

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

TOWN OF FALLSBURG ZONING BOARD MEETING

April 19th, 2018

Steven Burke, Chairman, Jason Pantel, Paul Lucyk, Neil Sapolsky, Mike Bensemone, Morgan Vegliante, Jonathan Schlosser, Board Members, George Sarvis, Code Enforcement, Paula E. Kay, Deputy Town Attorney.

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

OLD BUSINESS:

1. YESHIVA GEDOLAH ZICHRON MOSHE – SBL# 39-1-98.10 - Requests a 6 month extension for a previously approved variance.
 - Maria Zeno and Randy Wasson represented.
 - Maria Zeno: We anticipate approvals next month at the Planning Board. We have already been to the Planning Board.
 - Paul Lucyk: What was the hold up for 6 months?
 - Randy Wasson: We've been pushing through the Planning Board review comments, the SWEPP. There was some issues with the water and sewer connects as to where we were going to connect.
 - Paula E Kay: You were just at the Planning Board last week?
 - Randy Wasson: Yes. They are drafting the resolution for next month but we are expiring this month. That is why we are back.
 - Steven Burke: Anybody else? No? Any other questions? Okay motion to grant?
 - MOTION:
 - Neil Sapolsky motions to grant. Jason Pantel seconds. All in favor.

2. GRANT & LYONS – SBL# - 65-1-11.59 – Requests to appeal the Code Enforcement offices decision to grant a foundation permit for a single family

dwelling for Thompson Education Center. Zone: REC-1. Acres: 5. Location: Renner Rd., So. Fallsburg.

- Paula E Kay and Jonathan Schlosser are recused.
 - Steven Burke: So tonight we are just voting?
 - Mark Miller: Yes Mr. Chairman, your Board held 2 public hearings on February 15 and March 15th. You closed the public hearing portion on March 15th but left open a written comment period. You saved comments for the closing of the hearing prior to the deadline based on the discussions. I have prepared a resolution for your consideration. I believe you have all had it for a week or more and the opportunity to review it. If anybody has any questions or anything to say, now is the time. Then I would ask the Chair to take a vote.
 - Steven Burke: Did everyone get copies? Everybody had a chance to look at it? Ample time? Okay we will do a roll call vote. Basically this is just yay or nay or an abstain. We have one of those already.
 - Mark Miller: The record should note that Morgan Vegliante is not present tonight.
 - Steven Burke: The record shall reflect that. This is basically just a vote for the Building Department to go forward with their permit. Yes or no.
 - Mark Miller: The resolution is granted a yes vote which confirms the action of the Code Enforcement officer and a no vote would be to revoke the building permit.
 - Paul Lucyk: I vote yes.
 - Mike Bensimone: I vote no.
 - Neil Sapolsky: I vote yes.
 - Steven Burke: I am voting yes. The project has 3 year votes which is enough to go forward. Okay.
 - Mark Miller: Can you give George the original so he can file it with the Town clerk?
 - Steven Burke: I don't know how many of you plan to leave but just so we can be graceful to the applicant, I will give you a few minutes.
3. ZVI HOORI (EITAN HOURI) – SBL# 45-3-6.2 – Requests a use variance from the bulk table to allow the use of a single family home as a veterinary hospital. Zone: R-1. Acres: +/- half acre. Location: 23 Birch St., Mountaintdale.
- Jonathan Schlosser recused himself.
 - Eitan Houri represented.
 - Eitan Houri: I will say it again.
 - Steven Burke: We did ask you for some financials.
 - Eitan Houri: I'm not sure I understand. I gave you last time my Excel sheet, with the all the financials.
 - Steven Burke: Okay. Why did we have them come back?
 - Eitan Houri: There were some legalities that were supposed to be cleared.
 - Paula E Kay: Remember it is a use variance. The criteria are different from an area variance and there is a target threshold.
 - George Sarvis: You guys have nothing in your packets?
 - Steven Burke: No.

