

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

TOWN OF FALLSBURG ZONING BOARD MEETING

July 19th, 2018

Steven Burke, Chairman, Neil Sapolsky, Mike Bensemone, Board Members, Rabbi Zierler, Alternate Board Member, George Sarvis, Code Enforcement.

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

OLD BUSINESS:

1. 371 INC. – SBL# 14-1-33.5- Requests a 6 month extension on a previously approved variance.

- Jay Zeiger represented.
- Steven Burke: This is only for a 6 month extension?
- Jay Zeiger: Correct. The 6 months would be retroactive to June. Correct?
- Paula E Kay: Yes.
- Jay Zeiger: We got a variance. June was 6 months. We then based on that variance went to the Planning Board and got Planning Board approval. I have a different view on the request for a variance than Paula does. I don't think we need an extension. I think once we have our Planning Board approval then the variance became part of the Planning Board approval which is good for a year from when we had approval. Paula and Mollie feel differently and that is why we are here. Does anybody want to see what the project was approved? This is what you approved. These 2 duplexes. It is an existing site. There are about 6 houses there already. 8 houses with a synagogue. They approved the addition of 2 duplex buildings, 4 units. Again it needs Planning Board approval.
- Paul Lucyk: This is off what road?
- George Sarvis: Hasbrouck near the Aladin.
- Jay Zeiger: East side of Hasbrouck Drive across from the Aladdin.
- Paula E Kay: This is a 6 month extension, it is going back to last month because there was technically something on the agenda. It was not the applicant's fault

that it was left off the agenda. We are going to give them the extra month.

- Steven Burke: Does anybody have any objection to the extension to the variance that was granted?
- Neil Sapolsky: No.
- Mike Bensimone: No.
- Steven Burke: Rabbi Zierler?
- Rabbi Zeirler: Since I was not here for the initial discussions.
- Steven Burke: I vote to grant the extensions. 4 to 0. Do you still want the paperwork on this?
- Paula E Kay: It's just an extension.
- Steven Burke: Okay so I am good. Just on the record. Did I need to make a motion?
- Paula E Kay: You can do it as a motion?
- Steven Burke: Do I have a motion to grant the extension?
 - MOTION:
 - Paul Lucyk motions to approve the extension. Mike Bensimone seconds. All in favor.

NEW BUSINESS:

1. STUART WIZWER – SBL# 33-2-5 – Requests an area variance for a side yard reduction from the required 30 feet to 10 feet for a two car garage and driveway where an there is an existing dwelling. Zone: R. Acres: +/- ½ acre. Location: 324 Main St., Hurleyville.

- Stuart Wizwer represented.
- Stuart Wizwer: I am looking for an area variance for a side yard reduction from the required 30 feet to 10 feet for a 2 car garage in a driveway where there is an existing dwelling but no driveway or garage.
- Steven Burke: Before we go any further, you're going to need a 239 from the County. The County has to approve it because it is a County Road.
- Paula E Kay: State law requires that anything that is within a certain distance of a County Road or a boundary line between towns or villages we have to have the County Planning Department issue a ruling as to whether or not they feel it has regional impact potentially. The County has not done that yet.
- Stuart Wizwer: I was not told that it needed to be done.
- Paula E Kay: It's not something you need to do. The Town and the County handle it.

