

Minutes of the Zoning Board of Appeals Meeting held on May 11, 2022, at 7:30 PM

Present: Karen Ungerer, Chairwoman  
Kevin Abrams, Craig Brady, Rachel Bruce, Andrew Zoumas  
Absent: None  
Also Present: Kelly Naughton, Village Attorney; Natalie Barber, Village Engineer

Chairwoman Ungerer opened the meeting with the pledge of allegiance and stated that the next Zoning Board of Appeals meeting will be held on June 8<sup>th</sup>, 2022.

**1. Executive Session: No Executive session was necessary.**

**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 April 13, 2022. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**3. New Business:**

**4. Action on Decisions:**

**A. 14 Castleton Drive LLC –**

Review Decision for 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.

Chairwoman Ungerer stated the applicant submitted a withdrawal letter dated this day, May 11, 2022, stating they are no longer requesting an appeal the Building Inspectors determination. Chairwoman Ungerer then stated no action on a decision is required.

**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 the application was amended and the square footage is the only variance that the applicant is requesting. She stated that last month the traffic consultant was there to answer the boards questions, and the applicant was asked to submit water usage. The applicant sent in a letter stating at the Beer World Pine Bush location, they use about fifty-nine gallons of water a day, whereas the Dug Out (the previous owner at this current location) used about 589 gallons of water a day between the years of 2018 – 2021. Natalie Barber, the Village Engineer stated that she looked at the water report and found it to be accurate. Attorney Naughton stated that the board must complete SEQRA prior to their decision; but that could be done during deliberations.

With no further comments from the public, board, or applicant a motion was offered by C. Brady, seconded by R. Bruce, to close the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**B. Aponte –**

Continuation of Public Hearing 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 R2A Zoning District at 10 Sequoia Trail in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 247, Block 3, Lot 9.

Chairwoman Ungerer asked if the applicant was present. The applicant was not. A. Zoumas made a motion, seconded by R. Bruce to carry over the public hearing to the June 8<sup>th</sup> meeting and request that the building department reach out to the applicant and request that he is present at the next meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**C. Clark –**

Continuation of Public Hearing requesting a variance for the construction of a solid 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, and pursuant to Section 146-7(A), no fence shall be erected in a front yard in a residential district or along a public right-of-way unless the fence is uniformly less than 50% solid. Said property is located in the R1A Zoning District at 8 Ridge Road in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 202, Block 1, Lot 17.8 Ridge Rd

Mr. Clark stated he submitted a letter, and he did some research on statistics of the types of vehicles that were on the road in 2008 when this law was put in place, he stated he believed the law was put in place so that vehicles could see above the fence to the road. He then stated statistics that he found between how many sedans/SUVs are on the road now and in comparison, to 2008. Stating vehicles are now made taller. He then stated that there is more visibility now than there was with the living fence that was there before. He then stated the fence as it is now does not impede any visibility with traffic heading south on Route 32. He stated the location of the house, is very traffic heavy and a lot of trucks pass by from the quarry bringing stone and a lot of the time the stone falls out and ricochet on the property, the fence would mitigate that as well as being a shield for deer to not walk through the property and onto the road. He also mentioned the dogs and the close proximity to Route 32 and his concern with their safety. He then stated the fence is setback far enough that it is not obstructing any views.

Chairwoman Ungerer stated alternatives were discussed last month and asked if it were a possibility to not have the fence be completely solid. Mr. Clark stated it is a possibility, but it defeats the purpose of what he is trying to accomplish for safety, he then stated it would not be aesthetically pleasing and it would not make sense to have it open especially with what he was trying to achieve.

