

**KALTER, KAPLAN, ZEIGER & FORMAN**

ATTORNEYS AT LAW

6166 STATE ROUTE 42, P.O. BOX 30  
WOODBOURNE, NEW YORK 12788

IVAN KALTER  
JEFFREY KAPLAN  
JAY L. ZEIGER  
TERRY S. FORMAN

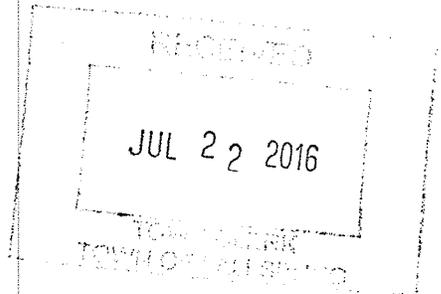
TEL. (845) 434-4777  
FAX (845) 436-8156  
Email: [kkz@hvc.rr.com](mailto:kkz@hvc.rr.com)

ELLENVILLE OFFICE  
47 NORTH MAIN STREET, P.O. BOX 186  
ELLENVILLE, NEW YORK 12428  
TEL. (845) 647-4110  
FAX (845) 647-6232  
Email: [jkaplan.kkzf@gmail.com](mailto:jkaplan.kkzf@gmail.com)

July 22, 2016

Ms. Donna Akerley, Town Clerk  
Town of Fallsburg Town Clerk's Office  
PO Box 2019  
19 Railroad Plaza  
South Fallsburg, New York 12779

**RE: 290 Laurel Ave LLC**



Dear Donna:

Enclosed is the original and six copies of a Petition for Relief from the Town of Fallsburg Moratorium law.

Please let me know when the public hearing will be scheduled.

I will be out of the office from August 11, 2016 to August 16, 2016. I would appreciate it if the public hearing is not scheduled during that time period; a few days before or after would be beneficial to me.

Thank you.

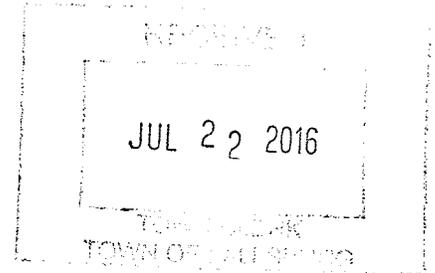
Very Truly Yours,

JAY L. ZEIGER

JLZ/dm

Enc.

cc: Mr. Hillel Rosenberg (via email with enclosures)  
Paula Kay, Esq. (via email with enclosures)  
Ms. Mollie Messinger (via email with enclosures)



State of New York - County of Sullivan  
Town of Fallsburg - Town Board

=====  
In the matter of the Application of /  
**290 LAUREL AVE LLC** /  
/   
for a Hardship Variance from the Town's/  
Residential Moratorium Local Law /  
=====

**Verified Petition for Relief from  
Moratorium**

The Petitioner, 290 LAUREL AVE LLC, by its attorneys, KALTER, KAPLAN, ZEIGER & FORMAN, hereby submits this Petition for a hardship variance from the application of the Town's Residential Moratorium Local Law (the "Moratorium Law"), and in furtherance thereof, respectfully alleges as follows:

1. The Petitioner is the owner of a parcel of real property located off of Laurel Avenue in the Town of Fallsburg, known as Town of Fallsburg SBL 36-1-33.1. Petitioner is also the contract vendee with respect to a portion of a second parcel, Town of Fallsburg 36.-1-33.7.

2. Parcel SBL36.-1-33.1 was acquired by the Petitioner on July 1, 2015, for the sum of \$360,000.00. The purchase price to the Petitioner for a portion of Parcel SBL 36.-1-33.7 is \$64,000.00, all of which was paid by the Petitioner on November 10, 2015. After approval of the Project hereinafter described, now pending before the Town of Fallsburg Planning Board, Petitioner will be able to complete the tax lot consolidation which is hereafter described. Accordingly, the total purchase price to the Petitioner for both parcels, all of which was paid in 2015, is \$424,000.00 (\$360,000.00 plus \$64,000.00).

3. Parcel SBL 36.-1-33.1 is approximately 9.39± acres. The portion of Parcel SBL 36.-1-33.7 to be acquired by the Petitioner will be approximately .61± acres which will be subdivided from said parcel and then consolidated with parcel 36-1-33.1. Accordingly, when the 2 parcels are consolidated, they will total at least 10 acres, which satisfies the 10 acres required for a duplex development pursuant to the Town of Fallsburg duplex development law. The Project that is hereinafter described (the "Project") and that is pending before the Town of Fallsburg Planning Board (the "Project") is a duplex development consisting of 22 houses.

