Minutes of the Zoning Board of Appeals Meeting held on March 9, 2022, at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Rachel Bruce, Andrew Zoumas

Also Present: Kelly Naughton, Attorney for the Village of Woodbury Zoning Board of Appeals
Tara Burek, Village Board; Christopher Gerver, Planning Board; Richard Cattagio, Planning Board; Beth Zoumas, Billing Control Clerk; Kathryn Luciani, Town Council; Maria Hunter, Town Beautification Committee

Chairwoman Ungerer, opened up the meeting with the pledge of allegiance, introduced the board, welcomed new member Rachel Bruce, and stated that the next meeting will be held on April 13, 2022.

1. Executive Session: N/A

2. Approval and Acceptance of Previous Minutes:

Motion was offered by R. Bruce, seconded by K. Abrams, to approve and accept the minutes of the meeting held on February 9, 2022. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

3. New Business:

4. Action on Decisions:

A. Woodbury Chicken LLC –

Review draft decision for variances for construction of a Popeye's Restaurant from Village Code Sections 310-27 and Chapter 310, Attachment 11, relative to the number and size of signs including landscaping. Said property is located at 20 Centre Drive, CV SBL 225-3-1.12.

DECISION

§ 310-27(C)(3): Front landscaped area: Interpretation and Area Variance

Village Code § 310-27(C)(3) provides, in relevant part, as follows: "In all districts, there shall be a landscaped strip in the front yard. . . . it shall be 25 feet deep and contiguous to the front lot line of the property. There shall also be a landscaped area at least five feet wide abutting the front of the building in all nonresidential districts. The purpose of the landscaping is to enhance the appearance of the use on the lot but not necessarily to screen the use from view." (Emphasis added.)

The Applicant has requested a variance from the five (5) foot landscaped area required and proposes a landscaped area with a range of widths varying from zero (0) feed wide to 1.8 feet wide, as depicted on the Landscape Plan (Sheet No. 8 of 15) prepared by Dynamic Engineering, dated October 15, 2021, last revised December 29, 2021 (page 56 of the bundled pdf submission). Integral to the ZBA's analysis of this requested variance is an interpretation of "front of the building." Specifically, the Board was required to determine, for purposes of the 5-foot landscaping requirement, whether the "front" of the building was (1) facing Route 32, which has the main "Popeye's Louisiana Chicken" identification sign and is identified on the Applicant's plans (Sheet PB-2) as the "Proposed Front Elevation," or (2) facing

away from Route 32, which is identified on Sheet PB-3 not as the "front" elevation, but as the "Proposed Main Entry Elevation."[1]

The Board considered how the purpose of the landscaping requirement was to enhance the appearance of buildings in nonresidential districts. The Board discussed how the enhanced aesthetics were meant to be as a

[1] The Applicant initially asked the Building Inspector for an interpretation on this issue, but the Building Inspector did not do so in his response to the Applicant concerning other issues. As a result, this issue (front elevation versus "main entry" elevation) must now be addressed by the ZBA as a threshold matter that is integral to the application.

building is viewed by the general public (*i.e.*, while driving past or entering the property); it would not make sense for the landscaping to be required based on however a property owner oriented the entrance to a building. After much discussion, the Board determined that the front of the building was the north elevation that faces Route 32.

Upon receipt of this determination, the Applicant modified its plans and shifted the building so as to increase the proposed landscaping to 2.5 feet, thereby requesting a variance of 2.5 feet from the five (5) feet of landscaping required to abut the front of the building.

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, which consists of a shopping center. The Board noted that the property involved is a large lot (51.7+/- acres), and there are several existing buildings on the site that do not have any landscaping abutting their fronts. The Board found that construction of a new building with 2.5 feet of landscaping visible from the Route 32 corridor instead of 5 feet would still improve aesthetics and would not be expected to have any adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board concluded that granting the variance requested would not alter the character of the neighborhood or create a detriment to nearby properties and would not result in an adverse impact on the physical or environmental conditions in the neighborhood.

The Board also weighed whether the granting of the variance was substantial. The Board found that the variance was substantial, representing 50% of what is required, but recognized that the lot and surrounding buildings are existing and do not meet this requirement. Further, the Board noted that the Applicant reduced its original request from a 100% variance to a 50% variance and found that the landscaping provided would be sufficient under the circumstances.

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 determined that the alleged difficulty is self-created by the Applicant because it is requesting to construct a new restaurant without meeting the minimum requirements for landscaping abutting the front of the building. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board determined that there was no other way to comply with this Village Code requirement and maintain the double drive thru and safe traffic circulation proposed by the Applicant. The Board concluded that there was no feasible alternative that would allow the Applicant to achieve the benefit sought and comply with the required minimum landscaping in front of the building.