- Steven Burke: We're going to go through everything. We can't vote on it tonight until we get that review. I asked if we could and we can't. There are certain extensions extend you. We'll ask you to vet your case and any public you have. We won't be able to vote on it tonight. We may be able to if I poll the Board and the poll is positive, at your own risk, you can go forward and keep progressing on the property. That is out of our control.
- Stuart Wizwer: Why wasn't I made aware of that the last time when I applied for that? Why wasn't that process started when all this paperwork submitted?
- Paula E Kay: This Board can't answer that for you. They are not in the office. They are volunteers.
- Stuart Wizwer: I spoke with the Public Works Department and applied for and was basically granted permission to put a driveway. You have to understand in there that are afraid they are going to get stuck on the lawn. I have been trying to get this expedited. After all of this I don't think I am any closer to where I need to go because we are talking about another month.
- Steven Burke: On the 239, doesn't the Zoning Board have head rule on that? They can give us their recommendations.
- Paula E Kay: If the County denies it then you need a super majority of your Board to overrule them. That's the issue. Do I think they will have a problem with this? No. But you haven't seen it yet.
- Steven Burke: So our attorney doesn't feel there will be a problem. You do have to go through the process. If the Board polls in a positive manner, I think you are okay. I would be careful how you approach this Board.
- Stuart Wizwer: No what I am saying is you told me there is nothing I can do for the process but you are telling me..
- Steven Burke: We can't vote on it tonight without getting that review back. What I did say and the attorney said is there doesn't seem to be a problem.
- Stuart Wizwer: I heard that. But you're telling me that the process of me following through and then you're telling me I don't do anything.
- Steven Burke: Who said you don't do anything?
- Stuart Wizwer: What do I need to do?
- Steven Burke: You don't need to do anything.
- Stuart Wizwer: That's what I am saying.
- Steven Burke: This paperwork goes to the Town. The Town sends it to the County. They have 30 days to do this. The County sends it back to the Town. At the next meeting we get the paperwork stating their recommendations. What I am saying to you is that we can take their recommendations but we don't have to take their recommendations as long as we have super majority. So after tonight if it goes well for you and you do get a positive reaction from the Board which I can't guarantee it but I am saying most likely.
- Stuart Wizwer: I was just upset with the prospect that I wasn't made aware of another step. I've already been in touch with the Public Works Department for the

driveway and the permit.

- Steven Burke: So if it is a positive reaction from the Board we are going to allow you to keep going at your own risk of course. The risk factor according to what we feel is very minimal.
- Rabbi Zierler: It is better than at the casino.
- Steven Burke: We are going to go through the public. We're going to do everything except vote because we can't.
- Stuart Wizwer: The 2 reasons we are requesting the variance is number one, there is a Town grinder pump and well behind the house. I had one member and I explained that to him. If I don't get the variance and I build the garage there may not be enough room between the garage and the house should the Town need heavy equipment back there to address the Town's responsibility. So then what do I do?
- Steven Burke: That's why you need to put the garage where you need to put it.
- Stuart Wizwer: The other one has to do with this driveway that I believe attached a copy of an email from the person that is recommending a large sight distance. We did what we can to improve it. The recommendation was to keep it as far south as possible to maximize the amount of sight distance for the County Road. That's where I am at and the reasons for my request. I have my neighbor who is the adjoining property that would be within 10 feet of his property line here. What else do you need from me right now?
- Steven Burke: Anybody have any questions?
- Neil Sapolsky: If the neighbors granted permissions, does that affect future sales when they go to sell the house? I just want you to protect yourself too.
- Paula E Kay: The neighbor isn't saying it is going over into the neighbor's property but that it is on a different location on Mr. Wizwer's property. It doesn't directly affect the neighbor's property. It wouldn't change the neighbor's deed.
- Steven Burke: Anybody else have any questions? Okay you can have a seat.
- Paul Lucyk: The right of way for the grinder pump and the well, does that go right through your property?
- Stuart Wizwer: It goes between my property and the adjoining property on the other side. It would not be conducive to take any equipment that way because there is shrubbery, bushes, and trees. There is a much deeper pit the other way. There is an easement but it is not the easy way.
- Paul Lucyk: How do they get to the area in the back right now to check the grinder pump?
- Stuart Wizwer: I assume they walk through the backyard. Nobody is going to bother them.
- Paula E Kay: You've never seen any equipment?
- Stuart Wizwer: Equipment correct. What I am saying is somebody needs to get back there I am certainly not giving them a problem.
- Paul Lucyk: Is there a right of way on your deed?

