

Minutes of the Zoning Board of Appeals Meeting held on January 8, 2020 at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Joseph DeVenuto, Gary Kestenbaum
Absent: None
Also, Present: Attorneys: Robert Dickover, ESQ; Kelly Naughton, ESQ.

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on February 12, 2020.

1. Executive Session: N/A

2. Approval and Acceptance of Previous Minutes:

Motion was offered by C. Brady, seconded by G. Kestenbaum, to approve and accept the minutes of the meeting held on December 11, 2019. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

3. New Business

A. Brach & Mann –

Discuss letter received requesting extension of decision of the ZBA granted on October 10th, 2018 for property located at 195 Bakertown Road in Highland Mills SBL 217-1-7

The applicant stated that they had some family issues and that they were looking for an extension to the decision granted to them by the ZBA on October 10, 2018. Chairwoman Ungerer, asked the applicant why it took 15 months for them to come back and ask for an extension. The applicant stated the family was just not ready.

Motion was offered by Chairwoman Ungerer, seconded by G. Kestenbaum to allow the applicant a month to submit the appropriate documents to the Building Department. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

B. Falkowitz –

Extension request for 12 Skytop Road, Highland Mills SBL 217-3-4

The applicant stated he is close however; he is being pro-active, and he doesn't want the extension that was granted to run out.

Motion was offered by K. Abrams, seconded by G. Kestenbaum to grant the 90-day extension as requested by the applicant. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

4. Action on Decisions –

A. Jagarnath–

Review draft decision for an area variance to permit the installation of an in-ground pool leaving a 10 ft. setback in the rear yard and a 10 ft. setback in the side yard. Whereas, pursuant to Section 310-25(A), a minimum of 20 ft. setback is required in both the side and rear yard. Said property is located in the R1A Zoning District at 5 Stirling Circle in HM SBL249-1-73.

Decision:

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, and employing the balancing tests set forth in Village Law Section 7-712-b (c), the Board hereby grants the variances as requested upon the following conditions, if any: Conditions: None. (Full decision on file in Village Clerk's office)

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

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

5. Public Hearings -

A. Conduurso –

Public Hearing for an area variance to permit the installation of 16 ft. x 32 ft. in ground pool leaving a rear yard setback of 15 feet. Whereas, pursuant to Section 310-25(A) a minimum of 20 ft. setback is required. Furthermore, the applicant requests an additional area variance to permit a 6 ft. high fence in a front yard. Whereas, pursuant to /Section 146-5(B) a maximum height of 4 ft. is permitted. Said property is located in the R1A Zoning District at 82 Washington Avenue in Highland Mills and is known on the Tax Maps as Section 212 Block 1 Lot 23.

The applicant stated they are requesting these variances for multiple reasons. First the above ground pool keeps eroding, collapsing and flooding the basement. If they get an inground pool it will get rid of all those problems. Also; she stated she has a son with Autism, so she is requesting the fence around the pool and around his play area, so it is more secure for him. The board asked what color the fence would be, and the applicant stated black. The board has reservations about how far away the pool was and if the fence was too close to the road.

Mr. Robert Scott, as well as his wife and another neighbor voiced their concerns. They stated they are the applicant's neighbors and stated their concerns with this being an eyesore for the neighbors that live near them. They are also concerned with sight distance; they stated a lot of kids run down that street to catch the bus and if the fence goes up the sight distance will be minimal.

The board then discussed having the applicant withdraw the application. Attorney Dickover, stated that the board should keep the public hearing open and the applicant should consult with the pool contractor to see if they could move the pool closer to the house. The applicant said she would. The applicant stated she would also be willing to move the fence back 15 feet from the curb. The board then requested a letter from the Building Inspector as well as the Highway Superintendent about the site distance from the road and the turn of the road if the fence is put up where the applicant is requesting it to be. The board also has requested the Building Inspector to look into the property and see if it is 500 feet or less from Smith Clove Road or a County Road, if it is in fact less then the ZBA has requested a 239 review be sent to the County.

