

Minutes of the Zoning Board of Appeals Meeting held on August 11, 2021, at 7:30PM

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

Also Present: Attorney Kelly Naughton

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on September 8, 2021, whether it will be in person or via zoom, only time will tell.

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 June 9, 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:

The Board discussed the moratorium that was put in place by the Village Board. The board then stated that no special permits can be issued until December, the earliest. Chairwoman Ungerer then stated that they will have to extend the discussion of Ross and Valdes until December or when the moratorium comes to an end. K. Abrams, made the motion, seconded by A. Zoumas to extend the public hearings until December, unless the Village Board decides to extend the moratorium further.

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

4. Action on Decisions:

A. Abraham –

Review decision for an area variance for the demolition of an existing non-conforming three family dwelling and reconstruction of a 2-family dwelling. 14 Skytop Road, HM SBL 217-3-5.

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

Under Village Code § 310-43.2(B)(1) and (3), "the 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... except as provided in [Village Code § 310-43.2(C)]" and "[s]hall not be changed to another nonconforming use without approval by the Board..., and then only to a use which, in the opinion of said Board, is of the same or of a more-restrictive nature." 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 current use of property as a three-family dwelling is not permitted in the R-2A district, but the Building Inspector has determined that this is a legal pre-existing, nonconforming use. Further, the Building Inspector has previously opined that the demolition of an existing building used for a nonconforming use would cause a loss of the nonconforming use protection, thus prohibiting the continuation of the nonconforming

use and as proposed herein, a change of nonconforming use to a more-restrictive nonconforming use. However, the Board has precedent that is applicable to the present circumstances. As stated in those prior decisions, "The Board has taken into consideration that on previous applications of this nature that the Board has allowed the demolition of an existing nonconforming structure and replacement thereof even though the razing of the existing nonconforming building results in the loss of the right to maintain a nonconforming building Based upon this precedent, the Board finds that this existing nonconforming three family structure may be replaced with a two- family residential structure provided the new structure's square footage is not expanded in size greater than 10% of the existing three-family residence's square footage."

(See Decision In the Matter of the Application of David Falkowitz, dated July 10, 2019).

Having determined that the Applicant could demolish the three-family dwelling and replace it with a two-family dwelling – which was recognized by the Board to be a more-restrictive use and thus a permissible change of nonconforming use under Village Code § 310-43.2(B)(3) – the Board then discussed whether a special permit should be granted to permit the expansion of the floor area by 10% under Village Code § 310-43.2(C).

In connection with the first element that must be satisfied for such a special permit, 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 small, and adds some living space. Additionally, despite this physical expansion, the new two-family dwelling use is less intensive than the current three-family dwelling. The Board determined that the 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 location of the property, as the dwelling is the last dwelling on the street. The Board concluded that the requested additional square footage is small and raised no adverse environmental impacts.

The Board conditioned the granting of the special permit upon (1) the Building Inspector or 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 replacement two-family dwelling to the Building Inspector to confirm that the new structure does not exceed a 10% expansion of the existing square footage.

CONCLUSION

A motion was made by K. Abrams, seconded by E. Yan, as a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the Applicant's request to demolish the existing three-family dwelling, and replace it with a two-family dwelling, and for a special permit to enlarge the nonconforming use of land (as a two-family dwelling) by up to 10% of the floor area of the existing dwelling, as stated and described herein, subject to the conditions set forth above.

