

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

## TOWN OF FALLSBURG ZONING BOARD MEETING

June 21st, 2018

Paul Lucyk, Chairman, Neil Sapolsky, Mike Bensemone, Board Members, Morgan Vegliante, Alternate Board Member, George Sarvis, Code Enforcement.

- Paul Lucyk called the meeting to order.
- May minutes approved.

### NEW BUSINESS

1. THE CENTER FOR DISCOVERY – SBL# 34-9-12/34-9-14 – Requests an area variance to increase the height to 40' from the maximum height allowed of 35 feet. Requests an area variance to decrease the size of the apartments to 733 square feet from the required 1000 square feet. Zone: MX. Acres: less than ½ acre. Location: 234 Main St., Hurleyville.

- Morgan Vegliante recused herself.
- David Fanslau represented.
- David Fasnsclau: I think you have these plans. Basically we are here to request 2 area variances. This is for a building that is to be built on Main Street Hurleyville. It is an in fill building which the MX zone encourages. We are building a 3 story building. The retail on the first floor with 3 to 4 businesses. Then 4 apartments on each of the second and third floors. The building will be fully sprinklered. The first area variance we are requesting is an increase of height from the 35 feet to 40 feet. We request a variance to decrease the size of 2 of the apartments from 1,000 square feet to 733 square feet. That if you look at the floor plan is required because it allows (inaudible). According to Glenn Smith in his letter dated May 30<sup>th</sup> to the Zoning Board, he included a short EAF. I do have a large plan of the site plan that has been submitted to the Planning Board three times now. The County has completed the 239 review because this is a County road. They are purging the development along with the additional parking from the Rail Trail.
- Paul Lucyk: Any questions from the Board Members?

- Neil Sapolsky: Are there electrical wires in front of the building? Has the fire department been there?
- David Fanslau: The fire department has been there. The building at 40 feet will be equal to or less than the buildings adjacent to it. The electric lines do not pose a problem for any of those buildings. In fact the buildings that are adjacent to it except for the new art center do not have sprinklers. This building was built to today's code and will be fully sprinklered building and will be less of a fire risk.
- Mike Bensimone: What is this in this apartment?
- David Fanslau: I don't know. That's the only one that has it. It is probably a column. It could be a shower stall. I'm not positive on that. The floor plans we will be going over with the Building Department. Basically the Zoning Board is just the 2 area variances. That could be something coming up from the bottom floor.
- Mike Bensimone: It is not coming up from the retail floor that is why I am asking.
- David Fanslau: It could be hot water. I don't see it in any other apartments.
- Paul Lucyk: One of my recommendations is to get a letter from the fire department just with the height.
- David Fanslau: This building is going to be lower in height than the art center. The fire district did get a letter in occurrence with the art center as well as I think the art center is higher.
- Paul Lucyk: My recommendation is to get a letter from the fire department. Every building is different. The access on the larger building maybe there is access on 2 sides.
- David Fanslau: This building has 3 points of access. Do you have the site plan? This is Main Street. There is a parking lot out here so you can have street access here. This house is offset so you have this front yard which will be open. So it is actually accessible on three sides. There will be space between this building and the current lot will be marked.
- Paul Lucyk: Okay. I still recommend getting a letter from the fire chief.
- David Fanslau: Okay. What we could do is make the variance contingent on the height if you were to agree to that. We have done that previously. Then the County's comments was this connecting walk path from the parking lot to the Rail Trail.
- George Sarvis: To be clear, you are looking for the fire department to weigh in on just the height of the building to confirm they have adequate equipment to reach it and for adequate access to the building? Or are you comfortable with the access to the building?
- Paul Lucyk: Just with the fire department if there is a fire that they have access. A lot of times with a big building like that they don't get let on top of the building. It is better off for safety concerns.
- David Fanslau: Again for the record the building is sprinklered. If there was a fire the automatic sprinkler will go off.
- George Sarvis: 3 story structure right?

