

Minutes of the Zoning Board of Appeals Meeting held on September 8, 2021, at 7:30PM

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

Also Present: Kelly Naughton, Attorney for the Zoning Board of Appeals; Christopher Gerver, Planning Board  
Chairman

Chairwoman Ungerer opened the meeting with the pledge of allegiance and requested a moment of silence for all those lost on 9/11. She then introduced the board and stated that the next meeting will be held on October 13, 2021.

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

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

Motion was offered by Chairwoman Ungerer seconded by K. Abrams, to approve and accept the minutes of the meeting held on August 11, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**3. New Business:** N/A

**4. Action on Decisions:**

**A. Hamaspik –**

Review draft decision 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. Property is located in the R1A Zoning District at 100 Summit Avenue, CV SBL 228-9-1.21

**DECISION**

Village Code § 310-7, Accessory Use #7 on Attachment 1, Minimum Lot Area for Keeping 25 Fowl (incorporated by reference into R-1A District Regulations [Chapter 310 Attachment 3]): Area Variance  
Village Code § 310-7, Accessory Use #7 on Attachment 1, Minimum Side and Rear Yard  
Setbacks for Keeping of 25 Fowl (incorporated by reference into R-1A District Regulations [Chapter 310 Attachment 3]): Area Variance, Interpretation

Accessory Use No. 7 on the R-3A zoning table (Chapter 310, Attachment 1), incorporated by reference into the R-1A zoning district regulations (Chapter 310, Attachment 3) permits the “keeping of not more than 1 horse, 1 cow or 25 fowl for every 2 acres.”<sup>1</sup> It further provides that they must be “housed or grazed not more than 200 feet from the property lines.”

Before addressing the area variances requested and applicable standards, the Board first considered the meaning of the phrase “not more than” as it related to the setbacks for the housing of a horse, cow or 25 fowl. Read literally, this provision requires that all animals must be housed or grazed only within 200 feet of the property line. In addition to being the unlikely intent of the Board of Trustees when adopting this language, setback areas are typically set to prohibit activity, not permit it. Although setback areas may allow some activity that is also allowed elsewhere on a lot (e.g., fences), to mandate that animals must only be housed and must only graze in a 200-foot setback strip along a property line appears unintended and an absurdity.

The Board considered the doctrine of interpretation that addresses this situation – the “Absurdity Doctrine.” The doctrine holds that if it appears that a mistake was made in the text, contrary to any sane intent of the legislative body adopting the regulation, then it can be corrected without doing harm to the statute or Code; indeed, it would be absurd to allow it to stand. The Board acknowledged that the doctrine is rarely invoked so as not to modify an intended substantive provision that may simply be unwise. Here, it appears that “not more than” was meant to read “not less than” or “more than” in order to make sense and be consistent with the regulation of a

<sup>1</sup> There is a general rule or canon of statute and code interpretation that if statute or code language sets out a series of permissible acts that is disjunctive (using “or”) then each is permissible, but not more than one of the series listed. If the series of permissible acts were stated with the conjunctive “and” (which is not the case in § 310-7), then all those listed would be permissible. Here, the Applicant is only requesting the keeping of 25 fowl.

“setback.” This Board, having the power to rectify this Zoning text through its interpretation and application of the Absurdity Doctrine to modify the language to what this Board believes was intended when it was adopted, has determined that that “not more than” was meant to read “not less than”, and continued with its review of the requested area variances.

The Applicant is requesting area variances to keep fowl on a 1.1-acre lot, where two (2) acres are required, and house such fowl 53.9’ from the side property line and 32.7’ from the rear property line, where a minimum setback of 200’ is required.

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:

1. 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.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than area variance.
3. Whether the requested area variance was substantial.
4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. 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 Applicant argued that the ability to house livestock would enhance the lives of the people living on the property with developmental disabilities and would not be seen in the rear of the property because of trees and wilderness in the rear. The Applicant further submitted that permitting the fowl on the property would enhance the quietness and overall beauty of the area. The Board considered the Applicant’s arguments, as compared to the comments received (oral and written) from the public. The Board reviewed the location for the proposed 32’ by 32’ chicken coop on the 1.1-acre lot, which is 53.9’ from the side property line and 32.7’ from the rear property line. Although the Applicant stated that the coop was frequently cleaned and fresh mulch was provided for the coop, no information was provided to the Board concerning the removal and disposal of the used mulch. The Board determined that locating fowl on the property would not enhance the quietness of the neighborhood, which is evidenced by the Violation Order that was issued in response to a noise complaint. The Board found that the proposed location for the fowl is too close to neighboring properties, and if the lot was two (2) acres as required by the Village Code there would be more space to provide separation for the neighbors so they would not have to contend with the noise and odor produced by the animals. There would normally be a separation of at least 200 feet from a property line for the animals, and here there was one-quarter of what is required. The Board concluded that the variances would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