§ 310-30 and Chapter 310 Attachment 11: Signage Table: Area Variance

The Signage Table (Attachment 11 to Chapter 310) provides that in the IB district, a wall sign may be: "10% of total wall area/1 per use" and "ARB approval required for new applications." The Applicant is proposing four (4) wall signs for the new restaurant – (i) two Popeyes Seals (west elevation and east elevation); (ii) one "Love that chicken!" graphic (west elevation); and (iii) one "Popeyes Louisiana Kitchen" channel letters (north elevation).

The Applicant is requesting a variance to permit a total of four (4) wall signs, three (3) more than the one (1) wall sign that is permitted, and a variance of 0.4 square feet for the "Popeyes Louisiana Kitchen" channel letters.[2]

The Board performed the same balancing test discussed above consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance. The Board considered all requisite statutory issues and was aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board again discussed 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 an existing shopping center. The Board noted that the building would have more than one wall that is visible to the public but recognized that other buildings within the plaza had signs on each wall that were visible to the public, whether legal or not. The Board thus found that permitting additional wall signs for the Applicant's building would be consistent with the existing character of the shopping plaza and would be beneficial to the public entering the plaza to provide identification of the building and business. The Board also found that the 0.4 square foot variance requested for the northern elevation sign would be indiscernible and would not create any adverse visual impacts. The Board concluded that granting the variances requested would not alter the character of the neighborhood or create a detriment to nearby properties and would not result in an adverse impact on the physical or environmental conditions in the neighborhood.

The Board also weighed whether the granting of the variances was substantial. The Board found that considering the totality of the circumstances and the context of the surrounding buildings and existing signage, the variances were 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 determined that the alleged difficulty is self-created by the Applicant because it is requesting to erect more signs and one larger sign than is permitted by the Signage Table. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board determined that there was no other way to comply with the Village Code in this regard, as the signs are corporate logos, and the Applicant has represented that the proposed signage is a franchise requirement that cannot be changed. The Board concluded that there was no feasible alternative that would allow the Applicant to achieve the benefit sought and comply with the Village Signage Table.

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. Should the proposal also require approval from the Village of Woodbury Planning Board, the 180-day expiration window shall run from the date of final planning board approval. The Board may extend this time for one additional period of 90 days if such extension is warranted by the particular circumstances. On motion by Member K. Abrams, seconded by Member C. Brady. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

[2] This sign is proposed on the northern elevation of the building, which is 404.7 square feet (18.54 x 21.83). The Village Code permits a wall sign to be 10% of the wall area. The maximum wall sign permitted on the north elevation is thus 40.5 square feet. The proposed "Popeyes Louisiana Chicken" sign is 40.9 square feet, requiring a variance of 0.4 square feet.

B. NMJ Ceasar PE/Choi-

Review draft decision for variances for the construction of a single-family residence. Whereas pursuant to Section 310-7, properties in the R-2A district are required to have a minimum lot width of 175 feet, and pursuant to Section 310-12, properties in the R-2A district are required to have a minimum street frontage of one hundred (100) feet. The application proposes a minimum lot width of fifty (50) feet and 81.75 feet of street frontage. Said property is located at 372 Route 32, CV SBL 218-1-42.2.

DECISION

§ 310-7 and Schedule of District Regulations, R-2A District (Chapter 310 Attachment 2): Minimum Lot Width: Area Variance

§ 310-12(A): Minimum Street Frontage: Area Variance

Village Code § 310-2(B) defines "lot width" as the "minimum distance between the side lines of a lot, measured at the required front yard setback line." The Village Code requires a minimum lot width of 175 feet per lot containing a permitted use in the R-2A district. *See* Village Code § 310-7 and Chapter 310 Attachment 2.[3] The Applicants seek to construct a 1-family dwelling on an existing vacant lot having a lot width of fifty (50) feet, thus requiring a variance of 125 feet. Additionally, Village Code § 310-12(A)(2) provides that in all districts other than the R-0.25 district, "not less than 100 feet of street frontage shall be required." The Applicants' lot has an existing street frontage of 81.75 feet, thus requiring a variance of 18.25 feet.