- Paula E Kay: It is for the building.
- Steven Burke: That's just an electric bill, water and sewer. Anybody that lives in a house pays water, electric, and sewer. In another words, what are your hardship financials that you need to do this in that building? You are just showing me school tax, county tax. Even if you didn't live in the house you would pay those.
- Eitan Houri: Right now the house is empty. I am paying around seven or eight thousand dollars a year on it. Those are my expenses. A reasonable return will not happen for me unless I do something with it.
- Steven Burke: There are options. You could rent it. You could sell it. You have to show us why you need to do this particular business in this building. You are asking us to change the code on this property.
- Paula E Kay: In essence what you have to show the Board is you have to take a look at all the uses that are legal and explain why none of those uses will work this building and the building owner.
- Eitan Houri: The only option I had was selling the home to someone, but it didn't work out. I don't think it will be benefit for the County as well. I don't think you will get taxes out of this entity that wants to buy the house. That's pretty much my option right now. That's pretty much it. I'll probably sell it to him.
- Steven Burke: Just so everyone on this Board knows, that shouldn't sway your decision. Whether or not a property is tax exempt or not. That has nothing to do with us and giving the variance or not.
- Eitan Houri: I said it last time that what I want to do is be able to do some procedures. My main business is still going to be house calls. I'm not going to be like a hospital. I've been doing house calls since 2012 and I like it that way. There are certain things you can't do in a person's house. Under anesthesia and stuff like that. It could work for me.
- Steven Burke: You have no other financials to show us?
- Eitan Houri: No not really.
- Paula E Kay: Again the financials would be if the building owner can utilize the building in any other way.
- Steven Burke: The applicant has already said he could sell it.
- Eitan Houri: You know the market now. It's not a very feasible option. Here is something I can do. If I do this, I can put more money into the house, I can make it nicer. Maybe sell it in the future. Right now it doesn't make much sense to put money into the house at this point. There is some work to be done.
- Steven Burke: Anybody have any questions? Okay. Did we close the public on this one?
- George Sarvis: Closed.
- Steven Burke: Any violations?
- George Sarvis: None that I am aware of.
- Steven Burke: Board comments?
- Paul Lucyk: I really don't have any comments. I always look for positive growth. That's about it. Is it positive growth or is it that it is more or less? Would it be good for the community? That is also something I am thinking about. I guess that is it. I don't have anything to say.

- Neil Sapolsky: My biggest concern would be if it is going to turn into a full fledged animal hospital in some amount of years. Right now it is long distance surgeries he can't do in the patient's home. Later on is it going to turn into a full animal hospital with parking lot, traffic in and out. That could change the neighborhood.
- Steven Burke: We'll go down some of the criteria. Cannot realize a reasonable return as shown by competent financial evidence?
- All board members vote yes, applicant cannot show reasonable return.
- Steven Burke: Alleged hardship is unique and does not apply to substantial portion of the district or neighborhood?
- All board members vote it is unique.
- Steven Burke: Requested variance will not alter essential character of the neighborhood?
- 1 board member votes no, 3 board members vote yes.
- Steven Burke: Alleged hardship has not been self-created?
- All board members vote it has been self-created.
- Steven Burke: Lead agency?
 - MOTION:
 - Jason Pantel motions for lead agency. Neil Sapolsky seconds. All in favor.
 - MOTION:
 - Paul Lucyk motions for negative dec. Jason Pantel seconds. All in favor.
- Steven Burke: Motion to deny or approve?
- Paul Lucyk: I will give a motion to approve.
 - MOTION:
 - Paul Lucyk motions to approve. Neil Sapolsky seconds. Steven Burke votes to deny. All other Board Members in favor. Granted.