Roll Call by the Board:

Chairperson Karen Ungerer	- Aye
Member Kevin Abrams	- Aye
Member Craig Brady	- Aye
Member Evan Yan	- Nay
Member Andrew Zoumas	- Nay

B. Koops/Rubin –

Review decision for an area variance to permit the construction of a detached 15 ft. x 32 ft. accessory structure in a side yard. 120 Seven Springs Road, HM SBL 213-1-16.1

As provided in New York Village Law, the Board's appellate powers and discretion are as broad as the Building Inspector's initial scope of review, and the Board is free to make whatever decision it believes "ought to have been made" by the Building Inspector. See Village Law § 7-712-b. The Board discussed how it is not the role of the Board to "negotiate" the meaning of the provisions of the Town Code with the Applicants, nor with the Building Inspector, and no conditions are appropriate to be included within its decision when addressing an interpretation issue; its role is to determine the meaning and intent of the Zoning Board of Appeals when the

Zoning Board of Appeals granted the variances and as they relate to the Property and circumstances under review. The Board's role is neither antagonistic nor deferential to the Building Inspector's initial interpretation from which the appeal to the Board arose.

Here, the Village of Woodbury Building Inspector has denied the Applicant's request for a building permit to construct a 32' x 15' (480 square feet) detached garage on the grounds that the proposed garage would be located within the front yard. This denial was based on the Building Inspector's determination that the private driveway providing access to the Applicant's residence is akin to a private road, and that the front yard was located parallel to the front doors of the Applicant's dwelling (120 Seven Springs Road) and the adjacent dwelling (122 Seven Springs Road), both of which were "rear dwellings" (*i.e.*, located behind another dwelling that fronts to Seven Springs Road). The Applicant has appealed this determination, arguing that the proposed garage is in the rear yard, and has requested an area variance in the alternative. The question before this Board is where the front, rear and side yards are located on this parcel, and whether the proposed location of the Applicant's garage complies with the Village Code.

The Board considered Village Code § 310-11(C), which provides that "[a]n accessory building or use may be permitted only in a rear yard." The Code defines "Yard, Rear" as "A ground area between the rear lot line and a line drawn parallel or generally parallel thereto at the building line, unoccupied by any part of a building or structure other than exceptions as provided herein such as fences, retaining walls or accessory buildings." Village Code § 310-2. "Lot Line, Rear" is defined as "[t]he property line of a lot opposite and generally parallel to the front lot line," and "Lot Line, Front" is defined as "[t]he property line coinciding with the street line of the street upon which the lot fronts." *Id.* The Board recognized how the definition of rear yard is different from that of a required yard. "Yard, required" is defined as "[t]hat portion of a yard which is required by this chapter [Chapter 310, Zoning] to be left open and unoccupied by any part of a building or structure other than by exceptions as provided herein such as fences, retaining walls or accessory buildings." *Id.* The Board also considered the definition of "Yard, Front", which is "[a] ground area between the street line (right-of-way) and a line drawn parallel or generally parallel thereto at the building line, unoccupied by any building or structure other than exceptions as provided herein such as fences or retaining walls." *Id.*

After reviewing the provisions of the Village Code, *supra*, the Board determined that the front yard is located – for each dwelling on the property – between the southern wall of each building and the Seven Springs Road right-of-way, and the rear yard is located between the northern wall of each building and the rear property line (parallel to Seven Springs Road). Additionally, the Board determined that the dwellings located at 120 and 122 Seven Springs Road are located along a driveway, and not along a street line.

Based upon this discussion, the Board reviewed the Applicant's request, and the positioning of the existing dwellings and proposed garage and determined that the proposed garage would be located within the rear yard, as it was proposed to be past the northern most wall of 120 Seven Springs Road and is not proposed in the front yard as determined by the Building Inspector. The Board also determined that the proposed garage would not be within the required rear yard area¹ and, thus, a rear yard variance was not necessary.

The Board then considered the definition of "Yard, Side" in the Village Code, which is "[a] ground area between a front yard and rear yard and between a property line and a line drawn parallel thereto at the side building line, unoccupied by any part of a building or structure other than exceptions provided herein such as fences, retaining walls or accessory buildings." Village Code § 310-2. The Board determined that the garage would be located within the side yard, as it is located past the eastern wall of 120 Seven Springs Road, and it would require a variance.

Village Code § 310-11(C), Permitting Accessory Building in Rear Yards Only: Area Variance

As noted above, Village Code § 310-11(C) provides that "[a]n accessory building or use may be permitted only in a rear yard." The Applicant is seeking an area variance to construct an accessory garage within the side yard.

Consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance, the Board balanced the benefit to the Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the requested variance was granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance.

Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than area variance.

Whether the requested area variance was substantial.

Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Whether the difficulties professed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance, and whether the requested variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board considered the character of the neighborhood, and that the adjacent properties are residential lots. The Board determined that it is not likely that the proposed garage would be visible from Seven Springs Road or the nearby residences (other than those on the property), and garages are normal accessory structures for residential dwellings. The Board found that the proposed location is better than being located entirely in the rear yard. The Board concluded that the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties. Additionally, the Board weighed whether the variance to permit the garage in the side yard is substantial. The Board determined that due to the layout of the property, the heavy tree growth in the side and rear yards, and that the garage was not within the required side yard, the variance was not substantial.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. The Board considered the Applicant's argument that placing the garage only in the rear yard is a poor location because the houses are perpendicular to Seven Springs Road, and that would require an extension of the driveway and increased impervious surface coverage. It determined that the alleged difficulty was self-created by the Applicant because he is requesting to construct the garage in the side yard but noted that this factor does not necessarily preclude the granting of the variance and that no one factor under the balancing test is determinative.

CONCLUSION

On motion by K. Abrams, seconded by C. Brady, because of the Board's discussions, the Zoning Board of Appeals hereby grants the requested appeal and area variance described and discussed above, to the extent noted above, and hereby finds that the variance as granted is the minimum variance necessary to preserve and protect the character of the neighborhood.

Per § A316-9 of the Village Code, this decision shall expire if a building permit is not obtained by the Applicant within 180 days from the date of this decision. The Board may extend this time for one additional period of 90 days if such extension is warranted by the circumstances.

Roll Call by the Board:

Chairperson Karen Ungerer	- Aye
Member Kevin Abrams	- Aye
Member Craig Brady	- Aye
Member Evan Yan	- Aye
Member Andrew Zoumas	- Aye

C. Vite --

Review decision for an area variance to permit the construction of a single-family dwelling on a lot having no frontage on a public road Smith Clove Road, CV SBL 218-2-88.

DECISION:

Village Code § 310-8, Buildings Not on Mapped Streets: Area Variance

Village Law § 7-736, Permits for Erection of Buildings: Area Variance

Village Code § 310-12(A)(2), Frontage and Yards; Exceptions: Area Variance

Village Code § 310-8 provides,

No permit for the erection of any building and no certificate of occupancy shall be issued unless the street or highway giving access to such site upon which said proposed structure is located is an existing state, county or Village highway or a street shown on a plat approved by the Planning Board as in effect at the time such plat was approved or a street on a plat duly filed and recorded in the office of the County Clerk prior to the adoption of this chapter. Before such permit or certificate of occupancy shall be issued, such street or highway shall have been suitably improved to the satisfaction of the Highway Superintendent, Village Engineer and Village Board as adequate in respect to the public health, safety, and general welfare for the special circumstances of the particular street or highway.²

Pursuant to § 310-12(A)(2) of the Village Code, all districts, other than R-0.25, shall have "not less than 100 feet of street frontage." "Frontage" is defined as "[t]he length of the property line separating a lot from the street right-of-way line, measured along the street right-of-way line." Village Code § 310-2(B).

Here, the Applicant's property is a landlocked parcel, having no frontage along a public roadway. The Applicant proposes to gain access over Section 218, Block 2, Lot 89, which is a 50-foot-wide strip of land owned by the Applicant, and via an easement over the adjacent property, Section 218, Block 2, Lot 85.231. Access over Lot 85.231 is proposed to be by an easement granted by the Applicant's former spouse, who is obligated under the divorce provisions to grant the easement benefitting this property, which is otherwise worthless. The easement was recorded in the Orange County Clerk's office on April 20, 2021, in Liber 14946, Page 259. Additionally, the Applicant has recorded a Road Maintenance Agreement in the Orange County Clerk's office on April 20, 2021, in Liber 14946, Page 264.

Consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance, the Board balanced the benefit to the Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the requested variance was granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances.

Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than area variances.

1. Whether the requested area variances were substantial.

2. Whether the requested area variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

3. Whether the difficulties claimed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variances that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances. The Board considered the character of the neighborhood, and that the adjacent properties are residential lots. The Board determined that likely, the proposed dwelling would not even be visible from Smith Clove Road or the nearby residences. With the New York State Thruway to the west of the parcel, undeveloped land to the east, and the distance that the parcel is set back behind other developed properties, there should be no visual impacts or detrimental effects from the construction of a dwelling on the property. The Board concluded that the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

The Board next considered whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. The Board discussed how the property is landlocked, with no access to a public or private roadway, making it virtually worthless without this variance. The Board also considered the unique nature of the circumstances – a divorce decree requiring that an easement be provided to the Applicant permitting access to the parcel for its development. The Board discussed the information provided by the Applicant, that the property has been landlocked since at least 1979 according to the records of the Woodbury Assessor. The Board concluded that there were no feasible alternatives for the Applicant to pursue.

The Board also weighed whether reducing the requirement for road frontage to zero (0) feet and permitting access to a landlocked parcel were substantial. The Board determined that the requested variance from the minimum required road frontage was substantial; however, the second variance was not substantial as the driveway access already exists and simply needs to be extended to the property involved. The Board concluded in its discussion that the extension of the driveway must be reviewed by the Emergency Service Organizations to confirm that it is suitable for access by their vehicles.

The Board discussed whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board considered the Applicant's argument that the granting of these variances would simply allow for the construction of a single-family dwelling on property that is not suitable for any other use. The Board concluded if the use of the property was restricted to residential, based upon the access provided, the area variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Board also considered whether the alleged difficulty was self-created. The Board found that this was one of the rare cases where the alleged difficulty was not self-created, as the hardship was created when New York State took property for the construction of the New York State Thruway.

CONCLUSION

A motion was made by C. Brady, seconded by K. Abrams, because of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variances described and discussed above to allow the construction of a dwelling on a lot that does not have adequate street frontage, conditioned upon the following: The driveway shall not be used by any additional structures for access. The driveway shall be used only by the owners of the properties involved and mentioned in this decision. The Applicant's property may only use this driveway to access a residential dwelling. No others shall use it for access unless and until the easement area is accepted by the Village as a public street and improved to the Village's Road specifications.

This approval is conditioned upon the receipt of all necessary approvals and permits from the Planning Board and/or Building Inspector.

The granting of these variances, unless extended per the Village Code, shall expire if a building or occupancy permit for the use is not obtained by the Applicant within 180 days from the date of this decision. See Village Code § A316-9(E).

The Applicant shall improve the easement area to the satisfaction of the Highway Superintendent and Building Inspector to a condition sufficient and suitable to allow the access, ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles.

Roll Call by the Board:

Chairperson Karen Ungerer	- Aye
Member Kevin Abrams	- Aye
Member Craig Brady	- Aye
Member Evan Yan	- Aye
Member Andrew Zoumas	- Aye

5. Public Hearings:

A. 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.

Please see above – due to the Village of Woodbury Moratorium this public hearing is extended until December.

B. 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.

Please see above – due to the Village of Woodbury Moratorium this public hearing is extended until December.