- David Fanslau: Yes.
- George Sarvis: Alright. If you are asking for something from the fire department I just wanted it clear what we are asking for.
- David Fanslau: It is a letter we've gotten before. Basically the letter will say that the Hurleyville Fire District will provide aid and the Loch Sheldrake Fire District will provide mutual aid.
- Paul Lucyk: The second part of it, going down from the 1,000 square foot to 733 square foot.
- David Fanslau: For 2 of the apartments. The other 2 apartments are over the required minimum.
- George Sarvis: So over 1,000 square feet?
- David Fanslau: Yes. Basically there is the 4<sup>th</sup> apartment on each floor, the stairwell is what pushes the space available for that. We have the whole vestibule. We have room for the elevator and the stairwell which reduces dispersion of the hall. That's why we are asking for the variance.
- George Sarvis: Will this be for residential use as far as rental purposes? Or for the Center for Discovery purposes?
- David Fanslau: It is for rental purposes. Basically we are the owner of the land. One of our benefactors, one of our parents will be developing this land. Jeffrey Stevenson.
- George Sarvis: So rentals for public use. Just wanted to make sure.
- David Fanslau: There is a good chance that staff of the Center will rent the apartments but it is not exclusive.
- George Sarvis: So it's not a residential home.
- David Fanslau: As far as the folks we take care of no.
- Paul Lucyk: It is a brand new building.
- David Fanslau: Yes.
- Paul Lucyk: Are there any other options for balancing out if you have a couple of the apartments or changing the size of one and increasing the size of the other units?
- David Fanslau: The architect has looked at the code and the current fire and building code and this is what he has come up with. To fit the fourth apartment on each floor you can't get 1,000 square feet out because of the roof, the elevator, the vestibule and the stairwell. By taking the square footage of the foot print of the building up to that, it reduces the allowable square footage. From the architect's perspective and our perspective, no.
- Mike Bensimone: There is an H shape pattern here with a relief going from front to back. Any reason for that?
- David Fanslau: There is parking behind the building. This is to stay within the setback and the character of the other buildings in town.
- Mike Bensimone: But it will have a metal roof over the front here?

- David Fanslau: It will probably have an overhang to shield from water but this is the front elevation that is proposed. The Architectural Review Board will have jurisdiction over the actual design of the façade.
- Mike Bensimone: It seems to me if it was a perfect rectangle it would open up some square feet.
- David Fanslau: I don't think we can do it on the front. In the back you have the walkway. This would be dedicated parking for the renters. This would be additional public parking for the business as well as the Rail Trail.
- Mike Bensimone: So you might have a grass or concrete or walkway here?
- David Fanslau: Yes. I don't think that would we would gain 266 square feet from this.
- Mike Bensimone: My only concerns are standards of living or quality of life. Just by looking the only thing missing is the extra bedroom. All of them have 2 bedrooms, this one has 1. There are certain things different with this apartment from the rest. For example, all the other apartments have pantries. The smaller apartment will probably have to get wire shelves to save space. Half of the apartments have a dedicated storage closet, about 30 square feet worth. They all have a breakfast bar except for the small apartment. They all have a dedicated laundry room whereas the smaller apartment has a folding door inside the bathroom. I think you have to look at the overall quality of life. There is a lot to consider here. It goes beyond just the bedroom. This is a pretty small apartment. In the business district you need to have 800 square feet minimum. To have an artist studio you need 850 square feet minimum. This is a 26% ordinance here, I think it is a little excessive.
- David Fanslau: There are people who will want to rent a one bedroom or a studio apartment versus 2 bedrooms. Not everybody will want to pay the additional money for a 2 bedroom if they don't need it. This basically gives people options. It may be a space that doesn't get rented but it may be a single person who is looking for just this.
- Mike Bensimone: Would you consider combining the smaller apartments?
- David Fanslau: They are on different floors. That wouldn't work code wise.
- Mike Bensimone: I still think you have some options here.
- Paul Lucyk: Okay, anybody from the public that would like to speak?
- Abe Berkovic: I would like to say that whatever the Center builds is top notch. Whatever they do just makes this Town look better. I don't know the details but we have to give it to them. I think you should take it into consideration.
- David Fanslau: If the public portion is closed I would like to make a couple of other comments along that line. Before the Center invested in the hamlet of Hurleyville, a number of these buildings were in disrepair and basically falling down. The Center has invested between the Makers Lab, the Rail Trail, and the art center more than 12 million dollars. We have also put in 2 public parking lots at the expense of the center which we are paying for the creation of the

Hurleyville parking district. As well as paying 3 hundred thousand dollars to make sidewalks from Thompson Street down to the Makers Lab handicap accessible. Whereas the Town had failed to provide that accommodation to folks with mobility challenges previously. We do ask for these 2 relatively minor variances to be approved by the Zoning Board tonight.