Motion was offered by K. Abrams, seconded by Chairwoman Ungerer, to continue the public hearing until the February 12, 2020 meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

B. Itskowitz –

Public Hearing for an area variance to permit a 19 ft. x 17 ft. addition to an existing single-family dwelling leaving a rear yard setback of 32 ft. including overhang. Whereas, pursuant to Section 310-6(B) and 310-7 bulk table a 50 ft. rear yard setback is required. Said property is located in the R2A Zoning District at 17 Blueberry Lane in Highland Mills and is known on the Tax Maps as Section 217 Block 2 Lot 8.

The board asked a few questions about the roof and the material that would be used to make a Succa. The applicant stated the roof is not sealed because it must be open to the sky.

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

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

C. Avalon –

Continuation of Public Hearing for review of a ruling by the Building Inspector pursuant to Section 310-49(c)(3). Whereas, Village Code Section 310-7.1(d)(5) states a hotel shall have frontage on a state or county highway or right of way, the Building Inspector has determined that the primary frontage for the proposed hotel is on a Village Road (Turner Rd.). If required, an area variance is requested to permit the construction of a 130 room 4 story hotel on a Village Road. Said property is located in the HO (Hotel Overlay) and LC (Limited Commercial) Zoning District at 140 Route 32 and 94 Turner Road in Central Valley and is known on the Village of Woodbury Tax maps as Section 226 Block 1 Lot 5 & 6.2.

The applicant's representatives spoke on behalf of the applicant. Stating they are asking for a limited service hotel. The applicant is in front of the Planning Board for the site plan and special permit approval, as well as a lot line change and merger of the two above-referenced properties. The Planning Board is processing the lot line change and merger application as part of the overall site plan and special use permit application. They then discussed multiple case studies in other towns where they zoning boards had to make decisions about road frontage. J. DeVenuto, asked the applicant if what they are asking can legally be done. The applicant stated they haven't found anything illegal. C.Brady stated he has reservation and concerns regarding another turn off Route 32. The applicant then requested the board advise them of their stance on the interpretation sooner rather than later due to the variance possibly being mute depending on how the board votes.

Mrs. Maria Hunter stated that Turner Road was supposed to be deeded to the Village of Woodbury with only one entrance leading into this property. She is concerned with buses and emergency access to the Woodbury Commons and the easement on Turner Road. She then stated she understands that the property owner has rights, but she is concerned with the other people that live in and around that road as well.

Motion was made by C.Brady, seconded by J. DeVenuto, to go into executive session at 8:47pm. Board returned at 9:01pm. Motion was made by C.Brady, seconded by G. Kestenbaum, to close executive session.

Chairwoman Ungerer, then asked for a motion to keep the public hearing open and have Attorney Dickover draft a favorable decision per the boards executive session conversation agreeing with the applicant and allowing the applicant to receive the interpretation in their favor in regards to the lot line change so when the merger goes through the applicant would have direct access to Route 32. Motion was made by G. Kestenbaum, seconded by J. DeVenuto. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED **AYES** **5** Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

D. The Shops of Woodbury, LLC –

Continuation of Public Hearing for area variances and/or Code interpretations. Applicant proposes to construct a commercial center and hotel having a lot area of 9.65 acres. The Applicant is also seeking relief from Section 310-7 regulating side yard setbacks and Section 310-12B regulating setbacks for commercial centers from state and county roads. Said property is in the IB Zoning District from the intersection of State Route 32 and Locey Lane in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225 Block 1 Lots 34.1 & 34.2