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 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 variances.
2. Whether the benefit sought by the Applicants could be achieved by some method, feasible for the Applicants to pursue, other than area variances.
3. Whether the requested area variances were substantial.
4. Whether the requested area variances 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 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, 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, including the adjacent residential properties. The Board noted that the property involved is an existing large lot (15+/- acres), and the construction of a single-family dwelling would not be expected to have any adverse effect or impact on the physical or environmental conditions in the neighborhood. However, the Board discussed how the property was located within the Water Quality Overlay District and advised the Applicants that they would be required to apply to the Planning Board for any proposed construction within the district. The Board concluded that granting the variances requested would not alter the character of the neighborhood or create a detriment to nearby properties and would not result in an adverse impact on the physical or environmental conditions in the neighborhood.

The Board also weighed whether the granting of the variances was substantial. The Board found that both variances were substantial but recognized that the lot is existing and was created approximately forty (40) years ago. The Board noted that the lot itself is large, it is just the entranceway to the lot that is small and does not comply with the Village Code.

[3] A 1-family dwelling is Permitted Use No. 1 on the R-3A Schedule of Zoning District Regulations (Chapter 310 Attachment 1), which is incorporated by reference into the R-2A Schedule of Zoning District Regulations (Chapter 310 Attachment 2).

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. The Board determined that the alleged difficulty is self-created by the Applicants because they are requesting to construct a single-family dwelling on a lot that does not comply with the minimum bulk requirements for lot width and street frontage. However, the Board noted that, again, the property was created approximately forty (40) years ago, and only the entranceway does not comply with the current Village Code requirements for lot width and street frontage. In considering whether the benefit sought could be achieved by another method feasible for the Applicants to pursue, the Board determined that there was no other way to comply with the Village Code in this regard and concluded that there was no feasible alternative that would allow the Applicants to achieve the benefit sought and comply with the required minimum lot width and street frontage. On motion by Member K. Abrams, seconded by Member Chairwoman Ungerer. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

C. Mendelovits –

Review draft decision requesting an interpretation of Accessory Use #7 on the Schedule of Zoning District Regulations for the R-3A district and 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 at 72 Summit Avenue, CV SBL 228-2-4.

DECISION

Village Code § 310-7, Accessory Use #7 on Attachment 1 (incorporated by reference into R-1A District Regulations [Chapter 310 Attachment 3]): 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 "[k]eeping of not more than 1 horse, 1 cow or 25 fowl for every 2 acres."[4] It further provides that they must be "[h]oused or grazed not more than 200 feet from the property lines." The Applicant has requested an interpretation from this Board regarding this accessory use. Specifically, the Applicant argued that this Village Code provision is ambiguous and does not state that 2 acres is the minimum acreage necessary to have up to 25 fowl, but instead provides a method of calculation for the number of fowl (or horses or cows) for any land area.[5] In this instance, the Applicant is seeking to keep six (6) chickens on 0.86 acres.

The Board discussed the Applicant's legal argument that this provision is ambiguous and, therefore, his preferred interpretation must be adopted. The Board determined that neither the Building Inspector, nor this Board (as noted below regarding Hamaspik of Orange County) found this provision to be ambiguous. In the Hamaspik of Orange County appeal, recently decided by the Board in September 2021, the Board effectively found that this very provision did require a minimum of 2 acres:

> "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."

(*See* ZBA Decision, *In the Matter of the Application of Hamaspik of Orange County, Inc.*, adopted September 8, 2021). This is recent precedent established by the ZBA regarding the application of that Code provision that, unless there is a reasoned basis for departing from that precedent, should be applied in this appeal.

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[4] 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 6 fowl.

[5] Using this approach, by example, if the property owner had a quarter-acre they could keep up to 3 fowl (excluding partial fowls), *i.e.*, 1/8 of 2 acres X 25, etc.

The Board continued its discussions on the matter and noted that even if the provision were to be deemed to be ambiguous, the Applicant's interpretation must be reasonable to be even considered as being one to be adopted by the ZBA. Their interpretation does not automatically get adopted. The Board reasoned that using the Applicant's theory, no horses or cows could be kept on less than two acres as you cannot have a partial animal. The ZBA determined that the language of the Village Code was straightforward and unambiguous – requiring a minimum of two acres for a horse, a cow or up to 25 fowl.

The Board next discussed the meaning of the phrase "not more than" as it related to the setbacks for the housing of a horse, cow or 25 fowl. As with the Hamaspik of Orange County appeal, the Board determined that "not more than" was meant to be "not less than." Otherwise, read literally, this provision would require 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 permit 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 "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 "not more than" was meant to read "not less than", and continued with its review of the area variances that the Applicant had requested as alternative relief.