- Stuart Wizwer: It was on an easement that the Town had to go through. This is part of the whole sewer system.
- Paul Lucyk: You have on your deed an easement from the Town of Fallsburg.
- Stuart Wizwer: There is an official document. I don't know if it is attached to the deed.
- Paula E Kay: Do you have it with you? Would you like to see that?
- Paul Lucyk: No. What I am trying to say is if it is your neighbor's property or your property, where is the access point?
- Paula E Kay: There is an easement somewhere.
- Paul Lucyk: You can't build where there is an easement and you want to make sure everything works together. So maybe if it is going to take 30 days it would be in your best interest to get ahold of the Town engineer to say listen if you need to access the sewer grinder pump and to bring in equipment, where is the right of way?
- Stuart Wizwer: The easement is not where the garage is. The easement goes directly from 104 to the grinder pump.
- Paul Lucyk: All I am trying to say is to make sure that everything fits together. That you are not building on the easement. If you don't know where the easement is..
- Stuart Wizwer: I know where the easement is. What I am telling you is it is on the other side of the house from where the garage is going. It is a straight line from the road almost perpendicular to the road to the grinder pump. There are trees and shrubbery. It is a very steep incline to go down behind to where it is. There is a much lesser incline going between where the garage is going to be and the house. No shrubbery needs to be moved or cut down to make that happen. I have no problem if the Town needs to get in there getting that way because it will be less disturbing to the vegetation than going the other way. If you go that way you will have to come in and make a path.
- Paul Lucyk: A pump is a maintenance item. If they have a grinder pump in the back they must have an idea of which way to go in and out. I would recommend to just make sure that they have access.
- Stuart Wizwer: That's one of the reasons that I am looking for the variance to allow for more room for the heavy equipment that may need to get down there. To allow it to go down that route.
- Paul Lucyk: What I have here does not show where the right of way is.
- Stuart Wizwer: I am trying to remember if I have a map or just all kinds of legal documents for the easement.
- Paula E Kay: It sounds like the Board is asking to see on a map where the easement is.
- Steven Burke: What if you got a letter from the Town stating where you want the garage is fine with them as far as the easement is concerned?
- Stuart Wizwer: I had a surveyor create this document on his measurements.

- Steven Burke: Didn't you say you got permission from the Town?
- Paula E Kay: Here is the survey. I don't see the right of way.
- Paul Lucyk: It doesn't show the right of way.
- Stuart Wizwer: I have legal documents. I have copies.
- Steven Burke: You have a letter from the Town and the Town said it is fine. If you can't find the easement and you have a letter.
- Stuart Wizwer: I have all the legal documents that were filed with the County clerk.
- Steven Burke: If you can get a letter saying from the Town of Fallsburg that where you want to place the garage is no issue, that would be fine. You said you got permission from them, so they know about it right?
- Stuart Wizwer: I never spoke to them about the easement because the easement is in place. It is on the other side.
- Steven Burke: Did you speak to them about the placement of the garage?
- Stuart Wizwer: That's been delivered on Tuesday by the surveyor to the office.
- Steven Burke: To the Code Enforcement office.
- Paula E Kay: Right. I think what the Board is asking for is a letter from the Town and engineer stating your proposal does not impact the easement.
- Steven Burke: That would make it easier and clear up these questions.
- Rabbi Zierler: He's not using the easement.
- Steven Burke: He's not but the Town might.
- Rabbi Zierler: So they have to forgive the easement in favor of the alternate plan.
- Steven Burke: Anybody else have any other questions? Okay we will open the public portion. Anyone from the public?
- Stuart Wizwer: This is an aerial map that the County supplied. It's not an official.
- Steven Burke: It doesn't say with easement.
- Stuart Wizwer: But I can show you where the easement is. The easement is on the other side. That is the electrical box and barn for the shul. If you look, that is the grinder right there.
- Paul Lucyk: Where is your house?
- Stuart Wizwer: This is the house. That's the property line. The easement has to go from here to the road for the connection to the sewer.
- Mike Bensimone: There is like a 6 foot drop off right over here.
- Stuart Wizwer: There is a grade back there. Going this way there is much less of a grade that you can attest to. We went there and looked. There are bushes and trees that if they technically went through the easement would have to be taken down.
- Mike Bensimone: There's no way they can get a vehicle in through here but they could probably go through here.
- Rabbi Zierler: The records would have to reflect that you can go this way so if ever they were to come in.

