

KALTER, KAPLAN, ZEIGER & FORMAN

ATTORNEYS AT LAW

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

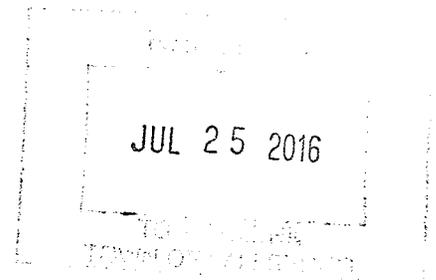
IVAN KALTER
JEFFREY KAPLAN
JAY L. ZEIGER
TERRY S. FORMAN

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

July 25, 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: Rachves Estates 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,

A handwritten signature in black ink, appearing to be "JAY L. ZEIGER". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

JAY L. ZEIGER

JLZ/dm

Enc.

cc: Ms. Sima Bernat (via email with enclosures)
Paula Kay, Esq. (via email with enclosures)
Ms. Mollie Messinger (via email with enclosures)

JUL 25 2016

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

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In the matter of the Application of /
RACHVES ESTATES LLC /
/
for a Hardship Variance from the Town's/
Residential Moratorium Local Law /
=====

**Verified Petition for Relief from
Moratorium**

The Petitioner, RACHVES ESTATES 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 two tax parcels of real property located on the west side of Route 42, approximately 3,100 feet north of the intersection of Route 42 and Route 52, Woodbourne, New York, known as Town of Fallsburg SBL 14-1-31 and a second parcel adjacent to said parcel, being Town of Fallsburg SBL 21.-1-2.1. The two parcels together (the "Property") are 51± acres.

2. The Property was acquired by the Petitioner on July 13, 2015, for the sum of \$500,000.00, plus closing costs and expenses and due diligence fees of in excess of \$10,000.00, representing total acquisition costs of \$510,000.00. The contract to purchase included a due diligence investigation period that allowed the Petitioner the opportunity to investigate the feasibility of a development project before committing to the purchase. During this time period the Petitioner and its representatives (engineer and attorney) met with the Town Planning Board consultants (engineer, attorney, planner, Code Enforcement Officer) to discuss the proposed Project. When it was determined by all that the Project could proceed as currently proposed, the Petitioner committed to purchase the Property.

3. The Project that is hereinafter described (the "Project") and that is pending before the Town of Fallsburg Planning Board involves the consolidation of said two parcels, and the construction of a duplex development consisting of 99 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 a combination of duplex buildings and single family dwellings representing 99 dwellings. The Project includes community facilities, including swimming pools and a community building.

5. A significant portion of the Property is located in the flood plain, and, as such, several meetings were held with Town representatives (planning consultant, engineers, attorney, and Code Enforcement Officer) to determine the number of houses that could be constructed on the Property, with the consensus result being 99. Also, since the Project involves Property that is located in the flood plain, the Project presented engineering challenges not typical of most other projects.

6. The entire Project is located within the Town water and sewer districts, so no district extensions will be required.

PROJECT HISTORY

7. The Project has been pending before the Town of Fallsburg Planning Board since December, 2014. 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 "A". 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. Some of the reports were not finalized until May or June of this year. However, as is well known, detailed engineering studies often take weeks or months to prepare; the reports were not first ordered when the Petitioner learned of the possible Moratorium Law; they were ordered weeks or months prior to that time.

8. 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, the 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, and Town Code Enforcement Officer and has incorporated all of the requests of the Town Planning Board. In addition, numerous reports related to aspects of this Project have been submitted to Town consultants and the Town Planning Board for review, and in many instances the review has been

completed. The Petitioner has presented this Project to the Town's Architectural Review Board on one occasion, and had been scheduled for another appearance, July, 2016, which was cancelled as a result of the Moratorium Law.

9. 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 submitted to the Planning Board. The part three to the environmental assessment form which determines the manner in which environmental concerns would be mitigated has also been prepared and submitted for review. Notice of Intent of the Planning Board to act as SEQRA Lead Agency has been circulated to all involved agencies, without objection, and the Project was submitted to the Sullivan County Planning Department for 239 Review.