**THE PROJECT**

4. The Project pending before the Town of Fallsburg Planning Board is a duplex development pursuant to the Town of Fallsburg Duplex Development Law. The Project consists of new construction of 11 duplex buildings representing 22 dwellings. The Project includes community facilities, including a swimming pool and a community building.

5. Access to the Project will be from Laurel Avenue and not from Route 42.
6. The Project is a relatively small project (22 dwelling units) and is intended to be occupied by friends and family members of the principals of the Petitioner, all of whom have been renting bungalows in the Town of the Fallsburg for the past several years. See letter from the potential owners annexed hereto as Exhibit "A".
7. The entire Project is located within the Town water and sewer districts, so no district extensions will be required.
8. No third party approvals or variances are required for the Project, the only approval needed is that of the Town of Fallsburg, Planning Board - lot consolidation/improvement, site plan and special use permit.

### **PROJECT HISTORY**

9. The Project has been pending before the Town of Fallsburg Planning Board since \_\_\_\_\_, 2015. A detailed history concerning the progress of this Project through the Planning Board process is outlined in the report of Kirk Rother, the project Engineer, which is annexed hereto as Exhibit "B". Copies of all of the submittal documents outlined in the report of Kirk Rother should be in the files maintained by the Town Planning Board, and, upon request, any or all of such documents will be provided by the Petitioner.
10. As set forth in the report of Kirk Rother, Project Engineer, the Project has involved several Planning Board meetings, including public hearings, and involved numerous meetings with staff involved with the Project, including the Town Engineer, the Town Planner, the Town Code Enforcement Officer, and the Town Planning Board attorney. A detailed site plan has been prepared by Kirk Rother and reviewed extensively by the Town Planner, the Town Engineer, and Town Code Enforcement Officer, and the Town Planning Board. The comments of the foregoing have been incorporated into the most recent draft of the site plan, and as of the date of this Petition, a site plan has been submitted which in the opinion of Kirk Rother, the Petitioner's engineer, has satisfied all of the requirements of the Town consultants, including the Town Engineer, Town Planner, Town Code Enforcement Officer and has incorporated all of the requests of the Town Planning Board. All reports requested by the Town Planning Board have been submitted, reviewed, and been determined to be satisfactory.
11. The Project has also undergone extensive SEQRA evaluation. A long environmental assessment form was submitted and reviewed. A part two environmental assessment form was completed and accepted by the Planning Board. The part three to the environmental assessment form which determines the manner in which environmental concerns would be mitigated will not be necessary, as no material environmental concerns have been identified by the Planning Board. In addition, SWPPP documents have been submitted for review by the Town Engineer.

12. Essentially, as of today's date, the Project is in a condition where it is at or near the approval stage, which approval would likely happen at the next Planning Board meeting in which this Project would be discussed.

### **FINANCIAL HARDSHIP**

13. As discussed in Paragraph "2" above, the Petitioner acquired the two parcels which are the subject of the Project for total acquisition costs of \$424,000.00. In addition to the foregoing, as detailed below, the Petitioner incurred additional expenses in the amount of \$105,000.00. Thus, Petitioner's total investment, to date is \$529,000.00.

14. In addition to the purchase price for the properties, the Petitioner has incurred significant additional expenses in connection with the Project by way of engineers, attorneys, consultants, and fees to the Town, including payments to the Town Planning Consultant and the Town Engineer. Annexed here to as Exhibit "C" is a schedule of all of the costs and expenses incurred by the Petitioner, to date, the total of all of the foregoing being \$105,000.00.

15. In order to complete the development through the approval process, additional costs and expenses will be incurred, although it is anticipated that the \$105,000.00 that the Petitioner has paid, to date, represents most of the costs and expenses that will be required inasmuch as the Project is at or near the final approval stage.

16. In addition to the cost and expenses already incurred by the Petitioner, as described above, the Petitioner has also incurred finance charges with respect to funds paid to purchase the property, loss of investment income with respect to the funds paid for the purchase of the property and for the cost and expenses of seeking approval, and lost investment opportunities. In addition, real estate taxes have been incurred since the acquisition of the property, and will continue pending approval of the Project and development and sale.