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

The Applicant has applied for area variances in the alternative, to be considered if the Board did not agree with his interpretation of Accessory Use #7. Specifically, the Applicant requested area variances to keep fowl on a 0.86-acre lot, where two (2) acres are required, and house such fowl 62' from the western property line, 51' from the eastern property line, 108' from the northerly property line, and 182' from the southerly 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 variances.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than area variances.
3. Whether the requested area variances were substantial.
4. Whether the requested area variances 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 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 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 life of a child living on the property who has "certain limitations related to anxiety, panic attacks, and social interaction," and would not be seen in the rear of the property. The Applicant further submitted that permitting the fowl on the property would be much less intrusive than having dogs. The Board considered the Applicant's arguments, as well as the comments received (oral and written) from the public. The Board reviewed the location for the proposed 10' by 12' chicken coop on the 0.86-acre lot, which is located 51' from the side property line at its closest. Although the Applicant stated that the coop would be frequently cleaned, the Applicant also stated that it would use the used mulch and chicken droppings as fertilizer for the garden. The Board heard concerns from the public regarding the smell of the coop during the summer months. 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 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 0.86 acres, when two (2) acres are required, and located 51', 62', 108, and 118' from the lot lines, when 200' is required, were substantial. The Board determined that these variances are substantial. The Board considered the Applicant's argument that this use would be located further from the property line than other accessory structures (*i.e.,* pools, sheds, etc.) are permitted to be. 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 and provide emotional support to the child residing on the property. The Board heard comments from the public that the interaction between the child and the animals seemed to provide him with peace and ease his anxieties. However, the Board also recognized that there are other emotional support animals available that would be permitted on the property and would not impact the neighbors. Therefore, the Board determined that there was an alternative method feasible to achieving the benefits of the variances. It also determined that the alleged difficulty was self-created by the Applicant because he 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 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

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby denies the requested interpretation and area variances described and discussed above. On motion by Member K. Abrams, seconded by Member Chairwoman Ungerer. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

D. Eastgate Management –

Review draft decision for an area variance from the required side yard setback. Whereas pursuant to Section 310-7 a minimum side yard setback of thirty (30) feet is required and 22.7 feet is provided. Said property is located at 300 Forest Road, CV SBL 213-1-63.

DECISION

Village Code § 310-7 and Schedule of District Regulations, R-2A District (Chapter 310 Attachment 2, Minimum Side Yard Setback: Area Variance

Pursuant to Village Code § 310-7, the Schedules of Zoning District Regulations are a part of the Zoning Chapter and sets forth the minimum or maximum zoning bulk and use requirements. The Schedule of Zoning District Regulations for the R-2A District (Chapter 310, Attachment 2) requires a minimum side yard setback requirement of thirty (30) feet for single-family dwellings.

In 2020, the Applicant received a building permit and began constructing an addition to its existing single-family dwelling, which included a ninety (90) square foot "bump out" on the side of the dwelling that resulted in a side yard setback of approximately 22.7 feet. The Applicant poured the foundation, and then decided to change

the roofline and the windows, which triggered review and approval by the Architectural Review Board (ARB). Upon receipt of the plan, the ARB determined that a variance was necessary, and that the setbacks approved by the Building Inspector were not in compliance with the Code. Despite having begun the construction in compliance with a valid building permit, the building permit was issued in error. The Applicant is therefore requesting a variance of 7.3 feet, and the Board is considering the application as if the construction were not commenced.

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 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 claimed 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, including the adjacent properties. The Board recognized that the property is in the R-2A and only affects a small portion of the structure. Furthermore, the Board considered that the existing dwelling encroaches into the same side yard setback by approximately 22.7 feet on the other end of the dwelling, which is a legally pre-existing nonconforming condition. Therefore, this "bump out" is not located any closer to the side property line than the current building and will not result in any adverse visual or other impacts. The Board concluded that granting the variance requested would not alter the character of the neighborhood or create a detriment to nearby properties and would not result in an adverse impact on the physical or environmental conditions in the neighborhood.

The Board also weighed whether the granting of the variance was substantial. The Board determined that the variance requested was not substantial, and since this "bump out" is not located any closer to the side property line than the current building, it will not encroach further than the existing condition.

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 determined that the alleged difficulty is self-created by the Applicant because they are requesting to encroach into the side yard setback with the construction of the addition; however, to the extent that the Applicant used its due diligence to comply with the Village Code and obtain the necessary permits, this variance is not self-created. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board noted that the only way to comply with the Village Code would be to remove the foundation that was poured.[6] The Board concluded that there was a feasible alternative that would allow the Applicant to comply with the required side yard setback.

