

Minutes of the Zoning Board of Appeals Meeting held on April 13, 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; Tara Burek, Christopher Graziano, Village Board Trustees.
Christopher Gerver, Planning Board Chairman; Phil Grealy, Village Traffic Consultant

Chairwoman Ungerer opened the meeting with the pledge of allegiance and introduced the Board and stated the next meeting will be on May 11, 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 March 9, 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. Action on Decisions: N/A

4. 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 Board had gone over the square footage and signage and the applicant did not need any relief for signage due to the amendment to the application. The square footage was also reduced in size, but the applicant has requested that the Board still consider the original request. She then went on to say the Board at the previous meeting requested to have the Village Traffic Consultant at this meeting to discuss the traffic in the area. Chairwoman Ungerer then introduced Mr. Phil Grealy as the Traffic Consultant for the Planning Board. Mr. Grealy gave a brief description of the application when the applicant was in front of the Planning Board.

He stated that the applicant submitted a traffic study in March of 2021, which was reviewed with a whole series of comments and questions from the Planning Board, he then went on to say that he had provided an additional memo asking for additional information and also getting input from the NYS DOT. They requested additional information from other Beer World facilities with how they deal with parking and traffic access and what types of improvements might be needed for the site. He stated the applicants Engineer responded to him January of this year and he in turn responded back with additional comments in March of 2022 with additional comments and questions and stated that Beer World still needs to submit a response to the March memo. In the March memo there were several issues related to traffic, the first being that the applicant did a traffic study from two separate existing Beer Worlds and averaged out the two, by taking the larger store and analyzed that it is apparent that there would be a significant increase to the traffic in the area. Secondly the traffic consultant asked that they show a reconstructed driveway plan on the site and where the driveway would be in respect to the proposed driveway of the hotel across the street, and comments from the DOT in which they did supply. The third is that the proposed hotel is requesting that parts of Route 32 be improved and widened with a turning lane to extend past the hotel and into the Beer World parking lot. Mr. Grealy then stated the DOT given examples of

where a light would be placed however, they have not made any promises to do so and stated would consider it in the future when other projects get approval. The benefit of the light would be for pedestrians and traffic to be able to make a left turn from the sideroads. He then stated that the application would require sixty-two parking spaces based on the code, where the application itself only has fifty spaces. He then stated the applicant would have to put a permit in with the DOT to receive a permit to widen the road and would most likely have to dedicate some land to the state in order to accommodate the widening and the sidewalk improvements. Chairwoman Ungerer asked if the applicant was responsible to get the road permit themselves. Mr. Grealy stated the applicant is responsible to get a highway work permit from NYS DOT. He then went on to say there was a conceptual approval from the DOT for widening and providing a turning lane at the Turner Road intersection if the hotel project received their approvals. In the January memo Beer World stated that they would do the improvements for the widening of the road if the hotel had not done so prior to. He then went on to say the Village could make that a condition of approval to make sure that the improvement was in place to accommodate the traffic.

The Board then discussed in length the turning lanes and allowances of the proposed hotel to the east of this project and if the access points would allow a right turn in and a right turn out. R. Bruce asked if Route 32 would need a U-turn option, Mr. Grealy stated there would be no need for that due to the option to make a U turn in the proposed site. Mr. Grealy then stated about 75% of the traffic for the proposed hotel would be coming from the South.

Chairwoman Ungerer asked if anyone had anything further to say, the public did not as well as the applicant's representative.

Attorney Naughton stated the Board previously reviewed the full environmental form part two and had expanded it to include part three; in which the Board requested the applicant to expand their response on ground water. Attorney Naughton went on to say she received a letter from the Village Engineer, just this evening stating the use of ground water could have a significant impact. She went on to say that this proposed action may require a new water supply well. Due to the Village having a Water Moratorium in place the Engineer will have to receive actual data of similar stores for the water and sewer that is used and not a conservative estimate. She also stated that prior to construction the Water Department would have to weigh in their opinion.

Mr. Grealy wanted the record to reflect that in a memo dated January 27th from DTS Provident, the applicant committed to providing a left turning lane on Route 32 if the proposed hotel does not proceed with their application.