C. Hamaspik –

Continuation of 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, the executive director of Hamaspik of Orange County was there to speak on this application. Chairwoman Ungerer stated that the applicant was before the board because they want to have 20 chickens in a 32 by 32-foot wire enclosure in the back of the property. Mr. Wortzimer stated that was correct. Chairwoman Ungerer then stated that the variance is needed because the code states that a parcel having less than 2 acres and the structure being less than 200 feet from the property line is a violation to the code. She then went on to say at the last meeting the board requested full-size plans and photos, however the board didn't receive anything that was requested, and the applicant was fully aware of what the board was asking for at the time of the request and informed the board that it would be no problem to get the pictures and plans that were requested. Mr. Wortzimer stated he did submit plans; E. Yan, stated the plans that were submitted on the 8 ½ x 11 paper were very difficult to read and at the last meeting the board requested that photos and larger plans be submitted. Chairwoman Ungerer then asked how long the chickens remain on the property and what is done with them during the colder months of the year. Mr. Wortzimer stated they would be on the property May – September. Chairwoman Ungerer asked what the children do for therapy when the chickens are not there. Mr. Wortzimer stated they do other types of therapy, the chickens are simply one of many therapies the residents enjoy, the residents enjoy feeding the chickens, watching them, and communicating with them on a level that they can't do with other people. Chairwoman Ungerer asked if the enclosure is wire with posts in the ground, the applicant answered yes, she then asked if there is any type of flooring and if the chickens ever leave the enclosure, the applicant answered no. She then asked if the coop is ever cleaned, and the applicant stated it cleaned every day with fresh mulch. Chairwoman Ungerer stated that there are laws in place to help protect all the residents and the law states that no one is allowed with less than two acres of property. She then went on to say that she had received two letters, one from a neighbor and one from the Town Supervisor Frank Palermo. K. Abrams, asked what happens to the chickens once the summer is over? Mr. Wortzimer stated that they return to the farm in Sullivan County in which they were originally taken; they have a partnership with that farm, and they supply the food and supplies for them as well. C. Brady wanted the record to reflect that in the zone in which the applicant resides it is 3 acres not the original two acres that Chairwoman Ungerer had stated in the beginning of the meeting.

Mr. Aaron Lefton thanked the board for the opportunity to address the ZBA and stated he lives on 105 summit avenue, which is the property directly across the street from 100 Summit Avenue. He stated he was not able to make the last meeting, however he watched it and the board very clearly requested documents from the applicant, that he was expected to have for the meeting tonight. He then stated that livestock has been kept since early March, he then complained to the building department by phone, and in writing and only when they were issued a violation from the building inspector did, they request a variance, and that nothing could be done by the building department until the zoning board made their determination on the variance. He then stated since March he has had to deal with obnoxious noise and powerful odors. He met with Trustee Andrew Giacomazza on June 23rd and he agreed that the odor and stated it was quite pungent. He stated he wants to enjoy the outdoor beauty of the Village and his property and requests that the board deny this request for a variance.

With no further comments received, a motion was made by E. Yan, seconded by A. Zoumas, 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	

D. Fischer –

Public Hearing for area variances to permit the subdivision of 2.07 acres into two lots for the construction of a new single-family residence. Whereas pursuant to Section 310-7, properties in the R-1A district are required

to have a minimum lot area of 1.0-acres and a minimum side yard setback of thirty (30) feet. The application proposes a minimum lot area of 0.91-acres and a side yard setback of 12.2 feet. Said property is located in the R-1A Zoning District at 7 Schunnemunk Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 204, Block 1, Lot 36.2.