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, conditioned on the Applicant receiving all necessary permits from the Building Department, and hereby finds that the variance as granted is the minimum variance necessary to preserve and protect the character of the neighborhood.

[6] The Applicant submitted information to this Board that it would cost $65,875 to remove the foundation. Although the Board considered the application as though construction had not been commenced, it recognized that the cost to remove the foundation is exorbitant.

Per § A316-9(E) 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 final subdivision approval by the Planning Board. The Board may extend this time for one additional period of 90 days if such extension is warranted by the particular circumstances. On motion by Member K. Abrams, seconded by Member A. Zoumas. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

5. Public Hearings -

A. Beer World –

Continuation of 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.

Chairwoman Ungerer stated that the applicant submitted their original plan as well as a new one that reduced the total size of 15,100 to 13,110 square feet with the retail space being reduced as well. With the decrease the applicant is still 60.8 percent above of what is allowed per code. She then went on to state the applicant does not need any variances for the signs if the board considers the new plan. Chairwoman Ungerer then asked the applicant to elaborate on the traffic study that they submitted.

Mr. Carlito Holt of DTS stated he is a traffic and engineering consultant for the project, and he submitted a traffic impact study to the Planning Board on March 3, 2022. He stated they did receive comments from the planning boards traffic consultant but had held off on formal responses while it went to the Zoning board but understood what the Villages traffic consultant wanted considered. He then stated they went out at the request of the Planning Board and updated their study to include actual traffic and parking counts of two existing Beer World to get current trip counts for the existing Beer Worlds that are in operation. With that being done the applicant would like to propose a dedicated left turn lane on Route 32 into the proposed facility. He stated that would consolidate the access and give a wide-open access along the entire frontage. He then stated that traffic would be greater in the evenings since Beer World would not be open in the mornings. He also stated a potential traffic light since there are proposed hotels going up in the area.

Attorney Naughton stated she sent out an email to the board with the Village's traffic engineers comments on this matter, but it was sent out late, so she is unsure that the board got to read it. She then stated the board could request to have the Village Traffic Engineer at their next meeting to answer any questions they may have.

Chairwoman Ungerer stated that when this application was originally brought before the board it was stated that the idea would be for this store to be Beer Worlds flagship store, she then asked the applicant why Woodbury. The applicant stated due to the traffic on the road and the amount of people that travel through the area makes it a desirable location – for those reasons, the location would make it a profitable store. He then stated that with the reduction in size it is now going to be the size of the Pine Bush location which opened towards the end of 2020. Chairwoman Ungerer then asked what the size of the Beer World location in Monroe is. Louis DiCostanzo stated that it is a profitable store however their platform does not fit the location and they do not have all of the product that they would like to have in the store at that location.

R. Bruce asked that due to Pine Bush not having many bars or alcohol facilities, similar to Woodbury not having many, she asked the applicant if they think that is why Woodbury would generate a profitable store. Chairwoman Ungerer asked if any research is done into the people or clientele of the community or do, they only look at location when looking for a potential location of another store. She then stated that the people of Woodbury tend to like shopping at a local business instead of a franchised store or chain. Louis DiCostanzo stated Beer World is family owned and really would not consider it a chain. He then went on to say that they potentially could have four thousand different beers and that makes it a more desirable location for beer drinkers and that is why they want to the size of the store that they are requesting for the unique brews for the beer connoisseur.

There was then discussion from the board to have the traffic consultant at the next meeting. A. Zoumas stated he did not have a chance to look over the traffic consultant interpretation however he would like to and if it

were an option, they would like him to be at next months meeting so that questions could be raised and answered. R. Bruce stated a concern of hers while looking at the map and the location. She stated that the back of proposed facility would be abutting a residential neighborhood and that is quite a significant disturbance. She then asked when moving forward with this project that a strong buffer would be put in that location to protect and respect the residential neighborhood. Larry Marshal stated that the buffer is not that significant with respect to the alternative, the impact on surrounding properties would be far greater if the building were divided into smaller retail spaces, in that case they would not have to be in front of the Zoning Board.

Mrs. Maria Hunter asked why no one is talking about the Beer World in New Windsor which is part of the family-owned business. Louis DiCostanzo stated that was part of Beer World, but the owner sold it to a family member who sold it to someone else, so it is no longer family owned. Mrs. Hunter then asked the square footage of the building in New Windsor and stated that it is huge and if it is anywhere near what they are proposing for Woodbury then she is against this variance due to the size. She then stated she did not like how they were telling the board that if they did not get what they wanted they were going to build the same thing and split the stores. She then went on to say that Woodbury does have four or five areas that have bars. She then stated Woodbury is a bedroom community and people drive through, Woodbury is not like Warwick or Cornwall, Woodbury is a different type of town. She also stated that this application is being based on if the Hotel gets built across the road, and the board and the applicant should not be basing this on the possibility of a potential hotel that may or may not be built.

