

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

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

August 10, 2016

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

AUG 11 2016

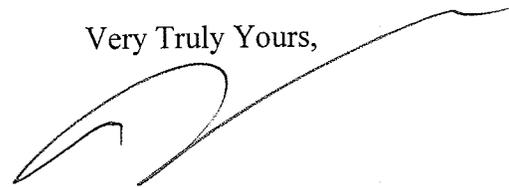
RE: Machne Ohel Moshe D'Krasna

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.

Very Truly Yours,



JAY L. ZEIGER

JLZ/dm

Enc.

cc: Mr. Hershey Fishman (via email with enclosures)
Mr. Abraham Berkovic (via email with enclosures)
Paula Kay, Esq. (via email with enclosures)
Ms. Mollie Messinger (via email with enclosures)

Served over the counter
by Danielle from Kalter,
Kaplan, Zeiger & Forman at
2:13 PM. on

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

=====
In the matter of the Application of /
MACHNE OHEL MOSHE D'KRASNA/
/
for a Hardship Variance from the Town's /
Residential Moratorium Local Law /
=====

**Verified Petition for Relief from
Moratorium**

AUG 11 2016

The Petitioner, MACHNE OHEL MOSHE D'KRASNA, 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 at 114 Lakehouse Road (Town Road 93) at the intersection of Claremont Road (Town Road 27) (the "Property"). The Property is known as Town of Fallsburg 29-1-4.1.

2. This Project has a long history with the Town of Fallsburg Planning Board. The initial application to the Town of Fallsburg Planning Board was submitted in the year 2006. The Property has been in front of either the Town Planning Board or the Town Board periodically since 2006, and during certain periods, the Property was active with respect to either the Town Planning Board or the Town Board. At other times, the Project was less than active, the primary reason being litigation, as hereinafter described.

THE PROJECT

3. The project that is proposed is known as Mountain Stream Villas (the "Project"). The Project consists of 93 dwelling units, consisting of 46 duplex buildings and one single family dwelling.

PROJECT HISTORY

4. The Project history from 2006 to 2009 is outlined in the Town of Fallsburg Planning Board tracking document, a copy of which is annexed hereto as Exhibit "A". As shown therein, the Project appeared on numerous occasions in front of the Planning Board during the years 2006, 2007, 2008 and 2009.

5. Although the Project continued in front of the Planning Board through the years 2008 and 2009, the Petitioner became involved in litigation, starting in October, 2007, from an entity called Clearmont Property, LLC ("Clearmont"). That entity alleged that it had a right of first refusal to purchase the Property, and that the Petitioner was not the rightful owner of the Property. As part of the litigation, Clearmont filed a Notice of Pendency against the Property, thereby rendering the

Property incapable of being sold except to Clearmont. The litigation is discussed in further detail in the letter of Ostrer & Associates, P.C. dated April 21, 2015, a copy of which is annexed hereto as Exhibit "B"

6. Notwithstanding the litigation, the Petitioner did continue to pursue many of the items that needed to be pursued as part of the development of the Project. Annexed hereto as Exhibit "C" is an outline of many of the items that the Petitioner pursued notwithstanding that litigation was pending. It should be pointed out that many of the items that the Petitioner pursued would be items that are normally pursued after conditional site plan approval has been obtained. In the instant circumstances, since the Petitioner was unable to continue to pursue obtaining site plan approval, the Petitioner, nevertheless, pursued many of the items that would be required to be pursued, with the expectation that at some point in time the litigation would be resolved in Petitioner's favor and that the Petitioner would then be allowed to pursue further development with respect to the Project. Indeed, by letter dated July 28, 2011, the Town Engineer, Keystone Associates stated that but for one remaining item, Keystone was prepared to sign the final site plan map and send it to the Town Planning Board Chairman for him to sign. A copy of this letter from Keystone is included as part of Exhibit "C" annexed hereto.

