

"Minutes are not official until approved by their respective board."

TOWN OF FALLSBURG ZONING BOARD MEETING

February 21st, 2019

Steven Burke, Chairman, Paul Lucyk, Steve Altman, Morgan Vegliante, Rabbi Larry Zierler, Board Members, George Sarvis, Code Enforcement, Paula E Kay, Deputy Town Attorney

- Steven Burke called the meeting to order.
- January minutes approved.

NEW BUSINESS:

1. RIVERSITE ASSOCIATES – SBL# 39-1-88.3 – Requests an area variance to reconstruct 7 structures that were destroyed by fire and have a 25' separation between buildings. Zone: R. Acres: 5.15 acres. Location: SR 42 and Gamble Rd., Fallsburg.

- Joel Kohn represented.
- Paula E Kay: I just got out planner's email and her determination is because the overall site is so nonconforming, the nonconformance is of a nature to threaten health, safety, and environment. The replacement should not be reviewed in a vacuum absent and understand the potential the property owner's would have in the future to improve the site plan. She wants the entire site developed and thought out.
- Steven Burke: Did you explain that to him?
- Paula E Kay: He read it with me.
- Steven Burke: Is he going to still be seen tonight? Or withdraw?
- Paula E Kay: He should withdraw, have a meeting, and come back.

2. SD FALLSBURG CORP. (TWIN CIRCLE) – SBL# 60-1-8.2 – Requests an area variance to allow 3 of the 19 buildings to be within the required building and clearing set backs. Zone: R. Acres: 13.70. Location: Lovers Ln. & Gibber Rd., So. Fallsburg.

- Applicant not heard.

3. FALLSBURG PEDIATRICS – SBL# 39A-1-80/81 – Requests area variances for side yard and rear yard setbacks for an addition. Requests a use variance for the expansion of a home based business for use of more than 25% of the dwelling. Zone: R. Location: 142 Laurel Park Rd., Fallsburg.

- Jay Zeiger represented.
- Jay Zeiger: We were here three or four months ago on the same property. At that time we were here as an extension of a home occupation. We withdrew the application because there were some issues we had to work through. We did. If you remember at that last public hearing there was tremendous community support for the project. The new applications that we are presenting today is both a use variance and an area variance. The property is in a residential zoning district. The property is now currently being operated as a pediatric office on the first floor and a residential apartment on the second floor. That's been operating in that capacity for more than 10 years. In 2012 they received a special use permit from the Planning Board. The limit on the space in the building for a home occupation special use permit is 25% and we exceed that. We need to convert what was a home occupation special use permit to a use variance which is what we are here presenting. As part of this project there is going to be some work done. The first floor medical office is going to have a small addition for a bathroom to make it a more comfortable place to work. Then there is going to be a rear exit for the building which is going to be primarily as a second means of egress for the upstairs apartment. There is also going to be a shed structure being built. All of which are shown on the site plan. That's the area variance portion of the application. There was some issues with the Building Department and some of the work that was done before and some of the permits that were issued before the work had been done. We are hopeful with these variances all the work that was part of the prior building permits would be part of what was done here. At the end of the day all of those permits would be closed down. I want to go through the criteria we need to establish. Particularly for the use variance. I think I would prefer to do that after the public speaks.
- Steven Burke: Anybody have any questions? No? Okay. Mailings?
- George Sarvis: Good.
- Steven Burke: Violations?
- George Sarvis: None.
- Steven Burke: We will open it to the public.
- Jay Zeiger: Can I try to cut through this? At the last public hearing it was great and a lot of people were out here. I see some of the same faces and all of you spoke. I think the message to the Zoning Board was this has a lot of community support for the variance. I will go through the reasons why they qualify legally for the variance. If your message is this is an important medical facility for us that we will

use. Rather than everybody repeating that we can just have a show of hands of who is here tonight and who wants to speak that.