R. Bruce stated she understands what the applicant is saying and would be interested to see how many accidents or near misses that have happened in that location due to the speed limit and the location on Route 32. She then stated she understands the applicants' reservations on having a half-slatted fence, she then suggested putting vegetation on the one side of the slatted fence that would create a barrier so the pets would not get out while also following the zoning code. Mr. Clark then asked what that would really do for him. He then stated he is not questioning the rule, he is questioning the purpose of the rule. He then went on to ask what the point of it is if it is still covered in vegetation, he might as well keep the solid fence. Attorney Naughton stated Mr. Clark has asked the previous question multiple times, she stated the reason for the request of the slotted fence is to comply with the code. She then stated the code requires the fence to be uniformly less than 50 percent solid, it is not what it can accomplish for the homeowner other than compliance with the code. Mr. Clark then asked what the purpose

of the code is and why is the code written in that way. Attorney Naughton stated that is a question for the Village Board of Trustees, which is not what is up for discussion at this time, she then stated that Mr. Clark is in violation and that is what is being discussed. Mr. Clark then stated he understood he was in violation and is in front of the board for a violation. He then stated he has pled his case; however, if the board is going to deny him the fence the way it is at the current moment and he is challenging the decision, then there should be a reason the regulation is there in the first place. A. Zoumas stated that the Zoning Board of Appeals board does not have the ability to interpret why a law was made, and that Attorney Naughton stated a challenge to a law could be made with the Village Board. The Zoning Board is not allowed to question the law or make assumptions as to why a law was passed; this board is charged with looking at the applicant's variance request based on the law as written. Mr. Clark then asked why he would be allowed to appeal to the Zoning Board, then why would he not be allowed to have the fence as it is. A. Zoumas stated the Zoning Board is allowed to evaluate the different circumstances of each application based on the factors that New York State has established for the board. He then stated based on those stipulations the board can make a determination. Mr. Clark then stated he did make the mistake of asking for forgiveness instead of permission, but he would really appreciate it if the board allowed him to keep the fence as is.

R. Bruce then asked if it was possible to allow 50% solid on the west side of Ridge Road and allow the applicant to keep the Route 32 portion solid. Attorney Naughton stated the board can place any conditions on the decision that they would like and request that applicant do what the board deems appropriate based on the five factors test that A. Zoumas was referring to. C. Brady stated he could see the purpose of the 33% variance request on the Route 32 side with the reasons stated multiple times, however on the front of the house, he feels that there should be at least 50%. Mr. Clark then interrupted asking if he could keep it solid but make it four feet instead of six. C. Brady stated that there were two parts of the code and there is potential for the applicant to take parts of the fence out and still protect the dogs, for example an inner fence. A. Zoumas asked if the slats of the fence were removable. Mr. Clark stated they were removable slats the posts were cemented in place, and cannot just be pulled out, he would have to get someone to cut it.

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

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

**6. Building Inspectors Report:**

The Board received a report from the Building Inspector that listed all of the mother/daughter houses and special permits in the Village that have passed their yearly inspections. R.B made the motion, seconded by K. Abrams, to accept the Building Inspectors report. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**7. Deliberations on Closed Public Hearings:**

**A. Clark-**

Chairwoman Ungerer stated this applicant is asking for two different variances. One for the height of the fence and the other is the opacity of the fence. She then stated at this time it is a solid six-foot fence that is not in compliance with the Village zoning code. She then stated that the board is to determine whether the fence can remain, be altered or other alternative conditions be placed on the application. C. Brady stated the boards deliberations should take place as if the fence did not exist.

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, in fact we cleared all the unwanted foliage that obstructed the view from the street and the view from the house. **The Board agreed with the applicant and stated it looks appropriate for the neighborhood.**
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated No, the only way to protect the privacy is with a fence. Shrubs, bushes, and trees limit the potential of flying objects entering the yard from Route 32. **The Board agreed with the applicant and stated the speed limit there is dangerous, and the fence would aid with safety for the people and animals living in the house. Flying debris was also a concern.**
3. *How substantial is the variance that you are requesting?* The applicant stated the only difference is two feet. The fence is well enough behind the right of way for the town and is below grade. My fence is six feet tall, and the regulation is four feet. When the house is a corner lot then the side is not the front as well. **The Board stated the variance is substantial, but it does not preclude them from granting the variance. They then stated that they have had other applications with similar safety concerns on a corner lot before.**
4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant stated no, it will only allow for the beauty of this 1800's home to shine. **The Board agreed with the applicant.**
5. *Is the alleged difficulty self-created?* The applicant stated no, the rules were put in place almost a century after the home was built. **The Board disagreed with the applicant and stated it is almost always self-created.**