- George Sarvis: Mailings are good. There are no violations.
- Paul Lucyk: Thank you. I am going to run down the different requests. No undesirable changes will produce in the character neighborhood or detriment...
- Neil Sapolsky: It is going to difficult to pick up 270 square feet for that apartment if you look at it. I am looking at it trying to bring it up to 1,000. If you move that left wall more into the apartment 2, it is difficult. With the landing behind it you can't go that way. With the mechanical room. If you push to the left. It is not easy.
- Mike Bensimone: I think with the shape of the building is the problem. It is hard to rearrange things.
- David Fanslau: It is really a design scenario. I don't believe the setbacks will allow it to be changed. The architect is Peter Curillo who is very up to date with codes. He has looked at all of this structure and foot print several times and this is what he has come up with. It is a matter of if he could have found the additional 266 square feet he would have and we wouldn't be asking for the variance.
- Paul Lucyk: One of the other things is once we allow a variance for less 1,000 square feet then anybody can come in here and say this.
- David Fanslau: I don't believe that the individual application is a precedent setting procedure. The Zoning Board, with all due respect, is quasi-judicial. You can take it case by case. I don't know that we could come in and say that you have bungalows and other apartments in the Town of Fallsburg that are less than 1,000 square feet which you have plenty of that as a basis for an application. The granting of a variance on this application doesn't set a precedent for what the Board would have to give to another applicant with a totally different set of circumstances. It's SBL by SBL and application by application. It doesn't create case law in the court system. No one else can come in and say you gave it to them give it to me.
- Neil Saposlky: There's no room on the left or right to expand?
- David Fanslau: No. There is a small existing house on the south side and an existing building on the north side.
- Neil Sapolsky: The only other option would be 3 apartments and make each apartment bigger.
- Mike Bensimone: I still think it is aesthetic the H shape. If it is a setback issue I would sooner give a variance for that than take away someone's living space. In the front you have the deck there, in the back it is adjacent to the walkway. I feel like you could gain 750 square feet if you took that up.
- David Fanslau: I don't believe that is a feasible option.

- Mike Bensimone: Financially?
- David Fanslau: No from an architectural and code perspective. It's not really a true H. There is a 4 foot indentation on the east and west side of the building. It's not a true H where you will gain significant square footage by moving it out. Again it is an architectural feature which the Town's master plan calls for. There is a set of guidelines for the MX zone calls for.
- Mike Bensimone: Everything except for the height and the square feet requirements.
- David Fanslau: The footprint would stay the same. What we are here for tonight is a variance on height and on square footage for 2 of the apartments.
- George Sarvis: I suggest you read the questions first on height then the questions again on the square footage.
- Paul Lucyk: Okay I am going to go first with the height. No undesirable change will be produced in the neighborhood character or detriment to nearby properties will be by granting the variance?
- Neil Sapolsky: The building next to it is just as high.
- Mike Bensimone: So no means no impact right?
- Paul Lucyk: No impact.
- All Board members vote no.
- Paul Lucyk: The benefit sought can be achieved by some feasible option other than area variance?
- All Board members vote no.
- Paul Lucyk: The area variance is substantial?
- All Board members vote no.
- Paul Lucyk: The proposed variance will not have an adverse effect impact on the physical or environmental conditions of the neighborhood?
- All Board members vote no.
- Paul Lucyk: The alleged difficulty is not self-created?
- All Board members vote it is self-created.
- Paul Lucyk: The minimum variance deemed necessary and adequate to preserve and protect the character of the neighborhood and the health safety and welfare of the community?
- All Board members vote yes.
- George Sarvis: We are out of order a little bit. You did Board comments. You need to designate the Zoning Board lead agency?
  - MOTION:
  - Neil Sapolsky motions for lead agency. Mike Bensimone seconds. All in favor.
  - MOTION:
  - Neil Sapolsky motions for negative dec. Mike Bensimone seconds. All in favor.