### **RELIEF REQUESTED**

17. For the reasons heretofore set forth, the Petitioner is requesting relief from the Moratorium Law and requesting authority to complete the development of the Project.

18. As set forth in this Petition, the approval of this Project is at or past the final stages. All of the reports and site plan requirements of the Town of Fallsburg have been met and submitted to the Planning Board and the Planning Board consultants and they have substantially approved all of the foregoing. The only remaining condition is a formal negative declaration and approval by the Planning Board. Inasmuch as all of the conditions to obtain the foregoing have been satisfied, it is expected that these approvals will be obtained at the next Planning Board meeting. Moreover, there are no third party approvals that are needed for this Project that have not already been obtained. Thus, upon Planning Board approval, this Project is "shovel ready". Indeed, construction of this

Project can begin sooner than many other projects that have previously received conditional approval (subject to third party approvals) and are not subject to the Moratorium Law.

19. The Petitioner has also demonstrated a substantial financial hardship mandating that this Project be allowed to proceed notwithstanding the Moratorium Law. To date \$529,000.00 has been paid for property acquisition costs and development costs, including engineers and town consultants.

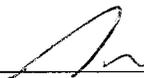
20. For all of the reasons set forth herein, it is respectfully submitted that the Petitioner has demonstrated that a significant hardship would be incurred, financial and otherwise, in the event that the Petitioner would not be allowed to proceed towards completion of this Project, and that, in such event, Petitioner would suffer irreparable injury of no less than \$529,000.00.

WHEREFORE, it is respectfully requested that the Town of Fallsburg grant the Petitioner relief from the stay of development provided for by the Town of Fallsburg Residential Zoning Moratorium Law and that this project be allowed to proceed through the approval process of the Town of Fallsburg Planning Board and any other Town Boards which may require approval for this Project, including the Architectural Review Board and the Building Department.

Dated: Woodbourne, New York  
July 28, 2016

290 LAUREL AVE LLC

By:



Shulem Kessler, Managing Member



July 5, 2016

Dear Town Supervisor Steven Vegliante  
And Board members of town of Fallsburg

Re: 290 Laurel Ave Project – 22 units

Extreme Severe Hardship Petition Of Homeowners

I am writing on behalf of 22 individual seasonal residents living in the Town of Fallsburg for over a decade, after living here seasonal for so many years and after loving the town we decided that this is a good place to buy their second home, we were searching for a property that would accommodate all of us together as a group.

We found this property on Laurel Ave. which was in an area we liked not close to any main highway roads, we went into contract with the Klein family who owned this property for decades in the summer of 2014, the subject property consists of 9.39 acres on Laurel Ave, and we closed the property on July of 2015 for the purchase price of \$360,000 to develop our winterized houses, only for our small group of 22 people, which the zoning at that time allowed us atleast the amount of units we needed, this project was not advertised or announced in public.

We did realize at that time that we need 10 acre for a duplex development so we signed an additional contract of purchase price of \$64,000 with the adjacent property owner Taanig Inc. to transfer 0.61 acre to enlarge our property to a total of 10 acres which is required for a duplex development.

We then started the project and investing time and money as will be explained in the petition and in the letter of our engineer.

As of July 2016 we the individual residents have spent/invested in total of \$528,000 including buying the land and planning process, which means that each of the 22 residents will be paying nearly \$25,000 for their future second home before starting construction, there is no way we can get our money in return if we cannot use it as the zoning was when we bought it.

Exhibit "A"

In the letter of our engineer Kirk Rother, you will see the details of the final stage that we were when the moratorium went in effect and we've spent already all time and money needed and all documents were submitted etc. (Planning board, ARB, town engineer etc) and that we agreed to build a side walk on the whole frontage of Laurel Ave, we were ready to negotiate with the next door neighbor to offer for the town a piece of property to ease traffic, and we did accommodate any changes to the site plan that we were advised by the town planner town engineer and town inspector and planning boards lawyer, and now we were rejected of being further discussed at any planning board or ARB meeting.

We now beg the town to understand the extreme severe hardship these individuals that saved their limited amount of money to buy this house, for most of us it will be the first owned home, and please don't make this group break up and go thru such a financial hardship, let us be be relived from the moratorium that we were hit with very hard without any notice when we bought this and invested the money, and get us our final approval and building department permits for the project as soon as possible.

Thanks in advance for your consideration.