The board asked multiple questions about the floors, ground, roof, retaining wall, sidewalk and hotel location. The Applicant is requesting an interpretation and/or variance from Section 310-27C(3) which requires a 25' landscape buffer in the front yard. During a consultants meeting on August 27, 2019, the uniqueness of the site with regards to frontage and access was discussed and it was confirmed that the "frontage" which provides access to the site was Locey Lane at the intersection with NYS Route 32. It was further determined that Locey Lane is subject to a 50' front yard setback consistent with the bulk requirements found in Section 310-7 of the Village Zoning Code. As noted in EX 2.0 Building #1 Front Yard Exhibit attached, the Plan provides a 25' "landscape strip" in the front yard. However, a portion of existing Locey Lane is within the setback. The Plan also proposes a sidewalk connecting the development to the signalized pedestrian facilities along Route 32 and a retaining wall. The purpose of the landscaping strip is "to enhance the appearance of the use on the Jot, but not necessarily to screen the use from view". The Plan proposes landscaping within the landscape strip. The proposed retaining wall will be a decorative retaining wall which will be subject to review by the Planning Board. Section 310-27 does not prohibit sidewalks or retaining walls within the landscape strip; therefore, the Applicant is requesting that the ZBA acknowledge that these elements are permitted within the landscape strip. Lot coverage is limited to 65% of a commercial center within the IB zone. This Jot coverage includes siting of the proposed hotel. The Applicant proposes 76% development coverage - an exceedance of 17%.

The Applicant is seeking relief from Section 310-7 Attachment 8 requiring a side yard 30' or 1.5 times the building height whichever is greater. The hotel exceeds the 30' setback requirement; however; it does not meet the 1.5 times building height requirement. Not having an end user currently, the Applicant is assuming a 60' building as worst-case scenario requiring a setback of 90'. It is the Applicant's opinion that when the Village developed the Hotel Overlay District the side yard requirement of 1.5 times the building height in the IB zone was considered for hotels given the permitted building height. During the

comprehensive planning process, the Village Board recognized that building height was critical given the current hotel industry. Under the current plan, the side yard setback north of the proposed hotel abuts a 200-car parking lot and is over 300' away from a state highway. There are no improved neighboring properties to the project site in the vicinity of the proposed hotel. See EX 3.0 Overall Setback Conformance Exhibit. As discussed at the December 11, 2019 ZBA meeting, the required setbacks could be achieved by relocating the hotel to the east or rotating the building 90°; however, it is the opinion of the applicant that the current layout provides a better distribution of parking for each of the proposed buildings. Relocating or rotating the hotel building solely to comply with the bulk requirement would compromise the function of the current development plan. The proposed vehicular circulation is also coordinated with Emergency Services and the Village's consultants to provide safe and efficient internal traffic patterns. It is anticipated that the hotel will also act as an anchor for the development. The current layout requires guests to drive by the proposed business and restaurants to encourage that they will patronize the businesses.

Motion was offered by J. DeVenuto, seconded by C. Brady, to close the public hearing and debate and come to a decision at the end of the meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum

6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings

A. Itskowitz –

The following responses were provided in the "Statement of Ownership and Interest" provided by the applicant for a use variance and the Board's 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 shall produce no change to the character of this neighborhood. This proposed addition to the existing house shall just fit perfectly into the neighborhood, as it will be similar to the surrounding homes and not visible from the front of the house. **The Board Agreed.**
2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated: No, the way the existing house is laid out with the bedrooms at the left side of the property without rearranging the entire bedroom layout. Placing the addition in the front would also not work, since the driveway and garage access are in the front. The only other option requires us to ask for a variance. **The Board Agreed.**
3. *How substantial is the variance that you are requesting?* The applicant stated: Minor. We expect the granting of this variance shall not have any substantial effect to the area as the surrounding homes are of similar character and it does not affect the look of the house as mentioned above. **The Board Agreed.**
4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant stated: No. As described above we believe that the granting of this variance shall have no adverse effect or impact on the physical or environmental conditions in the neighborhood and the proposed addition will fit in perfectly. **The Board Agreed.**
5. *Is the alleged difficulty self-created?* The applicant stated: Yes, to suit the need of our family and building the new Succa we can only do it by asking for this variance. **The Board Agreed.**

Motion was offered by K. Abrams, seconded by C.Brady, to have Attorney Naughton draft a favorable decision.

