

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

TOWN OF FALLSBURG ZONING BOARD MEETING

July 22nd, 2016

Steve Burke, Chairman, Jason Pantel, Richard Levine, Joe Puccio, Paul Lucyk, Neil Sapolsky, Board Members, George Sarvis, Code Enforcement, Paula E. Kay, Deputy Town Attorney.

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

OLD BUSINESS:

1. 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 represented.
- Steve Burke: I believe the public is still open.
- Jay Zeiger: There were only 3 members of the board here last time, We have a sketch of the house in the Pines Country Estates. They originally applied to the Code Enforcement office for a building permit to build an addition to the house. The original plan was as you see it over here. This was the application over here. This was the addition they got the permit for. The additional room is kind of a suite for the father of the applicant to reside in. He is 93 years old. The idea is that he would have his own separate entrance and a den area, and a bedroom as an addition to the house. When the contractors started constuction, the contractors said the design of this is not wonderful because you open the door and you are right in the house, in the winter you would let in all the cold air. The contractor advised the home owner to build this additional mud room which is this piece of here. They would come in they would be in the mud room, the door between the mud room and the suite would be closed. That would solve that problem. The addition itself is within the setback, the setback is 20 feet and they satisfy that. There are 2 problems, the mud room is into the setback and number 2 is the change in the plan was not discussed with the Building Department. My

client's explanation is that they weren't told they needed to. They hired a contractor and he got the permit, the contractor came back and gave them the proposal. It makes the suite much more comfortable but in order to get approval, we need a variance. This addition is only 7 feet wide. We're talking about 7 feet only that is into the setback. From last meeting to this meeting, we did a measurement of the distance between the mudroom and the neighbor's house, that is 43 and a half feet. It's not on top of each other. The neighbor's have been spoken to and the neighbor that is closest has not raised any objections. I spoke to them myself. I submit that there are other houses in this community, including the smaller lots, there are 20 foot setbacks. This is a high density community. This additional mudroom into the setback area should not change the character of the neighborhood. It is 9 feet in length and 7 feet width.

- Steven Burke: Are there other mudrooms in this development or just other additions?
- George Sarvis: Plenty of other additions.
- Steven Burke: Do they all have mudrooms?
- George Sarvis: I don't think any aside.
- Steven Burke: In my opinion, this shouldn't be here. It is something that is dumped on us because it should be in court. If the builder submitted the town plans and then built something other than what he submitted, he should be taken to court.
- Jay Zeiger: The builder wouldn't be taken to court, the home owner would be.
- Steven Burke: No the home owner should take the builder to court. He is illegitimate
- Jay Zeiger: We were hoping it could be resolved and that is why we came to the board. It is always better to come before rather than after, but we can't rewrite that.
- Steven Burke: My opinion is that he submitted plans and then did something on his own. I understand your defense that it is not the home owner's fault. If I was the home owner and he was building something other than what was submitted, it would never happen. In my opinion, this is being dumped here. The problem with something like this is that it sets a precedence. Of course the neighbor next door won't be negative, they will want one. This is a bad thing to bring in front of us. It's a huge community and how many additions are there? There's no doubt that the community needs more room, but if you buy a shoe box and you need an apartment building, don't buy the shoe box.
- Jay Zeiger: I can't disagree, this is the only place we can come to for relief. If you are inclined to grant the variance, put it on the record that there are special circumstances. There is a 93 year old man living in the room so it is for comfort. You can also put on the record that this is an extraordinary situation and you will not be inclined to do it again.
- Steven Burke: If he was living in the mudroom, you would have it.

- Jay Zeiger: The mudroom is really going to adversely impact on his comfort because everytime someone comes in they will bring in cold air or let the air conditioning out. It's a benefit for his comfort. You could avoid the precedence by putting on the record that this is an exceptional circumstances and it will not be accepted if it happens again. They could go to the contractor and say you got us into the mess, but unfortunately the contractor has flown the coop.
- George Sarvis: Sometime after the insulation inspection, prior to the CO. There was supposed to be a ramp, when I went there to do a CO I found the mudroom. Somewhere after the insulation inspection, the contractor decided this was a good idea.
- Jay Zeiger: There was no attempt to disguise this. From the home owner's standpoint it was a good idea. If you would like Mrs. Reznik can speak about the contractor now not even being around to finish what is supposed to be finished and paid for.
- Jason Pantel: Don't you have to put him on the building permit?
- George Sarvis: Yes.
- Jason Pantel: Is he on other building permits that are active now?
- George Sarvis: He was.
- Steven Burke: I can't take any input from outside, until we open the public. This is on record and we have to know who you are.
- Jay Zeiger: The dispute with the contractor goes way beyond this.
- Neil Sapolsky: Why can't the entrance and the mudroom be on the deck on the right side?
- Jay Zeiger: It's conceivable....I don't think Mrs. Reznik.
- Tyra Reznik: This whole thing is windows.
- Joe Puccio: Is this a living area?
- Tyra Reznik: Yes but over here there is a sliding glass door, and there are windows all along this wall. There isn't anywhere to build. It could not be over here, this whole room is windows.
- Steven Burke: Take the windows out, close it off and make a doorway.
- Joe Puccio: It wouldn't be a problem if this was over here. You would still have your steps going in and you would have still had your mudroom.
- Tyra Reznik: I would have been very happy to do this idea.
- Joe Puccio: You are as the home owner are with the contractor.
- Tyrz Reznik: This is not the only issue I have with the contractor.
- Joe Puccio: But this is brought before us today.
- Discussion.
- Tyra Reznik: He could have I am sure.
- George Sarvis: The ramp we approved could have been a bit longer.
- Steven Burke: Any other questions?
- Jay Zeiger: Again in terms of the requirements for the variance, you are the only

stop in town that give us the changes we want. There is not a material change in the character of the neighborhood. I think the variance is not substantial, it's only 7 feet and there is adequate separation with the neighbor.