A motion was made by R. Bruce, seconded by C. Brady, to keep the public hearing open to the public and carry over the application to May 11th meeting. The Board requested that the applicant submit all forms and documents needed by the Village Engineer and the Traffic Consultant prior to 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 stated he was present on behalf of the applicant. Chairwoman Ungerer stated that the public hearing was carried over last month so that the applicant could submit documentation. She then went on to say that an affidavit was submitted as well as a listing of income and asked if there were any other documents that the applicant wishes to submit. Mr. Gailey then stated he has nothing further to submit in writing and he would be willing to summarize the affidavit if the Board wishes him to. He stated that the affidavit shows financial information that the wedding events are both integral to the bed and breakfast use and by law also an accessory to that use. He stated due to those points the notice of violation is not accurate where it states that a wedding venue is a commercial business that is outside the special permit. He then asked what the building inspector

observed where he believed that a prohibited commercial business was going on there. Chairwoman Ungerer then asked how it could be both if an accessory use is really subordinate and incidental to the primary use, how can it also be an integral use. Mr. Gailey stated factually its integral; legally under case law wedding events have been held to be an accessory to bed and breakfasts. Mr. Gailey then stated he believes this is an accessory and under village code accessory uses are considered to be a part of the principal use. Chairwoman Ungerer then requested the case law that he was referring to since he stated last month, he would submit it to the Board. Mr. Gailey stated he may or may not have submitted the Brophy case, where just last year wedding events are permitted as an accessory use to bed and breakfasts. He then stated that in addition the violation states that there was a prohibited restaurant being operated on the site and Mr. Pulver's affidavit addresses that there is a definition in the Village Zoning Code and what is happening at these weddings events is not what falls under the Village Code's definition of a restaurant. He also stated the violation order states a prohibited public assembly; in which he says no public assembly had ever occurred there. He went on to say that there are no factual observations in the notice of violation and legally speaking none of these so-called commercial enterprises or commercial businesses were being conducted on the property and requested that the Board rescind that notice of violation.

K. Abrams stated that it seemed like the Board is dealing with two different laws. One being chapter 243 which is outside the authority of the Zoning Board of Appeals. Attorney Naughton stated yes that is outside of purview and authority of the ZBA, she then went on to say that the problem that the Board is faced with right now is a notice of violation, everything else that Mr. Gailey is arguing is outside of the Board's purview. The Board is only reviewing the violation notice. K. Abrams asked why chapter 243 was even brought up and the Board should just push that to the side since it does not pertain to this Board and in our law books 14 Castleton Drive is in the R1 zoning and is a single-family house. Chairwoman Ungerer stated the Board has to decide whether it is inside or outside its allowed use. Mr. Gailey stated this house has a special permit approval for a bed and breakfast and is not simply a single-family residence. K. Abrams asked if breakfast is the only meal served by the applicant, Mr. Gailey said yes. K. Abrams, then stated he has been thinking about this for a whole month and feels that the Village needs small venues like this; however, the applicant needs to go about it the right way by getting zoning and planning Board approval, making sure there are emergency preparedness which would include lighting, parking, and smoke detectors. Chairwoman Ungerer stated there are special permitted outlined conditions in the Bed and Breakfast. K. Abrams stated, yes for the bed and breakfast, but not if the applicant wants to have 50-75 people over for dinner. Chairwoman Ungerer then stated that the Boards job today is to decide if what Mr. Pulver is doing is outside of what he is allowed with the Special Permit he was given. K. Abrams, then expressed sympathy to all those who have scheduled and or pending events there but at the same time expressed the need to do things right and it is not at the current moment in time. Mr. Gailey stated that would be state building code and fire prevention issues, not zoning code issues. K. Abrams stated it needs planning Board approval, Chairwoman Ungerer stated the planning Board were the ones that issued the special permit for the bed and breakfast. C. Brady stated the Board received the affidavit and were able to review and digest the information, which was extremely useful.

Chairwoman Ungerer then asked if any of the members of the public had anything to say and if the applicant had anything further to submit. With no further comments from the public, applicant or the Board, a motion was made by R. Bruce, seconded by C. Brady, to close the public hearing and deliberate at the end of the meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

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

C. Clark –

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.