10. Essentially, as of today's date, the Project is in a condition where it is at or near the approval stage. Indeed, at the June, 2016 Planning Board meeting, the Board had a draft of the negative declaration that was prepared by the Town Planning board consultant. However, the Board could not act on the resolution because the County 239 review had not been completed. Had the Board been able to act, this Project would not have been subject to the Moratorium Law.

FINANCIAL HARDSHIP

11. As discussed in Paragraph "2" above, the Petitioner acquired the two parcels which are the subject of the Project for total acquisition costs of \$510,000.00. In addition to the foregoing, the Petitioner incurred additional expenses in connection with approval of the Project of in excess of \$120,000.00, consisting of engineer fees of in excess of \$108,000.00, plus attorneys, consultants, and fees to the Town, including payments to the Town Planning Consultant and the Town Engineer.

12. In order to complete the development through the approval process, additional costs and expenses will be incurred, although it is anticipated that the \$120,000.00 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.

13. 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

14. 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.

15. As set forth in this Petition, the approval of this Project is at or near the final stages. All of the reports and site plan requirements of the Town of Fallsburg have been submitted to the Planning Board and the Planning Board consultants and they are in various stages of review. It is anticipated that at the next Planning Board meeting, the Project will be seeking a formal negative declaration and conditional approval by the Planning Board.

16. The Petitioner has also demonstrated a substantial financial hardship mandating that this Project be allowed to proceed notwithstanding the Moratorium Law. To date in excess of \$600,000.00 has been paid for property acquisition costs and development costs, including engineers and town consultants.

17. 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 \$600,000.00.

*****END OF PAGE*****

Rachves Chronology:

November 2014: Contacted by applicant to discuss possible development of property known as the lands of Hartman on NYS Route 42 in Woodbourne. Old survey map was available. Authorized to prepare concept plans.

December 2014 – January 2015: Perform zoning analysis; Input survey provided by Client into CAD; Review publicly available data sets such as Soils, Flood Maps, Wetlands, Endangered species. Prepare multiple versions of basic concept plans.

January 2015: Advise Client of errors in old survey map provided and need to retain Land Surveyor to prepare new boundary survey; Retain aerial mapping company to fly two foot topographic survey.

March 4, 2015: Staff Meeting – Present proposed conceptual development plan; Discuss zoning related items, Flood Plain; NYSEG Easement; Sewer pump station; survey, among other items. Agreed to place on April 2015 Planning Board agenda for sketch plan discussion.

March 2015: General revisions to sketch plan per Staff meeting and Client input. Prepare Planning Board application packet and EAF.

March 25, 2015: Planning Board submittal – submit plans and application packet for April 2015 Planning Board agenda.

April 23, 2015: Planning Board meeting - Present project to Planning Board as new business. Advised to attend a Staff meeting to discuss zoning matters.

May 2015: Dialog with applicant Attorney; Computations as relates to zoning questions of Flood Plain and most restrictive zoning governing entire site in preparation for Staff meeting.

May 21, 2015: Staff Meeting – Ongoing discussion of zoning issues as relates to flood plain, which section of the zoning controls density; Density calculations; other related matters. Jay Zeiger to prepare memo for staff to respond to.

June 10, 2015: Jay Zeiger memo regarding zoning density calculation.

June 18, 2015: Staff Meeting – On going discussion about zoning. Reach consensus about application of density calculation in areas of floodplains.

June – July 2015: *Re-design of entire layout*: Reduce number of units to 99; Remove all dwelling units from Floodplain; Input new boundary survey and aerial topographic survey; new density calculations; Field work to survey Neversink River to be used in Flood study; Begin communication with NYSEG regarding improvements within power line easement. Revise road entrance location per Planning Board comments from April meeting.

July 29, 2015: Submit revised layout for August Planning Board meeting.