NEW BUSINESS:

1 MOUNTAIN STREAM VILLAS – SBL# 29-1-4.1 - Requests a 6 month extension for a previously approved variance.

- Maria Zeno and Abe Berkovic represented.
- Maria Zeno: We are just seeking a 6 month extension on this one as well. We are just awaiting 3rd party approvals.
- Steven Burke: Any questions?
- Paul Lucyk: Which 3rd?
- Maria Zeno: DEC reports.
- Steven Burke: How long have you been waiting for those DEC reports?
- Abe Berkovic: Years ago it was almost ready for approvals. Apparently the Health Department changed their rules with the water. Apparently we have to develop 2 more wells. They used to consider this a transient community, they have different

standards on the gpm. Gallons per minute. That's what we're in the middle of. In addition, we have to reflag the wetlands. We did it already. The DEC came out, now they moved a couple of flags so the surveyor has to go through this. We will probably be here for one more extension. There is a lot of work to be done on this project.

- Steven Burke: How long has it been already?
- Abe Berkovic: We just got approval about a year ago. We started right away. With the winter we couldn't get into the wells.
- Steven Burke: What did you start right away?
- Abe Berkovic: To dust off all the reports. We met with the Town engineer at a staff meeting. We went to the Planning Board just to see what has to be updated, what is still valid, one of the things were wetland. We've been pretty active, there's just a lot of work.
- Steven Burke: In your opinion George, have they been rigorously trying to get this approved?
- George Sarvis: I can't have an opinion because I don't have valid judgement.
- Paula E Kay: I won't say they have been rigorously before the Planning Board because they have been with outside agencies so we haven't seen this that much. What might be helpful and what the Board might want to request from applicants going forward on extensions is like a list of bullet points on where you have been since you were last here.
- Abe Berkovic: I believe Jay submitted one at the last extension but we will absolutely do that.
- Steven Burke: So next month? We are just going to wait Paula?
- Paula E Kay: It is up to you. From my personal knowledge I don't see any issue with you moving forward.
- Maria Zeno: If we have to come back again which is what we anticipate, we will bring you a summary at that time. That's how long this project will take.
- Jonathan Schlosser: You said you are working the DEC?
- Maria Zeno: DEC Health Department.
- Jonathan Schlosser: I am familiar with that process, it is a long process especially if wetlands are involved.
- Maria Zeno: If we do have to come back on this or any other project I will bring a summary.
- Steven Burke: Motion to extend?
 - MOTION:
 - Neil Sapolsky motions to approve the 6 month extension. Jason Pantel seconds. All in favor.

2 JOSEPH MARGIOTTA – SBL# 3-1-6.24 – Requests an area variance to allow an accessory structure closer to the road than the primary structure. Zone: REC-2. Acres:

11.04. Location: 110 Moore Rd., Woodbourne.

- Joseph Margiotta represented.
- Joseph Margiotta: I am requesting an area variance to allow an accessory shed closer to the road than my primary structure. The numbers are off a little on the drawing. The shed is 10 by 16. The shed starts right in the front of my house. Then it goes 16 feet. It is 60 feet from the road and it is actually 35 feet from that property line. The numbers are a little off on that sheet.
- Jonathan Schlosser: Where did you these numbers out of curiosity?
- Joseph Margiotta: Those numbers were approximate but then I had it walked off from the line. Those are more conservative, it is further away the property line and the road. 60 feet from the road and 35 feet from the property line.
- Steven Burke: Any questions?
- Mike Bensimone: How much of a slope behind the house?
- Joseph Margiotta: Substantial. I don't know that I could fill it. I don't know if I have another option other than taking it down a few hundred feet into the woods where it flattens out. My house is up then there is a seriously drop off. Then it levels out again which is several hundred feet from my house.
- Steven Burke: There is a big drop back there. Any violations?
- George Sarvis: No.
- Steven Burke: Mailings?
- George Sarvis: Mailings are good.
- Steven Burke: Board comments? Okay. You can have a seat. We'll go down the criteria for an area variance. Whether the benefit can be achieved by other feasible to the applicant?
- All board members vote no.
- Steven Burke: Undesirable change in the neighborhood character or to nearby properties?
- All board members vote no.
- Steven Burke: Whether the request is substantial?
- 1 board member votes yes, all other board members vote no.
- Steven Burke: Whether the request will have adverse physical or environmental affects?
- All board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members vote yes.
- Steven Burke: Anyone in the public have anything to say? Okay public closed. Do I have a motion?
 - MOTION:
 - Jonathan Schlosser motions to approve. Mike Bensimone seconds. All in favor.