Chairwoman Ungerer stated the applicant is in front of the Board about a 6-foot fence that has already been erected around the whole property that is located on a corner lot. Mr. Clark stated yes and apologized. He asked that the Board look at his submittals; drawing attention to the pictures that he submitted. He stated there was a living fence there prior to him adding the fencing and the living fence abutted Route 32 going south. He then stated he cleared that with the premise behind the regulation being that people coming from Ridge Road onto Route 32 shall be able to visually see oncoming traffic going down Route 32 from the North down to the South. Without the fence the clearing of the living fence is now more accessible to anybody driving from Ridge Road from Route 32, he then went on to say that even though he has a corner lot his front yard is Route 32. He then stated even though the fence is six feet high the depression of the ground where the fence has been situated is far enough back for the right of way it actually brings it down to less than 6 feet. He stated since the house is a two-family rental, the family on the bottom is utilizing the backyard for their dogs and he knows from experience that a four-foot fence would not keep a dog in. He stated the fence gives his renters protection especially from trucks moving south from the quarry when rocks and dust fly out of the trucks. Mr. Clark apologizes again while stating he understands there is some kind of violation fine but based on what the Board is looking at, he hopes they grant the variance for him.

Chairwoman Ungerer asked Mr. Clark why he cleared the living fence; Mr. Clark stated bees were coming through and it was hard to keep up with the maintenance of it. He also stated he has been renovating the house, re-doing the roof and the front porch. K. Abrams asked why the applicant did not just stop at the back of the house and make that where the fence ended. Mr. Clark stated the house is located on an obscure property type and there is no way he can close off the backyard when the side yard is still considered a front yard. Mr. Clark then stated that this fence does not impede on any one's line of sight from Ridge Road or Route 32. The Board and Mr. Clark discussed his "two front yards" in great length. Mr. Clark pleaded for relief, requesting the Board allow him the 6-foot fence for protection not only for the family but for the family dogs as well. Mr. Clark then asked what he could do to have the Board allow him to keep the fence. The Board requested that the fence be 50% solid. Mr. Clark stated he does not understand what the point is to have a fence that is see through. He then stated he could work with the Building Inspector to design spots on the fence where he could cut a slab though, so the dogs do not get through the fence.

Attorney Naughton stated the Board is here to discuss section 146-5b and 146-7a of the Village code the first code states that no fence shall be more than four feet in height in any front yard and side yard. She stated Mr. Clark does have two front yards, being that he is on a corner lot. The second code states 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 percent solid. If Mr. Clark is saying that he might not be open to a fence that is uniformly less than 50% solid, then that is a conversation Mr. Clark must have with the Building Inspector. She then informed Mr. Clark he may want to ask that the public hearing remain open when more information will be received from the Building Inspector. She then informed Mr. Clark that at this moment he has erected a fence that does not comply with the provisions, so it is in violation of the code. The Board is not here to explain the purpose behind the code, only to deal with the request for a variance from that code.

Mr. Clark stated he will follow up with the building inspector on how to mitigate the situation and allow him to keep the fence up. The Board then asked that Mr. Clark submit the requested information at least seven days prior to the next meeting. C. Brady asked what the height of the fence was in relation to the grade of Route 32. A. Zoumas wants to know why he stopped the fence where he did and did not just continue straight to Route 32. Mr. Clark apologized again, and stated he was simply voicing his opinion saying the code seems obvious that the purpose of the regulation is for traffic, and he feels as though he mitigated that. He stated unfortunately he made a mistake because he spoke to the building inspector about building a fence, but he was unaware that he needed a permit to do so. He stated his house is located on a hill with a gully with a door in the basement of the house that opens up into the yard and its on the corner of what he had to close in. A. Zoumas stated his concern is the sight lines on Route 32 with the fence being 100% solid and wondered if the applicant could push it back for more visibility. Mr. Clark stated the living fence that was there prior to the new fence had zero visibility, he then stated he cleaned it up and put a beautiful fence up instead. Mr. Clark then stated he knew he was wrong and should have asked permission first. A. Zoumas informed Mr. Clark that all of the questions that are being asked are

questions that are always asked of someone who has requested a variance and it is part of the Board's decision-making process. Attorney Naughton informed Mr. Clark that the Board is considering this application as if the fence is not in there right now. Mr. Clark then interrupted Attorney Naughton by thanking the Board multiple times and informing them that it looks a lot better now that he has cleaned it up.