- Stuart Wizwer: The ultimate owner of the property is going to be my son. He is aware of this.
- Steven Burke: Paula if they have an easement they can only use that portion. They just can't go any way they want on that property.
- Paula E Kay: Correct.
- Discussion.
- Stuart Wizwer: If they go this way I have no problem with that.
- Paula E Kay: An easement is a legal filed document for a specific location on your property or somebody else's property.
- Rabbi Zierler: If it is not noted someway..
- Paula E Kay: It gets recorded.
- Stuart Wizwer: That's what I am saying, I have copies that have been filed with the County clerk.
- Paula E Kay: It is in a specific location, it does not float.
- Stuart Wizwer: I understand that. That's why I am showing you where it is.
- Paula E Kay: The Board is looking for a survey that shows exactly where the easement is on your property or a letter from the Town engineer stating that your construction doesn't impact the easement.
- Steven Burke: Anybody from the public please come up.
- Jules Neet: I am neighbors. I have no problem with him. We are neighbors. That's what we do for each other.
- Steven Burke: Thank you. Anybody else from the public? No. We will close the public portion. Violations?
- George Sarvis: No. Mailings are good.
- Steven Burke: I am going to poll the Board about what they think about this so they can give the applicant an idea. I'm not asking for a motion but what is your feeling on this.
- Mike Bensimone: I think it is in keeping with the character of the neighborhood. There is a property right across the street that pretty much has the same 2 car garage setup. I think the only one affected here is the neighbor because it encroaches on his property but he is okay with it.
- Paula E Kay: It is not encroaching on his property. It is closer than it was but not encroaching. Everything is on Mr. Wizwer's property.
- Steven Burke: I have no problem with it either. Nobody on the Board has any issues with it either. I hope they are all healthy and come back in 30 days. Unfortunately we can't vote on it tonight. You have a pretty good idea according to the Board and the attorney that it should be fine. The Board has no problem with it. If the County comes back and there is a problem with it, home rule proceeds over them.
- Paula E Kay: You would need 4 out of 5 votes.
- Steven Burke: So 4 out of 5 would have to vote. Then you are okay. That's next

month where we can vote. You can proceed with doing whatever you want to do to the property at your own risk. It doesn't look like it will be an issue.

- Mrs. Wizwer: Do we have to put a sign on the door?
- Paula E Kay: No the Board has seen it.
- Mrs. Wizwer: We can take the sign down.
- Steven Burke: So we will close the public portion. All we have to do next month is vote.
- Mrs. Wizwer: Do you want us to be here?
- Steven Burke: You should be here. It would help if you brought that letter.
- Stuart Wizwer: Or supply it ahead of time.
- Steven Burke: Right. It's not going to matter where you put the garage anyway. If that's what our Board is asking for, I don't think you will have a problem getting the letter. We will see you next month. We will give you a 30 month extension.

2. PARADISE STAY – SBL# 39-1-34.6 – Requests an area variance for a rear yard set back. Requests an area variance for lot coverage from the allowable 20% to 32.7%. Zone: B. Acres: 0.92. Location: 5629 SR 42, Fallsburg.

- Jay Zeiger, Joe Hurwitz and Randy Wasson represented.
- Steven Burke: Before you even present this case, is it a hotel or a motel? If I don't get that answer definitely tonight we are not going forward.
- Randy Wasson: It is a hotel.
- Steven Burke: My distinction might be different from yours. Motel is entrance from the street and hotel is entrance from inside the building.
- Jay Zeiger: We are talking about the property. They used to call it Funland. It is right next to the Stewart's Shop at the 4 corners near the Dollar General. There are a couple of existing buildings on the property now.
- Randy Wasson: There is a big rec hall still there. There is a rather dilapidated shed building right here. There is a 2 family dwelling right here. The proposal is to take this down this dilapidated shed, relocate this 2 family home over here. It would be a professional office space. Then construct a new hotel. It says motel but it is a hotel.
- Paula E Kay: We are going to change that. The other thing you need to change is on your application your request from the Town of Fallsburg section it says 310-9.4. It is actually 310-22.9. 310-22.9, lot coverage per hotel/motel or recreational building. It is 310-22.9 A1. Area and coverage of hotel/motel or recreational building or structure shall cover more than 25% of the land upon which it is constructed. You are asking for 32.7.
- Jay Zeiger: Anyway taking this property, we are going with hotel, new office building, and storage. Parking and everything else. The plan is going to make that property a lot nicer and put it back to use. It hasn't been anything since Funland closed. That has to be 20 plus years ago. There are 2 variances that we are seeking. One is setback for the existing recreation building. The required

setback is 100 feet and we are at 35 feet.. The second variance is lot coverage that we are allowed. We are allowed 20% and we are at 33%.