- Paul Lucyk: Motion to approve the variance for the height from 35 to 40 feet? With a letter from the fire department?
  - MOTION:
  - Neil Sapolsky motions to approve. Mike Bensimone seconds. All in favor.
- David Fanslau: I would like to add that the letter from Glenn Smith to the Board states for the apartment size and the 4 apartments on the 2 upper floors with 3 apartments significantly exceeding the 1,000 square feet while 1 apartment on each floor will measure 733 square feet which is necessary to fit in the elevator and stairwell spaces.
- George Sarvis: 1 on each floor.
- David Fanslau: Yes.
- Mike Bensimone: I wouldn't say significantly exceeds.
- David Fanslau: Quoting the engineer.
- Paul Lucyk: Now we will move onto the variance for the area, from 1,000 square feet to 733 square feet apartments. No undesirable change will be produced in the character of the neighborhood, detriment to the properties will be created by granting this variance?
- 2 Board members vote no, 1 votes yes.
- Paul Lucyk: The benefits sought can be achieved by some method feasible other than the area variance?
- All Board members vote yes.
- Paul Lucyk: The area variance is not substantial?
- All Board members vote it is substantial.
- Paul Lucyk: The proposed variance will not have an adverse effect on impact of the physical or environmental conditions of the neighborhood?
- All Board members vote it will not.
- Paul Lucyk: The alleged was not self-created?
- All Board members vote it was self-created.
- Paul Lucyk: This is the minimum variance deemed necessary and adequate to preserve and protect the character of the neighborhood and the health safety and welfare of the community?
- 2 Board members vote no, 1 Board member votes yes.
- George Sarvis: Negative dec.
  - MOTION:
  - Neil Sapolsky motions for negative dec. Mike Bensimone seconds. All in favor.
  - MOTION:
  - Neil Sapolsky motions for lead agency. Mike Bensimone seconds. All in favor.
- Paul Lucyk: Motion to accept or deny?
  - MOTION:

- Neil Saposlky motions to accept.
- Mike Bensimone motions to deny.
- Paul Lucyk votes to deny.
- George Sarvis: So you have an increase in height but not the area variance.
- David Fanslau: Alright we will deem this project non buildable. We may not move forward and we will take it up with the Town supervisor. For an agency that has put this kind of investment in the Town this is kind of ridiculous over a minor variance. Can this application be presented again next month? When you have 5 members?
- George Sarvis: (Inaudible)

2. ADAS YEREIM – SBL# 12-1-13– Requests an area variance to allow a mobile home that is under the required size of 1200 square feet. Requests a use variance to allow a mobile home that is over 12 years old. Zone: REC-2. Acres: 45 acres. Location: 143 Labaugh Rd., Loch Sheldarke.

- Abe Berkovic represented.
- Abe Berkovic: We have a yeshiva summer camp on Labaugh Road in Loch Sheldrake. We had an old trailer that we removed and we got approval from the Town to replace it in kind with the same type of trailer. We went out looking for trailers. The Town has a law that it cannot be older than 12 years. If we need it older than 12 years we have to get a variance. There is a gentleman on Zimmerman Road, Bruce Sapinsky, who wants to sell his trailer. He is from the fire department. We are here for 2 variances. 1 variance is for it being old than 12 years and the second for the trailer being less than 1,200 square feet because it is technically a dwelling. Usually trailers are not so large. It is right under 1,000 square feet. It is in the Town currently. It is only 2 miles from where it is going to go if we get approved. This is way off the road. Downhill it is not even visible from the road. George can attest to that.
- Paul Lucyk: So you are removing 1 trailer.
- Abe Berkovic: We removed this trailer and we are replacing it.
- Paul Lucyk: The trailer that is being removed?
- Abe Berkovic: It is gone already. It was probably 50 or 60 years old. The Town said we can replace it. So we came here. These are all trailers. It is all the way downhill. You won't see anything from the road. This trailer will not be visible from the road.
- Morgan Vegliante: Do you have financials? Financially how would you be worse off if you didn't get the variance?
- Abe Berkovic: If I have to buy a brand new trailer it would be a hundred thousand dollars and here I am getting it for a couple thousand. We are not for profit so we wouldn't be able to afford a new trailer.



