

Minutes of the Zoning Board of Appeals Meeting held on January 12, 2022, at 7:30PM

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

Also Present: Kelly Naughton, ZBA Attorney; Christopher Gerver, Planning Board Chairman

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on February 9, 2022.

1. Executive Session: N/A

2. Approval and Acceptance of Previous Minutes:

Motion was offered by K. Abrams, seconded by C. Brady, to approve and accept the minutes of the meeting held on December 8, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

| | | | |
|----------------|------|---|--------------------------------|
| ADOPTED | AYES | 4 | Ungerer, Abrams, Brady, Zoumas |
| | NOES | 0 | |

3. New Business:

4. Action on Decisions:

A. Levy –

Review decision requesting variances for the reconstruction of a single-family dwelling that was destroyed by fire from Village Code Sections 310-7, 310-43, and 310-43.1. Property located at 999 Route 32, HM SBL 201-1-20.

Village Code § 310-43, Nonconforming Buildings: Discussion

Under Village Code § 310-43(B), “a building lawfully existing on July 11, 1990 (the day immediately preceding the effective date of the Town predecessor to this chapter), or lawfully existing on the day immediately preceding the effective date of any amendment to this chapter affecting such building, regardless of change of title, possession or occupancy or right thereof, may be continued indefinitely, subject to [certain identified restrictions].” The single-family dwelling, constructed in the 1800s, is a nonconforming building as it does not conform to the dimensional requirements of the Zoning Code (*i.e.*, lot area, setbacks, etc.). The single-family dwelling was damaged in a fire, and the Applicant seeks to reconstruct it.

Village Code § 310-43(B)(2)(a) provides that “[a] nonconforming building (whether housing a conforming or a nonconforming use) which has been damaged by fire or other causes to the extent of more than 50% of its fair market value shall not be repaired or rebuilt unless such building is made to conform to the height and yard requirements of the Bulk Table and other dimensional regulations of this chapter.” The Building Inspector has determined that the building has been damaged by fire “to the extent of more than 50% of its fair market value.” See Village Code § 310-43(B)(2)(a). As a consequence of this determination the dwelling cannot be repaired or rebuilt unless the building is brought into compliance with the Code. The Applicant is thus requesting variances from certain applicable bulk requirements so as to permit the reconstruction of this dwelling.

Village Code § 310-43.1, Nonconforming Lots of Record: Discussion

In addition to the nonconforming nature of the single-family dwelling, as noted above, the Applicant’s property is a nonconforming lot, which is defined in the Village Code as a “lot, the area or dimension of which was lawful prior to the adoption, revision or amendment of a zoning ordinance but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.” Village Code § 310-2. The property does not meet the minimum lot area of 3-acres, and the single-family dwelling that the Applicant seeks to reconstruct did not meet certain setback requirements.

Village Code § 310-43.1(A) provides, “[a] single residential lot separated by other land not in the same ownership and made nonconforming as to area or width by the 2011 revisions to this chapter, and not otherwise vested as to other zoning by state statutory or common law, may be used for a single-family dwelling, provided that the lot complies with the setback requirements of the district in which it is located.” The property is separated by other land not in the same ownership and was made nonconforming as to area by the 2011 revisions to the Village rezoning chapter. However, the proposed reconstructed dwelling does not comply with the setback requirements of the R-3A district. Thus, the Applicant is not able to construct the single-family dwelling on the nonconforming lot as of right under Village Code § 310-43.1(A) and requests the lot area and setback variances set forth below.

The property herein was created in the 1800s, and has been in separate ownership from neighboring parcels, permitting the Applicant to utilize the property for a single-family dwelling. Therefore, the lot is required to: (i) have a minimum lot area of 15,000 square feet, (ii) have access to municipal water and sewer services (or meet current New York State and Orange County Department of Health standards for their water and sewer services), (iii) meet the setback requirements for the R-3A district, and (iv) have a minimum lot width of 100 feet. The parcel contains approximately 53,448 square feet, which complies with the first element. The Applicant has represented that he complies with the requirements relative to water and sewer services; however, the Board discussed these requirements, and determined that any variances granted to this property must be conditioned upon the property having access to municipal water and sewer services or meet current New York State and Orange County Department of Health standards for water and sewer services. With regard to the fourth element, the property has a lot width of 330 feet and is therefore in compliance with this provision. The Applicant was unable to comply with the setback requirements for the R-3A district, and requested the variances set forth below.