Mr. David Niemotko, the architect for the project stated the planning board referred this application to the Zoning Board due to the need for area and side yard variance. The planning board stated that the application proposes a two-lot subdivision on a 2.07-acre parcel in the R-1A zoning district. Mr. Niemotko stated the subdivision request proposes a 2-lot subdivision from a 2.07-acre parcel. The zoning code allows 1 acre lots. Strictly subdivided into 2 – one acre lots, the project would meet the zoning code. Yet, due to the zoning code requirement to deduct steep slope (5-15% slopes) areas from the gross area to result in the allowable net lot area, the project requires an area variance since it reduces the allowable lot #1 area to 39,763 sf from 43,560 sf. This is a 9% variance. In addition, due to the pre-existing, non-conforming structure of lot #2 and the planning board's request to have a clear, straight subdivision line, with a more regularly shaped lots, a side yard variance of 12.2 feet is needed from the typical 30 feet setback. We have minimized the side yard setback and complied with the rear yard setback by removing the existing garage and a portion of the existing masonry structure. The remaining portion of the masonry structure will be used as a garage. Chairwoman Ungerer asked what the garage was being used for now and Mr. Niemotko stated storage. Chairwoman Ungerer then asked if the foundation/concrete pad and stone wall will be removed; Mr. Niemotko stated that it would probably be removed or covered over. Chairwoman Ungerer then asked if the house had an easement due to a paved road that runs through it, and Mr. Niemotko stated there is no easement. The board then collectively asked questions about the house possibly being up for sale and the placement of trees and the potential of removing a tree near the property line and the potential of preserving the tree. They then discussed that lot one requires the area variance and lot two needs the setback. The board then discussed the line options and where the property was divided, and Mr. Niemotko stated the planning board engineer made those suggestions and being that the applicant has gone back and forth and finally decided on the lines being drawn the way they are he would request that the board keep them as is.

Mr. Skaronki stated he lives across the street at five lent drive, and it is a beautiful area. He stated there used to be a creamery on the property with a sizeable well and he understands the why there would be a reluctancy to move it or take it down. He then stated a decision to build a subdivision could create an impact; however, he isn't against the building of a subdivision he just wanted to make the board aware. Mr. James Fabro stated he lives at 33 Schunemunk Road, and he would like to know where they are going to build the house, the square footage, and the size of the foundation. Chairwoman Ungerer stated she would think it is going to be a two story, but nothing is specified on the plans yet. He then requested the placement and size of the decks in which C. Brady, got up and showed him on the plans the board received. Chairwoman Ungerer stated the building department would issue building permits for decks. He then stated he didn't realize it is a very small right of way and due to the snow and turns in the winter, he is afraid of the line of sight if walls and bushes are put in front of the property line. Chairwoman Ungerer then stated anything of that nature would have to go through the planning board and they would make sure there was access for emergency vehicles, ingress, egress, line of sight and blind spots. A. Zoumas would like to know how the applicant is related to the owner. Mr. Niemotko stated there is no relation, Matt Dabney owns the property and fisher is the applicant and Mr. Niemotko is designing the work for them. Chairwoman Ungerer stated she has two letters that she would like to enter into the record, one from Mr. Jacobowitz of 197 Ridge Road who is writing in favor of the request, the second from Mrs. Monica Mitchel who is not in favor of the request and thinks that the setbacks should stay as they are. A. Zoumas, then stated he wasn't able to go to the site to see it and would like if he could gain access to the site. The owner of the property requested that the board members have the Building Department reach out to them prior to a site visit so they can put the dogs in the house and or feel the need to call the police due to strangers on the property.

Motion was offered by A. Zoumas, seconded by C. Brady, to carry over the public hearing so the board members can schedule a site visit. 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	

E. Vanderhurst –

Public Hearing appealing the denial of a building permit and requesting a variance for the construction of a six (6) foot fence in the side yard. Whereas pursuant to Section 146-5(B), no fence shall be more than four (4) feet in height in any side yard. Said property is located in the R1A Zoning District at 49 Ridge Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 241, Block 1, Lot 2.

Ms. Wendy Garcia stated when she purchased the house there was a pre-existing ten-foot fence that never got approval from the building department, and they are currently replacing it with a 6-foot fence. Chairwoman Ungerer stated the applicant has 3 different 4-foot sections currently and posts in the ground for a six-foot fence that is not currently up. The board discussed why the applicant would need the six-foot fence opposed to the four-foot fence. The applicant's stated animals are jumping over the fence, the slope and terrain of the property is dangerous and multiple trees came down during the intense winter storms.