- Neil Sapolsky: That's a residential trailer?
- Abe Berkovic: Yes. I have some pictures.
- Neil Sapolsky: Who will be living in that?
- Abe Berkovic: One of the teachers and their family. This is the trailer.
- Morgan Vegliante: I think there is a big jump from brand new to 29 years old.
- Abe Berkovic: I made some calls. I made a lot of phone calls and had several exchanges. There is a company in Mamakating. There is no market for the 10 or 20 year old trailers. I was looking for something at the 10 or 15 area. I made a lot of phone calls. There are 2 companies. One out in Wurtsboro. They explained to me that the only way something like that comes online is if somebody went bankrupt. Most of these trailers are in trailers parks and the person who owns the park doesn't typically change inventory. The only way we can get younger than 12 years is if we buy brand new. Brand is over 1 hundred thousand dollars. That would not be affordable for us.
- Mike Bensimone: It's tough because I know that banks only giving mortgages up to 20 years for trailers and manufactured homes. I think it is because there is a risk there with these homes not lasting that long. The useful life of these things.
- Abe Berkovic: This trailer and the interior Bruce had remodeled. On the outside he put siding. It appears to be not that old. I have to reside it as a condition I don't have an objection to that. Our camp has an annual inspection from the Town so if something become curated they would condemn it. That's why we got rid of that other trailer is because the Town said we could not use. They visit every year. They walk through the whole place. I understand your concerns. Normally single family homes throughout Town don't have annual inspections. I don't think it will come to that where it is not livable.
- George Sarvis: Correction that is every 2 years.
- Morgan Vegliante: So there was an inspection last year?
- George Sarvis: I didn't do it personally. There were some items. Gregg and TJ did the inspection. I talked to Gregg this morning and they are actively remedying the items.
- Morgan Vegliante: So the inspection was this year?
- Abe Berkovic: Gregg was there this week. We get them every year for public assembly but individual units are every 2 years. Going back to that point that if it is deteriorating the Building Department would condemn or make us do renovations.
- George Sarvis: We always find something.
- Paul Lucyk: One of my concerns with the older trailer is the electrical. We have had a lot fires where they draw a lot of electric when they are using the air conditioning or during the winter times. One of my concerns is the with the wiring.
- Abe Berkovic: We just use this trailer 2 months a year. We are not open all year. But even for 2 months we can make a condition that I will have an electrical inspector inspect the trailer to make sure.

