

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

## TOWN OF FALLSBURG ZONING BOARD MEETING

June 16th, 2016

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

- Steve Burke called the meeting to order.
- May meeting minutes approved.

### OLD BUSINESS:

1. MACHNE OHEL MOSHE D'KRASNA – SBL# 29-1-4.1 – Re-hearing of an area variance to allow a duplex development. Zone: REC-1. Acres: 83.79. Location: 114 Lake House Rd., Woodridge.

- Not heard

2. PARK HOUSE ESTATES – SBL# 60-1-52/53/54 – Requests a 6 month extension on a previously approved variance. Zone: REC-1. Acres: 15. Location: 85 Park House Rd., Thompsonville

- Not heard

### NEW BUSINESS:

1. RENEE APPENAUER – SBL# 2-1-4.2 – Requests an area variance to allow an above ground pool in the side yard set backs. Zone: AG-1. Acres: 2.95. Location: Beckys Hill Rd., Loch Sheldrake.

- Renee Appenauer and Michael Appenauer represented.

- Renee Appenaeur: I am applying for a pool to be set in the side area. I have some photos if you want to see. There are some drawings there. We don't have the availability to put the pool in the back yard. This map doesn't show the....I have a copy here. My rear yard inclines dramatically and there is a whole slough of trees. There is not enough room between the house and treeline for a pool. The road comes up here, our driveway is here. The pool would be on the opposite side of the house from the roadway.
- Jason Pantel: This is only the side of the house because of the way it is facing? If you were looking from the road, it would be the back?
- Renee Appenaeur: Yeah the road ends here. We're at the top of the dead end. You face our driveway on the side of our house, the pool would be on the opposite side. We tried to do what we could do for the best.
- Michael Appenaeur: The previous owners had a pool there for 20 some years. We redid it where they had it.
- Jason Pantel: It's almost the back of the house. It's not a problem there.
- Steven Burke: Any questions? Alright, we will open this to the public. Anyone from the public? No, okay. We will close the public. Any violations?
- George Sarvis: No.
- Steven Burke: Board comments?
- Paul Lucyk: No.
- Steven Burke: Whether the benefit can be achieved other means feasible to the applicant.
- All board members say no.
- Steven Burke: Do you want this heard tonight or would you like 30 days?
- Renee Appenaeur: Tonight.
- 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 request will have adverse physical or environmental impact?
- All board members say no.
- Steven Burke: Whether alleged difficulty is self-created?
- All board members say yes.
- Steven Burke: Motion?
  - MOTION:
  - Paul Lucyk motions to accept. Jason Pantel seconds. All in favor.

2. AMANDA DEGRAW- SBL# 16-1-3 – Requests an area variance to allow a 980 SF mobile home which is a reduction from the required 1200 SF. Zone: AG-1. Acres: ¾ acre. Location: 6550 SR 42, Woodbourne.

- Amanda Degraw's Lawyer and Amanda Degraw represented.
- Amanda Degraw's Lawyer: This is to remove a trailer, replace it, and move it 50 feet. It's a larger trailer, doesn't comply but it is closer to compliance.
- Paula E Kay: How big is the trailer?
- Amanda Degraw's Lawyer: 720 square feet.
- Paula E Kay: How old is the trailer there now?
- Amanda Degraw's Lawyer: Very old.
- Paula E Kay: The one replacing?
- Amanda Degraw's Lawyer: Brand new.
- Steven Burke: This is the same one? And this is the new one? Anything else you want to tell us? It's pretty cut and dry. Block skirting you know.
- Amanda Degraw's Lawyer: No issue.
- Steven Burke: I have no issues when someone wants to take something to upgrade. The variance requested is to allow a new trailer, so if it isn't new you will be before us.
- Amanda Degraw's Lawyer: The old one will be removed and destroyed in compliance with the law.
- Steven Burke: Any questions? No. We'll open to the public. Mailings are good. Anyone from the public want to speak? No. Any violations?
- George Sarvis: No.
- Steven Burke: Any comments?
- Paul Lucyk: It is an improvement even though it doesn't meet the sizing.
- Jason Pantel: I'll agree with Paul.
- Steven Burke: Benefit can be achieved by other means feasible to applicant
- 2 board members say yes, 1 says no.
- Steven Burke: Before I go through with this, do you want to go through with this tonight?
- Amanda Degraw's Lawyer: No.
- Steven Burke: No?
- Paula E Kay: My suggestion would be go forward.
- Steven Burke: Undesirable change to neighborhood character or nearby properties?
- All board members say no.
- Steven Burke: Whether the request is substantial?
- All board members say no.
- Steven Burke: Whether request will have adverse physical or environmental affects?