Chairwoman Ungerer stated the board received three letters from neighbors. The first from Gary Sussman who lives at 57 Ridge Road stated he has lived in Woodbury for 30 years and believes that keeping the four-foot limit is in good taste and should remain to enhance the surrounding properties values. Mr. Joseph Cameron who lives at 45 Ridge Road gave his consent and agreement to the six-foot fence. Mrs. Teresa Parker who lives at 46 Ridge Road is also in favor of the six-foot fence. Mr. Joseph Cameron was present at the meeting and stated he was unaware that the previous owner didn't have a permit for the ten-foot fence, however he appreciates that his neighbors took it down because it affected his property as well and it was an eye sore, and what they are putting up now looks beautiful.

With no further comments received, a motion was made by A. Zoumas, 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	

F. Coughlin-

Public Hearing appealing the denial of a building permit and requesting a variance for the construction of a solid six (6) foot fence in the front yard. Whereas pursuant to Section 146-5(B), no fence shall be more than four (4) feet in height in any front yard, and pursuant to Section 146-7(A), no fence shall be erected in a front yard in a residential district or along a public right-of-way unless the fence is uniformly less than 50% solid. Said property is in the R1A Zoning District at 1 Cindy Lane in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 221 Block 3 Lot 8.

Chairwoman Ungerer and Mr. Coughlin discussed his application and the placement of the fence and the style. Mr. Coughlin stated due to being on a corner lot his side yard and front yard are the same. He just wants extra protection due to having an inground pool.

Mr. Don Seibold stated he has a corner house as well and understands why Mr. Coughlin would like the extra protection. He stated he has nothing bad to say about Mr. Coughlin and that he always kept his house looking beautiful and well maintained and Mr. Coughlin has increased neighbor's property values by putting a beautiful porch in the front of his house.

With no further comments received, a motion was made by C. Brady, seconded by A. Zoumas, 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	

6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings

A. Hamaspik –

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 the variance we seek is merely to allow the 1.1-acre property to house live-stock that are known to greatly enhance the lives of people with developmental disabilities. The livestock will be contained to the back of the property that neighbors only trees and the wilderness. This variance will only enhance the feel and look of this wonderful area by helping to keep the residents calm and will enhance the quietness of the area. The board disagreed with the applicant and stated it does change the character of the neighborhood.

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

The applicant stated the only way this outcome can be achieved is by receiving a variance. The residents living there cannot have these animals living with them in-house, and based on research and experience, the interaction that they gain from the livestock can at times be the only way they can find peace in their life. The board stated that they don't doubt that it is therapeutic for the residents, however; in addition to mentioning the possibility of using another animal for therapy for the children, the applicant himself spoke of other therapies that the children receive when the chickens are no longer on the property during the colder months. The board felt that this suggested that there were other feasible methods for therapy and, therefore, disagreed with the applicant.

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

The variance we're looking to obtain entails zero construction, zero change in the lot layout and no change that will affect our or neighboring properties. We only ask to have some domesticated small animals in a net enclosure like many other people in the town have. The board disagreed whole heartedly with the applicant due to multiple residents stating there is obstruction to neighboring properties also the size of the property is very small, and these are considered farm animals not domesticated animals.

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, as stated before; this variance will not negatively impact or affect the physical or environmental condition in the neighborhood nor the district. If anything, the presence of nature and the relationship those residents develop with those animals will enhance the overall beauty of the area. By granting such use, it will improve the activities and behaviors of these residents. As proven before in many studies. such therapy will keep the residents occupied and calm for a long time, thus enhancing the life of the surrounding neighbors. The board disagreed with the applicant and stated it has affected the property and negatively impacted the neighborhood due to the smell and the noise.

5. *Is the alleged difficulty self-created?*

The applicant stated the reason we cannot currently achieve the goal of having live-stock on the lot is merely because of it being short of the 2-acre minimum. It is not up to us to increase the lot size. so, we can only have the so much needed enhancement by receiving an area variance. The board stated it is self-created due to not applying for a variance prior to receiving a violation.