Additionally, the Board weighed whether the variances to permit the fowl on 1.1 acres, when two (2) acres are required, and located 53.9’ and 32.7’ from the side and rear lot lines, when 200’ are required, were substantial. The Board determined that numerically, these variances are substantial. The Board considered the Applicant’s argument that there would be no construction or change in the lot layout, and that it is requesting to have some domesticated small animals in a net enclosure like others in the Village. However, the Board disagreed, as the fowl are not domesticated animals but are farm animals. The Board was unaware of any other similar applications or situations within the Village as referenced by the Applicant. The Board concluded that the requested variances were substantial both numerically, as well as on their resulting impact on the neighbors.

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 the animals are therapeutic to the individuals residing at the facility, and that the interaction with the animals can help them find peace. However, the Applicant also stated that these

animals would only be present on the property from spring through the early fall. When the fowl return to the farm for the colder months, the residents receive other means and methods of therapy. Therefore, the Board determined that there was an alternative method feasible to achieving the benefits of the variances sought – *i.e.*, continuing year-round the other methods of therapy utilized during the colder months. It also determined that the alleged difficulty was self-created by the Applicant because it is requesting to have fowl on the property, which is less than the required minimum lot area, and to locate the fowl within the minimum side and rear setbacks required for the accessory use. The Board noted that although no one factor under the balancing test is determinative, none of the factors weighed in the Applicant’s favor.

**CONCLUSION**

A motion was made by K. Abrams, seconded by A. Zoumas, to deny the requested area variances described and discussed above by the Zoning Board of Appeals.

**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

**B. Vanderhurst –**

Review draft decision 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

**DECISION**

§ 146-5(B): Height Limitations: Area Variance

Village Code § 146-5(B) provides that “[n]o fence shall be more than four feet in height in any front yard and side yard.” The Applicants are requesting a variance from this provision to permit the construction of a six (6) foot tall fence in 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 Applicants 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:

1. 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.
2. Whether the benefit sought by the Applicants could be achieved by some method, feasible for the Applicants to pursue, other than an area variance.
3. Whether the requested area variance was substantial.
4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the difficulties professed by the Applicants 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, which is residential, and reviewed the location of the proposed fence. The Board heard a statement from the owner of the immediately adjacent property, who had no objection to the proposed fence and thought it would enhance both his and the Applicants’ homes and yards. The Board found that the proposed fence would blend nicely into the neighborhood and raised no adverse environmental impacts. The Board concluded that the variance requested would not alter the character of the neighborhood and would not have an adverse impact on the physical or environmental conditions in the neighborhood.

Additionally, the Board weighed whether a two (2) foot height variance from the maximum four (4) feet permitted was substantial. The Board determined that numerically the variance appears substantial. However, the variance sought is only for a 37.3 feet long portion of the fence, and the remainder of the existing fence complies with the height restrictions. Considering the layout of the yard and the proposed 6-foot portion of fence in relation to the existing complying fence with the existing landscaping and trees in front of it, the two (2) foot increase was not visually substantial. The Board concluded that this variance was not substantial.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicants could be achieved by some alternative method feasible for the Applicants to pursue. It determined that the alleged difficulty was self-created by the Applicants in desiring a fence that is taller than what is permitted under the zoning regulations. The Board then determined that a four (4) foot fence would not achieve the benefits sought by the Applicants, which included keeping out animals such as bears and deer and protecting their pets playing in the yard, and thus concluded that the benefit sought could not be achieved by another method feasible for the Applicants to pursue.

Finally, the Board concluded that the six (6) foot fence fulfilled the Board's obligation to grant only the minimum variance that it deemed necessary and adequate.

**CONCLUSION**

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested 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 Applicants 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 particular circumstances.

A motion by Member A. Zoumas, seconded by Member K. Abrams to grant the requested area variance.

**By Roll Call of the Board:**

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

**C. Coughlin –**

Review draft decision for the construction of a solid six (6) foot fence in the front yard Said property is located in the R1A Zoning District at 1 Cindy Lane, HM SBL 221-3-8.

**DECISION**

§ 146-5(B): Height Limitations: Area Variance

§ 146-7(A): Materials and Composition: Area Variance

Village Code § 146-5(B) provides that "[n]o fence shall be more than four feet in height in any front yard and side yard." Village Code § 146-7(A) provides that "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." The Applicant is requesting variances from these two provisions to permit him to relocate an existing solid six (6) foot tall fence in the front yard along the public right-of-way of Adrienne Drive. As stated *supra*, this property is considered a "corner lot" under the Village Code and, therefore, has two front yards – along Adrienne Drive and Cindy Lane.

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 variances were granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

1. 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.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than an area variance.
3. Whether the requested area variance was substantial.