- All board members say no.
- Steven Burke: Whether alleged difficulty is self-created?
- All board members say yes.
- George Sarvis: If the board doesn't mind, Code Enforcement would like that prior to the CO being issued, the other trailer is removed entirely.
- Steven Burke: Is that a fair condition?
- Amanda Degraw's Lawyer: I think we can.
- Steven Burke: Motion?
  - MOTION:
  - Paul Lucky motions to approve pending full removal of the first trailer. Jason Pantel seconds. All in favor.

3. NACHUM AND TYBA REZNIK – SBL# 39A-1-48 – Requests an area variance to reduce the required side yard set back from the required 20 feet to 11.3 feet for a mud room. Zone: R-1. Acres: less than ¼ acre. Location: 14 Estate Dr., Fallsburg.

- Jay Zeiger and Tyba Reznik represented.
- Jay Zeiger: We are asking for an area variance. The client is building an addition onto their house. This is the addition they are building. The purpose of the addition is living quarters for the husband's father. He is 94 years old. The living quarters has in it a living room area, a bedroom, and a bathroom. When the contractor did the building, he said the design of what you are building is not wonderful because in the winter months, this is a handicap exit, you're going to open the door and be right out in the cold. The cold would come into the bedroom and living area. The contractor suggested the construction of a (inaudible). It will be here, here. This will be the door outside, and that will provide protection for the house. It is unfortunately it infringed on the side yard setback requirements. We have a letter from the neighbor, whose house is...
- Jason Pantel: This is already complete, isn't it?
- Jay Zeiger: It's not complete, there's no CO for it so no one is living in it.
- Jason Pantel: But the structure is complete?
- Paul Lucyk: They put it in without a permit?
- Jay Zeiger: They got a permit for the addition, but not for the change. From my client's perspective, I don't know who the contractor is, my client was told by the contractor that this was a betterment. The next question to ask was when to go to the Town, they thought it was a better way to be. That's basically what happened. Anyway, from the neighbor whose house is over here, we have a letter which says that the 7 by 7 mudroom that is attached to the house does not disturb us in anyway. The room does not affect the appearance of the neighborhood.
- Jason Pantel: Is that notarized?