Village Code § 310-7, Schedule of Zoning District Regulations, R-3A District [Chapter 310 Attachment 1] – Minimum Lot Area, Side Yard, Both Side Yards, & Rear Setbacks: Area Variances

As discussed above, the Applicant’s property is a pre-existing nonconforming lot that, until recently, contained a pre-existing nonconforming single-family dwelling. The dwelling was destroyed by fire; however, the masonry walls of the structure remain. The Applicant proposes to reconstruct the dwelling, and to do so requires the following five area variances:

1. A variance of 1.773 acres from the required minimum lot area of three (3) acres, to allow a minimum lot area of 1.227 acres.
2. A variance ranging from 19 feet to 28.8 feet from the minimum side yard setback of thirty (30) feet to allow a side yard setback ranging from 1.2 to eleven (11) feet along the western boundary.
3. A variance of six (6) feet from the minimum side yard setback of thirty (30) feet to allow a side yard setback of twenty-four (24) feet along the northern boundary.
4. A variance of 34.8 feet from the minimum side yard setback for both side yards of sixty (60) feet to allow a total side yard setback for both side yards of 25.2 feet.
5. A variance of 35.7 feet from the minimum rear yard setback of fifty (50) feet to allow a rear yard setback of 14.3 feet along the western boundary.

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 claimed by the Applicant were self-created.

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

The Board discussed the variances as a whole and began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances. The Board considered the character of the neighborhood and determined that rebuilding the house would have a positive impact on the neighborhood. The Board found that the house has a lot of charm, and that rebuilding it in its prior location would be appropriate as the masonry walls remain after the fire. Additionally, no new conformities are really being created as the Applicant is seeking to rebuild the dwelling in the same location. The Board concluded that the variances would not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

The Board also weighed whether the variances requested were substantial. The Board determined that numerically, the variances were substantial; however, after reviewing the property, the Board also considered that the reconstruction of the dwelling would not alter anything in the neighborhood. There would be no substantial aesthetic impact, as the house backs up to the New York State Thruway, and the house will be located in the same location as the original structure that was built in the 1800s.

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 Applicants to pursue. It was determined that the alleged difficulty was not self-created by the Applicant because the Applicant did not build the house in its location or on this lot, and there was a fire that destroyed the house and created the need to reconstruct. The Board discussed whether the request to reconstruct the nonconforming house on a nonconforming lot was self-created, but again determined that it was not self-created because the masonry walls remain from the original dwelling, and the structure would simply be reconstructed. 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 relocate the masonry walls of the building. Therefore, the Board concluded that there was no feasible alternative for the Applicants to pursue to achieve the benefit sought.

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, conditioned on the Applicant receiving all necessary permits from the Building Department, 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(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.

A Motion was offered by K. Abrams, seconded by C. Brady, to grant the above variances. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

| | | | |
|----------------|------|---|--------------------------------|
| ADOPTED | AYES | 4 | Ungerer, Abrams, Brady, Zoumas |
| | NOES | 0 | |

6. 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.

A motion was made by K. Abrams, seconded by Chairman Ungerer to continue the public hearing until the meeting in February at the request of the applicant. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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| ADOPTED | AYES | 4 | Ungerer, Abrams, Brady, Zoumas |
| | NOES | 0 | |

B. 14 Castleton Drive LLC –

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.

A motion was made by C. Brady, seconded by K. Abrams to continue the public hearing until the meeting in February at the request of the applicant. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED AYES 4 Ungerer, Abrams, Brady, Zoumas
 NOES 0

C. Woodbury Chicken LLC –

Public Hearing requesting variances for the 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. Said property is located in the IB Zoning District at 20 Centre Drive in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225, Block 3, Lot 1.12.

Ms. Drew Victoria Gamils the attorney for the project gave the following overview. She also stated Matthew Bursch the project engineer and Robert Grimaldi the architect was present. She stated they are requesting relief from the Zoning Code to construct a 2,454 square foot Popeyes restaurant in the Woodbury Center business park which will be replacing the existing Pizzeria Uno’s building; in which they will be demolishing and rebuilding on the property. The proposed Site Plan and Special Use Permit application requires three (3) variances as follows:

A variance to permit a portion of the landscaped area abutting the front of the proposed building to be at varying widths from zero (0) feet wide to 1.8 feet wide, where Village Code § 310-27.C.3 requires a landscaped area at least five; and (5) feet wide abutting the front of any building in all nonresidential districts. A significant portion of the landscape area otherwise complies; A variance to allow the Applicant to install four (4) wall signs where Village Code Chapter 310-Attachment 11 allows an Applicant to install only one wall sign per use; and A variance to allow the Applicant to install one sign exceeding the permitted sign area where Village Code Chapter 310-Attachment 11 limits all wall signs to a size equal to 10% of the wall area.

| Sign | Size | Location | Size | Variance Needed |
|---|------------------|-----------------|------------------|--------------------------|
| | | | Permitted | |
| Popeyes Seal | 7.1 square feet | West elevation | 8.2 square feet | No size variance needed. |
| “Love that Chicken” Graphic | 44.8 square feet | West elevation | 45.1 square feet | No size variance needed. |
| “Popeyes Louisiana Kitchen” Channel Letters | 30.9 square feet | North elevation | 40.5 square feet | 9.6 square feet |
| Popeyes Seal | 7.1 square feet | East elevation | 8.2 | No size variance needed. |