- Paul Lucyk: A lot of the older trailers for a while were using aluminum wiring instead of copper wires. That was a problem. That was with the older trailers. My concern is with fire and also a lot of times they are not insulated well. What happens is they run 3 or 4 air conditioners which overloads the circuits. One of the things is it is an older trailer. You're getting into a situation where you don't want to expend the money for a newer trailer but you would get a lot more longevity from a newer trailer. These are the options.
- Abe Berkovic: The trailer is in Town. Somebody is living there. It is in great condition. The people went to see it and said it is very well kept and updated. As far as electrical I can have a licensed electrician check it.
- Paul Lucyk: That is one of the things I would prefer. I am just speaking for myself.
- Neil Sapolsky: 28 years ago were they using asbestos?
- George Sarvis: They are using asbestos today. Even today they are shipping things in from other country and we are still producing in the US. The Labor Board says anything before 1974 you are going to do any construction, alterations, renovations that you have to get an asbestos survey. If there is any it has to be abated. The Environmental Protection Agency says 1984. We don't work for the Environmental Protection Agency so we stick with the New York State Department of Labor.
- Neil Sapolsky: So from 1990. This was in 1990.
- George Sarvis: It is still being imported into the US today.
- Abe Berkovic: So it is the 70's they are looking for.
- Neil Sapolsky: Okay.
- Paul Lucyk: Let's open it to the public. Anybody from the public that would like to speak? We are going to close the public portion. I am going to go down the criteria.
- George Sarvis: We did Board comments.
- Paul Lucyk: Yes. We did the public. Closed. Violations?
- George Sarvis: There were some campus violations that are being remedied as we speak.
- Paul Lucyk: Board comments?
- Neil Sapolsky: I would just hope they looked at 2 different manufacturers or sellers of mobile homes. Do like a nationwide search.
- Abe Berkovic: I went to an exchange. Like an MLS exchange. I went to a website. It went all over. All the way up to the Canadian border. Everything led me back to trailer parks. When I called they said they were not selling. They said I could buy it and leave it on their property. I had another guy from the yeshiva office make calls. Then I spoke locally in Woodborne. They said that from bankruptcy that you can find. Usually you don't find them. I tried my luck.
- Neil Sapolsky: Okay.
- Morgan Vegliante: I am going back to what I said before. I don't know a lot about the market. From 12 to 29 years is a large jump. It is not within sight right?

- Neil Sapolsky: Right.
- Morgan Vegliante: I am still concerned with the electrical and the safety of people there.
- Abe Berkovic: That we can address.
- Paul Lucyk: You were discussing earlier about the situation with the financials.
- Morgan Vegliante: I think we need more financials to be able to approve a use variance. There's nothing concrete just that you are telling us that a new trailer is a hundred thousand dollars and this one is a couple thousand dollars. There's nothing solid for me to bite into. If you could provide some examples.
- Abe Berkovic: Examples of what? How much a new trailer is?
- Morgan Vegliante: Yes. Examples of the search. We need financials to approve a variance. Indications of a financial loss if you didn't get the variance. It's a little tricky.
- Abe Berkovic: I don't want to lose this mobile home if he will sell to someone else. We were lucky to find this one. There is a concern if we drag this thing out we will lose this one to somebody else. Although maybe not in this Town but they may take it to another Town where they don't have the jurisdiction.
- Paul Lucyk: What about the other members of the Board? Would you like to hold this off for 30 days to see some financials?
- Neil Sapolsky: I think we should. He is saying he can't spend a hundred thousand on this.
- Mike Bensimone: As it stands I don't think I would vote to approve. I would have to see some hardship, financial or otherwise that could make this case a unique case. Otherwise I don't see anything substantial. Something that would mitigate the situation
- Abe Berkovic: What kind of information are you looking for?
- Mike Bensimone: Does the organization have financials to show that they can't afford? Even if they finance it?
- Morgan Vegliante: You would financially be at a loss without this space.
- Neil Sapolsky: Proving a financial hardship.
- Abe Berkovic: Bring a letter from an accountant or something?
- Paul Lucyk: I don't know exactly which financials.
- Mike Bensimone: A letter from an account would be helpful if it had something financial accompanying it so we could independently verify it. I don't think just a letter would be enough.
- Morgan Vegliante: I agree. For a use variance to be approved there has to be some indication of a financial hardship.
- Mike Bensimone: To be honest, this is kind of a substantial request. If this was a 13 year old trailer and it was 1,150 square feet I wouldn't have to think about it. Because it is so old it makes me think that there was a lot of interior work done, I have to think if it is structurally sound. For that matter, 29 years old is pretty

excessive. I don't even have that much issue with the size depending on how the layout and what kind of living conditions there are. I know it is a pretty large property. The age is definitely a deciding factor for me.

- Paul Lucyk: Do you want 30 days to come back?
- Abe Berkovic: Yes. It doesn't look like you guys will approve it tonight.
- Paul Lucyk: It may be in your best interest. If you do come back, have an electrician look at it.
- Abe Berkovic: So you are going to leave it open?
- Paul Lucyk: Yes. Let's leave it open.
- George Sarvis: For the record for this application for next month, we didn't do negative dec, lead agency, or SEQR. They will have to be done next month.

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