- Neil Sapolsky: If the neighbor was to expand how much further could he come out?
- Jay Zeiger: The neighbor has to be at least 20 feet from this setback, this is 11 something. There would be 31 of addition if the neighbor wants to build.
- Steven Burke: Then if he put a mudroom, the fire truck would never get in there.
- Jay Zeiger: He can't put a mudroom because it is not permitted without variance.
- Steven Burke: I see what you are saying. Any other questions?
- Neil Sapolsky: And then the neighbors come up with some circumstance to make it happen.
- Steven Burke: And if it happened already, you have a better chance of getting it. It's not proper to approve 1 and not the other. Especially in a development. Let's open it to the floor. Anyone from the public?
- Luther Hitt: I don't know these folks at all, I have no cat in this bag. What I am hearing is this is a 93 year old father with an apartment added onto an apartment. My question is how many times is the old man going to go out in the winter? I want to thank the board for recognizing me. I believe the purpose of this board is to insure the building codes, Town of Fallsburg building policies and legal remedies. Addressed for all the community, not just a single person. A motion is not a fitting response to the definings and actions of this board. This board is to adhere to written and sound policies put forward for the safety and good of all the community. This is not the Dr. Phil show dealing with emotion and risk. The petition applied for received permit and willfully did not follow the permit. The discussion about how the contractor proposed and built an unapproved structure has no relevance for the permit that is held. The home owner is responsible, not the contractor for the completion of the project to the letter of the law. Suggested as part of the remedy of the fine, \$500.00 or \$1,500.00 is not a logical response to the community. If this is the case, anyone can build whatever they want, anyone can violate the approved permit, wrongfully accomplish the project and then accept the fine as a cost of doing business, getting what they want and bending the law. I can also where this could educate the petitioner's legal counsel to knowingly explain to their client's where it is no problem to just pay the fine and get the as built. The project approved for you, a few dollars more, no further consequences. I ask you if this is how we do business in Fallsburg. This board must listen carefully to the petitioner's legal counselor responses. I will paraphrase from last month's minutes. Jason Pantel states this is already complete is it not? Counsel responded, it's not complete, there's no CO. It was complete. Just a few minutes late, George Sarvis responded yes it is finished. I believe that legal counsel is willingly misleading and misrepresenting to the board. What are the correct options? I believe the petitioner should choose

to tear out the violation and complete the project according to the approved permit, or abandon the project in its entirety and return the property to its normal state. Neither this community or this board should award anyone who shakes the dice and takes a risk. Should they lose this, so be it. This board is charged to follow the rules and policies set forth in the Town of Fallsburg, to grant desires on emotional and financial hardship is not the responsibility of this board. To set bad precedence only opens the door for more bad and or improper approval in the future. I do not find any reasonable legal or humanitarian reason to approve this request beforehand.

- Steven Burke: Anyone else?
- Abe Berkovich: I agree with the gentleman, the board should not agree emotionally. If you look at the project and the houses here, someone violated. Look at the fact, there is an applicant over here asking for a variance, the purpose of this board is to look at each variance. The fact of it is if we are going to follow the law 100%, and not bend anything, we might as well shut down the board. The board is here to weigh and see if there is any impact. The notion that a neighbor won't be able....that it will set a precedence, the neighbor is going to come and ask for the extension, the mudroom. Now we have from a 31 foot separation which is a safe fire separation, which is accepted in the code. You can't argue precedence on that point because she came first and got the variance. Then at that time, when the neighbor comes, it is a different situation. Yes there is an emotional attachment, maybe some will argue. She did something wrong, you have to pay your price and tear it down. The correct way to look at it, let's wait and see. There is a 93 she claims. If I know an 8 year old child that cannot go out his own, I know 100 year old people who drive a car. She wants this, is it safe. Let's not look, the house is up and if they did or did not violate. Is it an adverse impact to the neighbors? Are their neighbors on the block coming out against it? To say you shouldn't give any variances because you don't like it, somebody living on the other side of the town doesn't like it. I don't think that is fair. The board is here to give variances based on merit. They can deny, but you have to look at each application.
- Steven Burke: Anyone else?
- Gary Kalcher: I wanted to make a change in my house, I was told by my neighbors not to go and get a permit. The worst case scenario they would find me and then leave me alone. So this is getting around my neighborhood. I think it is a real sad thing that someone built this. There has to be value to the permit. Then everyone can build and there is just chaos.
- Steven Burke: Anyone else? No, we will close the public portion. Board comments?
- Paul Lucyk: My comment was to eliminate all of this tonight by having the mudroom put off to the side. That solves everything and we don't have to be here.

- Steven Burke: Let's go down the criteria. Whether the benefit can be achieved by other means feasible to the applicant?
- All members say yes.
- Steven Burke: Undesirable change to the neighborhood character or to nearby properties?
- All members say no.
- Steven Burke: Whether request is substantial?
- All members say yes.
- Steven Burke: Whether request will have adverse environmental or physical effects?
- Jason Pantel: I am saying yes because she is complaining about the roof leaking, nothing has been inspected besides what was legally done, who knows what could happen.
- 4 board members say no, 1 says yes.
- Steven Burke: Whether alleged difficulty is self-created?
- All board members say yes.
- Steven Burke: Lead agency?
 - MOTION:
 - Richard Levine motions for lead agency. Paul Lucyk seconds. All in favor.
 - MOTION:
 - Richard Levine motions for negative dec. Jason Pantel seconds. All in favor.
- Steven Burke: Do I a motion to approve or deny?
 - Richard Levine motions to approve. No second.
 - MOTION:
 - Paul Lucky motions to deny. Jason Pantel seconds to deny.
- Steven Burke: So it was denied. The motion was denied. It is denied.
- Tyra Reznik: We need a variance for the back also.
- Steven Burke: That is a whole other project and I would make sure I do something Code Enforcement before you do anything.
- Tyra Reznik: If you deny now, will I need another variance?
- Steven Burke: You may not get that one, I don't know.
- Tyra Reznik: What about on the side?
- Jay Zeiger: I don't think she needs a variance.
- George Sarvis: As long as she stays in line. From Code Enforcement's perspective, I can't give a CO.
- Discussion.
- George Sarvis: An issue with a CO they can legally use.
- Abe Berkovic: If you have a motion to deny, you have to vote yes to carry the deny.
- Steven Burke: We had a motion to deny. You understand George, we denied the

variance they asked us for?

