

“Minutes are not official until approved by their respective board.”

TOWN OF FALLSBURG ZONING BOARD MEETING

February 18th, 2016

Steve Burke, Chairman, Jason Pantel, Peter Frunzi, Joe Puccio, Richard Levine, Board Members, George Sarvis, Code Enforcement, Paula E. Kay, Deputy Town Attorney.

- Steve Burke called the meeting to order.

OLD BUSINESS:

1. RALEIGH-HEIDEN – SBL# 60-1-56 – Requests a 6 month extension for previously approved variances. Zone: PRD. Location:Heiden Road

- Glenn Smith represented.
- Glenn Smith: I was here in last August and the board granted a 6 month extension on several front and side yard variances on this project. When the town changed the zoning, this was done under the old zoning. When I was here in August, I gave a list of what we're going through with the DEC, the Health Department and the Delaware Basin Commission. It was proceeding well then, and even better since. I have a letter of everything that happened since last August. Just to highlight it, the Health Department changed their requirements for the well. They now want more surplus water. We have 4 wells at 75 gallons a minute, they want another 31 gallons a minute. We've been searching for wells in November. We found a well behind the Raleigh hotel with 40 gallons a minute. That was drilled in November, it was tested for 4 days on January 25 to th 28th of this year. The samples are all in the lab now. We should have them back next week. We have all the water the Health Department wants. DEC we have been going back and forth for 2 years, on numerous permits for stream crossing, SPEDES permit for the sewer plans, water quality and well permits. We have a DEC complete application which is the step before they issue all the permits. We have a 30 day period with the state, that will be done next week. We should be getting everything from the DEC in early March. Keystone, we submitted things back to them in 2014, more in 2015. We finally got comments in December, we are going back to Keystone next week. The Delaware Basin, we have their

permits. We hope this will be the last extension.

- Steven Burke: We're just going to do our consensus. Are we in favor? Okay six months, we are good.

2. GOLDBERG /DORFMAN PROJECT – SBL# 39A-1-45/39A-1-47 – Requests an area variance to increase the fence height from the allowable 6 feet to 8 feet. Zone: R-1. Acres: .01. Location: Laurel Ave., So. Fallsburg

- Mr. Dorfman represented.
- Paula E Kay: We had an issue with the mailings, we have the mailings for last month. You did not close the public hearing, it needs to be (inaudible) and then close the hearing. You guys were pretty much okay with this, this was the fence height.
- Steven Burke: We just needed to know that everyone heard about this. Is there anyone from the public here to speak? The reason this is back is because all the mailings weren't sent out. We wanted to make sure every neighbor had the opportunity to speak about this project. No one to speak? Public portion closed. Board comments?
- Peter Frunzi: No sir.
- Jason Pantel: No.
- Richard Levine: No.
- Steven Burke: Whether the benefit can be achieved by other means feasible?
- All board members say yes.
- Steven Burke: Undesirable change in the neighborhood character or nearby properties?
- All board members say no.
- Steven Burke: Whether request is substantial?
- All board members say no.
- Steven Burke: Whether the request will have an adverse physical or environmental affect?
- All board members say no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members say yes.
- Steven Burke: You have the other paperwork on this George? Thank you. Do I have a motion?
 - MOTION:
 - Jason Pantel motions to approve. Peter Frunzi seconds. All in favor.

3. SUN RAY COTTAGES, INC. – SBL# 60-1-4.2 – Requests an area variance to increase the height of a replacement bungalow unit #'s 25/26 to 1 ½ stories within a bungalow colony. Zone: REC-1. Acres: 6.66. Location: 57 LaVista Dr., So. Fallsburg

- Randy Wasson and Joel Kohn represented.
- Steven Burke: We left this one off at that we were determining to our calculations as to whether it was a bungalow colony or a duplex.
- Paula E Kay: You had some discussion about what the definition of a bungalow is and it is to my understanding that what the applicant wants to do is actually not change it to 1 and a half stories, but to change the roofline.
- Randy Wasson: Our preference would be 1 and a half stories, but we understand the reticence of the board. At the very least we do feel that changing a 3 unit building that is fairly decrepit to a 2 unit with a roofline that fits in with every other roofline is a much more aesthetically pleasing look. This is 2 variances we are looking for. One to change the roofline into conformance, and the other would be to have a half floor. We understand the reticence on the second, at least on the first there should be no problem. Since almost every other unit has this roofline, except 1 or 2. At the last Planning Board meeting, the 3 new duplexes approved in the other portion of this development will have this roofline.
- Steven Burke: What will be in that second story if there was to be one?
- Randy Wasson: A loft.
- Joel Kohn: It'll be a little loft. The definition of a loft is if it is less than a third of the floor plan. This area is going to be an angled roof like that, the living area will be open. The back porch which is this portion over here. You have that open loft look. Basically we're occupying less than a third, this red area indicates the area we wanted to use. It's less than a third of the existing first floor. It's a small area because the whole first floor is 900 square feet, 30 by 30. It's a small unit. We wanted to add a little area space over here and office in the back.
- Steven Burke: Any plumbing?
- Joel Kohn: Originally we had a bathroom in the low area. It wouldn't be possible. Basically, we're left with a portion that is 16 feet by 10 feet with area that has 8 feet ceiling. We want to occupy that area. It would have a railing. It gives the bottom part that loft look. We're not going for luxury. The whole thing is 900 square feet. Just a little area space.
- Steven Burke: Do you have heat on the bottom part.
- Joel Kohn: Bottom part will have heat.
- Steven Burke: The top?
- Joel Kohn: No. If we don't have to.