- Steven Burke: Do they have to be notarized?
- Jay Zeiger: No, they are signed.
- Jason Pantel: It's irreversible really. Sheetrock is done?
- George Sarvis: Yes it's finished. The only thing it needs is...it was approved by our department. This is a side view. This is a handicap ramp with a little landin ramp for ease of access to get in. This is what Gregg approved. When I went to do a framing inspection, this is what was there. This foyer wasn't there. The permit had expired, we sent feelers out and told them the permit was expiring, close it or renew the permit. They invited me in and I found this foyer on there and I couldn't approve the CO. The survey stakes were not obvious and I didn't know where the line was. I needed them to verify the setbacks and sure enough they came in in the setbacks.
- Paul Lucyk: It's 11 feet off of the property line. How far is the other property from this house?
- Jay Zeiger: The other house is at least 20 feet, probably 30 because I don't have the measurement here, there's a side yard on the other house of at least 20 feet.
- Steven Burke: 20 feet before the expansion.
- Jay Zeiger: There's 11 plus feet from here, from here to there is at least 20, most likely 30 because if all the houses were all built on the plot within the same thing. This one was at least 10.
- Paul Lucyk: What if the other house wants to do an addition?
- Jay Zeiger: He could do an addiiton up to the setback.
- Paul Lucyk: There's no...
- Jay Zeiger: Sure there would be. There would be at least 30 feet. He is within the 20 foot setback.
- Discussion.
- George Sarvis: It's on the plan, the setback requirements. They did receive a variance we keep that in the office.
- Jason Pantel: For every place in that development.
- Steven Burke: So it already got a community wide reduction.
- George Sarvis: When the place was envisioned.
- Steven Burke: They never envisioned the growth going on there now.
- George Sarvis: When they first got this, they got approvals for 20 feet and 30 feet for side yard.
- Jay Zeiger: So this number is at least 31 feet from anything the neighbor has or can build.
- Paul Lucyk: You have a deck on this side. What is the floor plan? Is there anyway of making a door on the side and going out? Could you put a door...I don't know what the floor plan is or the flow, why couldn't you make a door go out to the deck and then out?
- Jay Zeiger: Because the handicap area is here.

- Paul Lucyk: If you are on the deck you can go out.
- Paul Lucyk: This is your...to go out.
- Tyba Reznik: The deck comes out to about here. I don't know what he would build or cut off....
- Discussion.
- Paul Lucyk: Is there an option of putting a door here, or here?
- Tyba Reznik: It still has the same problem.
- Paul Lucyk: If you took this piece and put it out here as a double door, a double room, a foyer. Could it be done over here? I don't know what the flow plans are, I'm making a recommendation.
- Tyba Reznik: Over here is a window to outside.
- Paul Lucyk: What about...
- Jason Pantel: Is this the side of the house the room is on? This room right here?
- Tyba Reznik: This is the ramp, this is the mudroom.
- Paul Lucyk: George, this was the plans given...
- George Sarvis: Yes.
- Paul Lucyk: The handicap ramp and this door is over here. This door...
- George Sarvis: You walk in this door and there's another door inside.
- Paul Lucyk: The handicap ramp comes in here and it goes into here and there's a door here and that is the creation of the mudroom.
- Steven Burke: The only thing I don't understand in your reasons for request, it says the community is densely developed and that other properties within this community have also been constructed within the setbacks. What you're telling us is that other buildings in this community have had structures like this built within the setback. That's one of your reasons to go without...
- Jay Zeiger: Yes that's showing that it is consistent.
- Jason Pantel: He is inside of the setbacks.
- Paula E Kay: What Jay is saying is that within community there have been similar other variances granted. The argument would be that this is not inconsistent and would not stand out.
- Jason Pantel: Any fines?
- George Sarvis: It would fall under the category of making alterations to a permit without approval. We could get up to \$500.00 with the first offense. Building without a permit is \$1,500.00.
- Jason Pantel: We could be real jerks, say no, then you'd have to tear the side of the house off, correct? In the mean time, personally, a \$500.00 fine is not enough. This is not dealing with the outcome of this case, it's difficult for someone to come in here and tell someone to take the side of their house off.
- Steven Burke: The biggest no no in this is that it was done illegally.
- Paula E Kay: Since the building department determined that this was built impermissibly, has it stopped working?