3 MOSHE AND AVIGAIL WISE – SBL# 39.B-1-7 – Requests an area variance to expand a non-conforming lot by adding a second story to an existing single family house. Zone: R-1. Acres: less than ¼ acre. Location: 20 Laurel Park Rd., So. Fallsburg.

- Applicant not heard. Cancelled.

4 LAVISTA 19 – SBL# 60-1-18 – Requests an area variance to allow a height increase to add a second story for units 5 and 6. Zone: REC-1. Acres: 4.73. Location: 80 Lovers Ln., So. Fallsburg.

- Maria Zeno represented.
- Maria Zeno: I don't know how to word the variance here. We are under the duplex law. We are looking to add a first floor to a bungalow. Raise the bungalow, put in a first floor, bring the bungalow back down. Essentially increasing the height to 2 stories instead of 1 which we have done on prior bungalows in this project. The bungalow itself has separations that do not currently meet the separation requirements under the duplex law. My client went to the Building Department and the Building Department said you have to go through the Zoning Board to get a variance because of the separation issues. However the agenda is worded that we are here for a height variance.
- Low discussions.
- Paula E Kay: The public notice does talk about a height variance but it is not height, it is a separation issue. The public notice was incorrect so they are going to have to come back.
- Steven Burke: I am also going to ask you to get some kind of input from the fire department. This way you have it already.
- Paula E Kay: What is causing the separation issue?
- Maria Zeno: 1 side. I want to make sure we are not seeking a height separation. The distance between bungalows 3 and 4, 5 and 6, 5 and 6 being the one we are seeking the variance for is 10 feet 8 inches. The distance between 5 and 6 and 6 and 7 is 16 feet 11 inches.
- Steven Burke: You're looking for how much from there?
- Maria Zeno: It is 31 feet on each side. This bungalow is grandfathered in before the duplex law came along. When we do raise it we are more than willing to center it so that it is even on both sides so that the variance we request for either side is that much less. If that makes sense.
- Steven Burke: It does but we need a number.
- Paula E Kay: It is 24.2 on the one side and 14.89 on the other. They are going to have to revise the application.
- Maria Zeno: So we are revising the application, sending new notices and getting

input from the fire department. Thank you.

- Steven Burke: Thank you.

5 LAUREL CREST ESTATES, LLC – SBL# 39-1-90/56-1-1/56-1-3.1 – Requests an area variance from the required 175 foot front yard set back for a detention pond, parking lot, interior roads and several buildings. Zone: HR-1. Acres: 60. Location: Laurel Ave., So. Fallsburg.

- Maria Zeno represented.
- Maria Zeno: On this one we are requesting a number of variances. The variances on this project were approved in the past. We had Planning Board approval. Mollie and Paula asked that we come back because the variances had expired and no construction had taken place. This does take the position that once the Planning Board approved the project, the Zoning Board variance ran with the Planning Board approval.
- Paula E Kay: I disagree.
- Maria Zeno: Mollie and Paula disagree. So we are back here seeking the same variances under the same conditions. Nothing has changed. We do have Planning Board approval. We spent over \$100,000.00 getting that approval based on the variances that were granted by this Board last time.
- Paula E Kay: The Board has a copy of the approval resolution from January 2017. I believe Steve has that.
- Steven Burke: Yes.
- Paula E Kay: But because this is a new application, there still needs to be a public hearing.
- Steven Burke: Anybody have any questions? Does anybody want to see the resolutions?
- Neil Sapolsky: Read them out loud?
- Steven Burke: There were some conditions when we did grant this. Those conditions when this was granted was there would be no additional buildings or structure other than those shown on the site plan as presented to the ZBA on 1-19-17. Additions to buildings or structures shown on the site plan are permissible but only as of right. 2 was 64 units on 40 acres. 3 was need conservation easement. 4 was berms in front of the detention basins. Do you have any problem if all of those are included in this variance?
- Maria Zeno: You are reading which variance decision letter? I have one day dated January 19th 2017.
- Steven Burke: That's it.
- Maria Zeno: I see 64 units on 40 acres. Restriction conservation easement. Restrictions of no more buildings on the 40 acres. Berms in front of the basins. I don't have a copy of that.
- Paula E Kay: You can get a copy tomorrow.