- Paula E Kay: You're allowed 25%.
- Randy Wasson: Because it is a hotel. We got the 20% out of the bulk tables.
- Paula E Kay: So it is a lesser variance.
- Jay Zeiger: The rather interesting thing is in questioning the validity of the bulk tables. You will see what we are talking about on the bulk table for hotels. It says 20%
- Paula E Kay: Does it have an asterisk?
- Jay Zeiger: Anyway assuming that this bulk table is correct, you will see that there is a lot of permitted uses that are listed. The lot coverage on most of the permitted uses is at 50%. Although a hotel is not at 50% the consistency of all of the other uses, we would be consistent with that. That lot coverage is similar with the setback. With it being an existing building, it is debatable that we need a variance. I think Randy has asked the question if we do need a variance because it is an existing building which we are not touching. We are assuming that is the first question you would answer which you can do without the 239.
- Paula E Kay: You need a variance.
- Jay Zeiger: So that is your interpretation that we need a variance even though it is an existing building. That being said the rear yard requirement if you look at that chart for most of the allowable uses in the zoning district, you will see the first dozen or so is 25. Most of them for whatever reason, schools and hotels, are singled out as larger. I bring that out not to say we don't need a variance but to show that the variance we are requesting is consistent with what is allowable in that zoning district therefore consistent with the character of the neighborhood.
- Joe Hurwitz: Behind this building is a very steep rise. It is almost a 20 foot rise. It's not as though the absence of that setback is contingent on finishing the hotel. I think we barely see the roof of this building from back here. You certainly can't see anything here from back here. If the variance is granted it effectively has absolutely no impact.
- Paul Lucyk: What are the plans for that recreational hall in the future?
- Randy Wasson: At this point we don't have any plans.
- Jay Zeiger: It is storage.
- Randy Wasson: It is storage for the foreseeable future.
- Mike Bensimone: Are you going to rehab it in anyway?
- Randy Wasson: At this time I don't believe so.
- Mike Bensimone: I was there yesterday and the roof is open.
- Joe Hurwitz: That would destroy the value of the property if something wasn't don't.
- Jay Zeiger: We are going to have to make it nice. I think what Randy was saying is there are no plans to convert it to anything. I think they will make the building nice. They may side it.

- Joe Hurwitz: Some roof damage that needs to be taken care of.
- Rabbi Zierler: The owner of that recreational piece is? You're the principal?
- Randy Wasson: She's not here.
- Jay Zeiger: She told us she was on the way but maybe she hit traffic.
- Paula E Kay: How many stories is the proposed hotel?
- Joe Hurwitz: 3 floors.
- Randy Wasson: 35 foot back. With that handout I just wanted to emphasize that there are some other uses. Automobile sales and service. Retail shopping center. Gasoline service stations. Repair garage. Self-store facilities and warehouses. Ones with the red dots can really suck up the land and it is allowable in the zone. It is much smaller setbacks than what we are looking at. We are within the 100 feet with the exception of the variance requested for this building. We are going to be 100 feet off all property lines. This one being an office building owns a 35 foot setback. We showed this additional dash line right here doesn't meet that where we've got it. Again in the zone 50% lot coverage is very common.
- Paul Lucyk: Do you feel something about that storage?
- Rabbi Zierler: I am bothered by that. I want to more about that. It is amorphous.
- Steven Burke: You can make it a condition.
- Rabbi Zierler: It's amorphous the way you are describing it. Something is going to be done. This is a big chunk of real estate that someone could overlook and try to walk away from or ignore.
- Jay Zeiger: The plan for the building is storage. Assuming we get our variances here, we have to go to the Planning Board for approval. They can only approve what we ask for. If we ask for that as storage and then we will fix it up.
- Rabbi Zierler: Then the ARB?
- Paula E Kay: This one doesn't have to.
- Rabbi Zierler: I am thinking aesthetics.
- Jay Zeiger: Again the plan is to make it nice. Joe can give you more details for the next meeting.
- Rabbi Zierler: But the person paying for it is not here.
- Steven Burke: They are representing.
- Paula E Kay: She doesn't have to be here.
- Jay Zeiger: What we commit to on her behalf is part of the approval.
- Steven Burke: I feel in my opinion that this has been a vacant property for many years. I would love for something nice to be there. It is there. It just needs to be reconfigured and if you or you have a problem with that building, you can state that the building stays as storage.
- Paul Lucyk: If you are putting up a brand new hotel and you have old warehouse next to it, it's not like it is hidden.
- Joe Hurwitz: It will be self-defeating on their part not to dress up that building. It