4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. 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 variances, and whether the requested variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board considered the character of the neighborhood, which is residential, and reviewed the location and materials for the proposed fence. The Board found that the proposed fence would blend nicely into the neighborhood, and that the solid six (6) foot would enhance both the existing home and the character of the neighborhood. The Board also found that the proposed fence raised no adverse environmental impacts. The Board concluded that the variances requested would not alter the character of the neighborhood and would not have an adverse impact on the physical or environmental conditions in the neighborhood.

Additionally, the Board weighed whether a two (2) foot height variance from the maximum four (4) feet permitted, and a variance to permit a fence that is uniformly more than 50% solid, when less than 50% is required, was substantial. The Board determined that numerically the variance appears substantial. However, the Applicant is simply relocating an existing fence seventeen (17) feet closer to the roadway. It will be located at the base of a 35-degree slope and will be set back twenty-six (26) feet from Adrienne Lane. Furthermore, although the yard is considered a front yard under the Village Code since the property is a corner lot, it physically appears to be a side yard due to the orientation of the dwelling and, thus has even less of an impact on the neighborhood and decreasing its substantiality. The Board concluded that this 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. It determined that the alleged difficulty was self-created by the Applicant in desiring a fence that is taller and more solid than what is permitted under the zoning regulations. However, the Board found that due to the setbacks applicable to the property as a corner lot, locating the fence outside of the front yard setback would substantially shrink the Applicant's usable yard area. The Board determined that a four (4) foot, see-through fence would not achieve the benefits sought by the Applicant and thus concluded that the benefit sought could not be achieved by another method feasible for the Applicant to pursue.

Finally, the Board concluded that the six (6) foot fence, and the solid style chosen by the Applicant, to be located twenty-six (26) feet from Adrienne Drive at the base of the slope fulfilled the Board's obligation to grant only the minimum variance that it deemed necessary and adequate.

**CONCLUSION**

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variances described and discussed above, to the extent noted above, and hereby finds that the variances as granted are the minimum variances 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 particular circumstances.

A motion by Member A. Zoumas, seconded by Member E. Yan to grant the requested area variance.

**By Roll Call of 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. Fischer -**

Continuation of 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 applicants architect stated he was here to answer questions the board may have on behalf of the applicant. The applicant as well as the board discussed slopes and Chairwoman Ungerer clarified that the applicant was going to deduct the slopes from 0.94 to 0.91. Chairwoman Ungerer then questioned lot two and the existing farmhouse and the plan to take down the bard and part of the masonry building and the part of the building that remains will become a garage. She then went on to discuss what they had gone over at the last meeting and stated that the board requested a site visit, which was done on August 26<sup>th</sup>. Mr. Niemotko stated he appreciates that the board took time to go and do a site visit and hopes that the board appreciates the historicity associated with the Village of the existing structure that will become an accessory structure once the project is completed.

Mr. Tom Skaronski stated he lives across the street on 5 Lent Drive and is fully aware of the large well that is on the property. He has profound concerns with the sizeable well that is on the property as well as the aquifers. He then stated the structure that they are speaking of is directly above the well that houses clean pristine water. He then stated he hopes someone from the town, state or DEC does an independent study making sure no aquifers would be affected if that well is covered up. He then went on to talk about the affect it would have on Earl Reservoir and asked that prior to this projects approval that this is vetted because it truly could have a profound effect on water tables and aquifers.

Zoumas asked that the project manager to bequeath his knowledge about the well that is on the property. Mr. Niemotko stated he is ready to take care of the technical issues associated with it and will be resolved, discussed, and addressed during the planning board process. He then stated the building department would issue whatever permits are allowed; he then stated that the first stage of the project is getting the variance so they know how to proceed, and the technical issues would be resolved on the Planning Board level. A. Zoumas then asked to Mr. Niemotko's knowledge if there is a well on the property. Mr. Niemotko stated he has not seen one. K. Abrams stated Alan Jones had a water company up there and Chairwoman Ungerer stated there was a dairy bottling plant up there as well. Mr. Niemotko stated this is private property and everyone else has the freedom to have a well, septic, or municipal water/sewer. There is no way to know if this well would affect any other aquifers but that will be done during the technical planning process. A. Zoumas stated it is something for the Zoning Board of Appeals to evaluate due to the environmental impact of granting this variance. K. Abrams stated it is about the land not the wealth of it, the variance that is requested is not one acre and that is what the board must make its decision on. Chairwoman Ungerer then clarified what variances are being requested and stated the well would be in the Planning Boards hands if we choose to give them the variances requested.