The Village Building Inspector provided clarification concerning the definition of wall area and advised that “upon calculating the area of a façade upon which a building sign may be placed, the area of the façade of the building or tenant space shall be the length of the building or tenant space times the height of the building or tenant space.” The wall area must be based on the height of the building and the length of the building façade along the elevation

in which the sign is located and not just to the uninterrupted piece of the façade wall where the wall sign is located. The permitted sign area is based on the length of the entire wall elevation of each side of the building and not just the small bump or recessed area on which the sign is placed.

Chairwoman Ungerer stated that the board as well as the applicant will have to determine where the front of the building will be due to the renderings stating that the front will be where the entrance is. The board then discussed in greater detail if the front of the building would be adjacent to the access road or Route 32.

Mr. Matthew Bursch, the engineer for the project gave his report. He showed the board an ariel map exhibit and gave a brief overview of the site and surrounding roadways. He stated that the property is located in the IB industrial district, and the overall property is a little over sixty-eight acres. He went over the shopping centers and the stand-alone buildings that are located on the property. He then stated as part of the proposed development they will be tearing down the current building and replacing it with the proposed development of the Popeyes restaurant with a double drive through. He then stated that the majority of the shopping center will remain as is at the access points and the driveways, just the Uno's property will be changed. He then showed the board a site plan rendering as well as their landscaping plan. He stated that the restaurant will have forty-two seats inside and will be 2,454 square feet with an internal walk-in freezer and a double drive through on the south side of the building. He also showed the board where the sidewalks would be located, where the building frontage would be. He stated that the two front doors would be located on the eastern side, and the western side would be the main entrance with parking along that side as well. He explained the signage as well as the color choice and where each sign would be located. He then stated the center does not have room for them to be on the pylon sign, so they are relying on their building for the signage to show the general public where they are. The board voiced concern over the ADA accessible entrances and being close to the parking lot, Mr. Bursch stated that all doors were accessible to ADA needs. The board as well as the applicant discussed in detail where the front of the building would be located.

A. Zoumas stated he is concerned to set a precedent that could possibly be detrimental in the future. He also stated that it is the job of the ZBA to approve the minimum variance to the applicant. Chairwoman Ungerer asked if the applicant would consider removing one of the Drive-thru's and Mr. Bursch stated every application and engineer for applicants from here on out will most likely request a double drive-thru due to the pandemic and the adequate separation of vehicles, he stated it helps to speed up time on processing orders and pick up. A. Zoumas then asked if the building could be moved back a couple of feet to get closer to a smaller variance, if one and a half feet were taken from the back buffer and moved the building back towards the drive through, then there would be three more feet for the front landscaping coverage and would solve both issues giving the applicant a smaller variance requested. Mr. Bursch stated they could probably shift the building back a few feet to provide a two-foot mulched area with landscape shrubs; however, it would not give a full five feet and they would run into bigger issues, he also stated that a wider buffer is ideal, especially since cars will be driving in the bypass lane down the hill. The board then decided that the front of the building will face Route 32, but the main entrance will be on the side facing the highway (17), which would be the southwest side of the rendering. They then discussed landscaping in detail, K. Abrams, stated he wanted to make sure the landscaping was not like the landscaping that was approved for Walmart, since it is exceedingly difficult to see when pulling out of the parking lot. Mr. Bursch stated that the landscaping will be the same as the rest of the development and what the Planning Board approves. Chairwoman Ungerer stated the public hearing cannot be closed since the board has not received the 239 back from the county. Chairwoman Ungerer then opened up the meeting to public comment.

Maria Hunter stated she is a resident of Woodbury and is pro-business, she stated she believes this to be a beautiful rendition of the proposed Popeyes and that the landscaping looks great. She then stated the whole building is considered 20 Center Drive and no matter what the landscaping; consumers do not care and will throw debris anywhere. She then stated she does not feel the number of signs is intrusive to the area, especially since the surrounding stores as well as the signs on Larkin Drive have multiple signs on their buildings. She then stated that corporate signs should take precedence and if it is required by the business owner, the boards should take that into consideration, since Woodbury does need business to survive in this area.

A motion was made by A. Zoumas, seconded by K. Abrams to keep the public hearing open to the public and carried over the application to next month when the applicant will be submitting a new rendition of 2.5 feet in front. The board requested that they also include the width of the landscaping and Kelly told the representative that she will let her know when the Building Department receives the 239 from the county.