- George Sarvis: Yes.
- Jay Zeiger: The intention to deny the variance. I don't know what the variance was.
- Steven Burke: I had a motion to deny.

2. 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: This is one we were here last month. New Palms is a property that was originally a hotel or some houses, that was around here many years. A new developer came in and got approval to tear down a bunch of old houses that were on the property and construct 70 new houses. At the time that the developer came to the Planning Board, some of the recreational facilities and community buildings were located in this area over here. The developer came to this board and got approval, there is a required 175 foot setback. The developer came and made the case that there is already a couple of pools here, there's a couple things here. We want to put all the recreational and common facilities in that hub for the community. They got permission to put this community here, and the caretaker cottage over here. The community building is 70 feet from the property line. The pool is 89 feet as is currently sits. The area has a 175 foot setback. Already the pool and community building are in the setback. Here is the pool we are talking about. The pool currently has a fence that surrounds the pool and because of the population of the community, the area inside the fence is rather tight. They want to move the fence 14 feet closer to the setback. After the variance, that area would be 67 feet as compared to the community building that is now 70 feet. The pool is setback further than this. We're not moving the pool, just the fence 14 feet closer to the road. We were here last time and the issue that came up that the contractor or someone had come in and starting clearing the land where the fence would be moved, and apparently cleared not only the 14 feet back, but a lot more. The board was kind enough to give me the opportunity to go to the property owner to say they shouldn't have to do what they did. Now we are looking to fix it. They prepared a landscape plan.
- Steven Burke: We had questions and you did not have the answers.
- Jay Zeiger: They came back with this landscape plan. The landscaping is rather

extensive George.

- Jason Pantel: This has to be done by someone certified? Not a hand drawn. I see a lot bigger trees than 5 or 6 feet in the undisturbed buffer. This is under development? There's still more buildings to be built.
- Jay Zeiger: No I believe it is completely built.
- Jason Pantel: So they just forgot the undisturbed buffer?
- Jay Zeiger: The builder obviously knew about the buffer because he spent time with the setback. The home owners did not know about the undisturbed buffer. All they were interested in was making the fence, the area inside the fence bigger so it would better serve the community. They were not aware there was a buffer or that they needed anything...
- Jason Pantel: I find it hard to believe that you would come to us with this weak architectural drawing when if you looking at the pictures that are taken at the place, there were 30 or 40 foot trees here. To replace it with 5 foot tall bushes, you're not doing us too big of a favor.
- Jay Zeiger: What would you like to see? That was about \$20,000.00 of work.
- Jason Pantel: It's hard to put value on a tree that is 40 feet tall, 30 or 40 of them. It's almost something irreplaceable. You are talking swimming pools and whatever else is necessary, you can't cut down trees in the buffer to make room for the swimming pool. It doesn't make sense.
- Jay Zeiger: The trees are gone, so you're not happy, I'm not happy, George is not happy, and now the property owner has a \$20,000.00 bill he is not happy. If you have a different suggestion, we're talking about moving the fence. We're not punishing him, we're not in court. That's why we come to the Zoning Board, to move the fence, moving the fence is not a material issue. The material issue is the cutting down of the tree.
- Jason Pantel: You don't even have permission yet, and there are holes dug for the fence. This is the second time in 2 months out of 2 different cases where the deed has been done but you come to ask for forgiveness. What's the extenuating circumstance here? They needed more fence?
- Jay Zeiger: The extenuating circumstance here....I am not here to defend what they did. They did call in and stated they did it. This gentleman had said no one gave them the advice to tear down the trees, you pay the fine and walk away.
- Jason Pantel: These trees were not cut down by home owners.
- Jay Zeiger: It was cut down by a contractor hired by the home owners. What I am told is that in order to get back there, the contractor moved the fence.
- Jason Pantel: A 40 or 50 feet swap of trees needed to drive back to put fence post in?
- Jay Zeiger: I'm not the contractor who did it and I am not going to defend him. Your suggestion is you did something wrong, what do you do to fix it?
- Jason Pantel: Why doesn't your guy pay for the town to get an architectural engineer to come in to design something similar to what was there prior,

whatever that costs you pay that and maybe you will get your variance for the fence.

- Steven Burke: Obviously he is not happy with the proposal for the fix.
- Jason Pantel: Did you bring someone from regional planning? You just pick somebody to draw up architectural landscape plan? These aren't professional.
- Steven Burke: Would you like to see something from a landscape architect?
- Jason Pantel: I think it makes sense. Once again, the punishment should fit the crime. If you are going to cut a huge area of trees, I don't know how many could be in there. If you compare to what still exists, it was a dense bit of foliage. I think it should be put back similar, to the same type and as close to the size as possible.
- Jay Zeiger: Remember Jason, trees are a lot bigger when they get older.
- Paul Lucyk: I would like to see a bigger picture of what was there.
- Steven Burke: Look at the trees around it.
- Paul Lucyk: To put something back that is...
- Steven Burke: Trees that are roughly standing now are what was there before. How big of a tree can you put there?
- Jason Pantel: I find it ridiculous that he clear cut.
- Steven Burke: What's the biggest size tree you can start with?
- Richard Levine: You have to find them first.
- Jason Pantel: That's their problem.
- Paul Lucyk: I would suggest that they bring in a professional person to go out there..
- Discussion.
- Richard Levine: Boxwoods aren't going to get that tall. The Norway spruce will get tall.
- Steven Burke: Like a foot a year they grow.
- Jason Pantel: I think it should be done by a landscape architect.
- Jay Zeiger: What is the suggestion?
- Steven Burke: The Norway spruce, instead of 20 feet separation, 10 foot.
- Paul Lucyk: I think you should have a professional do it.
- Steven Burke: If we offer Jay 30 days to come back with, we have to give him something to go with. You're never going to get....he has the Norway spruces.
- Jason Pantel: It should be planted the way it was planted. It's to make sure there is sun for the pool, that's what it is.
- Richard Levine: If they spruce it up with those trees.
- Steven Burke: If it was done by a professional and brought back in 30 days, we suggest instead of 20 day separations, 10 foot separations.
- Jason Pantel: I don't think we should be able to see the fence.
- Steven Burke: In about 5 years you won't see the fence. Is that acceptable?
- Jason Pantel: I'll reserve my judgement for the engineer.