Mrs. Maria Hunter wanted clarification if the farmhouse or the house itself was being pulled down. Chairwoman Ungerer stated no, the red barn will be pulled down as well as a third of the masonry building that's next to it. She went on to say that if someone purchases a property, the buyer should do their due diligence and know what the zoning code is for the property. She also states that the Village needs to stop subdividing property within a less than one acre lot. She then went on to say that this year the Village had a water shortage issue; in which the Village is searching for more water, the Village also has a building moratorium in place. The Village Board is currently looking for ways to make sure that all the residents that currently reside, can stay comfortably. She then stated she has always been pro-business and pro people living and moving here; however, the time has come to stop giving out variances. She stated she has lived here for 42 years, and her husband's family has been here since the 1800's she stated they have always followed the codes and is tired of people moving here and repeatedly requesting to change what they moved into. She then went on to discuss the history of that area. K. Abrams stated unless its registered, the Village has no knowledge of it. Mrs. Hunter stated maybe we should look into it or have the historical society weigh in on it.

Mr. Tom Skaronski previously spoke, stated he didn't want to come off as cynical, but; he doesn't want this project to become a "trojan horse". Where he could see billions of gallons of water flowing freely down to Kiras Joel. He wanted to reiterate his concerns on the aquifers and the effect that could have on the entire Village of Woodbury.

Motion was offered by E. Yan, seconded by K. Abrams, to close the public hearing and deliberate at the end of the meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**B. Beer World –**

Public Hearing requesting variances from: (1) Section 310-32(B) to exceed the square footage for a retail establishment; (2) Section 310-30(D)(2)(d) to allow an additional wall sign in excess of what is permitted; and (3) Attachment 11 of Chapter 310 to allow additional wall sign area in excess of what is permitted. Said property is located in the LC Zoning District at 159 State Route 32 in Central Valley and is known on the Village of Woodbury Tax Maps as Section 226, Block 1, Lot 9.2

The applicants lawyer Mr. Dominic Cordisco stated he was there on behalf of the applicant. Chairwoman Ungerer stated the applicants name is John Safe, the owner of the property is the Cluttler Family, LLC and their spokesperson for the family is Ms. Denise Forcello. Mr. Cordisco stated yes. Chairwoman Ungerer stated the applicant is asking to build a new building and demolish the current dugout building and are requesting three different variances. The applicant is also looking for relief from the 8,000 square feet of the maximum allowed by the code per retail store and relief from the two-wall sign limit in which the applicant is requesting three. The applicant is also asking for those signs to be 32 square feet where the maximum amount allowed for a sign is 30 feet. Chairwoman Ungerer stated she would like to start with the signage discussion. C. Brady stated they should start with discussion of the building because if the board doesn't agree with the building there is no reason to discuss the signs.

Mr. Cordisco stated the applicant proposes to construct a 15,110 square foot commercial building on the Project Site. The building will be divided into two (2) sections: a 11,840.50 square foot retail store for the sale of beverages (Beer World) and a 3,000 square foot redemption center for the return of recyclable cans and bottles for a total of 14,840.50 square feet of retail space. The redemption center is an accessory use to the retail store, a to accept "empty beverage containers of the design, shape, size, color, composition and brand sold or offered for sale by the dealer" The remaining 523.5 square feet of building footprint is comprised of fixtures, equipment, and a warehouse for on-site storage. Chairwoman Ungerer then stated when plans were submitted, she didn't see any setbacks for the side, front or rear, and that is a little concerning to her especially since all the trees are there. She then requested the board be shown what is going to be cleared and how much is going to remain especially when looking at the homes that exist behind the structure that is currently there. C. Brady stated from a clearing perspective and where this proposed building will be placed and the other homes in the vicinity, he would strongly request that the applicant provide the setbacks to the board. Mr. Cordisco stated that those were not shown on the plans that the ZBA has, it was shown to the Planning Board; however, they will provide that to this board as well. Chairwoman Ungerer then asked why this Beer World is larger than all others. Mr. Cordisco stated that due to Woodbury being the center of retail development in the County, they want this location to be their flagship store. Mr. Cordisco then stated that he is the applicant's lawyer and can't answer all the technical questions that would be better suited for the engineer that was unable to make it tonight. He stated he understands the publics plea to not remove the dugout, but the dugout is merely a tenant on the property, the property has been on the market for several years and the Collette family is finally able to sell it. He then went on to list all of things that are going to be needed if they are allowed to follow through, specifically they are going to require a highway work permit from NYS DOT along with highway improvements and correcting the gravel parking lot. Mr. Cordisco stated this building is in the LC zone in which commercial building are allowed and multiple uses can exist within as long as setbacks are met and if each store is no more than 8,000 square feet, he stated he believes those rules were set so that smaller stores would exist. He then stated that the state requires them to have a redemption center and they would like to have a second door for the redemption center. The signs they are requesting would be one in front of Beer World, a second in front of the redemption center and one sign along the north side of the building so people that are traveling south along Route 32 would be able to see it. Chairwoman Ungerer then stated the applicant already requested a free-standing sign and she wondered why the applicant would think people would not see that. Mr. Cordisco stated they do have the free-standing sign, however; the Planning Board Engineer suggested they put a sign on the blank wall as well.