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

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| ADOPTED | AYES | 4 | Ungerer, Abrams, Brady, Zoumas |
| | NOES | 0 | |

D. NMJ Ceasar PE/Choi-

Public Hearing requesting 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 in the R-2A Zoning District at 372 Route 32 in Central Valley and is known on the Village of Woodbury Tax Maps as Section 218, Block 1, Lot 42.2.

Mr. Nick Ceasar stated he will be discussing the application on behalf of the applicant; he also stated Mr. Choi is present and the owner of the property and he is present as well. Chairwoman Ungerer stated that this application is an interesting piece of property, she also stated she has a letter stating that Mr. Ceasar has authority to act on behalf of the applicant and that in her possession is a building permit for a house and a barn; however, the application is just for the house. Mr. Ceasar stated that the application is for both structures, and they both appear on the site plans. Chairwoman Ungerer then stated that on Route 32, the applicant has 81.75 feet of frontage and when the unpaved road is taken back to where the house is, there is a lot more frontage and the property has a greater width. Mr. Ceasar stated there is lot of bottleneaking and irregularities in the 15-acre property with the rear yard of the property being 630 feet. He then stated the majority of the property is a wetland that they had delineated in October, he then stated they had the property re-surveyed so the current wetland location that is displayed is the most accurate as per the NYS DEC. He then stated that there is a large swath of area that is realistically could be developed it is just restricted by the zoning code. Mr. Ceasar then shared the proposed site plan to the board and did a brief overview of the property’s boundaries showing the board through google maps. He stated there is a significant plantation buffer between the two properties and 9 months out of the year the property can not be seen by Route 32 or the adjoining properties due to the tree coverage. He then stated that between the zoning setbacks, wetlands, and municipal setbacks the buildable area is a significant amount but is constrained by the bottleneaking entrance. He then stated after speaking to the municipal engineer consultants it seems that this property is within the sewer district and would result in sewer connections, pending building department approval; he also stated that there is a potential for a well on the property. He then stated that due to the unique size of the lot, the applicant is looking to place the house and barn in the location presented so he could do some farming. He then showed multiple pictures of the vacant property.

A. Zoumas asked Mr. Choi how long he has owned the property; Mr. Choi stated 4 years. He said in the past four years he planted some fruit trees and a vegetable garden, but there is no water or electricity, so it was difficult to make the plantings work. Mr. Ceasar stated that this lot was part of a bigger subdivision that was approved in 2014, in which this lot was deemed unbuildable, and the current property owner built the lot under the assumption that it was in fact buildable. A. Zoumas asked why it was purchased with the assumption that it was buildable even though it was subdivided and deemed unbuildable. Mr. Ceasar stated that it was conveyed to the current owner that it was a buildable lot. Mr. Choi stated that the previous owner tried to build a spa using this area, but it was going to cost too much to build, and the land was then abandoned for 10 years. Attorney Naughton stated the two-lot subdivision created lots 14.1 and 14.2 and it did not involve this parcel. Chairwoman Ungerer stated that if the applicant did not have that narrow section by Route 32 this would be considered a buildable lot. K. Abrams stated that the board gave a variance to a similar lot on Smith Clove Road that had the same hardship. A. Zoumas asked about the driveway and if it would move or be improved. Mr. Ceasar stated it would be improved a little, but it currently works as a driveway and Mr. Choi’s Sudan fits through.

K. Abrams, voiced concern with the property being close to the town wells, if Mr. Choi plans to put a big farm in his backyard with the use of pesticides and fertilizers and the aquifer being right underneath this property that would be detrimental to the residents of Woodbury. Mr. Choi stated he wants to plant organic lavender. Mr. Ceasar stated this would not be a commercial farm, it will be a family residence with a small garden in the back. Attorney Naughton stated that the land might be subject to the water quality overlay district and certain activities may be restricted. She then stated if the applicant gets a variance, he will have to get a building permit and single-

family residence are subject to a water quality overlay district review. Mr. Ceasar stated that he believes this discussion is beyond the scope of what variance is being asked. Attorney Naughton stated these questions are appropriate, due to the discussion of this property becoming a farm. A. Zoumas informed the applicant that the board appreciates and understands the problem with variances, he then stated that a variance goes with the property, so the board has to do its due diligence in making sure everything is copasetic, and that is why the board analyses everything.

A motion was made by Chairwoman Ungerer, seconded by K. Abrams to carry over the public hearing until the meeting in February waiting for the 239 from the county. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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|----------------|------|---|--------------------------------|
| ADOPTED | AYES | 4 | Ungerer, Abrams, Brady, Zoumas |
| | NOES | 0 | |

6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings

8. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by C. Brady, to adjourn the meeting at 9:23 PM.

| | | | |
|----------------|------|---|--------------------------------|
| ADOPTED | AYES | 4 | Ungerer, Abrams, Brady, Zoumas |
| | NOES | 0 | |

9. Attorney Client Session

Jessica McClennan, ZBA Secretary