With no further comments from the public and the Board, a motion was made by A. Zoumas, seconded by C. Brady, to keep the public hearing open until next month's meeting. A. Zoumas requested and stressed that any documentation that is submitted on behalf of the Boards questions should be submitted at least seven days in advance. 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. Aponte –

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 called upon the applicant and was informed by Attorney Naughton that the applicant was signed on and present at the beginning of the meeting; however, since the beginning of the meeting he has not returned or attempted to sign back on. She then opened it to the public, no member of the public had any comments.

A motion was made by K. Abrams, seconded by C. Brady, to keep the public hearing open to the public and carry over the application to May 11th meeting giving the applicant a chance to appear and explain his request. 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. Building Inspectors Report:

6. Deliberations on closed Public Hearings:

A. 14 Castleton Drive LLC –

Chairwoman Ungerer stated the applicant is contending that these events are part to the bed and breakfast. The applicant is stating that the former building inspector gave him permission to hold these events. The Board has stated that Chapter 243- Public Assembly Law has nothing to do with what this Board has to decide. She then stated the Board needs to decide whether it exceeded the limits of the special permit or if it was in the purview of the special permit. Chairwoman Ungerer then stated that the special permit that was received had a multitude of conditions which included some of the following:

1. Parking shall be at the rear of the main house
2. Inform guests that rattlesnakes were on the premises
3. Need to be informed where the fire hydrants are located
4. Public access would only be through Castleton Drive unless there was an emergency
5. Lighting for outdoor amenities will be switched on only when its being used
6. There was a number of candles that could be used
7. The septic tank for the ballroom had to be pumped out prior to certificate of occupancy in 2012
8. The home must remain owner occupied
9. Only meal that may be offered to quests is breakfast which would be served between the hours of 7am-12pm (M-F) 1pm on weekends
10. The public restaurant is not to be approved as part of the resolution
11. Municipal waste is not available – must contract with someone privately – no dumpster allowed on site
12. Each year it needs to be renewed since it is a special permit

Chairwoman Ungerer then asked the board if wedding venues and parties or whatever catering events he is holding at this location is outside the purview of the bed and breakfast. C. Brady stated that part of the violation from the building inspector that he does not agree with, is where it says he has a restaurant on site. There is no preparation of meals by Dr. Pulver himself and it seems like they are having outside vendors providing food. Chairwoman Ungerer agreed and stated it seems like they hire a caterer and Mr. Pulver himself is not selling food. C. Brady stated he is not preparing the food, other than breakfast, Chairwoman Ungerer stated the kitchen there is exceedingly small. C. Brady stated there is no violation that he sees in context to a restaurant, and he would have to disagree with that portion of the violation. A. Zoumas stated that in Dr. Pulver's affidavit it is stipulated that the wedding package is integral, and it does not negate that one depends on one or the other and he feels that it is important to state that an accessory use is something different. The special permit allows it to operate as a bed and breakfast, he feels that it is important to make that distinction. Chairwoman Ungerer stated she agreed and with the income supplied by the applicant in which it states he receives \$37,000 for the bed and breakfast and \$56,000 for the wedding package and he is getting more money from what he is calling an accessory use than what he is getting for the primary use. R. Bruce stated she knows people that have bed and breakfasts that can be used for wedding events and at those events it is customary to up charge for a wedding package. Chairwoman Ungerer stated she just assumed the room would be charged the same way since a person is simply renting the room regardless of if they are getting married or not. She then wondered if the wedding package consisted of the rental of the ball room and or catering since he claims that the party is paying for the catering themselves. She then wondered what the miscellaneous income of \$13,000 came from since it was not specified.