- Jay Zeiger: Can we have a split proposition down the middle? The suggestion about the 20 feet versus 10, that has to be incorporated in the final plan, before they get the permit to put up the fence, they have to submit a landscape plan done by a professional. That way my client knows that if he spends the money with the professional, at the 10 feet intervals then he knows that that money is going to be the condition of getting the permit. Otherwise, he goes out and hire the landscaping architect, comes up with a plan and then gets turned down.
- Steven Burke: The other hand is we can say yes and then he will put the fence up.
- Jay Zeiger: He can't get a permit to put the fence up unless he provides George a revised landscape plan.
- Steven Burke: What if it doesn't meet our criteria?
- Jason Pantel: If we turn him down what does he have to go?
- George Sarvis: Go to court.
- Jay Zeiger: If we go to court, we are going to be in the same place. Negotiating with the court, putting the minimum in and the town is going to suggest the maximum, then we will meet in the middle. We are in a better position now.
- Jason Pantel: We're not in any position. As far as I am concerned, you should restore it to how it was and then come back for the variance.
- Jay Zeiger: That's not happening. I'll talk to the other board members,
- Steven Burke: I don't want to give any half okays.
- Jay Zeiger: You're not giving any okays. You're giving an okay subject to a professionally submitted that comes from us. I think we can work with that. If we have the okay for the variance provided we can submit to you a landscape plan that satisfies this criteria. I think it is unfair to send us to a professional landscape plan without knowing..
- Steven Burke: What is your opinion if he comes back with a plan with plantings, if it was sufficient for us, would you feel better?
- Richard Levine: The damage is done, whatever will be done now will look 100 times better. I'd rather see large trees there.
- Paul Lucyk: I can't see putting 20 or 30 foot trees, but I believe you need the trees so you don't see the fence. If he came back with a set of plans that showed no fence by putting maple leaf or...
- Discussion.
- Jason Pantel: I would have felt better tonight if the plans came from a landscape architect rather than Allen Frishman.
- Richard Levine: We've seen worse plans than that. Let's make a decision if we want more trees put in there. We go with a minimum height. Whatever you guys want. Norway spruces, in a few years it will be filled in.
- George Sarvis: I would like to remind the board that the Town Board calls for a 25 foot vegetation buffer. At minimum, we need to see a 25 foot buffer.

- Richard Levine: You set it up so you cannot see the road when you drive by.
- George Sarvis: I want to say so it is on the record. On 2 different occasions, 2 different contractor came to my office looking to put sheds in the buffer zone. You can't put anything in the buffer zone. Somebody knew. I gave 2 different people approval for sheds in the buffer zone. They had to go tell somebody I would assume that you can't do this in the buffer zone.
- Jason Pantel: It says it right on there, undisturbed buffer zone.
- Richard Levine: Set it up with the landscaper to redesign the new landscape. That's all we can do.
- Paul Lucyk: So you can't see it from the road.
- Steven Burke: You guys okay?
- Jay Zeiger: Yes.
- Steven Burke: I'm not even going to open it to the public.
- George Sarvis: Whatever it is going to cost, there should be a bounty involved. Whatever they are going to pay. For touching this vegetation, it clearly states undisturbed. They are going to come for a permit.
- Steven Burke: That is up to you guys. Jay, 30 days okay?
- Jay Zeiger: Yes.

3. CALOGERO GIANNONE (VISEU ESTATES) – SBL# 7-1-37.16 – Requests a use variance to add another dwelling unit to an existing non-conforming multi-family property used for rentals, where an increase in the number of dwelling units is prohibited. Zone: REC-2. Acres: 8.07. Location: 299 & 304 Wade Rd., Liberty.

NEW BUSINESS:

1. MACHNE OHEL MOSHE D'KRASNA – SBL# 29-1-4.3 – Requests a use variance to allow two storage containers in an REC-1 zone. Zone: REC-1. Acres: 83.79. Location: 114 Lake House Rd., Woodridge

- Abe Berkovic and Jay Zeiger represented.
- Jay Zeiger: The property is a camp.
- Abe Berkovic: Basically it is Lakehouse Road, the old Lakehouse hotel. It burned down a couple years ago, about 6 years ago. Something like that. They rebuilt a

portion of it, a substantial amount of it. Recently, they got a violation for having 2 trailers on the property. They are used for storage. It is inside the parking lot. The reason they like to use this, they use it because they take the trucks back up. They never rebuilt the storage facility. They want to correct the violation. We're here for the variance. Storage is permitted in certain zones. In this zone, we didn't see anything in the code that said yes or no. So we came for a variance. Storage are permitted in other zones, especially agricultural zones.

- Steven Burke: You're not sure if it is allowed or not?
- Abe Berkovic: It does not say you cannot have them, but it does not say you can either. So I assume you cannot.
- George Sarvis: Section 3105.26, temporary storage trailers, truck pods, tractor trailer pods, shipping containers, and other similar container may be used as temporary storage. These fall under tractor trailer bodies. They fall under out code, they're not classified. You guys have oversight on this here. This is a pretty long code section.
- Jay Zeiger: So it is allowed?
- Abe Berkovic: Truck bodies are allowed certain zones.
- George Sarvis: Temporary. You guys are looking for permanent.
- Abe Berkovic: No I am looking for where you have to apply every year with the building departments. We want it for a year or so.
- Jay Zeiger: We want it for 2 months.
- George Sarvis: What you're looking for is in subsection G, zones other than B-1, I-1, and AG-1, you are in REC-1, storage containers are prohibited and subject to use variance approvals from the Zoning Board, shall not be approved for placement to exceed 18 months. Screening from public view for all storage containers shall be required as part of the approval set forth by the Zoning Board for placements exceeding 30 days. You're looking for more than 18 months.
- Abe Berkovic: I am happy with 18 months and then every 18 months get reapproved. I am not looking for a permit for approval. I am looking for something where I go to the Building Department every 12 to 18 months to get reapproved. There are storage containers outside over here, maybe 13 storage containers down the road here.
- Richard Levine: Are there any plans to build a new storage building?
- Abe Berkovic: They are thinking of something, they would put together 2 or 3 trailers, put a roof over and siding around it. For now, if I can get at least 18 months then if we can build it quick in the 18 months. If not we will be back in the 18 months to see what happened. We want to live by the letter of the law. If I get denied, we will take it away. It was a hardship, we had a fire over there. They have an opportunity to rebuild the storage facility. I don't think this is a loophole. This is clearly in the code where it gives the ZBA certain flexibility.
- Steven Burke: Could they build walls and roof now over the storage facilities?
- George Sarvis: Sure. Less than 1,000 square feet and they have adequate lot

coverage. We could give a building permit as long as they meet all the setbacks. If they want the structure over 1,000 feet, they could go to the Planning Board.