- George Sarvis: I went to do a CO inspection, the work has stopped and they are waiting for the CO.
- Paula E Kay: So there's no furniture in this room?
- Steven Burke: I'm sure it's being lived in.
- Jay Zeiger: There's nothing in the mudroom.
- Steven Burke: This is the argument that we always have with these. It's nothing against you, it's that if 1 person in the development we desperately need it, I guarantee we will keep hearing cases like this. We are going to see, as I misread your statement, there will be 8 others and then everyone else in the community. That community needs more room. There's no doubt in my mind, they need more room for the families moving in. The problem I have with that is if I bought a small house and my family doesn't fit, I can only explode out so much. The problem with these developments, they all meet the same needs.
- Jay Zeiger: What they can do without a variance is just the mudroom.
- Steven Burke: A mudroom on this one and this one, you take 10 feet here, 10 feet here, now you have 20 feet.
- Jay Zeiger: Saying yes to 1 doesn't obligate you.
- Steven Burke: It makes it a little more difficult. You are right. My argument is this, just because I made 5 mistakes before, doesn't mean I have to keep adding to my mistakes. When I do, I try to correct it.
- Jason Pantel: What bothers me is it is already done. This isn't like an owner put an extra 10 feet on their deck. This is an elaborate venture. You had to move windows to put the addition on, if this had come before us, there are a lot of other options available.
- Jay Zeiger: Jason, you and I are in business of knowing something, and you change what you submitted, I have to change what I submitted. This is their first. In good faith, they went and drew the plans...
- Jason Pantel: This was drawn by Fishman.
- Jay Zeiger: They drew the plans, went to the building department, then they bring the contractor in and he said he had a suggestion.
- Jason Pantel: Why bother go through this if you're just going to go with what the contractor wants.
- Jay Zeiger: They were told that was a requirement, they weren't told that when you make this change that is a (inaudible). That's not their business. It's my business. Your business. Why would they go ahead and make the building permit, know they need a CO, and say we will just change it and George won't see it.
- Steven Burke: I'll give you 50 reasons why people do that. We made them move a road. The guy built a foundation behind my house on LaBaugh Road. He said he already put the foundation in, we gave him 2 choices. Move the foundation, or move the road. He moved the road. If he's a contractor, he knows what these plans are. I agree, it's not the applicants fault that he talked them into something.

It's their fault that they let it happen. That's a bad argument.

- Jay Zeiger: We are coming to you with a better design than what they had. They have a 90 plus year old father that they're trying to make his living quarters more comfortable. The neighbor who is most impacted submitted a letter. I don't think what is being asked is evil. We should have done it the other way.
- Steven Burke: If this was a human interest story, I would be cheering you on. When you have a human interest story, you are tugging at the heart strings. The problem is there are legalities too. The problem I see is that this has been done how many times in this community. I can't tell you how many times this community is trying to build out. I understand the homes aren't fit for their needs, so don't move there. You have to do something else. I do understand, I'm sure if this gets voted down, everybody on this board is going to feel terrible. On the other hand, what do we do? If we let it go, and it stands to the case that you make, I guarantee I'll have however many units are in that community, will have 90 year old parents that they want to make another home for. I don't really know if they have, I do believe you. It's a terrible hardship you have. Everything in my heart says I want to do this, when I go to make up my mind, if I do this for this one, I'll have 16 more before the close of the year.
- Jay Zeiger: Not to minimize your thinking on it, so what? You still have 30 feet separation from this house to where any neighbor condoned. It's a community that has chosen to live in a more densely populated...
- Jason Pantel: No they chose to live in the town of Fallsburg. That's not how things work. If I decided to move to another place, to something that doesn't conform, I can just do it? Doesn't that happen anywhere?
- Jay Zeiger: We need a variance.
- Jason Pantel: Of course. What if we deny you? You can go sue, they can use you, the contractor. You're saying the contractor is ultimately responsible for this. There is a legal path for this to follow.
- Jay Zeiger: That is not a path anyone wants to take.
- Jason Pantel: No they want us to alter the laws of Fallsburg. It's easier to alter and tug on our heart strings, than it is to go through the legal process.
- Jay Zeiger: Your heart strings are the only forum that they can go formally, the only ones who can grant a variance.
- Jason Pantel: We're not talking in the future, we're talking past tense. You're coming here after it is already done, to convince us that it is okay. There are many other legal options you can follow here. I don't know why we have to explain ourselves.
- Steven Burke: Do you want 30 days to come back before we go any further? Give this board 30 days to think about it, at least the 3 members here. As a fireman in Loch Sheldrake, whenever you see a fire in Foxcroft, when we get to the fire scene, we shoot water onto the 2 mobiles are on either side. There's no saving that one, we're trying to save the structures on the other sides because

they are only 20 feet apart. A lot of people don't think about that stuff. We'll open it to the public tonight. We're not going to vote on this tonight.