- Steven Burke: Are your intentions right now to put heat up there?
- Joel Kohn: No. This whole unit is not open. I hope we can put in heat if we want to. It's an open area.
- Steven Burke: What kind of heat?
- Peter Frunzi: Central.
- Joel Kohn: This is the unit next to it. The unit next to it has a big second floor, not a loft. This building and 1 other building out of the 20 something buildings has the flat roof. At the last month at the Planning Board, they approved new duplex units that do not look like the regular duplex units. We are demolishing 3 and putting in 2 instead. Even though it will be only 30 by 30, that little space we feel...
- Steven Burke: How many other buildings like this one on this property?
- Joel Kohn: 1. Let me show you.
- Jason Pantel: How does the Planning Board approve 3 duplexes in a bungalow colony?
- Paula E Kay: Anytime there are more than 2 duplex units it has to be considered under the duplex law. When there are a number of duplexes, they have to look to the duplex law.
- Jason Pantel: You don't have to seek any variances like we did for the one down by the sewer plan?
- Paula E Kay: It depends on the layout. Most of the time they do. Sometimes they don't.
- Peter Frunzi: You use this as a reference, that portrays a different picture, your diagram there. Is that going to look like this in the end?
- Steven Burke: This is existing, this is next to it.
- Joel Kohn: Everyone has that angle thing with the roof.
- Randy Wasson: If it's the board's concern that the loft will become a bedroom area, we have no problem with a condition that it cannot be used for a bedroom space.
- Paula E Kay: How about living space?
- Randy Wasson: We will specify what the uses will be.
- Paula E Kay: If there is any living in it, then it becomes a 1 and a half story.
- Joel Kohn: The front area will be open and in the back we have like a 10 by 11 I think.
- Steven Burke: It's a housing unit correct? It's not an office.
- Joel Kohn: My wife does payroll, she has to work to have people get paid.
- Paula E Kay: It would be an office, it's living space.
- Joel Kohn: Yes definitely. Rather than having the setup on the bottom in the living area, we wanted to have the quietness in the loft area. It will be less than a third. The whole unit is only 900 square feet.
- Steven Burke: It's not that much but you still want it.
- Joel Kohn: We bought 3, made it into 2.

- Jason Pantel: Why not make into 1?
- Joel Kohn: 3 into 1? My wife is mostly there alone, she wants someone there next to her. Her niece.
- Steven Burke: A lot of times what this board does is look at like you bought this property with that building knowing what it was.
- Joel Kohn: At that point when I bought it, height wasn't a conditional thing.
- Steven Burke: Yes it was.
- Paula E Kay: There was a discussion between Jason and Mr. Zeiger, where Jason you said you're going to change into a duplex, once you change into a duplex you can put a second story on the duplex. I said to Jay, do you understand that? Jay said I understand what he is saying, he is saying that in the interpretation that I feel that it is a satisfactory result then he can build what is proposed without the variance. Steve said then at that point you can move forward with the project. What the board was saying last month is if you want a second story, it's not coming from them.
- Joel Kohn: Last month, this project was in the Planning Board. Not for this, but to approve the duplexes. Basically, what Jason is recommending is if everything is being changed to a duplex complex, there is no issue.
- Randy Wasson: They just did.
- Steven Burke: They just gave you those 3.
- Paula E Kay: That's what you asked for, if you added this to the application it would have been different.
- Joel Kohn: They didn't change the whole complex.
- Paula E Kay: You have to ask them. You're coming back on the same issue that they sent you away on last month.
- Steven Burke: Nothing has changed here so therefore you have no argument here.
- Randy Wasson: For one variance, for the other which is this fitting into the neighborhood with the roofline.
- Steven Burke: Do you just want to put rafters up with no room to live up there?
- Randy Wasson: They are putting in a new unit, they don't want it to look like this.
- Joseph Puccio: What happened to the other units approved?
- Steven Burke: Nothing to do with them. What they are here tonight for, if they don't get....actually the way we left off last month and nothing has changed, the second story living space is a no go. Nothing has changed. The secondary application....
- Paula E Kay: There were 2 requested variances. 1 was to increase the replacement building from an existing flat roof finished elevation of 10 foot 10 inches to proposed sloped finished elevation of 26 feet.
- Steven Burke: But just rafters, no access from inside, no doors. All you want to do is make it look like the other building?