7. Unfortunately, the litigation became more complicated than the Petitioner had contemplated, and in the year 2009, the court reinstated several of the causes of action that were part of the litigation and agreed that potentially, Clearmont had the right to purchase the Property. It took from 2009 until October of 2014 to resolve these matters. The litigation is further discussed in the letter dated April 21, 2015 from Oster and Associates, PC, the attorneys that represented the Petitioner in connection with the litigation (Exhibit "B" annexed hereto). Accordingly, although Keystone (the Town Engineer) in 2010 indicated that the Project was ready for final approval, the Petitioner was unable to act in furtherance thereof due to the status of this litigation. Had the litigation not been pending, upon receipt of the Keystone letter, the Petitioner would have begun construction of the Project, and the Petitioner would not have been subject to the Moratorium Law.

8. Shortly after the litigation was resolved in December, 2014, the Petitioner retained Abraham Berkovic to assist the Petitioner in continuing development of the Project. The Petitioner also retained this law firm in connection with the foregoing.

9. The initial research determined that when the Town Zoning Laws changed in 2008, the Property, which had been located in an R-1 Zoning District, had been rezoned in such a manner so that the Project that the Petitioner had been pursuing prior to commencement of the litigation was no longer a viable project for this zoning district.

10. The Petitioner first attempted to have the Project reinstated by the Town Planning Board. However, the Planning Board indicated that the Project could not be pursued by the Planning Board because the Property was not properly zoned for the Project that was being pursued, and any prior approvals for the Project would have expired.

11. Inasmuch as the Property was not properly zoned for the Project that the Petitioner contemplated, during the month of June, 2015, the Petitioner filed a request for a use variance from the Town Zoning Board of Appeals.

12. In connection with the Petitioner's request for a use variance, the Zoning Board of Appeals conducted multiple meetings. A public hearing was held, and on several occasions the Zoning Board asked the Petitioner to provide additional information, such as a history of the Project before the Town Planning Board, a schedule of all of the tasks that the Petitioner completed subsequent to the commencement of litigation, and a schedule of the amount of money that the Petitioner had invested in connection with obtaining approval of the Project from the Town Planning Board prior to the date of the Zoning Board Variance Petition.

13. The Petitioner provided the Zoning Board with all of the information that the Zoning Board requested. Nevertheless, the Zoning Board determined not to grant the use variance. That determination was based, in large part, upon the County Planning Department 239 review, which took the position that although the Project would have no Intermunicipal impact (which was the purpose of the 239 review), as a general zoning rule, use variances are a drastic remedy and should not be granted except in extraordinary circumstances. The foregoing comment, of course, beyond the scope of the County 239 review.

14. After the Petitioner's request for a use variance was denied, the Petition commenced an Article 78 proceeding to challenge the determination of the Zoning Board and to preserve the Petitioner's rights; at the same time Petitioner sought assistance from the Town Board. Representatives of the Petitioner met with the Town Board on several occasions, and ultimately the Town Board referred the representatives to the Town Consultants (attorney and code enforcement officer) to consider options that may be available. Of course, resolving the matter with the Town Board would also resolve Petitioner's Article 78 proceeding.

15. Implicit in the Town Board's determination to allow the Project to move forward and to meet with the Town Consultants in an effort to find a remedy to allow the Project to move forward was a determination by the Town Board that they recognized that the Petitioner had experienced a substantial financial hardship as a result of the change in the Zoning Laws in 2008 and the litigation that the Petitioner had experienced. The Town Board, having determined that a hardship existed, agreed to investigate a remedy to allow the Petitioner to proceed with the Project.

16. After meeting with the Town Consultants, it was determined that a proper solution would be to create a Planned Unit Development ("PUD") for the Property, and to create a PUD law applicable to the Property which would be consistent with the Project as proposed, with modifications to include a commercial use, such as a retail store.

17. In response to the above, this law firm drafted a PUD law and submitted it to the Town Consultants, (attorney and Code Enforcement Officer for review). After incorporating the comments of the Town Planning Board attorney and the Town Code Enforcement Officer, the PUD law was revised and subsequently found to be satisfactory and consistent with the instructions from the Town Board, such that the PUD law was presented to the Town Board for consideration.