- Steven Burke: Right now I am just putting this all on the new variance decision.
- Jonathan Schlosser: It is the same one.
- Steven Burke: Except tonight is the date right Paula? It will be presented to us on tonight's date?
- Paula E Kay: Right.
- Paul Lucyk: You said something afterward about plantings?
- Paula E Kay: I'll look in the minutes.
- Paul Lucyk: I think there was something mentioned about that.
- Abe Berkovic: We went to the ARB, we approved the buildings. We still have to go back to the ARB for the front area of the detention area. We have to find out what the fence is going to look like. We are still going back to the ARB.
- Paul Lucyk: I was there today looking at it. Off of the edge of the road, the grades are like 4 feet higher than the road. Is that going to stay there? You aren't cutting that down any lower to the road?
- Abe Berkovic: I cannot speak to all the details but we did hire a landscape architect which the Planning Board has reviewed and approved. We created a landscaping plan to make the whole property look nice. The ARB had concerns there would be a fence on top of the retaining wall. They wanted to know what the fence material would be. If we should break it up some kind of way. Maybe make 50 feet one type of fence and another 50 feet another type fence. It shouldn't look like one long thing. Everything has been reviewed as far as that.
- Paul Lucyk: My main concern is someone going down the road (paper rustling.)
- Steven Burke: That was your concern last year too.
- Abe Berkovic: There is a bump before the house.
- Paul Lucyk: That's great. That is my main concern
- Maria Zeno: The berm will be a part of the initial approval.
- Steven Burke: So that is fine with what we discussed as far as the same conditions?
- Maria Zeno: That is correct.
- Steven Burke: Okay. Anybody have any questions? We will open it to the public. Anybody from the public like to speak on this matter? We will close the public portion. Mailings?
- George Sarvis: I believe they were good. They were supposed to emailed to Denise but she was out today so I couldn't get a confirmation.
- Maria Zeno: They were emailed to the Code Enforcement agent.
- Paula E Kay: You have them?
- Maria Zeno: Yes. They are on here.
- Paula E Kay: Last year there, Steve said do I have a motion? Before I go any further my restrictions are going to be a conservation easement. Berm the ARB will take care of. Joe made the motion, Neil seconded it. Jason denied.
- Steven Burke: Okay.

- Paula E Kay: Then Abe said for the record that it wasn't the original developer.
- Abe Berkovic: I still say it tonight.
- Steven Burke: Anybody have any questions? Any violations?
- George Sarvis: No.
- Steven Burke: Let's go down the criteria. Whether the benefits can be achieved by other means feasible to the applicant?
- 3 board members vote no, 1 votes yes.
- Steven Burke: Undesirable change in the neighborhood character or nearby properties?
- All board members vote no.
- Steven Burke: Whether the request is substantial?
- All board members vote yes.
- Steven Burke: Whether the request will have adverse physical or environmental affects?
- All board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members vote yes.
- Steven Burke: Lead agency?
 - MOTION:
 - Neil Sapolsky motions for lead agency. Jason Pantel seconds. All in favor.
 - MOTION:
 - Neil Sapolsky motions for lead agency. Mike Bensimone seconds. All in favor.
- Steven Burke: Do I have a motion with the stipulations explained to the applicant, to approve or deny?
 - MOTION:
 - Neil Sapolsky motions to approve. Jonathan Schlosser seconds. All in favor.

Jonathan Schlosser motions to adjourn. Jason Pantel seconds. All in favor.