- Joel Kohn: That's 1, that's the other one with the half living.
- Steven Burke: That's a huge expense to do for no living space.
- Randy Wasson: They have to build a new unit anyway. I don't think they can build a flat roof now anyway.
- Jason Pantel: You'd rather get the height elevation than go to the Planning Board and get a second floor put on?
- Joel Kohn: It's very little space I have, it's not worth going to the Planning Board.
- Steven Burke: They would conform more so.
- Richard Levine: You'd get what you want. If you got 2 or 3 approved...
- Randy Wasson: This way he can build this and in the future if he wants a second floor.
- Jason Pantel: You're going to build it....you're not going to rip the roof off and build it later?
- Joel Kohn: It will be built with rafters and open space. I'll live like this for 1 year, it's a big expense and if I need it I will go to the Planning Board.
- Steven Burke: So it's just for the height to go from 12 foot 10 inches to 26 feet. Anything else?
- Randy Wasson: With the understanding they are going to demolish.
- George Sarvis: We gave them a variance to increase the size of the footprint a couple months ago. The building has since been demolished and they got a permit for just the piers for the footprint, they are waiting on the rest of the construction based on your approvals for the height. There is no building there now, just the 6 by 6's that the building will be on.
- Steven Burke: We closed the public on this. Any comments? No, we discussed it pretty much. Let's run it down. Whether the benefit can be achieved by other means feasible to the applicant?
- All board members say yes.
- Steven Burke: Undesirable change in the neighborhood character or nearby properties?
- All board members say no.
- Steven Burke: Whether the request is substantial?
- 1 board member says no, all others say yes.
- Steven Burke: Whether the request will have adverse physical or environmental affects?
- All board members say no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members say yes.
- Steven Burke: We have the paperwork George?
- George Sarvis: Yes.
 - MOTION:
 - Richard Levine makes a motion for lead agency. Peter Frunzi seconds. All

in favor.

- Richard Levine makes a motion for negative dec. Jason Pantel seconds. All in favor.
- Steven Burke: Do I have a motion?
 - MOTION:
 - Richard Levine makes a motion to approve. Peter Frunzi seconds. Jason Pantel denies. Joseph Puccio approves. Steven Burke approves.
- Steven Burke: Just for the second floor, for height only. Height is from 12 foot 10 inches to 26 feet even. That's it, that's what is here.
- George Sarvis: No habitable space?
- Steven Burke: No habitable space.
- Paula E Kay: They did not vote on that, it's two separate spaces.
- Steven Burke: All we voted on was height.

4. CONGREGATION AHVH – SBL# 17-1-24 – Requests an area variance to replace old buildings with new buildings not in the same footprint. Zone: Acres: Location: 612 Loch Sheldrake Rd., Loch Sheldrake.

- Ari Grunhut represented.
- Steven Burke: The 239 did not come back. There is nothing we can do.
- Paula E Kay: I am just double checking that we closed the public hearing. We weren't sure about the mailings. We have the same mailing issue, we can see if anyone is here for the public hearing. We have the mailings.
- Steven Burke: Anyone from the public want to speak on this? No. Okay, public closed. We will see you next month.

5. YESHIVA ZICHRON MAYIR – SBL# 42-1-14 – Requests a use variance to allow a new dormitory in a non-conforming property and an increase in lot coverage. Zone: R-1. Acres: 18.8 acres. Location: 9 Ronald Tawil Way, Mountaindale.

- Jeff Kaplan represented..
- Jeff Kaplan: We have maps to show you with the eliminated buildings that appear to be the big issue from the last meeting.
- Paula E Kay: Jeff Kaplan, do you have the mailings? You have to start over because no one from the public would know to be here tonight. Do you have the minutes from June?
- George Sarvis: She wrote here, mailings are good, open to public and left open.
- Steven Burke: From June?
- George Sarvis: They were told to remove the 2 trailers and the shed, and then come back and discuss. There were violations on the property. It took them longer to remove the structures than anyone would like.
- Paula E Kay: What kind of public response would these have been? I am

concerned that we don't have public concern on this really.