K. Abrams, asked if the applicant wasn't building their flagship store, would they be able to fit everything into the scope of the zoning. Mr. Cordisco requested the board go look at the Middletown and Kingston stores due to them being new facilities; the owner takes great pride in their product and stated it is a fun environment for people that are into beer. Chairwoman Ungerer then asked if K. Abram's question was answered to the standard size of a Beer World being 8,000 square feet. Mr. Cordisco stated he made a note of the question however he is the attorney for this project, and he will make sure that's answered in the next submission by the engineer. E. Yan stated he understands from a retail perspective why the applicant would like to maximize linear square feet but would like to know what dictates the square footage of the recycle portion. Mr. Cordisco stated he will have the engineer answer that question as well. A. Zoumas requested a description of the redemption center and the details, the process, and the operation along with machines that would be in use; what and how it would be packaged and the amount of water that would be needed to clean and maintain a redemption center. Mr. Cordisco again referred that question to the engineer at the next meeting.

Chairwoman Ungerer then requested they discuss the environmental form. Attorney Naughton stated that this board usually deals with type 2 applications that require no further environmental review. However, this application was initially proceeded before the Planning Board, it was requested that an uncoordinated review be used she then stated the board can proceed with an uncoordinated review and type this an unlisted action. She then stated she provided the board with a draft part two which is based upon the answers that were provided in part one and went over it with the board. She stated that the DEC are the only ones that can say "no" and "small" in the same sentence when dealing with big differences in environmental impact. She went on to list and discuss the questions on the form and they were the following: Does the proposed action involve construction within or adjoining a fresh water or tidal wetland or in the bed or banks of any other water body? Attorney Naughton stated right now the project includes some paving and some other impervious surfaces. Runoff is likely going to be controlled with a storm water pollution prevention plan. It covers part of the parcel but the parcel does adjoin wetlands so the board will need additional information due to the possible disturbance of the wetlands. Will there be an impact on land? She stated she marked it yes, however all the related questions came back as no. She then discussed impacts on groundwater and stated the Village has a moratorium in place to deal with the lack of water that the Village has, so this would be a moderate to large impact that would require new water supply and wells to be created. She then stated pursuant to the Planning Board Engineers comments that were forwarded to this board this proposed application would have to be connected to a public water supply that is near full capacity and it is a big issue with the Village right now. She then stated that a potential impact would be to the long-eared bat which is on the endangered species list. Mr. Cordisco stated the process of proving that no bats were affected is a lengthy one and it is easier to agree to no trees being cleared during the summer months until October 1<sup>st</sup>, than it would be to make sure the bats were not disturbed. Chairwoman Ungerer wanted to know if tree cutting would happen after the summer months, Mr. Cordisco stated yes. Attorney Naughton then stated that a moderate impact on aesthetic resources would have a response of yes and that it would be visible from publicly accessible vantage points during routine travel, recreation, and tourism-based impact. This proposed action may cause a diminishment of the public's enjoyment and appreciation of the designated aesthetic resources of the ridge corridor and Harriman state park was noted in the FEA part one for people traveling. Chairwoman Ungerer then asked about the proposed similar projects that are being discussed in the same area. Attorney Naughton stated that was a good question however it is more about their project than community character, which is a different question. She stated there is a moderately large impact under the proposed action on impact to the historic and archaeological resources, but without further information provided the board has no way of deciding on the impact. She also stated the impact on transportation and stated there will be moderate dot large impacts which is that of the projected traffic increase may exceed the capacity of the existing road network and the proposed action may alter the present pattern of movement of people or goods and would be directly associated with the shopping center. There will be an impact on energy, sound, and light. She then requested the board to look at their lightning plan due to it being very detailed. She then discussed community impact and it being inconsistent with the local land use plans and zoning regulations but that is why they are in front of the ZBA.

E. Yan requested the elevation plan for the lighted sign be discussed at the next meeting. Mr. Cordisco stated he will make sure that is addressed at the next meeting. Chairwoman Ungerer asked the public if they had any comments and requested that they only speak about the square footage of the building or the signage.



Ms. Norma Fennel stated she lives at 12 Morgan Court, and she is concerned with increasing any size of the footprint of the building. She stated living next to the wetlands and having the building about the wetlands is concerning. She stated the wetlands flood now and there is always tremendous runoff in the area. She stated being that the dugout is gravel it absorbs more, there is more porosity there. She stated that paving the entire area will have a negative impact on the surrounding areas. She then stated she doesn't understand why the need to change things. When a property is purchased, it shouldn't be able to change from how it was purchased. She stated this is a small community. Most people moved here to not have to deal with large signage, noise, and light pollution and that negatively affects the residents. She stated living next to the Woodbury Commons is concerning enough, especially when one must navigate back roads to get to their destination because Route 32 traffic is backed up due to the heavy weekend and holiday traffic of the shopping center. She stated that building bigger in bigger into a smaller community makes bigger and bigger problems.