- Hya Dorfman: I am the direct nextdoor neighbor on the other side. What you are saying about fire safety, most of the townhouses are attached. You have a run of 6 or 7, or 10 or 12. There are not a lot of end units. If they were stand alone, I would see this as an issue. But they are not.
- Steven Burke: This one isn't.
- Hya Dorfman: This is an end unit, I am a middle unit. It doesn't impact me, it directly impacts the person from the letter. They called me up when this whole thing started, they wanted it all according to law. He builder was a jerk, say hey let's do this. If she had known this was going to be an issue, she wouldn't have done it.
- Jason Pantel: I agree with you. I was going to vote yes. It is over for tonight, they can come back in 30 days. That's why I asked about the fine. I don't want to tear down the side of the house, there has to be some kind of manner for the Town to get something out of this that's almost on par...
- Paula E Kay: I think by the board holding this open for 30 days, it gives the Building Department to assess what that fine should be. That may make the decision more attractive.
- Jason Pantel: And then if the home owner would like they can go after the contractor. That's the fairest way for the people of the Town of Fallsburg, for your neighbor, for everybody.
- Steven Burke: Maybe your contractor can come before us.
- Paul Lucyk: One of the things is when you have a plan like this and you start adding things, you have to approve the additional costs. Is this something that was spoken to about? One of the things I would say is I am worried about safety, the distance to one to the other. He's saying 30 feet. Is there a way of making that fire proof if it is going to be closer?
- Steven Burke: What if the guy on the other side says I want to do it.
- Tyba Reznik: I don't believe there's a firewall between our units.
- Steven Burke: There's probably a fire wall there.
- Tyba Reznik: I don't know, we found other things not up to code.
- Jason Pantel: That's kind of what we're trying to avoid here, if you build a room onto a house that George doesn't look at as it's being built, there's a procedure that has to be done, inspections that need to be done. In a way we are looking out for the safety of the people living there.
- Steven Burke: Anyone else from the public?
- Gary Kalcher: I have a problem when people build stuff and then say what can I do, please approve me? It really is there problem. It's the Town's responsibility to approve that.
- Steven Burke: Unfortunately it comes before this board. This board is regular people, going to work and going home. I was in the same position a couple years

ago, my father living with me and I had to take care of him. These sometimes are bad positions that people are put in. You were put in a bad position, you didn't know. Sometimes that's not an excuse, sometimes it is. We are going to postpone it for 30 days.

- Paula E Kay: You are leaving it open?
- Steven Burke: The hearing open but not the public portion.
- Paula E Kay: No leave it open.
- Steven Burke: Alright we will leave the public open.

4. THE NEW PALMS CONDOMINIUMS – SBL# 28-1-41.2 – Requests an area variance from the town's Duplex Law to install a fence around the swimming pool within the required 175 foot front yard set back to 67 feet. Zone: R-1. Acres: 31.80. Location: Riverside Dr., Fallsburg.

- Jay Zeiger represented.
- Jay Zeiger: The New Palms development was built within the last 5 years. This is a full size map of what was built. The property used to be or previously was a hotel and had some houses with it. The area over here you are looking at, this was in existence when they went to the Planning Board for approval to build. As part of the approval for this whole site, they said all of the amenities or recreational facilities are all in this location, they got permission to build the community building in this area as well. This area should have been a 175 foot setback. The variance was to allow the community building to go in this area next to the pool. The pool is in existence and the rest of these things were. The variance at the time of the development was to put the caretaker house in the community building. When the residents moved in, the recreational facilities were already in this area. There is a fence that now exists around the pool. That pool was in existence well before the rest of the development was built. There always existed a fence around the pool. That's where the pool area are inside the fence. The size of community and the number of people inside the fence is very populated and very crowded. What they want to do is move the fence back, here is the line of the existing fence, they want to move it back 14 feet. The area inside the new fence would be new grass. Because they are already inside their 175 foot setback, if they move anything, they would need a variance. The request here is to move a fence 14 feet back to enlarge the fenced area for the pool.
- Paul Lucyk: What would that distance be off of the road?
- Jay Zeiger: 67 feet. The community building is now 70.
- Steven Burke: This says from 175 to 67.
- Jay Zeiger: Yes but it's already at...
- Jason Pantel: 81 feet.
- Jay Zeiger: 81 feet. It's not building a pool, just the fence around the pool which