Mrs. Sandy Capriglione asked about the traffic study being based off of the peak hours of the other two stores. She stated it is not a fair trip generation when one of the stores was stated to preform inadequately. Mr. Holt stated that they did a study with traffic exiting and entering both locations and applied it to the proposed square footage of the proposed store. Ms. Capriglione stated that if both of the stores were successful the trip generation would be higher and then being that the proposed location of the store would be in a highly trafficked corridor the traffic study does not seem to be totally accurate. Mr. Holt stated that extra traffic on Route 32 would not be counted, it would just be the stops in and out of the facility.

A. Zoumas asked the applicant why they felt that traffic that is already traveling on the road is not impactful to the traffic study. Carlito Holt stated they are dedicating a left turn lane on Route 32 so the traffic would queue up in its own lane and other cars would be able to bypass the left turn lane. A. Zoumas then asked how many cars would be able to fit on the left turn lane. Mr. Holt stated it is about 150 feet of lane so that would be about 7-8 vehicles. C. Brady asked if the NYS DOT weighed in on this application, Mr. Holt stated that they were the ones that requested they dedicate a turning lane. A. Zoumas stated if the NYS DOT is requesting a lane put in then the board should automatically assume that traffic will be impactful because of the traffic that already exists. K. Abrams stated he could not understand how they could weigh what traffic drives on Route 32 to what drives on Monticello and Pine Bush. Larry Marshal stated that Monticello was one of their most profitable stores. Carlito Holt stated the store in Monticello is on a State Route as well and they get similar traffic to what drives on Route 32. R. Bruce requested that a traffic study be done on the New Windsor facility, she stated she is aware that it longer belongs to the family, however to the consumer who is only going by name recognition it would appear that it is the same store. She believes the location of the Beer World in New Windsor would be comparable in the location and size of this community. She then added a concern of hers, stating that in the future when people run across the street from the proposed hotel to Beer World and back again – with the volume of traffic the way it is now a person would/is essentially taking their lives in their hands.

Maria Hunter stated that a left-hand turn lane going northbound is a pinch point and she has not seen anyone take that into consideration especially since there is accident history in that particular area due to sight distance. She then stated she understands that the driveway is going to be narrower but as it stands right now its dangerous to make a turn out of there whether you are going North or South on Route 32 due to the speed limit and sight distances. She is also concerned with how they could possibly make that road wider to put a turning lane and is interested to see what the traffic consultant says.

A motion was made by K. Abrams, seconded by A. Zoumas, to keep the public hearing open to the public and carry over the application to April 13th meeting. The board requested the Village traffic consultant at the next meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

B. 14 Castleton Drive LLC –

Continuation of Public Hearing appealing the determination of Building Inspector Michael Panella that the use of the property as a commercial business including uses such as private catering events, a wedding venue, a restaurant, and place of assembly, is outside of the approved special permit use, and the issuance of a Notice of Violation of Zoning & Order to Cease Same. Said property is located in the R-1A Zoning District at 14 Castleton Drive in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 202, Block 1, Lot 70.

Mr. Ben Gailey the applicant's attorney was present to represent the applicant. Chairwoman Ungerer stated that the applicant is here appealing the Building Inspector 's findings based on a special permit that was issued outside the purview that was issued in violation of section 310-7. The applicant contends that the former Building Inspector allowed these activities in accordance with chapter 243 of the Village code. Chairwoman Ungerer stated that the applicant is basing their argument on section 243 that is not part of the zoning code but as public assembly regulation and that has a host of requirements including applying 60 days in advance, paying a fee and applying for permits, there are time constraints and if there are less than 200 people present the Building Inspector can determine approval, if there are more it would have to go in front of the Planning Board. Chairwoman Ungerer then stated the applicant submitted a packet with several exhibits in it, one violation order and email with a response but no question and aerial and ground views of the property. She then went on to read the violation order, which was dated October 7, 2021, in which it states the property was being used for multiple purposes outside of the special permit use. The only use that is allowed under the special permit is for a bed and breakfast that is allowed to serve meals to the guests of the bed and breakfast. Mr. Pulver submitted a letter to the previous Building Inspector asking for the allowance to throw a few parties a year and the Building Inspector attached a letter stating that the following activities are allowed as long as the applicant fills out the application and pays the fee prior to 60 days before the event and receives planning board approval.