- Paula E Kay: We will incorporate for the record all of the public comments from the original application into tonight's public hearing. All of those comments will be part of the record.
- Jay Zeiger: On that note who is here? If you are here to support the project can you just raise your hand? Paula if anybody else has something to add. We don't want to shut anyone out.
- Ara Sherwinter: I am an RN. I definitely am in support. BSN. I worked in Crystal Run. I started working for Esther 5 or 6 years ago. It was part time. It is such a valuable resource we have in the community. I never worked for a medical professional that extends herself the way Esther Gottlieb does. Across the board whether the patient is Jewish, Hispanic. Any race. Any ethnicity. Any religion. She will spend hours on the phone coordinating with a school district. If someone is hospitalized she will call and speak to the medical professionals that are taking care of the patient. She will coordinate care when the patient comes home. She has someone in her home for those who only speak Spanish. She will tell Mary Beth who works there to call the patient to find out how they will do. I have never seen somebody who will do as much as she does. She will call during off hours. Over weekends. Anything we can do to facilitate and ease the burden on the Gottliebs. Whatever time is not spent working on things that are out of the medical practice, that time will be spent on members of our community. Obviously I cannot say strongly enough how much I support anything needs to be done to make that medical office work for our community.
- Steven Burke: Anybody else?
- Carlis Faab: I have been a patient of Esther's since I was 6 days old. We have a big health crisis in this County. I wrote a paper on it for my college class. Esther is the best doctor I have ever had. We live an hour away from her office and we go and sometimes she will tell my mom don't even take them here. This is what she thinks we have then to call her to let her know if we are better. I think by denying the access to her practice, the community and County would be losing a really, really great doctor.
- Martha Spath: I spoke in December. I don't want to repeat myself. I just want to say I travel from the Town of Freemont. I feel as if the Town of Fallsburg has a gift in having Esther as part of your town. I implore you do to do whatever it takes to work with the Gottlieb to keep this practice open and continue it in our County because it is desperately need this.
- Steven Burke: Anyone else?
- Brian Manown: I am just observing that this whole area along Laurel Avenue is changing. Transforming rapidly. I think in the future there will be more interested in commercial activity given the way it is transforming. Rather than dealing with (inaudible) constantly, perhaps your Board should consider making a zoning

change.

- Paula E Kay: That's up to the Town Board.
- Brian Manown: I'm just asking to have it proposed to the people who do make those decisions.
- Steven Burke: You can do that at a Town Board meeting. This is strictly for this application. Do you have anything to say about this particular application? No. Anybody else? No. We will close the public portion. Any comments?
- Paula E Kay: Did you want to address the criteria?
- Steven Burke: Before you start Jay I just want to say I agree with the comments made back then and tonight. I can only speak for myself I think I got a little bit of indication from the Board last time that we are all in favor of this practice and what they do and how important they are for the community. Sometimes this Board has to protect people from themselves. Buildings can't be built any old way and businesses can't be conducted any old way. You have to do things according to laws, rules, and regulations. That's the only thing we were asking you to conform with was that. I think we were fair. I think we do know it is imperative that this business is in this Town. That's how I feel. We kind of lean toward that. That's why we ask the applicant to invest a little bit of money. Go forward with drawings. They did provide that. We just wanted things to be done correctly.
- Jay Zeiger: Just to reiterate I think the applicant has done that. Hopefully at the end of the day it will be a better site than it had been. For a use variance there are a few criteria. One of the more difficult is financial burden and I think we have clearly demonstrated the significant financial loss. It is in the papers. I am support by the contractors to the loss and the financial loss if it is converted back to a family residence. The property is very small. The only other use that would fit for this land is a 1 family residence. Just to get back to where it was would cost the applicant a few hundred thousand dollars. The other issues go to the character of the neighborhood. Often what the impact on the character of the neighborhood would be speculative. I can give all the reasons why it would have a positive impact on the neighborhood. And someone hearing in a vacuum would think it has a negative. I think in this case the practice has been there since 2012. In 2012 it had a special use permit from the Planning Board. If this variance is granted it is going to continue to operate the way that it has been. The only expansion is going to be a bathroom and breakroom for the workers. We know what the impact on the neighborhood would be. Judging from the people that are here tonight in support of the other variance which means they believe this property and the use of the property would have a positive on the neighborhood. Whether there's any adverse environmental conditions is another criteria. There is none at this point because essentially what you see is still there. There's no environmental impact at all. The last is the variance self-created? Maybe if we were coming here without the practice operating you could argue it has been self-created but the practice has been operating with a special permit from the Planning Board. The practice has

expanded and now there is a real need to get this building in the proper condition to support the need in the neighborhood for the pediatric service that is provided. It is the only pediatric practice in the Town of Fallsburg. It is within walking distance of many of its residents. I think we're well within the criteria for a variance on that. That's the use variance. For some reasons I think we do the same on the area variance.