Ms. Felicita Ferrara stated she is a resident and a teacher in the community and while planning her lesson plan, she started thinking how children learn how to read through signage. She stated she is concerned as a teacher, resident, and parent to have flashing signs for beer in our town. She stated this is a small community and a small town and this town doesn't need a place to buy or return beer. The community already has a bottle return redemption center, a liquor store, and multiple convenience stores that sell beer. She stated she accepts that Beer World is going to be there, she just doesn't understand why they just can't work with the means of which it is zoned for now. She doesn't understand why variances are given to big companies that come in this town where rules are set for a reason and request that boards change the rules for them. She then stated if she wanted to live in the city she would have stayed in the city.

Mrs. Maria Hunter stated the environmental impact that was submitted by the applicant talks about the principal aquifer but there is no indication as to the location of said aquifer. She also voiced concerns regarding the signage, she referenced the April 7<sup>th</sup> Planning Board minutes and discussion of the washing of the bottles, cans, and water usage of the redemption center to minimize the odor. She discussed that the building is going to be 6,000 square feet larger than what it is zoned for and that is a major concern for her especially when extra water that the Village doesn't have is going to be used for cleaning the bottles. She then voiced concern for the sellers of the property and that they live in different areas, so they are unaware and unconcerned about Woodbury. She then referenced the Planning Board minutes for this application where it states the Planning Board Engineer stated the code allows two signs, if the applicant's intention was for more than the two signs the applicant would have to request that of the ZBA. She then stated the applicant is asking for four signs which includes the free-standing sign, and she just wants to make sure that it is placed in a proper location like Fort Knox's was placed with the curvature of the road. She then stated many groups in Woodbury are pushing to have Central Valley as the entry into Woodbury. She stated Cosmo's was designed to look like a house and to fit into the scenery of Woodbury, she is concerned that this building is going to be too big and rectangular for the location. She voiced concern over the impact of adjoining properties, the flooding that occurs now and even more so when that property gets blacktop, and the traffic that is going to be increased as well as the location and its many accidents over the years. She then mentioned on the applicant's map that there will be a cigarette and cigar humidifier location so they will be doing more than just beer in that location, and she wanted to make the board aware of that. She then went on to say in 1995 there was an approved miniature gold that was never built and that is mentioned in the applicant's narrative as being built. She then expressed concern over the school aged children that walk up and down the road and around the vicinity, due to the John Burke Pool being in that area.

Mr. Cordisco stated he had made notes of everyone's concerns and would like to resubmit information for the board prior to the October meeting after speaking with the other consultants. E. Yan requested clarification for the freestanding sign, he stated he noticed the south elevation doesn't show dimensions for the redemption portion, Chairwoman Ungerer stated she would like to clarify that it will not be a flashing sign because they are not allowed. Mr. Cordisco stated they are not proposing that and would like to say that they will be designing a stormwater protection plan that will meet the most current stringent requirements. K. Abrams stated he would like to know how much water will be used per day. Mr. Cordisco stated that will be addressed in his next submission.

Mrs. Maria Hunter stated she had one final comment pertaining to the environmental review. She stated if a retention pond/ water collection area is put in front of the building along Route 32, it will be left open to children playing in it and she just doesn't understand why it would be there.

Motion was made by C. Brady, seconded by A. Zoumas to carry over the public hearing to the next scheduled board meeting which will most likely be October 13, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