---

Shulem Kessler – 290 Laurel Ave LLC

**Jacob Kessler**  
*Laurel Ave Fallsburg*  
**Leibish Kessler**  
*Laurel Ave Fallsburg*  
**Yoel Low**  
*Laurel Ave Fallsburg*  
**Hillel Rosenberg**  
*Laurel Ave Fallsburg*  
**Mendy Berkowitz**  
*Laurel Ave Fallsburg*  
**Joel Berkowitz**  
*Laurel Ave Fallsburg*  
**Joel Friedman**  
*Laurel Ave Fallsburg*

**Lazer Friedman**  
*Laurel Ave Fallsburg*  
**Mendel Gradt**  
*Laurel Ave Fallsburg*  
**Berish Yungreiz**  
*Laurel Ave Fallsburg*  
**Joel Spilman**  
*Laurel Ave Fallsburg*  
**Joel Feldman**  
*Laurel Ave Fallsburg*  
**Joel Rubin**  
*Laurel Ave Fallsburg*  
**David Schwartz**  
*Laurel Ave Fallsburg*

**Yitzchok Klein**  
*Laurel Ave Fallsburg*  
**Yoel Kleinberger**  
*Laurel Ave Fallsburg*  
**Joel Freund**  
*Laurel Ave Fallsburg*  
**Chezky Landau**  
*Laurel Ave Fallsburg*  
**Wolf Landau**  
*Laurel Ave Fallsburg*  
**David Tabak**  
*Laurel Ave Fallsburg*  
**Herman Fekete**  
*Laurel Ave Fallsburg*

## 290 Laurel Ave Chronology

May – 2015: Contacted by the applicant about possible development of the 290 Laurel Avenue property. Maps of the property not available at the time. Performed preliminary zoning review. Boundary and topographic survey would be needed to prepare a site development plan.

July 30, 2015: Boundary and topographic surveys as prepared by a Licensed Land Surveyor were delivered by the Applicant. Authorized to prepare a conceptual development plan alternatives.

August – September 2015: Zoning analysis, slopes analysis, prepare multiple concept development plans with input from Applicant. Discussed need to secure additional acreage for Duplex development to bring total acreage to 10 gross acres as required by Code. Applicant would pursue options to acquire additional land.

September 17, 2015: Advised by applicant that adjoining property owner would agree to lot line change conveying additional acreage needed to 290 Laurel Ave. Advised applicant that a survey of the adjacent parcel would be needed for the Lot Line Change application and to finalize site plan concept.

September – October: Perform slope analysis based on topographic survey; prepare sketch alternatives assuming acreage would be secured from adjoining neighbors. Waiting on survey of adjoining property.

October 28, 2015: Received survey map of adjacent parcel.

November – December 2015: Finalize site development plan sketch; prepare Lot Line Change plat; prepare Planning Board application packet; Prepare Environmental Assessment Form.

December 30, 2015: Submittal to Planning Board for January 2016 agenda.

January 14, 2016: Planning Board appearance as new business. General sketch approval. Instructed to attend staff meeting to discuss some zoning issues. Need to obtain proxy statements for Lot Line change.

February 2016: Plan revisions. Dialog with applicant attorney regarding zoning: gross vs. net acreage, lot coverage calculations and slopes calculations.

February 18, 2016: Attend Planning Board Staff meeting. Discuss zoning related matters. Instructed to provide additional calculations and return to another Staff meeting.

March 2016: Perform additional calculations with regards to slopes and lot coverage. Add more detail to the plans. Plan revisions per staff meeting such as relocating shared dumpster. Pool location.

March 17, 2016: Attend Planning Board Staff meeting. Reach consensus with Staff about zoning analysis as relates to gross vs. net acreage, lot coverage and slopes calculations.

March 30, 2016: Plan revisions per staff meeting comments in weeks after staff meeting. Preliminary site plan design. Submit plans for April Planning Board meeting and Public Hearing.

April 14, 2016: Planning Board public hearing and discussion under Old Business.

May – June 2016: Detailed engineering design; Design road in plan and profile; Grading plan; sewer main and profile with rim and invert calculations; water main design; Driveway sight distance measurements; Erosion control plan; Drainage Analysis; Begin SWPPP preparation; Hire Landscape Architect for preparation of Landscaping Plan; Prepare Lighting Plan; Prepare construction detail sheets; Work with applicant on ARB submittal.

June 22, 2016: Submit application to Town of Fallsburg Architectural Review Board with color renderings of buildings and Landscape Plan prepared by Landscape Architect for July ARB agenda.

June 27, 2016: Submit designed site plan to Planning Board for July Planning Board agenda.