Mr. Gailey stated that the Building Inspector is charged with enforcing the zoning code and in stating that he would allow wedding events there he is also stating that there's compliance with the zoning code in terms of the current Building Inspector stating that in reference to the meals being limited to those who stay for the bed and breakfast, it doesn't say anything about meals for non-bed and breakfast guests. He then went on to say that the previous Building Inspector allowed wedding events at the property and being that wedding events are an accessory use to a bed and breakfast Mr. Pulver should be allowed to have such events. He then went on to say that Mr. Pulver spent considerable amounts of money on advertisements, equipment, and furnishings for the wedding events on the determination of the Building Inspector that allowed Mr. Pulver to have wedding events at his property. He then went on to say that the neighbors support Mr. Pulver and they have no complaints. The only reason a violation was issued was due to a complaint from a competitor.

Chairwoman Ungerer stated she was looking through emails between Mr. Pulver and the Building Inspector Thomasberger and nowhere does it say weddings are permitted. Mr. Gailey said no, but it does say public assemblies are permitted which would include a wedding which is all Mr. Pulver sought to do. Attorney Naughton stated to be fair what the Chairwoman is saying is that the email that Mr. Gailey and Mr. Pulver are relying on is a question that was omitted. Mr. Pulver was not asking about wedding events, he stated he would like to throw a few parties, no where does it say wedding events, and those are two vastly different things. Attorney Naughton requested the board move on from public assembly events because that is not the discussion for right now. The only discussion to be had is to determine and review this violation and determine whether the proposed use of the property for these events exceeds the approval granted by the planning board.

Mr. Gailey stated the special permit for a bed and breakfast says it does not prohibit wedding events or public assemblies; the only thing it says is that the only meal is for breakfast and that is limited to the bed and breakfast guests and there is no limitation to others who may visit the property. K. Abrams asked if the entire wedding party could fit in the four rooms that the bed and breakfast. Mr. Gailey stated that is not what he is saying, he is saying that is a customary use to have wedding events at a bed and breakfast. K. Abrams, then stated Mr. Pulver should have asked for that and been more specific when he was in front of the Planning Board. Mr. Gailey stated that was years ago and Chairwoman Ungerer stated he never received any permits to have weddings at this location. R. Bruce asked if tents were set up outside or if the wedding itself was within the residence. Mr. Gailey stated it cannot really be used as a residence due to the size of the property and that it obviously needs to be used commercially. K. Abrams stated that many other people owned the property and just lived in it, none of

this started until Mr. Pulver bought the property. Chairwoman Ungerer stated the Zoning Board has no control over 243 and if he received an application, he just did not apply for the permits that he was holding; if he had this would not be in front of the board. Mr. Gailey then stated the Building Inspector at that time would not have said Mr. Pulver could have public assemblies if that was prohibited by the zoning code because he is also the enforcement officer for the zoning code, so he recognizes at that time that wedding events are an accessory use to a bed and breakfast. Chairwoman Ungerer stated she is not going to guess what the former Building Inspector was thinking; however, he did inform Mr. Pulver that he would need to apply 60 days in advance, pay a fee and fill out an application and that was never done. Mr. Gailey then stated pursuant to 243 by saying that Mr. Pulver could have a public assembly but be prohibited from having a wedding event would be inconsistent. A. Zoumas asked why it has to be mutually exclusive and why cannot the Building Inspector grant a special permit on his own for a special application with the plans of less than two hundred people for that property. Mr. Gailey then said he does not believe that a Building Inspector can grant a special permit on his own but buy saying that he could have a public assembly he was also saying he could have wedding events as part of the bed and breakfast. A. Zoumas then asked what if a permit came in for a concert and it was allowed and given a special permit for that specific use, would you then interpret that by allowing a concert at this venue that it would automatically mean that all concerts can be held there as an accessory use. Mr. Gailey stated no because the Building Inspector knew it was wedding events. K. Abrams stated Mr. Pulver has had more than just wedding events at the property. Mr. Gailey stated yes there have been a few private events that occur but mostly weddings. R. Bruce stated that there are always different fees and restrictions associated with events especially when it comes to more or less clientele at a specific location. She stated having a birthday party or having a wedding are two completely different things. Chairwoman Ungerer stated the Building Inspector was enforcing the zoning code; Mr. Gailey is referring to chapter 243, the Building Inspector made it clear in his letter that in accordance with the public assembly law you would be allowed to do this. A. Zoumas stated he did not understand Mr. Gailey logic that because the Building Inspector said the applicant could, does not mean that the applicant does not have to do all of the things that require you to get a special permit. The applicant would still have to fill out the application and pay the fees prior to the 60 days that are required. Chairwoman Ungerer stated the Building Inspector was noticeably clear in his letters and even capitalized the letters in EACH event when applying for a permit. Chairwoman Ungerer then read a letter where Mr. Pulver was asking Inspector Thomasberger about being able to throw a few parties a year and Inspector Thomasberger states in accordance with public assembly law the applicant would be allowed to do this once the application is filled out in its entirety, they pay the fee a minimum of 60 days before each event. A. Zoumas asked Mr. Gailey if that is the exchange that he was referring to, and Mr. Gailey stated it was. Chairwoman Ungerer states it says nothing about weddings in the email exchange. Chairwoman Ungerer then stated that the board needs to determine whether these wedding events are outside the permute of the special permit because that is what the violation is and under the special permit that Mr. Pulver has is for a bed and breakfast. K. Abrams stated if what Mr. Gailey is saying he could have a wedding in his back yard. C. Brady stated he could if he received a special permit, filled out the application and paid a fee then he would receive a public assembly permit under 243. He then stated he does not see anything talking about accessory uses in terms of weddings or other large public assemblies. He then stated it is not what is customary it is what is in the code and the Zoning Board is charged with determining. The special permit was for a bed and breakfast, which pending it is in the bed and breakfast overlay district the accessory uses are outdoor amenities such as decks, porches, fire pits and pools. There is no mention of actual use cases such as event types, so under the code Mr. Pulver received a special permit for a bed and breakfast which is very straightforward; however, that does not prohibit the owner from applying for a special permit under section 243 for any event, 60 days in advance and paying the fee. He stated they are both completely different distinct items, and the board should not be confusing them. Attorney Naughton stated that this property is not in the bed and breakfast overlay district and Mr. Gailey stated then it is not subject to those restrictions.