- Abe Berkovic: These 2 trailers are not 1,000 square feet. For now...
- Steven Burke: I understand. All you have to do is the right thing to begin with.
- Abe Berkovic: Right now they are not ready. It costs money.
- Jason Pantel: How long have the trailers been sitting there?
- Abe Berkovic: I don't know. They just got cited a couple months ago. I am here to correct the violation. There are trailers down the road and I am not here to complain about other people, This is in the boondocks.
- Jason Pantel: I'd get rid of all the trailers.
- Steven Burke: So financial hardship is part of it?
- Abe Berkovic: They're not ready yet, they don't have the money yet.
- Steven Burke: Can you show us that you have financial hardship? You certainly can go that route, but I just can't take your word for it. It's a use variance. If you're saying that finance is the hardship, if you can show us.
- Abe Berkovic: I don't know how to show hardship.
- Steven Burke: Is it a camp?
- Abe Berkovic: Yes.
- Steven Burke: Do you lose money every year?
- Jay Zeiger: The camp is survived by donation.
- Jason Pantel: I looked at the picture of these trailers, there is no regard for screening or for cleanliness around the trailer. There are empty pallets everywhere, no parking spray painted on the back of the trailer. If you came in here with the idea of doing better, I understand what you're saying but it is a mess. If you didn't get caught it would still be a mess.
- Abe Berkovic: I think the facility over there is being run very well. George you do the inspections over there?
- George Sarvis: Gregg did the last one.
- Abe Berkovic: It's a clean place, if the board has specific instructions pertaining, I would agree.
- Discussion.
- Abe Berkovic: They don't have a storage facility. If they are made aware they have to do something permanent.
- Steven Burke: When did they have the fire?
- Abe Berkovic: 6 years ago but they did not know the storage was an issue. They were notified a couple months ago. This is a place where they get annual inspections.
- Steven Burke: The storage facility burned down 6 years ago? They never replaced the facility?
- Jay Zeiger: No they had the trailers.
- Steven Burke: So they never anticipated putting back up what burnt down to

begin with.

- Abe Berkovic: They did not know it was a problem.
- Steven Burke: They knew they had a storage problem then, it burned down and they just left it.
- Abe Berkovic: They got comfortable with the storage containers. They were notified this is an issue and they want to correct it.
- George Sarvis: I took 3 photos today and I will show the board.
- Abe Berkovic: I also took photos. I don't know which angle you took.
- George Sarvis: I will remind the board, if you are going to consider this, part of the code says you have to deal with the screening issue.
- Abe Berkovic: When you drive by, it screened behind a bunch of trees. I took pictures I sent to Denise.
- Paul Lucyk: Not according to these photos. It has graffiti.
- George Sarvis: If you are going to consider it, move it to the other end of the parking lot and screen it. I know it is in the boondocks, but residents will see it.
- Abe Berkovic: These are my pictures. This is from the street. It is behind these trees. Behind these trees it is shaded, this is the pavement from the road in front of it. You can see it when you pass by one way. I don't think this is substantial.
- Paul Lucyk: If they have the option to the building the enclosure.
- Abe Berkovic: I am just asking for an 18 month variance.
- Steven Burke: Well you didn't make a move in 6 years.
- Jay Zeiger: Every year they have been inspected.
- Abe Berkovic: These people are showing good faith and effort. They want to correct it. If there is room for 18 months, they will figure out a way to correct it or get rid of it.
- Steven Burke: I would propose to give them to the end of the season. You have another month or 2. They have a year to do what they have to do.
- Abe Berkovic: They use this facility year round.
- Steven Burke: It's a camp or a school?
- George Sarvis: It's open use.
- Steven Burke: Can it be both?
- George Sarvis: They came before the Planning Board to get a special permit.
- Abe Berkovic: I don't know exactly what it is. There is a big issue over here, since we are doing this on a side note. We are 2 different societies, what you interpret a camp, we call a yeshiva. A camp is what Kutscher's used to be years ago, it would go from morning to night for sports. For us a camp, it's still a school. We learn all day and go out swimming.
- Steven Burke: You have to look at what New York State defines a camp. This is a problem, because I have a camp in Loch Sheldrake that is open all year round. Are you a camp or a yeshiva? You can't be both.
- Jay Zeiger: You can be a religious retreat, and under the code you can be year

round. In all events, the Health Department regulates these things, under the Health Department, they have limited categories.