- Steven Burke: It would not be wise for this board to act on something that Paula has concerns on.
- Paula E Kay: If it followed immediately in August or September....I am concerned with the time in between and that your neighbors may have thought it was not continuing. We also have to send out for the 239 on this. While that is happening, you could schedule it for public hearings for next month.
- Steven Burke: I do have to say that I passed by the property and that you did clean it up quite a bit.
- Jeff Kaplan: Is there anything you saw that maybe we can?
- Steven Burke: I think the board was pretty comfortable with moving forward with this.
- George Sarvis: I had some questions. The old dorm was going to be removed, then it was going to stay, then the use. How many beds? How much of an increase? When it goes to the Planning Board, there will be a question on the current pump station, if it is designed for the bigger head count.
- Jason Pantel: They have to resubmit a whole new application?
- Paula E Kay: Their application from last year, it was the same size building correct?
- Jeff Kaplan: Yes.
- Paula E Kay: The only issue that Code Enforcement had was are you increasing the number of students in that building or are you keeping it the same?
- Jeff Kaplan: It's just a replacement building, no increase.
- Paula E Kay: It's 2,320 square to 4,032 square feet. Mollie asked if you were adding students and she wasn't sure of the answer.
- AVH Rep: Gradually we would like to increase.
- Steven Burke: So yes.
- Paula E Kay: We have to look at the overall impact.
- Steven Burke: Are they submitting a whole other application or just updating?
- Jeff Kaplan: We will just respond to those questions at the next meeting.
- Paula E Kay: The size is the same but they will address the environmental impacts with more students. That's something for before we send it.

NEW BUSINESS:

1. SAL CRACOLICI – SBL# 9-1-7 – Requests a use variance to allow a previous non-conforming use of a restaurant/bar that has terminated due to abandonment for a period of time exceeding two years. Zone: REC-1. Acres: 1.07 Acres. Location: Benton

Hollow Rd. and Hasbrouck Rd., Woodbourne.

- Sal Cracolici represented.
- Sal Cracolici: I am asking for a variance on the property of 99 1001 Hasbrouck Road. It's the old Hasbrouck Tavern. I'm doing some homework, based upon the approvals, I'm interested in buying the property, and opening up a restaurant with a bar there.
- George Sarvis: Mailings are good.
- Paula E Kay: Do you have an owner's proxy?
- Sal Cracolici: I did.
- Steven Burke: The only issue we were having, that we were discussing which you may have heard it at the public hearing, is that the board kind of felt that you shouldn't have even been allowed to come here. Because he's not the owner, you can't show that there's a hardship.
- Sal Cracolici: My hardship is that I am afraid if I buy the property then you won't let me open up the restaurant.
- Steven Burke: That's not a hardship yet. The only one who could show hardship is the owner. They could come here and say listen I own the property, I pay the taxes and it costs me a fortune.
- Sal Cracolici: I think the problem is they lost the use variance and that's why the Building Department said I can come here to get the variance.
- Joseph Puccio: He should be coming here for that.
- Steven Burke: That's what we felt. Really you can't prove a hardship, you can only prove it if you bought it already.
- Paula E Kay: We don't have enough information for the board to act on this. Mr. Chairman if you could read to the applicant what the criteria are for a use variance, then maybe he can see the specific criteria that have to be met.
- Steven Burke: Cannot realize a reasonable return? You don't know that yet, you don't own it yet.
- Paula E Kay: Essentially what that means is you look at all the uses allowed in that zoning district and tell us why you can't make money in one of the allowed uses.
- Steven Burke: The owner of the building can make that building many times over, but even the second one. Alleged hardship....you can't prove any hardship. Requested variance will not alter, it won't alter the essential character. The alleged hardship is only created when you buy it. The only hardship you have is that you don't know.
- Peter Frunzi: When does the owner come back?
- Sal Cracolici: Probably in the spring.
- Paula E Kay: He could submit documentation. We have an owner's proxy, so he doesn't have to be here in person. The problem is the board has none of the criteria...