A motion was made by C. Brady, seconded by Chairwoman Ungerer, to have the Board enter record the acknowledgement and the receipt of a Short Environmental Assessment Form and that they received the 239 back from the county in which it says it would be up to local determination. They labeled this application a type 2 action and requested that the Attorney draft a decision of denial 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:

MOTION CARRIED	AYES	5	Ungerer, Abrams, Brady, Zoumas, Yan
	NOES	0	

B. Vanderhurst -

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 the granting of this variance will not produce an undesirable change in the character of the neighborhood or nearby properties. On the contrary we are replacing an old pre-existing wooden fence that is in very bad condition. The Board Agreed
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no other method is feasible since the pre-existing like fence was uprooted due to the severe weather this past winter. Most of the trees came down and the others were taken down. The board agreed with the applicant but did state there are other feasible ways.
3. *How substantial is the variance that you are requesting?* The applicant stated the variance that is being requested is a two-foot increase on a section of the existing wooden fence. Only a section of the fence will be six feet high. 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 variance will not have an adverse effect or impact on the physical, environmental conditions of the neighborhood. The Board Agreed
5. *Is the alleged difficulty self-created?* The applicant stated as indicated before, the pre-existing wooden fence was in very bad shape and destroyed by severe weather the past winter. The board disagreed stating the applicant could have put in a four-foot fence.

A motion was made by A. Zoumas, seconded by K. Abrams, to have the Board enter record the acknowledgement and the receipt of a Short Environmental Assessment Form and that they received the 239 back from the county in which it says it would be up to local determination. 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. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

MOTION CARRIED	AYES	5	Ungerer, Abrams, Brady, Zoumas, Yan
	NOES	0	

C. Coughlin-

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. This project will not change the character of the neighborhood or be detrimental to any nearby properties. Due to the geography, landscaping and location of surrounding homes, the fence will not appear much different than the fence in its current location. The board agreed.

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

The applicant stated no. We have an in-ground pool that must be fenced. The only way we can gain practical use of the additional flat yard space is to move the fence out 17 feet. To retain our privacy, the security of our pets, and the safety of local children attracted to the pool, we want to continue to utilize a 6-foot privacy fence. The board agreed due to the slope of the yard.

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

The applicant stated in my somewhat biased opinion this variance I am seeking is very limited in scope and inconsequential to other residents of my neighborhood or any potential future growth anticipated by the Town of Woodbury. The fence will be placed at the base of a 35-degree slope and 26 feet from Adrienne Drive making it almost unnoticeable from the roadway. 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. The movement of the fence 17 feet from its current location will not have any effect or impact on the physical or environmental conditions of the neighborhood. In fact, once the fenced is

moved additional plants and bushes will be added which will enhance the physical and environmental conditions of the neighborhood. The board agreed.

5. *Is the alleged difficulty self-created?*

The applicant stated no. The pool and fence in its current location were in place when we purchased the home. Unfortunately, the current fence location restricts the use flat land space that could more effectively be used to improve the functionality of the backyard. The board disagreed with the applicant and stated it usually is always self-created.

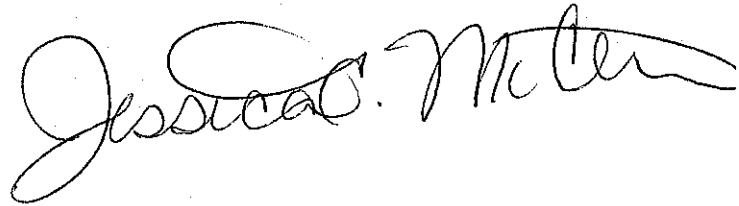
A motion was made by A. Zoumas, seconded by K. Abrams, to have the Board enter record the acknowledgement and the receipt of a Short Environmental Assessment Form and that they received the 239 back from the county in which it says it would be up to local determination. They labeled this application 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. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

MOTION CARRIED	AYES	5	Ungerer, Abrams, Brady, Zoumas, Yan
	NOES	0	

8. **Adjournment**

With no further business to discuss, a motion was offered by K. Abrams, seconded by E. Yan, to adjourn the meeting at 9:19 PM.

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



Jessica McClennan, ZBA Secretary