- Abe Berkovic: Even if you are yeshiva, you are a camp. You can be a yeshiva without educational certified.
- Jason Pantel: I think you can have a camp or a yeshiva without a junky trailer outside it.
- Steven Burke: Anything else? We all done? Any other questions? No.
- George Sarvis: I want to remind the board, looking at subsection G, the board shall not approve placement more than 18 months. That's the most you can allow.
- Steven Burke: He is saying he wants to come back every 18 months.
- Abe Berkovic: For now I am asking for 18 months.
- Steven Burke: Your best case scenario is you will have these for 18 months and they will be gone.
- Abe Berkovic: Or I will build the storage facility or I will see what the circumstances are then but then I will come back. At least for 18 months they can plan, do whatever they need. Just to give some breathing room.
- Steven Burke: We know there are violations.
- George Sarvis: Yes and the mailings are good.
- Steven Burke: Please step up.
- Luther Hitt: I want to apologize to the board for the way that people come to you with no plans, no idea what they want to do, and then want you to solve their problems. I really do apologize for you and I don't want your job. To me this is disgraceful. The camp burned 6 years ago, the gentleman wants 18 months on repeat. Then he says he does not. You made a great proposal, get them through this summer session, and then start fresh.
- Steven Burke: Anyone else from the public? Okay the public is closed.
- Jay Zeiger: The end of the summer season is highly inadequate.
- Steven Burke: That was my suggestion, you may not get anything.
- Jay Zeiger: Until George did his inspection, they didn't know they had an issue. They thought it was appropriate, and it was inspected for many years. To fix it by putting in something permanent for a not for profit organization, the cost estimates and the whole nine yards, finding the donations and getting the money, I don't know what the needs are for the camp. 2 months is very short.
- Steven Burke: We have many not for profits in this county that don't look like storage trailers. We have one coming before us tonight that whenever they do something they do beautiful work, they make the community better looking.
- Abe Berkovic: What they rebuilt over there is a beautiful building, the grounds are well kept. The trailer was maybe overlooked and we will take any suggestions. I want to apologize for harassing. Thank you for doing your civic duty and listening to our requests. To comply with the zoning code to allow to hear these cases.

- Steven Burke: Anybody else from the public? Closed. Alright let's run down. Cannot realize a reasonable return as shown by competent financial evidence?
- All board members state no. There is no competent financial evidence.
- Steven Burke: Alleged hardship is unique and does not apply to substantial portion of the district or neighborhood?
- All board members vote it is not unique.
- Steven Burke: Requested variance will not alter essential character of the neighborhood?
- All board members say it will.
- Steven Burke: Alleged hardship has not been self-created?
- All board members say it has been self-created.
- Steven Burke: Lead agency?
 - MOTION:
 - Richard Levine makes a motion for lead agency. Jason Pantel seconds. All in favor.
- George Sarvis: We have to keep in mind we are dealing with an 18 month approval and you have to deal with screening. Screening has to be approved by the board.
- Steven Burke: If I get a second on a yes to approve the variance, then we will make those stipulations.
 - MOTION:
 - Richard Levine motions for negative dec. Jason Pantel seconds. All in favor.
- Steven Burke: Do I have a motion to approve or deny?
 - MOTION:
 - Jason Pantel motions to deny. No second.
- Steven Burke: Do I have a motion approve?
 - MOTION:
 - Joseph Puccio motions to approve. Richard Levine seconds. Jason Pantel, Paul Lucyk, and Steven Burke voted no. Variance not granted.

2. THE CENTER FOR DISCOVERY – SBL# 34-9-1.1 – Requests several area variances to allow a Family and Group Care Facility. Zone: HR-1. Acres: Location: 252 Main St., Hurleyville.

- David Fanslau represented.
- David Fanslau: We are here today to request 5 area variances, 3 of which are preexisting on the property. The current condition existing size lot area is 14,999 square feet. The code requires under family and group home facilities, we are requesting a variance from 20,000 square feet to 14,999 square feet existing. The second one is the code requires a lot width of 125 feet. The existing

condition is 100 feet. This is a quarter property so the code requires you to look at the front yard. We are requesting a front yard setback to comply with code on Thompson Street from 35 feet to 15 feet for the front yard. The fourth one is a request to have relief on a side yard setback from 20 feet to 10 feet. The last is the lot coverage request. The existing lot coverage is 30%. The existing already exceeds the code of 25%. What we're proposing, there's a note included on the architectural from Cerello Architect, the closed parking area driveway would be considered as part of the lot coverage. If that is the case we are requesting relief from 25% to 62.7%. I would note the actual structure lot coverage would be 46%. There is a structure that was an apartment above the garage. At one point this property had 2 or 3 apartments.

- Steven Burke: Do you plan to keep the apartments?
- David Fanslau: No. It's existing, we're not looking to change that structure. The property fronts on Main Street but code requires you to look at it as it has 2 fronts.
- Richard Levine: What portion of the house is being removed?
- David Fanslau: Where the connection is between the crossline and the larger addition, there is a deck and a small addition to the house. We're looking at taking away that small addition that hangs over the foundation and the deck. That would be demolished and the new additions would be added.
- Steven Burke: Any questions?
- Jason Pantel: This barn is part of the property?
- David Fanslau: Yeah it's the garage for the property. It's preexisting.
- Paul Lucyk: That's staying?
- David Fanslau: Yes.
- Steven Burke: I'd like to see you do something with that garage.
- Jason Pantel: You must have some plan.
- Steven Burke: The doors are on it are not safe.
- David Fanslau: We would do improvements. We don't plan to demolish it.
- Steven Burke: You don't want to demolish it.
- David Fanslau: But we wouldn't leave it looking like that as we improve the house.
- Jason Pantel: You're fixing it up just get it..
- David Fanslau: The current work that is going on is simply...the structure needs a new roof. Any work that we're proposing in the variance has not been started. Under the state and hygiene law, the group has to be considered a single family house. It's a family unit. There is some position that we take consideration of the town code that may need to be updated at some point. As the code is written, we need a variance, even though it's a single family house, the lot size would be 20,000 square feet. Under the Hygiene law, the state site selection is reserved for the Town Board.
- Paul Lucyk: The house would be 20,000 square feet?