is 81 off the road, would be 67 off the road. If you drove by and looked at this property because of this topography, you wouldn't see it now or with the new fence at the new location.

- Steven Burke: What's the height of the fence you're looking to build?
- George Sarvis: 14 feet.
- Jay Zeiger: This is not a security fence, it is a religious privacy fence.
- Steven Burke: Any questions? Anything else?
- Jay Zeiger: I think the requirements for a variance are satisfied. First is whether there is an undesirable change in the character of the neighborhood. I say it would have no impact on anything. It would be a betterment for this community. Benefits sought could be achieved by a method feasible other than an area variance. I'd say no, they are already inside the setback. Any amount of feet and they would need the same variance. Whether the requested variance is substantial. We are only talking about a fenced area. There is no visibility of the pool with the fence now, and will be no visibility after. Whether the variance would have an adverse affect on the physical or environmental conditions of the neighborhood. I don't think that would have an impact on anything outside this community. Whether the alleged difficulty is self-created? I would say it is not. The Planning Board approval approved the pool within the setback area. That's how they bought the community, that's how it was approved 5 years ago. Anything they do to improve or expand that area would require a variance. It's not like they go in a different direction or go to a different place.
- Jason Pantel: Has the work order started on this?
- Jay Zeiger: No.
- Paula E Kay: Has the work started?
- George Sarvis: Yes. The work has started on the fence, they clear cut from the road in.
- Paul Lucyk: So the buffer is out?
- George Sarvis: The buffer is removed to this side of the fence.
- Paul Lucyk: They clear cut everything to the road?
- George Sarvis: Gregg caught them in the process.
- Jay Zeiger: After they submitted the variance application?
- George Sarvis: No before.
- Paul Lucyk: You got right in the plans here, undisturbed buffer. If that is clear cut, first thing that has to be dealt with more than the fence.
- George Sarvis: From Code Enforcement's point of view, the undesirable part, they clear cut those trees. For the variance, the trees have to be put back. Code Enforcement doesn't mind if the same species or same size. For self-created, instead of coming in toward the road, they could come in toward the middle of all the pools you see on there, and created the desired green space. There was another option and this is the one they chose, and they did it before coming to our office to see if they could do it.

- Paul Lucyk: I've been reading pictures of before and now, this is just....
- Jason Pantel: Insane.
- Steven Burke: It's kind of hard when you say no the work wasn't started.
- Jay Zeiger: They told me no.
- Jason Pantel: Why would you even clear cut it?
- Jay Zeiger: I don't know, I would ask George.
- Paula E Kay: We're not going to answer that. Your applicant knows why they did it.
- Steven Burke: So we will open it to the public. Anyone here from the public like to speak?
- Gary Tavormina: What will the fence be made out of?
- Steven Burke: What's every other fence made up of?
- Jay Zeiger: It's not chain link.
- Steven Burke: Corregated metal.
- Paula E Kay: You may need some landscaping.
- Paul Lucyk: It says right on the plans, a buffer.
- Steven Burke: Find out what it is constructed of, I assume corregated metal. Maybe you can find out why they decided to do what they did. We will leave the public portion open. Would you like 30 days?
- Jay Zeiger: Yes.

Paul Lucyk motions to adjourn. Jason Pantel seconds. All in favor.