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

**7. Deliberations on closed Public Hearings**

**A. Fisher –**

Chairwoman Ungerer stated that three of the five board members as well as the Engineer and Architect for the project did a site visit on August 26<sup>th</sup> where they had multiple concerns. C. Brady stated that this was a type two action, Chairwoman Ungerer stated the 239 was received back from the County on August 8<sup>th</sup> and it was left to local determination. She stated among the concerns of the board are the masonry building setback of 12.2 feet. E. Yan stated concern that when the site was visited the lot line and natural elevation and slopes of the property are very different than that on paper. Chairwoman Ungerer stated it was advantageous to see it in person. A. Zoumas stated there are two vantage points on the top towards the reservoir and the bottom towards the driveway in which the red barn wasn't visible until on the property. He stated while we understand the logic of the line change, it is counter intuitive to what is on the property. A. Zoumas stated that the north line should continue straight past the red barn and go towards Schunnemunk Road which would look more natural and would be an appropriate solution. Chairwoman Ungerer stated there was a problem with the acreage, and that the Planning Board was looking at the least variance possible, if a straight lot line was given you would have to consider all the slopes, and that is the reason it was drawn the way it was. C. Brady wanted to know why it would make a difference due to a property line not being visible unless it is staked out and is curious to know why it would make a difference at all. He then went on to say that if you are looking at the property from Earl Reservoir the property line is not visible. He also stated that when the applicant went to the Planning Board the applicant had a variety of cuts and angles, that is why the Planning Board suggested the straight lines. A. Zoumas stated by doing that you would remove the need for the setback on the first property. Chairwoman Ungerer stated they would still need an area variance for the lot size. C. Brady stated if the line that is proposed by A. Zoumas were to go straight up, one of the properties would be around 1.4 acres and the other would be around 0.7 acres and the variance needed would be of greater significance. K. Abrams stated he would go with and agree with the Planning Board and its Engineer. E. Yan stated that of course lot lines are not seen unless you mark them out, however; it does dictate in the future if that building is to be demolished and something else would be built in its place, so lot lines and their locations do matter. C. Brady stated if that were the case, they would still need another variance or at least they would need to apply for a building permit. A. Zoumas then stated this variance is going to allow them to take the red barn down and turn whatever is remaining of the masonry building into a garage. Chairwoman Ungerer stated the variance will allow the 12.2 setback, what they do with the garage, or an existing building has nothing to do with this board decision. A. Zoumas stated Mr. Neimoko stated that it is going to be within the accessory square footage requirements. C. Brady stated the current size does not fit the accessory building/accessory use requirement, so by removing part of the structure and bringing it down, they would then fit the requirement. Chairwoman Ungerer stated she understands the concerns, however at the end of the day they could tell the board they are taking down the garage and replacing it with something else, or they could leave it as is, if it's a legally sized accessory structure that's 12.2 feet away from the property line. A. Zoumas stated the barn is historical, but the masonry building is not. Chairwoman Ungerer asked Attorney Naughton if it mattered if it was historical and if it was on a registered historical map. K. Abrams stated that is where the creamery was. Attorney Naughton stated it is not registered historical.

The following responses were provided in the "Statement of Ownership and Interest" provided by the applicant for a use variance and the Boards decision on each question follows:

1. *Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?* The applicant stated no, the granting of this variance will allow for the construction of a new single-family home on the property. The design will be contextual with the surrounding residential neighborhood. The existing house and structure will remain on its respective, current lot. K. Abrams stated he doesn't think it will change anything by adding one more house to the street. Chairwoman Ungerer stated she is surprised they are taking the barn down and leaving the

masonry building, however they are probably taking it down so they could meet the side yard on the other side. She then stated the proposed house is well within the setbacks. C. Brady stated it would have to go in front of the ARB for its location. Chairwoman Ungerer, C. Brady and K. Abrams, all felt there would be no effect. A. Zoumas felt there would be a negative effect on the neighborhood. E. Yan was split he stated he doesn't think the house would be too different; however, he believes demolishing an existing structure will change as well as landscaping would change so that could negatively affect 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 benefit sought cannot be achieved by another method. This hardship is due to the pre-existing non-conforming masonry structure located on the property, which will be reduced in size to minimize impact. Also, the zoning code's requirement to deduct steep slope areas from the total lot area to produce a buildable lot results in a hardship. Chairwoman Ungerer stated if there wasn't an easement down on Ridge Road and there weren't the slopes, they would be able to draw a straight line. A. Zoumas stated he agrees with the first part but not the second, especially if they take three quarters of the accessory structure down. K. Abrams interjected and stated that if the owner took down that structure right now and just go in and get a permit. A. Zoumas stated that the board is being asked to grant a variance because they want to keep the structure up. Chairwoman Ungerer stated there is a feasible method, but not with what the applicant wants. C. Brady stated the fact that the current owner could effectively pre-demolish the sections that are being discussed and enclose the remainder of the proposed garage, however what is relevant to this discussion is the context of the setback from the proposed lot. He then stated we could propose a different lot line. A. Zoumas suggested moving the structure or demolishing it completely. C. Brady agreed that there were multiple ways this could be mitigated. E. Yan stated he agrees, and he doesn't understand why they couldn't demolish more to meet setback requirements. Chairwoman Ungerer stated the board felt that there were alternative methods that could be achieved. K. Abrams stated that this is the recommendation of the Planning Board. Attorney Naughton stated the Planning Board didn't recommend this specific layout; they did ask that the applicant to present something different to the board. C. Brady asked A. Zoumas if he would be more inclined to grant a variance if the lot lines were moved up, essentially eliminating the 12.2 setback issue. A. Zoumas stated yes, because it is the job of the board to recommend the minimum required variance for a project. He then stated if the line was bumped up another 17 feet the setbacks would not be affected. Chairwoman Ungerer stated she understands what is being said, and if the line is moved 17 feet, they can't build on it anyway due to the ravine. The board is split on its decision.
3. *How substantial is the variance that you are requesting?* The applicant stated the requested variance is very minor in nature, with only a 3,797 SF (9%) decrease in net lot area in lot 1 and 17.8 feet decrease inside yard setback in lot 2. Chairwoman Ungerer stated she agrees about the lot size being minimal, but the setback is substantial. The board agreed. She then stated that the board seems to be hung up on the 12.2 setback being substantial. C. Brady stated that the fact that its unusable, effectively because of the slope behind the variance, in his opinion is not substantial. If they were to tear that building down, they would need to come back for a variance to do anything with it, the board would either grant it or make them give a 30-foot setback. E. Yan stated that even though the acreage portion might not be substantial the setback is substantial so whether you increase or decrease one or the other regardless its substantial.
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 requested variance will have no adverse impact on the neighborhood. Municipal sewer and water utilities exist and are available for the new lot. The residential nature of the neighborhood will remain intact by design and with existing structures. Chairwoman Ungerer stated she feels that there will be no adverse effect or impact on the physical or environmental conditions. This is about one house on one lot, increasing the yard area by removing one accessory building and part of another. C. Brady and E. Yan stated they agreed but noted the potential issue of the well inside the structure would be purview of the Planning Board. Chairwoman Ungerer requested Attorney Naughton place that in their decision.