Motion was offered by C.Brady, seconded by G. Kestenbaum, to declare themselves lead agency and type it a type two action under SEQRA. They stated no further environmental review is needed. Chairman Ungerer conducted a roll call of the Board which resulted in the motion's being:

ADOPTED AYES 5 Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
 NOES 0

B. The Shops of Woodbury –

The board discussed three separate requests from this site. The first being an interpretation and landscape buffer which they allowed in the applicants favor.

1. Landscape Buffer/ Interpretation -

Motion was made by K. Abrams, seconded by J. DeVenuto to have Attorney Naughton draft a favorable decision to allow the sidewalk, retaining wall and Locey lane be included in the landscape buffer and have the interpretation be in the applicants favor. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

2. Hotel Setback -

The following responses were provided in the "Statement of Ownership and Interest" provided by the applicant for the hotel setback that they are requesting and the Boards decision on each question follows:

- 1. Will the granting of this variance(s) produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?* The Applicant answered: No. The subject property is in the Industrial Business Zoning District (IB) with frontage on NYS Route 17. This portion of the Village consists of a variety of big box and mixed uses including retail, restaurants, service and commercial office. The Project as proposed is consistent with the 2019 Village of Woodbury Comprehensive Plan and the purpose of the Industrial Business District as referenced in Section 310-7 of the Zoning Code by providing a "variety of economic development opportunities". Granting the area variances will not result in any undesirable change in the character of the neighborhood nor will it be a detriment to nearby properties. The neighborhood and adjacent properties are state owned highways or federal wetlands. The Application will provide an opportunity for the development of mixed uses that would support and be consistent with existing land uses and with the 2019 Comprehensive Plan.
The Board Agreed.
- 2. Can the benefit you seek be achieved by some other feasible method other than variance?* The Applicant answered: No. The development thresholds of the current plan is of similar scale or less than the previously approved Cabela's project on this site, which also required several zoning code variances. The variances included lot coverage, side yard, building height and signage. Due to a subsequent taking by NYS DOT for the improvements in the Exit 131 Interchange reconfiguration, the overall lot size has been reduced from 11.15 acres to 9.65 acres, which slightly increases the site's degree of nonconformity. This land reduction, and changes in the project from Cabela's to the current proposal, necessitate the Area Variances for lot coverage and side yard relief in order to proceed.
The Board was split on their decision.
- 3. How substantial is the variance that you are requesting?* The Applicant answered: The Applicant believes that the requested Area Variance(s) are not substantial in relationship to the existing land use patterns and within the context of the site which previously received a number of area variances including one for lot coverage, it is the opinion of the Applicant that the Area Variance(s) are consistent with the 2019 Comprehensive Plan and Zoning Code. The variance(s) are not substantial given the site location, context regarding existing land uses and development patterns. Granting the Area Variance(s) will not physically or visually change the project appearance or scale. **The Board Agreed.**
- 4. Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant answered: At the February 6, 2019

Planning Board meeting, the Board confirmed that the proposed action "with respect to SEQRA that the potential adverse impacts posed by this project are within the potential adverse impacts that were mitigated under the prior SEQRA analysis for the site." Granting the requested Area Variances will permit the construction of a commercial center as defined by the Zoning Coe which is consistent with the surrounding land uses. The land uses within the vicinity of the site are comparable in size and magnitude regarding structures and requisite site improvements. The proposed project will include mixed permitted uses with shared parking, site lighting, stormwater management facilities and extensive landscaping plan. Therefore, the proposed improvements are consistent with existing land uses and will be an economic benefit to the neighborhood and the Village as a whole. No adverse effects or impacts upon physical or environmental conditions in the neighborhood will occur. Granting the Area Variances will not significantly alter the project in appearance or scale. **The Board had a split vote, J. DeVenuto felt that it was very substantial.**