August 13, 2015: Planning Board meeting – update Planning Board on changes to plans per Staff meetings regarding zoning; present new plan with fewer units.

Exhibit A

August - September 2015: Begin detailed engineering design; Forward plans to NYS DOT for comment; Correspondence with NYS DEC regarding Bald Eagles.

September 30, 2015: Receive correspondence from NYSEG indicating that easement on the property is 150 feet wide instead of 100 feet wide and that towers are not centered within the easement for reasons unknown. Asked to update our site plan accordingly. Change results in substantial re-design of site.

October 2015: *Re-design of overall layout per NYSEG Easement*: Re-design plans to reflect NYSEG comments and resubmit plans to NYSEG for ongoing review.

November 19, 2015: Received additional review from NYSEG Engineering Department resulting in the need to make additional revisions to the plans.

November 2015: Continue with preliminary design drawings; Preliminary design of water and sewer utilities; Roadway profiles and grading; Prepare multi-sheet drawing set; Preliminary flood plain analysis utilizing HEC-RAS.

November 25, 2016: Planning Board submittal - Submit plans for December 2015 Planning Board meeting.

December 10, 2015: Planning Board meeting - Public Hearing and Planning Board meeting.

December 2015: *Re-design of overall layout*: Re-design site plan to accommodate public comments from adjoining properties to the south. Move roadway along southern property line to provide larger buffer. Relocate three units in south west corner to other areas of the site to provide buffer to adjoining neighbors.

January 14, 2016: Planning Board meeting – present revised layout per Public Hearing comments to the Planning Board.

January 2016: Submit newly revised plan to NYSEG. Detailed engineering design on revised layout; new utility design; new road profiles; new grading plans;

January 28, 2016: Submit plans for February Planning Board meeting.

February 11, 2016: Planning Board meeting – matter not heard due to time cut-off.

March 10, 2016: Planning Board meeting - Project not carried over from February Planning Board meeting. Told need to respond to Public Hearing comments in writing. Minutes from December public hearing not yet available.

March 17, 2016: Receive correspondence from NYSEG indicating the Grant of Encroachment is approved and documents to be executed and recorded are forth coming.

March 17, 2016: Staff meeting – Agreed to circulate for coordinated SEQR review. Geneslaw to prepare Notice of Intent. Need written responses to Public Hearing comments. Checked with Town, minutes from December meeting still not available.

March 18, 2016: Layout presumed to be finalized based on staff meeting. Authorized archeologist to conduct Phase 1 Archeological study on the area of disturbance, also known as the Area of Potential Effect. Authorized Landscape Architect to prepare Landscaping plan.

April 2016: Ongoing detailed Engineering. Detailed design of utilities with rim and invert elevations; pipe lengths and slopes; grading; erosion control; lighting; NYS DOT entrance details; applicable site details. Ongoing work with Applicant and Modular Company with regard to building elevations in anticipation of submittal to ARB.

April 20, 2016: Submit application and plans to the Architectural Review Board.

April 21, 2016: Staff meeting. Review SEQR Notice of Intent prepared by Rother Engineering on behalf of the Town.

April 22, 2016: Notice of Intent circulated by Rother Engineering.

April 25, 2016: Received Landscape Plan from Landscape Architect.

May 2, 2016: Soil borings at site with excavator. 20 borings completed throughout area of proposed development.

May 4, 2016: Received NYS DOT Highway Entrance plan approval. Permit to be applied for prior to starting work.

May 5th, 2016: Attend ARB Meeting. Discussed desired revisions to plans. Advised by ARB that starting new procedure and they will make recommendations to the Planning Board and Planning Board will either require or not require the ARB recommendations. No need to return to ARB with revisions.

May 2016: Work with modular manufacturer to revise buildings per ARB comments; Ongoing engineering of site plan. Finalize flood study. Draft Storm water Pollution Prevention Plan.

May 12, 2016: Planning Board meeting – Matter not heard due to time cut-off.