Chairwoman Ungerer stated she has a letter dated January 12, 2022, from a resident Mrs. Leidy Picardo a homeowner at 6 Braemar Way which is a cul-de-sac immediately behind 14 Castleton. She states she has an autistic child who is extremely sensitive to loud noises especially at night and constant noise would trigger some extreme behavior in her son, she also states her husband is a NYPD officer and works a lot of different hours so needs his sleep when he gets home. She stated if there were constant parties and wedding there it would be

disruptive to their lives. She states that Mr. Pulver's parking lot is directly behind her property and has not had any issues; however, if he were allowed to have parties and weddings every day it would become a problem.

Mrs. Maria Hunter asked if the approval for the bed and breakfast was grandfathered in under the old code. Attorney Naughton stated she would not use the word grandfathered; however, she would consider it a pre-existing non-conforming use and she would have to see if it was a permitted use under the old code, but under the new district it currently is not a use. Ms. Hunter than said she was on the Planning Board when this application was approved, and the board went through great pains to accommodate the owner to allow him to have a bed and breakfast and not live in the same building as the bed and breakfast. She stated she is more concerned that the applicant will not go back to the Planning Board and get his special permit amended to allow no more than twelve gatherings per year which would then allow him to have these functions. She then went on to say that if he has put in all the extra furniture into the ballroom then it would greatly reduce the number of people he could have per room and building code. She then stated every other business in town has to go through the right channels to get approved for different things. She mentioned multiple scenarios including a permit for fireworks and more specifically Palaia Winery - stating every time the owner has an event, she goes to the building department and fills out the proper information to hold the event so why cannot Mr. Pulver do that. She requested that Mr. Pulver do the proper thing as a resident of the Village and follow the law.

Mr. Gailey stated he would like to request that a question be brought in front of the board as to whether or not these events are accessory uses because case law from the courts says that wedding events is an accessory use to a bed and breakfast, and he would like to supply information to the board to consider that.

K. Abrams stated it has been five months already and he feels the board should decide tonight. A. Zoumas stated he feels the board should hear the applicant out and allow them one more month to submit information.

A motion was made by A. Zoumas, seconded by R. Bruce, to keep the public hearing open to the public and carried over the application to next month's meeting. The board requested that all documentation submitted on behalf of the applicant be submitted by April 1st, so the board has plenty of time to look it over. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	4	Ungerer, Brady, Bruce, Zoumas
	NOES	1	Abrams

6. Building Inspector s Report

7. Deliberations on closed Public Hearings

8. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to adjourn the meeting at 8:51 PM.

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

Jessica McClennan, ZBA Secretary