- David Fanslau: No the lot. The lot size would normally be required to be 20,000 but the existing is 14,999 square feet.
- Steven Burke: Are you doing siding??
- David Fanslau: Most likely we would do receivement fiber siding.
- Steven Burke: Can you make me promises to match the garage?
- David Fanslau: The siding and color scheme on the house would be matched.
- Steven Burke: Can that be a condition?
- David Fanslau: Sure. If you look at our properties, we wouldn't have the garage left in that condition.
- Richard Levine: This is a family and group care facility?
- David Fanslau: It will be for people will developmental disabilities. There would staff there.
- Paul Lucyk: What about parking?
- David Fanslau: We proposed parking off of Thompson Street.
- Richard Levine: On the other side of the road?
- David Fanslau: No. It's...
- Richad Levine: How many spaces?
- David Fanslau: None of the residents drive. The residents don't drive.
- Discussion.
- David Fanslau: This will be for those who are nonambulatory, so we are proposing in the front a parking spot off the street. While the addition will be slightly larger, that will come out. This is the current structure.
- Paul Lucyk: So you are doubling the size of the house?
- David Fanslau: Not doubling it. It will come out a little further than what the current house is.
- Discussion.
- Paul Lucyk: Where are those pictures?
- David Fanslau: Something like 2,000 square feet.
- Steven Burke: We will open to the public in a minute.
- Paul Lucyk: This is the house?
- David Fanslau: Yes. This is the front porch, front door, this is the side street.
- Paul Lucyk: You will come out on this side?
- David Fanslau: We will come out of this side.
- Discussion.
- David Fanslau: It's a 2 story house. It would be a finished foundation.
- Steven Burke: Anyone have any questions?
- Richard Levine: From the new building to the road, Thompson Street. 15 feet?
- David Fanslau: It would be 18 feet 11 inches.
- Steven Burke: So you're going from 35.
- Richard Levine: No before it was 27.
- David Fanslau: We're going from 27.4 to 18.11. The setback...

- Richard Levine: Your setback is now 15 feet.
- David Fanslau: Sideyard is 20 feet, we're asking to go to 10 feet. That's the other side yard.
- Steven Burke: Any other questions? No.
- George Sarvis: I want to remind the board, this is a big application. They are asking for quite a bit. It should be looked at, I will agree with the sentiment that the Center does a great job, but this is a big job. We have to look at it like any average Joe coming in.
- Paul Lucyk: Our height?
- David Fanslau: No area variance on the height. What we're proposing is a 1 floor addition which will be the finished floor level on the first level of the house. It would be lower than the current.
- Richard Levine: What are you going to use the house for? The present house?
- David Fanslau: Staff offices. Only upstairs. Supplies and so forth.
- George Sarvis: Residents?
- David Fanslau: The residents will be on the first floor. Our plan is that the residents going to this house would be nonambulatory. We're working with the Town on a public works project to improve the sidewalks from Thompson Street to the center of town so it would be ADA compliant on this side of the street.
- George Sarvis: I have done multiple inspection on the work the Center is doing, all I can say is it is top notch.
- Steven Burke: We're going to lump all these together and vote on it one shot. Anyone from the public like to speak?
- Victor McCarthy: I have 3 letters. 3 of the properties around there. I don't have any objections. The house that is next door is the house that will be between that house and Mrs. Carris. I expect in a short amount of time they will own that house because that house is in complete disrepair. I suspect they will buy that.
- David Fanslau: The Town Code is a little bit misconceding by asking that the lot coverage include the asphalted area. We put a note that we're asking for 25% to 62.7. Without that it would be from 25% to 47%.
- Victor McCarthy: Originally the house has 3 apartments. One in the basement, and the other 2 on the other floor.
- Steven Burke: Anyone else from the public? Public closed. Any violations?
- George Sarvis: Not at this time.
- Steven Burke: Board comments? No? Okay. Let's run down. Whether the benefit can be achieved by other means feasible?
- All board members vote yes.
- Steven Burke: Undesirable change in the neighborhood character or nearby properties?
- All board members vote no.
- Steven Burke: Whether request is substantial?

- 2 members vote no, 3 vote yes.
- Steven Burke: Whether request will have adverse environmental or physical effects?
- All members vote no.
- Steven Burke: Whether alleged difficulty is self-created?
- All board members vote yes.
- Steven Burke: So, just to make it clear. We're going from the lot width...
- David Fanslau: The first one would be the lot area from 20,000 to 14,999 square feet. Lot width from 125 square feet to 100 square feet. Front yard on Thompson Street from 35 feet to 15 feet. Side yard from 20 feet to 10 feet. The lot coverage from 25% to 62.7%.
- Steven Burke: So that's how we will vote these, on all as one. If one is turned down, it's a done deal. If you have a problem with 1. Lead agency?
 - MOTION:
 - Richard Levine makes a motion for lead agency. Jason Pantel seconds. All in favor.
 - MOTION:
 - Richard Levine motions for negative dec. Jason Pantel seconds. All in favor.
 - MOTION:
 - Jason Pantel motions to approve. Paul Lucyk seconds. All in favor.
- Steven Burke: Yes the project is granted.

3. YESHIVA GEDOLAH ZICHRON MOSHE – SBL# 39-1-98.10 – Requests an area and use variance for the construction of a school building. Zone: R-1. Acres: 23.99. Location: Laurel Ave. and Laurel Ave., So. Fallsburg.

- Jay Zeiger and Randy Wasson represented.
- Jay Zeiger: This is a year round. They have been operating in Fallsburg since 1967 on a year round basis. All the attendants are year round, 12 months, at the yeshiva. This is the area where it operates right now. The proposal is to build a new building over here on a different piece of property across the street.
- Randy Wasson: Where the yeshiva is now is a 28 acre parcel, they also own this piece across the street that is 24 acres. The proposal is to put a 3 story building in the location shown. It will be classrooms, a small gymnasium, and a lunch room. It will serve about 200 students. These are existing students, what we're showing is an exit and entrance here, and just an exit here with 1 way going this way. The building is 3 stories tall but it does fit the site quite well because there is a large hill area that has been here for 34 years probably, there is a step drop off on the hill at this point where the proposed building it about 25 feet lower than the top of the fill. It is for the most part hidden from the road. That's the one

reason we need a height variance is because the building is 48 feet high. The code allows for 35 feet high. It's not something you would see a great deal from the road. In this particular site it seems to work well.