May 18, 2016: Final flood analysis report and full site development plan set delivered to Planning Board and Keystone.

May 19, 2016: Deliver letter to Planning Board from Archeologist indicating that Phase 1A archive research and Phase 1B field tests consisting of 320 shovel tests is complete with no artifacts found. No additional work needed.

June 1, 2016: Staff meeting. Discuss status of project. Needs to be sent to County Planning for 239 review. Robert Geneslaw prepared a Part 3 to the Long EAF and a draft Negative Declaration. Agreed to be placed on June agenda for 239 referral. Advised that contrary what was stated at May ARB meeting, the applicant needs to return to the ARB with revised plans for ARB approval.

June 6, 2016: Received final archeological report from Archeologist. Forwarded to Planning Board.

June 9, 2016: Planning Board meeting – Reviewed plans and Negative Declaration with Planning Board. Authorized 239 referral. Board cannot act until 239 complete.

June 22, 2016: ARB Submittal – Submit revised architectural renderings.

June 27, 2016: Planning Board submittal – Submit latest revised plans for July 2016 meeting in anticipation of adoption of Negative Declaration and Conditional Final Approval.

Rachves Expenses:

Boundary Survey - \$6,500.00

Aerial Topography - \$9,934.00 (includes 371 Inc.)

Archeological - \$6,800.00

Landscape Architect - \$3,000.00

Biologist (Eagles) - \$2,498.00

Engineering - \$80,000.00

Total - \$108,732.00

jayzeiger-kkz@hvc.rr.com

From: "Kirk Rother" <krother@kirkrother.com>
Date: Friday, July 22, 2016 2:05 PM
To: "Zeiger Jay" <JayZeiger-KKZ@hvc.rr.com>; "Bernat Sima" <simacbs@yahoo.com>
Subject: Fw: Rachves (Bernat)

FYI, I sent the below email to the supervisor.

Kirk

From: Kirk Rother
Sent: Friday, July 22, 2016 2:00 PM
To: Vegliante Steven
Subject: Rachves (Bernat)

Good Afternoon Supervisor Vegliante,

Thank you for taking the time to meet with myself and the Bernats last week.

We just finished preparing the application to the Town Board for relief from the moratorium with Jay Zeiger's office. While going through the process my Clients were concerned that your attention to the dates of the studies last week could count against them and be perceived as a rush to beat the moratorium. In light of this concern, I figured I would send this brief note.

Over the course of this project's appearance before the Planning Board the overall layout changed three times: once due to a consensus reached between Staff and the applicant as relates to zoning and its application to the flood plain; second due to circumstances requested by NYSEG and the crossing of their power line easement; lastly, voluntary changes made by us to try to accommodate requests by neighboring properties to the south which were brought up at the public hearing held in December 2015.

This last iteration of the plan was not finalized with Staff and the Planning Board until around March of 2016. It is at that point that some of the sub-consultants were authorized to perform their work. Namely the Landscape Architect and, more importantly, the Archeologist. The Archeologist was required to conduct archival research as well as conduct shovel tests at the site. Those tests are to be done in the area that will be disturbed, or what they refer to as the Area of Potential Effect (APE). 320 shovel tests ended up being performed. So, although his final report, the report you briefly reviewed at our meeting, is dated June 2016, his background research started months before that and the field work could not start until the final layout was agreed upon with the Town. He gets paid by the acre by the way, so we try to keep his APE tight.

My Client had asked me in the winter to try to have the project approved by summer for marketing purposes. So, between the close of the public hearing in December and now, there was a push to have things finished by July. Coincidentally the Town's moratorium followed a similar time frame.

In the interest of being my Clients advocate I figured it couldn't hurt to take a moment to explain

7/22/2016

the timeline a little.

Feel free to contact me with any questions.

Kirk



KIRK ROTHER, PE
Consulting Engineer, PLLC

5 Saint Stephens Lane
Warwick, NY 10990
Office: 845.988.0620
Fax: 845.988.1628
Email: krother@kirkrother.com