A motion was made by A. Zoumas, seconded by Chairwoman Ungerer, to have Attorney Naughton draft a favorable decision consistent with the facts and findings of the Zoning Board of Appeals, allowing the applicant both requested variances. Final decision will be finalized into record at the next meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

**B. Beer World –**

Attorney Naughton stated the board must complete SEQRA, which expanded part 3 which is part of the environmental review process. She explained that the board requested the traffic consultant give a report, which was received and discussed at the last meeting. Attorney Naughton also stated the Village Engineer was present at the meeting tonight to discuss a memo received as well as the water and sewer calculations on this project. She then explained what the difference is between a negative and a positive declaration and its determination of significance. C. Brady made a motion, seconded by A. Zoumas to determine a negative declaration of significance for the environmental review. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

AYES	3	Abrams, Brady, Zoumas
NOES	2	Ungerer, Bruce

Attorney Naughton then stated a 239 review was sent to the county and came back on September 21<sup>st</sup> stating that it was up to local determination.

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 an undesirable change will not be produced in the character of the neighborhood by the granting of the area variance. The Property is located in a commercial zoning district, and the proposed Project is a permitted use in the district. The Property is located in close proximity to the Woodbury Commons Outlets, a large shopping complex with a variety of retail and commercial uses. Therefore, the Project will be consistent and harmonious with surrounding land uses.

**K. Abrams stated the water runoff would negatively affect the neighboring houses, especially the houses in Morgan Court. Chairwoman Ungerer stated the entire area will be covered in asphalt. C. Brady stated in the original application the applicant had containment areas for the water in the front and not feeding into the retention pond that abuts Morgan Court. R. Bruce stated she has concerns with the buffer zone as well, and even though it is a commercial area and there is a karate studio and motel in the area, in 15-20 years that area is going to look a lot different and she is worried about the residential area affected by bigger and bigger commercial buildings in that location causing a disruption to the area. C. Brady stated that a facility – such as a strip mall could be placed in that location, with three stores, none of which exceeded the particular size would not need a variance. This application would be in front of the Village planning board, where they would be judging these aspects or have the five questions that the Zoning Board does. He then stated regardless of what the board does – the character of that lot is going to change, he stated he feels for the residential neighborhood, but it is in fact a commercial district, regardless of the size of the facility, he agrees with the applicant. A. Zoumas stated he feels that the size of the building, which is outside of what is allowed in Village Code will create an undesirable change to the neighborhood.**

2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated the benefit sought by the applicant cannot be achieved through any means other than the requested area variance. The Zoning Code does not allow for a retail establishment, other than a supermarket, to exceed 8,000 square feet. In order to incorporate both the retail and recycling components of the proposed facility, additional square footage is required.

**Chairwoman Ungerer disagreed with the applicant and stated they never convinced her with evidence provided how a bigger store would be more profitable. She then stated that there are many different things that make a store profitable, and all the applicant stated was the size. K. Abrams agreed with Chairwoman Ungerer. A. Zoumas and C. Brady both stated they understand the logic of having a bigger store with the necessity of having many assorted brands available however there are other circumstances in play.**

3. *How substantial is the variance that you are requesting?* The applicant stated the requested area variance is substantial. The Applicant proposes 14,840.50 square feet of gross floor area where 8,000 square feet is permitted. However, the proposed size of the Project is consistent with surrounding commercial facilities including the Woodbury Commons Outlets and an adjacent Best Value Inn. K. Abrams, stated that the requested variance is 61%