5. *Is the alleged difficulty self-created?* The applicant stated the difficulty is self-created in requesting for a 2-lot subdivision that requires a side yard and lot area variance. The board disagreed with the applicant; it is self-created.

Chairwoman Ungerer stated the board was split on most of the questions. A. Zoumas asked if the board must vote on both together or could they split their decision. Attorney Naughton stated she could separate the discussion and the board could vote on both separately since most of the discussion was on set back and lot area. Attorney Naughton stated the board can decide on one thing and not the other, the board can also ask that the engineer to come back with a new plan and request that you wait until the next meeting when the application is revised. She also stated it is not up to the board to design it, but there are available options for engineers, architects, and consultants to shift lot lines. If one was granted and not the other, they would have to react and change things if they wanted to proceed with the project. K. Abrams stated he is ready to make a motion. A. Zoumas stated they must deliberate due to board members going in different directions. Chairwoman Ungerer asked Attorney Naughton if they could do an informal vote to see what the board has gathered. Attorney Naughton stated she feels that she has gathered everyone's position on how they would be voting. A. Zoumas then stated Chairwoman Ungerer could make a motion to instruct council to provide, based on the conversation tonight a favorable decision on one thing and a non-favorable decision on another thing and pole the board. C. Brady stated if the board denies the variance and the applicant comes back with a new plan the board must be unanimous vote of the board to allow a rehearing. He then stated he was saying this in case the applicant wants to ask the board to defer the decision and speak to his clients prior to the board deciding. Attorney Naughton then asked if Mr. Niemotko would like to do that. Mr. Niemotko stated if they remove the structure, it exposes the well to this site, and when that happens it becomes a hazard to the area where someone could fall in, so he feels the best way to protect it is if the accessory structure stays where it currently is. He then stated the lot lines are as close as they are going to be making them as close to one acre as possible especially given the steep slopes. He stated he doesn't need to speak with his client because this conversation has come up before. He also stated that this is a private well and it is not owned by the Town, Village or State, keeping the accessory structure there would ensure the well to remain untouched. He stated this is the owner's effort to keep it because once it is gone and filled in there is no way it could come back.

A motion was made by A. Zoumas, seconded by E. Yan to approve the lot area variance and a decision denying the setback request, based on the facts and findings of the board. Attorney Naughton conducted a roll call of the Board which resulted in the motion being:

<b>AYES</b>	<b>2</b>	<b>Zoumas, Yan</b>
<b>NOES</b>	<b>3</b>	<b>Ungerer, Abrams, Brady</b>

**Motion Failed**

Attorney Naughton then asked if anyone would like to make a motion denying both requests. No one made a motion.

Attorney Naughton then asked if anyone would like to make a motion in favor of both requests. A motion was made by Chairwoman Ungerer, seconded by C. Brady to have council draw up a favorable decision granting the approval of the lot area variance as well as granting the approval of the setback request. Attorney Naughton conducted a roll call of the Board which resulted in the motion being:

<b>AYES</b>	<b>3</b>	<b>Ungerer, Abrams, Brady</b>
<b>NOES</b>	<b>2</b>	<b>Zoumas, Yan</b>

**Motion Passed**

**8. Adjournment**

With no further business to discuss, a motion was offered by K. Abrams, seconded by C. Brady, to adjourn the meeting at 9:40 PM

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

  
Jessica McClennan, ZBA Secretary