- Steven Burke: What were the measurements for the area? You had a side yard and a rear yard?
- Jay Zeiger: It is required 25 feet. I would say the development where this is probably is nowhere near 25 feet. That's the rear yard. The side yard is 20 feet. What we're proposing on the rear yard is 5 feet 8 inches for one structure.
- Steven Burke: You're going from to?
- Jay Zeiger: We are going from 25 to 5 for one structure and 1.5 for the second. On the side yard it is 20 feet to 18 feet.
- Steven Burke: I'll have to know those numbers. Do you know those numbers George?
- Jay Zeiger: From 20 to 17.23 for one and 16.22 for the second.
- Steven Burke: Okay.
- Jay Zeiger: The location of it also may violate the side yard but if you look at the site plan by putting where it is it will maximize the open space on the site.
- Steven Burke: But those are the numbers we are going with.
- Jay Zeiger: Yes.
- Paul Lucyk: Engineer plans for the building?
- Jay Zeiger: Yes. The engineer prepared site is here and the plans were given to the Building Department.
- Steven Burke: So we'll do the use variance first right? Let's run down the criteria. Cannot realize a reasonable return substantial as shown by competent financial evidence?
- All Board members vote yes.
- Steven Burke: Alleged hardship is unique and does not apply to substantial portion of the district or neighborhood?
- 4 Board members vote yes, 1 votes no.
- Steven Burke: Requested variance will not alter essential character of the neighborhood?
- All Board members vote no.
- Steven Burke: Alleged hardship has been self-created?
- Morgan Vegliante: Yes but most of it was done given a prior special use variance.
- All Board members vote yes
- Steven Burke: Lead agency?
 - MOTION:
 - Mike Bensimone motions for lead agency. Paul Lucyk seconds. All in favor.

- MOTION:
 - Mike Bensimone motions for negative dec. Morgan Vegliante seconds. All in favor.
- Steven Burke: Do I have a motion for the expansion of the home based business of more than 25%?
 - MOTION:
 - Mike Bensimone motions for approval. Morgan Vegliante seconds. All in favor.
- Paula E Kay: Though it may not be technically in your application but your applicant has employees. Can we also add it is also to include the employees? Because a home based business does not generally allow for employees. If we are expanding...
- Jay Zeiger: I thought we were doing this an use variance which makes a permitted medical practice and therefore I didn't focus on the employees. As a use variance if you are permitted to have a medical practice then you are permitted to have employees.
- Paula E Kay: That's fine.
- Steven Burke: Are the wrong building numbers on these? One building you're going from 20 to 17.22 side yard. Is it that same building with the rear building you are going from 25 to 5?
- Jay Zeiger: That's the new the structure.
- Steven Burke: But that's all 1 structure?
- Jay Zeiger: Yes.
- Steven Burke: So that's structure number 1.
- Jay Zeiger: That's the small shed.
- Steven Burke: Okay. And structure number 2 would be side yard going from 20 to 16.22?
- Jay Zeiger: What we have is a small shed being relocated. It is .34 from the side yard and 5.08 from the rear.
- Steven Burke: But you're going from 20 to 17.22.
- Jay Zeiger: The shed that is being relocated is going from 20.
- Steven Burke: Let's do side yard first.
- Jay Zeiger: The relocated shed is .34.
- Steven Burke: That's what you are going to have left.
- Jay Zeiger: Yes.
- Steven Burke: So it is from 20 to .34.
- Jay Zeiger: It is almost on the side yard.
- Paul Lucyk: What did they do with the sewer right of way? The sewer right of way that goes through the back of that property?
- Jay Zeiger: It is still there. It's not being interfered with.
- Paul Lucyk: Did the Town Engineer sign off on that?