**A. Zoumas stated that even though in that location – 15,000 square feet is allowed in total, having one retail establishment as requested instead of multiple establishments in this location is in fact incredibly significant. He then asked what is stopping Fort Knox for tearing down their building and building a 15,000 square foot building in its place. R. Bruce stated there is currently the motel there and a potential one across the street, but they are entirely different establishments. Chairwoman Ungerer stated the board feels that it is substantial and not consistent with the surrounding properties.**

4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant stated the requested variance will not have an adverse impact on the physical and environmental conditions of the neighborhood. The Project is an Unlisted Action under SEQRA. Therefore, the Project will be required to undergo environmental review to ensure that no adverse environmental impacts will result. The Project will be located on Property that has been previously developed for use as a take-out restaurant. The Project will reuse the disturbed

portions of the site, including the paved areas for parking. A new commercial building will replace the existing restaurant and will comply with all new NYS Building and Energy Code requirements. The Project involves a change in a retail use that is consistent with the current commercial use of the property. Therefore, no adverse physical or environmental impacts are expected. However, should the environmental review conclude, that significant impacts will result, the applicant will be required to incorporate mitigation measures to reduce any impacts to the maximum extent practicable.

R. Bruce stated that the runoff would have an impact on the surrounding properties. Chairwoman Ungerer stated she does not like that they referenced the dug out as a preexisting restaurant, the wording makes it seem like the building was the same size. She also stated the noise that would come from that location with the loading and unloading would have an impact on the neighborhood. She then stated she is concerned with the lighting and the potential request that they use low lights or shielded lights. K. Abrams stated not only would there be negative impacts on Morgan Ct, but they would also be in the back yard of the residents on Cottonwood Drive. C. Brady stated most of what Chairwoman Ungerer is concerned with would be purview of the Planning Board since it is the Planning Boards job to make sure there are no negative impacts to environmental conditions, and he is largely agreeing with the applicant. A. Zoumas stated that the applicant within its plans gave examples of what they were going to do and as long as they stick with the plans there would be no adverse effects.

5. *Is the alleged difficulty self-created?* The applicant stated the alleged difficulty is self-created but does not detrimentally affect the health, safety, and welfare of the neighborhood or community and therefore shall not preclude the granting of this area variance.

The Board agreed with the applicant stating it is self-created but should not preclude them from getting the variance. K. Abrams asked why to purchase a property that only allows 8,000 square feet and request that a 13-15 thousand square foot building be built there.

A. Zoumas stated he is concerned with a significant override of a law that is extremely specific. He then stated he understands that a 15,000 square foot building could be placed there and be separated into two 7,500 retail stores, but one single retail space is too much. C. Brady stated as much as he agreed or disagreed his biggest issue is that the code specifically states in 310-32b where no single retail establishment shall exceed 8,000 square feet except for a supermarket which shall not exceed 40,000 square feet. He then stated because it is worded in such a precise way, in his opinion the variance is substantial, and he would be opposed to granting the variance request. The board completely agreed with C. Brady. C. Brady stated that he feels this would be a benefit to the Village if it was located somewhere else in the Village, just not in this location at this site.

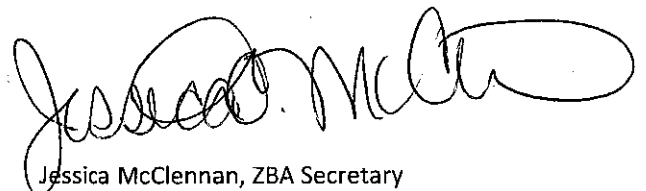
A motion was made by C. Brady, seconded by R. Bruce, to have Attorney Naughton draft a decision consistent with the facts and findings of the Zoning Board of Appeals. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

#### 8. Adjournment:

With no further business to discuss, a motion was offered by A. Zoumas, seconded by K. Abrams, to adjourn the meeting at 9:01 PM.

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



Jessica McClennan, ZBA Secretary