based on precedent and the precedent that the Falcowitz decision was based on was looking at the precedence of the various ones in the area and all of those except for one was essentially due to a fire that cause the damage and the change of use was not discussed.

Chairwoman Ungerer stated we did discuss that at length and there is some ambiguity in the code. She then stated the board is going to have to come to a decision based on what the board has discussed.

C. Brady, stated that the ambiguity and disparate language in different sections of the code gave the board pause, especially during the Falkowitz decision and it has continued in this application. At the previous meeting, the board asked Kelly to ask the Village Board to investigate the wording of the code and possibly make changes making the wording clearer and more concise. Attorney Naughton stated that she approached the Village Board and has requested that the code be reviewed. A. Zoumas asked if the precedence is set by the board as a whole or individuals, due to board members changing over time. Attorney Naughton stated the precedence goes with the board as a whole.

With no comments from Facebook or Zoom a motion was offered by C. Brady, seconded by K. Abrams, 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, Brady, Zoumas, Yan
	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 offered by Chairwoman Ungerer, seconded by K. Abrams, to carry over to the next scheduled meeting at the request of the applicant. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

C. 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.

Ms. Ross stated that she has plans that she recently required and sent them to the Building Department email moments ago. Chairwoman Ungerer stated that those documents were required to be sent two weeks prior to the meeting so the board has time to review them, she also stated the Building Department is not there at 8:00 at night. Ms. Ross then asked if she could send it to Chairwoman Ungerer's personal email. Chairwoman Ungerer then stated due to not having the documents the board will need to carry over the public hearing. Ms. Ross stated the board is wasting her time, and when she bought her house, she was not informed that she had to get a special permit for a mother daughter house. She then stated that she does not cook, her mother does that for her and she needs to have her mother live with her. She then stated she is a singer, actor and a doctor and she is very busy and does not have extra time to set aside for these meetings every month. C. Brady, then stated that the plans that she sends must show square footage of her house and the apartment. Ms. Ross stated she googled her house, and it states that her house is 72 thousand square feet. Chairwoman Ungerer informed her to make sure all that information is documented in what is submitted to the building department with her application.

K. Abrams, made a motion, seconded by Chairwoman Ungerer, to carry over to the next scheduled meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

C. 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.

Motion was offered by A. Zoumas, seconded by K. Abrams, to extend and carry over the public hearing and request that the Building Department reach out to the applicant again and ask them what they want to do. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

D. Hamaspik –

Public Hearing for an area variance to permit the keeping of livestock (chickens & roosters) on a parcel having less than 2 acres with less than 200 feet from a property line. Whereas pursuant to Section 310-7(accessory uses) a minimum of 2 acres of lot area is required and a minimum distance of 200 feet to property lines for housing and grazing. Said property is located in the R1A Zoning District at 100 Summit Avenue in Central Valley and is known on the Village of Woodbury Tax Maps as Section 228 Block 9 Lot 1.21.

Mr. Moses Wortzimer stated Hamaspik is a non-for-profit agency funded by the State of New York which is an office that oversees homes for people with developmental and disabled individuals. There are two homes within the Village of Woodbury. This one home in particular houses four school aged boys, they live under the care of staff and go to school during the day. The sites are certified by the state and consistently receive unannounced visits by the State. The chickens are there as a form of therapy for the children, due to studies showing that children communicate better with these animals than with humans. K. Abrams, asked if they were outside, Mr. Wortzimer stated yes, they are and they are fenced in. K. Abrams, then stated that there have been complaints from neighbors about the noise level and hearing the rooster's caw. Mr. Wortzimer stated that the roosters have been treated and they have not cawed for the last three months. A. Zoumas stated he drove by earlier in the morning and he heard the rooster. C. Brady asked how many chickens are on the property and Mr. Wortzimer stated that there were 20. Attorney Naughton requested more information about the fenced structure and where the structure is located within the property lines. Mr. Wortzimer stated he does not have that specific information now; however, he did say that it is meticulously clean and in the back of the house. Chairwoman Ungerer asked if it was safe from predators and Mr. Wortzimer stated it is a type of metal mesh material that protects them from the predators but is open enough where the children can see in. The board then requested the applicant supply them with specifics pertaining to the structure for example the dimensions of the lot, dimensions of the coop, and how far away it is from the property line. E. Yan asked that if this house were a single-family home on two acres of land would they have the right to this without any approval. Attorney Naughton stated that they would go to the Building Department and if they had the minimum acreage, and they met the bulk requirements then they would just need a building permit.