Motion was made by K. Abrams, seconded by G. Kestenbaum, to have Attorney Naughton draft a favorable decision allowing the applicants request for the Hotel setback. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Kestenbaum
	NOES	1	DeVenuto

3. Lot Coverage -

The following responses were provided in the "Statement of Ownership and Interest" provided by the applicant for the lot coverage that they are requesting and the Boards decision on each question follows:

1. *Is the alleged difficulty self-created? The Applicant answered:* No. The current development plan has been reduced in scale compared to the previously approved Cabela's project on this site. As noted above, due to subsequent land takings for the improvements in the Exit 131 Interchange reconfiguration, the overall lot size has been reduced, which increases the site's degree of nonconformity through no action of the Applicant. **The Board Agreed.**

2. *Will the granting of this variance(s) produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties? The Applicant answered:* No. The subject property is in the Industrial Business Zoning District (IB) with frontage on NYS Route 17. This portion of the Village consists of a variety of big box and mixed uses including retail, restaurants, service and commercial office. The Project as proposed is consistent with the 2019 Village of Woodbury Comprehensive Plan and the purpose of the Industrial Business District as referenced in Section 310-7 of the Zoning Code by providing a "variety of economic development opportunities". Granting the area variances will not result in any undesirable change in the character of the neighborhood nor will it be a detriment to nearby properties. The neighborhood and adjacent properties are state owned highways or federal wetlands. The Application will provide an opportunity for the development of mixed uses that would support and be consistent with existing land uses and with the 2019 Comprehensive Plan. **The Board Agreed.**

3. *Can the benefit you seek be achieved by some other feasible method other than variance? The Applicant answered:* No. The development thresholds of the current plan is of similar scale or less than the previously approved Cabela's project on this site, which also required several zoning code variances. The variances included lot coverage, side yard, building height and signage. Due to a subsequent taking by NYS DOT for the improvements in the Exit 131 Interchange reconfiguration, the overall lot size has been reduced from 11.15 acres to 9.65 acres, which slightly increases the site's degree of nonconformity. This land reduction, and changes in the project from Cabela's to the current proposal, necessitate the Area Variances for lot coverage and side yard relief in order to proceed. **The Board Agreed**

4. *How substantial is the variance that you are requesting?* The Applicant answered: The Applicant believes that the requested Area Variance(s) are not substantial in relationship to the existing land use patterns and within the context of the site which previously received a number of area variances including one for lot coverage, it is the opinion of the Applicant that the Area Variance(s) are consistent with the 2019 Comprehensive Plan and Zoning Code. The variance(s) are not substantial given the site location, context regarding existing land uses and development patterns. Granting the Area Variance(s) will not physically or visually change the project appearance or scale. **The Board Agreed.**

5. *Is the alleged difficulty self-created?* The Applicant answered: No. The current development plan has been reduced in scale compared to the previously approved Cabela's project on this site. As noted above, due to subsequent land takings for the improvements in the Exit 131 Interchange reconfiguration, the overall lot size has been reduced, which increases the site's degree of nonconformity through no action of the Applicant. **The Board Disagreed.**

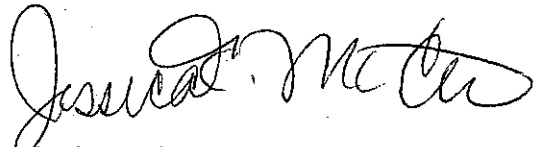
Motion was made by K. Abrams, seconded by J. DeVenuto to have Attorney Naughton draft a favorable decision for the lot coverage that was requested and allow the applicant no more than 75%. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

8. Adjournment

With no further business to discuss, a motion was offered by C. Brady, seconded by J. DeVenuto, to adjourn the meeting at 10:04 PM.

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	



Jessica McClennan, ZBA Secretary