would be absurd to put up a brand new hotel and leave that piece of garbage sitting there.

- Paul Lucyk: Even with a hotel with 78 rooms, there is no swimming pool or anything.
- Steven Burke: How fixable is that? Is that something that they may possible remove?
- Mike Bensimone: The concrete foundation is excellent. They could do something with that building.
- Paula E Kay: This Board can send a recommendation to the Planning Board. Obviously it has to go back to the Planning Board if you approve it saying that you want the Planning Board to address usage of that building and to determine whether or not if it needs to come down. Let the Planning Board know you have concerns.
- Rabbi Zierler: We have reservations of it staying as a warehouse which is less than optimal use and could be deleterious to the overall purpose of the project. I don't get comfort from the warehouse.
- Randy Wasson: We're not using the word warehouse. We are saying storage.
- Jay Zeiger: One of the things I try to recommend to a client is I am hearing concerns about that building. We have to come back here next month so between now and then we will have some discussions with our client as to some additional or alternative suggestions to the building.
- Paul Lucyk: Has there been soil testing on this property?
- Randy Wasson: No we haven't done anything.
- Paul Lucyk: That's a rough lot. Rock and water.
- Randy Wasson: I think the sewer runs there.
- Discussion.
- Steven Burke: We can make conditions. We don't need to make the same mistakes over and over again.
- Paul Lucyk: You think this will be great to put a hotel in.
- Joe Hurwitz: It seems to me it will be for people who occupy the hotel. Perfect for people who occupy the hotel to have a recreational facility.
- Jay Zeiger: We will have the conversation. Paula what do we need to do? Listening to the last conversation we are doing the 239 review.
- Paula E Kay: Contact Mollie tomorrow. Either she will send it out or you will.
- Rabbi Zierler: Encourage your client to turn it into a recreational facility with memberships for pool use and I think it will sail.
- Jay Zeiger: I think if we were going to do anything it would limited to the hotel guests.
- Rabbi Zierler: There's a lot that could be done. It is a big piece.
- Mike Bensimone: It may be financially feasible to do something with it, even if it was just torn down.

- Jay Zeiger: We will have that conversation.
- Rabbi Zierler: Hotels have served their clients or customers with a pool and then opened it to the public.
- Jay Zeiger: There is a project after us if a woman walks in.
- Paula E Kay: If they opened it to the public they have to deal with traffic, which is fine and workable.
- Steven Burke: I put a condition that the Planning Board addresses the storage building.
- Jay Zeiger: We will also discuss and come back next month.
- Steven Burke: You have to do a 239.
- Jay Zeiger: You want to open and close the public?
- Paula E Kay: Steve?
- Steven Burke: Is a state highway the same as the County?
- Paula E Kay: State and County.
- Steven Burke: We had that issue with somebody that wanted to build houses off of 42. Anybody have any questions? Any violations?
- George Sarvis: I have a lot of high grass. We haven't document but it is pretty obvious from the road.
- Steven Burke: Joe looks like he is ready to take care of that. Not in violation right now?
- George Sarvis: No. Normally we'd write it up and have it mowed ourselves like we have over the years.
- Steven Burke: So we will open the public portion. Anybody here from the public? No okay so we will close the public portion. We will wait for you guys and give you 30 days.
- Paula E Kay: That's it.

3. YIFEI NOF – SBL# 20-1-4.1 – Requests an area variance from ICC Code to reduce the separation distance between existing an emergency entrances to 340 feet. Zone: R. Acres: 50. Location SR 52, Loch Sheldrake.

- Applicant not heard

Mike Bensimone motions to adjourn. Neil Sapolsky seconds. All in favor.