With no further comments from the board Chairwoman Ungerer stated that a four page letter was received from a neighbor, Mr. Aaron Lefton, within it he states he has lived in his house since 2011 and he believes that this is a commercial organization and it doesn't belong in the neighborhood and commercial organizations should not be allowed in residential neighborhoods, Within his letter he speaks about water usage and bouncy houses, he feels that the permit should be denied especially since it is only a one acre property. He stated that this would cause negative, adverse, and detrimental impacts on the neighborhood. He states that the noise is unreasonable and that he is awoken by rooster caws at 2:30 in the morning. He stated that he put in a noise complaint to the Building Department, and they issued a citation. He feels that these chickens create an unacceptable health risk because they carry diseases and bacteria that can make animals and people sick. Supervisor Palermo also wrote a letter where he states he agrees with Mr. Lefton, and he witnessed, and he saw personally what Mr. Lefton must deal with. He also stated that he sent the Police there on multiple occasions. There have been school buses lining the road, which is an already narrow road, he has witnessed carnival like activities for extended periods of time with extreme noise levels that are above normal for residential neighborhoods. The Building Inspector submitted a letter in which it states that this is a single-family dwelling and not a group home. A group home is when six to twelve residents live there, this residence only has four. On Facebook comments, Brady Delbecia wanted to know what farm the chickens were from. Mr. Wortzimer did not know. Sue Lynch stated different animals can be used for therapy. Ann Demico, the wife of Aaron Lefton stated she has lived in Woodbury her whole life and they never had an issue with who lived across the street until this situation.

A. Zoumas wanted to clarify what they are asking the applicant to submit prior to the next meeting. He stated he wants to know what the yellow square is and how big it is on the plans. He wants the measurement of the property lines and how far away/close it is to the structure. He would also like the distance from the setback and photos of the existing structure and coop. E. Yan, asked for full size plans.

Motion was offered by Chairwoman Ungerer, seconded by K. Abrams, to carry over the public hearing and request that the Building Department reach out to the applicant again and ask them what they want to do. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings

A. Abraham-

The applicant answered no to all the following questions, however, did submit an attached addendum that stated the following.

1. *Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?*
2. *Can the benefit you seek be achieved by some other feasible method other than variance?*
3. *How substantial is the variance that you are requesting?*
4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?*
5. *Is the alleged difficulty self-created?*

Applicant has authority to act for Congregation Kha! Kedishas Levi which owns a legal nonconforming three (3) family residence at 14 Skytop Road. Applicant seeks to reduce the occupancy of the residence to two (2) families and to expand the floor area of the structure by 10% pursuant to Zoning Law § 310-43.2(C) which provides:

"§ 310-43.2 Nonconforming uses.

Expansion of nonconforming use. Notwithstanding any other provision herein, the Zoning Board of Appeals may issue a special permit for the expansion of a nonconforming use of a building by up to 10% of the floor area of the principal structure, provided it finds that:

Said expansion of the use is not detrimental to surrounding properties or to the health, safety, and general welfare of the immediate neighborhood; and

No need for an expansion of off-street parking or traffic generation will occur in a residential district as a result of such an expanded use."

Submitted herewith are two (2) plot plans showing the expansion of the existing floor area by the permitted 10%; Drawing CI 00 shows the location of the proposed improvement to be over the existing footprint plus the 10% expansion; Drawing CI02 shows the footprint moved back to the 40 ft. setback from the street which would cure that nonconformity. As to the requirements of § 310-43.1(C)(1), the building is in a developed residential zone and other 2 family homes exist in the vicinity so the expansion will not be detrimental to the surrounding area. As to § 310-43.1(C)(2), the reduction of occupancy from three to two families will reduce the off-street parking need as well as traffic generation.

Applicant is also requesting permission to demolish and replace the existing dwelling in its entirety. Submitted herewith is a structural engineering report prepared by Anthony Meluso, PE, dated November 19, 2020, indicating that any renovations or additions will require the replacement of the foundation. Also submitted herewith are ZBA Decisions wherein this Board has granted permission for demolition and replacement under circumstances identical to the Applicant's. In all the cases, including those where the buildings were destroyed by fire, the residences in question were seasonal and, in the R,-2A zoning district which did not permit seasonal dwellings. Despite the dwellings being legal nonconforming structures, the Board allowed the demolition and replacement without the applicant losing its legal nonconforming status.

A motion was made by K. Abrams, seconded by Chairwoman Ungerer, 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 with conditions consistent with the facts and findings of the Zoning Board of Appeals.

Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

Chairwoman Ungerer	Aye
K. Abrams	Aye

C. Brady,	Aye
A. Zoumas	Nay
E. Yan	Nay
Motion Carried	

B. Koops-

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, putting the garage in the spot that I am proposing, it would be the least visible from our surroundings three neighbors. If we put it in the “backyard” (like the code dictates), then it will be visible from all three neighbors as well as Seven Springs Road. **The Board Agreed and stated that the front yard is parallel to the side yard.**
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no, the code indicates such a garage (temporary building made by versa tube) needs to be in backyard. That is a bad place for it because the houses are facing perpendicular to Seven Springs Road. I must put it up to store the truck in. **The Board Agreed**
3. *How substantial is the variance that you are requesting?* The applicant stated not very. I am asking that I be allowed to put the garage on the northeast side of the house (where there is nothing but forest) instead of the west side where all the neighbors will see it. **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, I rent the house, when I leave, I will disassemble it and take it with me. There is already gravel in the area and I want to put it because that is where I have parked the truck since 2017. **The Board Agreed**
5. *Is the alleged difficulty self-created?* The applicant stated no, I have been parking the truck here without a problem since 2017. I recently got in a dispute with my next-door neighbor over a car he tried to abandon in my backyard. When I asked him to remove it, he called in a complaint on my truck to try and get even with me. I am just trying to support my wife and three children. The Board Disagreed and stated it is self-created.

A motion was made by K. Abrams, 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 with conditions consistent with the facts and findings of the Zoning Board of Appeals. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

C. Vite-

1. *Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?*

Applicant believes the granting of this variance will have an almost negligible effect on the neighborhood and nearby properties. The parcel itself is a land-locked parcel created when the state did the highway taking for the New York State Thruway. As can be seen by an expanded view of the vicinity map, there are four residential parcels existing between the subject property and Smith Clove Road. Applicant's access to the subject premises will be over an existing 50- foot right-of- way that runs from Smith Clove Road to and along a portion of the

easterly boundary of tax lot parcel 218-2-85.231, and the owner of tax parcel 85.231 has agreed if the variances are granted to provide a 30-foot-wide easement over the easterly portion of its land from the right-of-way to the subject property. The right of way already is paved to tax parcel 85.231 so for all intents and purposes the only impact on the neighborhood will be the residential traffic to the proposed dwelling. The proposed dwelling would, likely, not even be visible from Smith Clove Road or the dwellings erected thereon. The variance will permit a residence on the lot which is the current character of the neighborhood. With the New York State Thruway to the west of the property and undeveloped land to the right of the property, coupled with the distance behind the existing developed lands, there should be no visual or detrimental effect on the homes in the neighborhood. **The Board Agreed**

2. Can the benefit you seek be achieved by some other feasible method other than variance?

There is no feasible way to provide ownership from the subject parcel to Smith Clove Road as the lot is fully landlocked and has existed since at least 1979 according to the records of the Woodbury tax Assessor as reflected on the Assessor's property card a copy of which is annexed hereto. **The Board Agreed.**

3. How substantial is the variance that you are requesting?

The variance should not consider substantial as the road access already exists and the variance will permit the access drive to be extended to the subject lot. Obviously, the extension must be reviewed by emergency services to determine suitability. **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 variances, if granted, will simply allow for construction of a small single-family dwelling on a parcel of land that is not suitable for any use other than residential. As shown on the plans submitted as part of this application, the actual house setting is located at least 150 feet north of the closest structure, that being a shed on the boundary line between tax lot 81 and tax lot 85.231. The applicant does not propose any significant modification to the grades and all drainage created by the impervious surfaces related to a single-family dwelling should easily be able to be handled as the actual setback from the lot line is 65 feet and there is room for drainage to be directed easily to the larger open side of the proposed dwelling, to wit: the southwest area. **The Board Agreed**

5. Is the alleged difficulty self-created?

The non-conforming lot has existed for at least the past 40 years. It was purchased by the current owner in 2005 so it can be argued that it is self-created. It should also note that for 16 years of ownership the property has been carried on the tax rolls of Woodbury. **The Board Disagreed.**

A motion was made by K. Abrams, seconded by Chairwoman Ungerer, 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 with conditions consistent with the facts and findings of the Zoning Board of Appeals. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

8. Adjournment

With no further business to discuss, a motion was offered by A. Zoumas, seconded by Chairwoman Ungerer, to adjourn the meeting at 10:18 PM.

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

Jessica McClennan, ZBA Secretary