Mr. Gailey then stated he could answer the question. Attorney Naughton stated he could not since it is the board's time to deliberate, and the public hearing had been closed. She stated if the board has additional questions they can certainly ask, but no additional information should be submitted at this time, unless the board asks for it. Mr. Gailey stated he does not agree and that he is not a member of the public, he is representing the applicant, so he felt that he was entitled to be permitted to speak. Attorney Naughton stated that if additional information were to be submitted the public hearing would have to be reopened so the public could comment on the added information. She then stated that the Board, at the end of public comment asked if the applicant had any additional information to provide, the applicant did not, so the public hearing was closed. Mr. Gailey stated he had no objections to keeping the public hearing open. Attorney Naughton stated the public hearing had been closed, apologized to Chairwoman Ungerer, and requested that she continue with the Board's deliberations.

Chairwoman Ungerer stated that on page 2 of Dr. Pulver's affidavit it states that it is an integral part of the bed and breakfast operation and results in the rooms being rented by the wedding party. It allows family and friends to use the ballroom and grounds for related gatherings. Chairwoman Ungerer stated she does not see how it is an accessory use if it is an integral use, an accessory use is something that is smaller than a primary use. Mr. Gailey then interjected again, causing Attorney Naughton to ask him to stop commentating and explaining to him that if the board has a question, they will direct it to him. Mr. Gailey stated he did not accept that.

Chairwoman Ungerer stated she agrees with C. Brady in regard to the restaurant. She then asked the board how they felt about this being a commercial business being that Dr. Pulver advertises on Facebook as a place for a wedding venue. She stated she knows of a few local events but is unaware if he charges people for them.

K. Abrams stated the board needs to determine whether Building Inspector Michael Panella's violation that he wrote is justifiable. He then went on to say that he agrees with C. Brady that no food is being cooked there out of the scope that was allowed for the bed and breakfast. However, the special permit was for the operation of a four-room bed and breakfast whereas the only meal served to guests of the bed and breakfast will be that of breakfast. He went on to say that he feels that it is a fantastic opportunity for people who want a small venue; however, Dr. Pulver is going about it the wrong way. He stated he needs to follow the proper procedures, and there is currently no governing or inspections being done, in which he feels puts a lot of liability onto the Village.

Attorney Naughton reiterated what the board needed to discuss and the argument that the applicant is stating that the violation issued by Building Inspector Michael Panella is not a violation because they feel these weddings are an accessory use to the Bed and Breakfast. C. Brady thanked Attorney Naughton and stated that there is a fairly comprehensive list of accessory uses for every zoning district, there is no mention of anything like this, nor is it a specifically mentioned item. He stated that the board has dealt with specific accessory uses before

like horses, cows, goats, and pigs being accessory uses – wedding events and indoor public gatherings are not mentioned as an accessory. He then stated on that basis he feels the violation order should be upheld. He stated if the applicant seeks redress, it should be done through the Village Board; where the applicant could request the Village Board to change modifications to the code or grant specific things that would create this accessory to be part of a Bed and Breakfast special permit. Chairwoman Ungerer agreed with C. Brady stating it is not permitted nor can he expand a non-conforming use unless what he wished to expand was less than what it was intended to be.

A motion was made by C. Brady, seconded by Chairwoman Ungerer, to authorize Attorney Naughton to draft a decision consistent with the Boards discussion of this application. The Board will then vote on a written decision at next month's meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

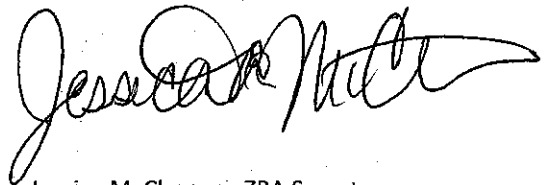
ADOPTED BY ROLL CALL AS FOLLOWS:

Chairman Ungerer:	AYE
Board Member Abrams:	AYE
Board Member Brady:	AYE
Board Member Bruce:	AYE
Board Member Zoumas:	AYE

7. Adjournment

With no further business to discuss, a motion was offered by K. Abrams, seconded by R. Bruce, to adjourn the meeting at 9:05 PM.

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



Jessica McClennan, ZBA Secretary