- Sal Cracolici: The property has been up for sale for 3 or 4 years. It went up for auction, he could not sell it.
- Steven Burke: I'll let you know that the consensus of the board is they were happy that it was someone looking to buy something that was dormant for some years. That is a good thing. We just can't make that decision on your behalf. It has to be on the owner's.
- Paula E Kay: There are a whole host of allowable uses in an REC-1 zone, other than a restaurant.
- Sal Cracolici: A restaurant was not listed that is why we came here.
- Paula E Kay: Under a use variance, someone has to prove that none of these other uses would be financially viable.
- Sal Cracolici: My only concern was to make it a restaurant.
- Peter Frunzi: We're just trying to help you out. There's probably a lot of reasons why you could suggest it would not be lucrative to have these other uses.
- Steven Burke: That's the book. The reason this board is here is there are certain instances where it doesn't go by the book. If it's a common sense decision, we see a dormant building, and we think it's better for the town to have you, we don't want a wasted piece of property. We can overrule the book. I don't want you walking away from here, the board felt it was a great idea. We just can't rule on your behalf.
- Peter Frunzi: We want to see you back here.
- Jason Pantel: Can't he have a contract of sale?
- Paula E Kay; We have an owner's proxy. We are fine on that. We need to some backup to show why there is no other use that would be financially viable. That is something the owner would have to attest to. The owner doesn't have to be here, the owner can submit in writing.
- Steven Burke: Do you want to postpone for 30 days?
- Sal Cracolici: I'll think about it.
- Paula E Kay: Leave it open for 30 days. If you want to come back, let Mollie know.

2. JULITA ROBINSON – SBL# 32-1-60.8 – Requests an area variance to allow an accessory structure closer to the road than the primary structure. Shed was placed there by the previous owner then sold to current owner. Zone: HR-1. Acres: Approx. 1 Acre. Location: 93 Mongaup Rd., Hurleyville.

- Nick Benizzi represented.
- Paula E Kay: We have a proxy?
- Nick Benizzi: It should be in there.
- Paula E Kay: Mailings?
- George Sarvis: They are good.
- Nick Benizzi: She wouldn't understand any of these, she is from Indonesia. We

went to contract on this property, we bought it back in October. In this contract was with this carport over there. As far as the other one, the shed, I didn't know I needed a permit for a portable shed. That's not even an issue. The issue is the carport. It's been there since 2010. I have the original bill of sale when he bought it. He put it in the contract. That's one of the reasons I even bought it. I need storage. Being that it is a hardship because there is no place to put this thing, in the back of the house is a septic system. On the left side there is no room. There is no where to put it. That's what I am looking for, a variance to leave it. It doesn't obstruct the road.

- George Sarvis: Definitely not.
- Nick Benizzi: The other shed I can move. I spoke with someone with a truck today.
- Peter Frunzi: This was a violation that's been there for 6 years and was put there by a previous owner, you brought the property under the assumption that everything was okay.
- Nick Benizzi: The title search wouldn't have found that.
- Paula E Kay: Municipal search would have. Municipal searches are usually ordered by your attorney with the title search. You have to order them separately.
- George Sarvis: This wasn't a documented violation. It's a recent violation. The shed has been there for a while. I had to do an inspection around the corner, and I caught this shed close to the road. I looked up the records and I did a violation on it. It wasn't a violation when he bought the property.
- Steven Burke: The reason why the title search didn't get it is because it's not a permanent structure?
- Paula E Kay: When you order title, the title company asks whether you want a municipal search. You pay extra for the municipal.
- Jason Pantel: What would have shown up, a carport?
- Paula E Kay: If there was a violation.
- George Sarvis: In this case, if the municipal had happened, it would have brought up a violation if there had been a violation, but there wasn't one on the property.
- Steven Burke: So it wouldn't have come up anyway.
- Joseph Puccio: George you know that property, looking at that shed, there's no other place to put it?
- George Sarvis: The back has a heavy grade to it.
- Joseph Puccio: Plus the septic.
- George Sarvis: The reason it is where it is, is because the previous owner's didn't have somewhere either.
- Nick Benizzi: My neighbor who is right next to me has no problem. He said it has been there forever.
- Steven Burke: Okay. Any questions? No? Okay. Have a seat. Anyone here from the public want to speak? Public closed. Let's run down. Whether the benefit can be achieved by other means feasible to the applicant?

- All board members say no.
- Steven Burke: Undesirable change in the neighborhood or character to nearby properties?
- All board members say no.
- Steven Burke: Whether the request is substantial?
- All board members say no.
- Steven Burke: Whether the request will have adverse physical or environmental affects?
- All board members say no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members say no.
- Steven Burke: Paperwork George?
- George Sarvis: Good.
- Steven Burke: Do I have a motion?
 - MOTION:
 - Richard Levine motions to approve. Joseph Puccio seconds. All in favor.
- George Sarvis: For the record, because the shed is over 80 square feet it will need a building permit.
- Nick Benizzi: I will meet with George on that.
- Peter Frunzi: You'll move that other shed?
- Nick Benizzi: I'll work with George on that.

Richard Levine motions to adjourn. Jason Pantel seconds. All in favor.