- Paula E Kay: He will when this goes back to the Planning Board.
- George Sarvis: We discussed this at staff. It is going to be in front of the Planning Board and they are going to deal with it.
- Paul Lucyk: So the Planning Board is going to make the determination if they can put the building. We are only saying if they can put the building.
- Steven Burke: The Planning Board may make them move the building somewhere else.
- Paul Lucyk: Is there another option to that if the Planning Board says no?
- Paula E Kay: At that point they will need to address it. It won't be the Planning Board it will be the Town Engineer that needs to go take a look.
- Paul Lucyk: The Planning Board was the one that issued the permit for the operation of this correct?
- Paula E Kay: The special use permit yes.
- Paul Lucyk: Do you have a copy of that permit?
- Jay Zeiger: I do. I have an email from Mollie Messenger to Mr. Gottlieb which says Dear Mr. Gottlieb, the Planning Board granted your approval several years back to have a home based business in your home. I'm not finding the actual document.
- Steven Burke: So the shed is going from 20 feet to 5 inches on side yard?
- Jay Zeiger: Yes.
- Steven Burke: The rear?
- Jay Zeiger: It is 5.08.
- Steven Burke: From 25?
- Jay Zeiger: That's the required 25. That shed was about 5 inches as well. That is an existing shed. It was 5 feet and it is staying 5 feet.
- Steven Burke: So it is should be 25 but it is going to be 5 feet.
- Mike Bensimone: So you're not looking to move it any further back you want to move it to the side.
- Steven Burke: That's building number 1. The other building. I just want to be clear.
- Jay Zeiger: That building is 5.13 on one side.
- Steven Burke: Side yard?
- Jay Zeiger: Yes. 16.92 on the other side. On the rear it is 1.49 feet.
- Steven Burke: What do you want to call that building?
- Jay Zeiger: That's the new shed it can be building 2. The addition is going to be 17.83 on one side. And it is almost on the property line on the other side.
- Steven Burke: Side yard?
- Jay Zeiger: Yes. The rest of the building is on the property line.
- Steven Burke: The rear?
- Jay Zeiger: It is 17.35.
- Steven Burke: That's on the addition.
- Jay Zeiger: Yes.
- Steven Burke: If one doesn't get it then the whole project doesn't. So all of this is

lapsed together.

- Paul Lucyk: The shed is being used a shed?
- Jay Zeiger: As an office.
- Steven Burke: It was always an office.
- Paul Lucyk: Why should we deem it a shed it should be an office.
- Jay Zeiger: That's the proposed use. We're calling it a shed because it is a shed building.
- Paul Lucyk: But if it is an office there is a criteria like with a doctor's office.
- Jay Zeiger: This is not for patience. This is an office with a computer and desk.
- Paul Lucyk: When I think of a shed that's where you put tools.
- George Sarvis: The existing office that Mr. Gottlieb will be using is just being relocated and will still be used as his own personal office. It's not part of the business per say
- Paul Lucyk: I'm just trying to say what it actually is.
- Paula E Kay: You guys don't have any issues with that. It will be code compliant when construction is complete.
- George Sarvis: That's a fair and accurate statement.
- Paul Lucyk: Electric, water, sewer, all the utilities like a regular office? Can you sleep in it?
- Paula E Kay: No.
- Jay Zeiger: No.
- Paula E Kay: It is for personal use. No customers, clients, etc.
- Steven Burke: Let's run down the criteria. Whether the benefit can be achieved by benefits feasible to the applicant?
- All Board members vote yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members vote no.
- Steven Burke: Whether request is substantial?
- All Board members vote yes.
- Steven Burke: Whether request will have adverse physical or environmental affects?
- All Board members vote no.
- Steven Burke: Whether alleged difficulty is self-created?
- All Board members vote yes.
- Steven Burke: Lead agency?
 - MOTION:
 - Morgan Vegliante motions for lead agency. Neil Sapolsky seconds. All in favor.
 - MOTION:
 - Mike Bensimone motions for negative dec. Morgan Vegliante seconds. All

in favor

- Steven Burke: Do you want me to go through the measurements? Do I have a motion with the stipulations on all the buildings? Shed number 1, new shed number 2 and the addition?
- Paula E Kay: And it would have to go back to the Planning Board.
- Paul Lucyk: Motion to approve prior to the Planning Board approval, all the right of ways are taken care of.
 - MOTION:
 - Paul Lucyk motions to approve. Mike Bensimone seconds. All in favor.
- Steven Burke: So you have your variances.

Mike Bensimone motions to adjourn. Morgan Vegliante seconds. All in favor.