- Steven Burke: It's not the code in that area, the code in town is 35?
- Randy Wasson: I think you are right. This is more or less what it will look like. They're showing this sidewalk here which is kind of a meandering way to get down because this front porch goes down here and it's a bit lower than the ground at that point. They form a handicap ramp. They propose this more gentle slope with some steps to the covered entry down here. The parking area would be about here, then another parking area with emergency vehicle turn around in the back. The use is not permitted in the zone. It's an R-1 and it is a school, schools are not permitted. Across the street is in the same zone, across the street is preexisting. They're not expanding but they do need to get out of the building they are in, it's difficult to heat the pool. They are trying to upgrade the facilities and move the students into the building here.
- Jay Zeiger: The R-1 zoning district where this is in since schools aren't permitted, the setback is something you will have to establish if you are inclined to grant the variance. We're proposing 100 feet as the setback.
- Randy Wasson: We're a bit beyond that.
- Jay Zeiger: In the HR and B-1 district, schools are allowed at 100 feet. In the REC-1 and REC-2 district, schools are allowed at 200 feet. In the B-1 and HR, the setback is 100 feet. In an ideal world they would go back further, but because of the slope they are as far back as they can go back.
- Steven Burke: How far are you going back?
- Randy Wasson: About 130 feet, 125 feet back.
- Jason Pantel: Are you tearing any buildings down??
- Randy Wasson: Not at the moment.
- Steven Burke: Is there a basement?
- Randy Wasson: No basement, just the lower floor.
- Steven Burke: That's considered 3 floors total then.
- Richard Levine: Where on there is that old pool they filled? That's under the parking area?
- Randy Wasson: Yes.
- Steven Burke: It's 2 variances, a use and a area.
- Jay Zeiger: The area variance is on the height.
- Richard Levine: What is the length of this building?
- Randy Wasson: 140 feet by 65. Plus this little porch back here.
- Richard Levine: Is there any comment from the Fallsburg Fire District on the road?
- Randy Wasson: We haven't spoken to the but it is 24 feet wide.
- Steven Burke: George was there anything that was supposed to be brought before us?
- George Sarvis: I will read the email between Mollie, myself. My opinion is that

whatever provided to the board tonight will be too late for the board and staff to provide a responsible and accurate review. Most likely, public hearing will be held open so board can review and/or you to provide necessary information. She would prefer to see a zone change than a use variance. Her last sentence is I simply do not see any proof of ownership. That was at 12:30.

- Jay Zeiger: That was in response to Mollie's email.
- George Sarvis: I can't say if any paperwork has been submitted that Mollie and Paula would like to see.
- Jay Zeiger: The items that Mollie asked about came to us at about 11:30 today. I was in meetings for the first half of the day, I first read the email at 3.
- Jason Pantel: When will you build this? (Inaudible)
- Jay Zeiger: Pretty much, the fundraising is done. The architect is done detailed. Building drawings.
- Steven Burke: Mollie wants something sent to her.
- George Sarvis: They're going for 2 variances. Use and area, use financial hardship is always...
- Jay Zeiger: Financial hardship we're having here...
- Steven Burke: There can't be a financial hardship, you're building a building.
- Jay Zeiger: In the variance you just approved is also building and fixing up. The financial hardship is this property is across from the school. If they go into a different district that does allow schools, then they are left with half their students here and half their, this increased administrative costs, substantially increase busing. The school is year round residents. Because of Jewish holidays, most if not all of the students live within walking distance of the school. The financial hardship would be busing, Jewish holidays in the proximity of the school.
- Jason Pantel: I'd rather see a use variance than a zoning change. I'd rather grant the use than make it a school zone and then you don't know who is coming in for a school. That way we can control it, what gets built there, rather than open it up. We had a guy down the road want to put a school in the 3 bedroom.
- Steven Burke: They still need a variance for the height. Paula wanted to see a zone change?
- George Sarvis: She would rather see that than the use variance.
- Steven Burke: What is the procedure to go for a zone change?
- George Sarvis: To sit on the Town Board.
- Steven Burke: We have an attorney for a reason. I'd like to talk more to her about it. Once we go forward with it, we're there. Unfortunately she is on vacation and she is leading into something here.
- Jay Zeiger: I think you have to read it in the context that Mollie's comment was that we haven't presented enough financial evidence so Paula was trying to help us with that comment by saying we do have the issue with financial, that's why she suggested the zone change because for that we don't have to demonstrate that.
- Jason Pantel: You have to come for a zone change if you build it on the other

side. I'm talking the use variance.

- Jay Zeiger: There's limited convergence.
- Jason Pantel: Even if the building wasn't across from the other buildings, you'd still need a use variance to add a building over there.
- Steven Burke: Do you want 30 days to come back with your financial hardship?
- Randy Wasson: That doesn't have anything to do with the zone change question.
- Steven Burke: That's right.
- Randy Wasson: Without seeing a zoning map I don't know, I don't know if the adjacent zone or if we are surrounded by all R-1.
- Paul Lucyk: Why wouldn't you put it on the other side of the street?
- Randy Wasson: This is way to use this site and make it viable because of that big fill pile.
- Discussion.
- Steven Burke: I know. I know you're building it down slope so even though it is way above, it won't appear that way. That is like the project in Sheldrake, it was 20 feet down. I don't particularly like the height part of it, but the way it appears it really isn't going to be an issue. What do you suggest? Do you want to go forward? You want to for more information?
- George Sarvis: Speaking for Mollie and myself, we prefer Paula to sit on the whole thing. Have her explain the whole thing and then you can make an educated decision based on that.
- Steven Burke: I'm not comfortable going forward without her here. That's up to you.
- Richard Levine: I would also like to hear from the fire district.
- Steven Burke: Fallsburg. You comfortable with that?
- Richard Levine: As long as they don't have an issue with the width of the road.
- Jason Pantel: I'm seeing some possible issues with that lower side you're talking about, especially with the cars parked right against the building.
- Richard Levine: That's why I'd rather have the fire district's input.
- Steven Burke: You want to leave it open for 30 days?
- Jay Zeiger: It's the public hearing, so anyone here tonight should be allowed to speak.
- Steven Burke: Any more board questions? Alright anyone here from the public like to speak?
- David Sabel: I work for the yeshiva. I want to make it clear, I wasn't sure if you were aware why we are on this side of the street. First of all because we have the property and it is not developed. The school we are intending to build is entirely for girls. We're trying to delineate.
- Paul Lucyk: It would be a lot more cost effective to build on that lot than go with.
- David Sabel: But the reason is we're trying to keep it away from the main campus. I don't pretend to know what the meaning of the hardship. We always try to do what is best for our community. We always want to make it better for the surrounding areas.

- Steven Burke: Anyone else from the public?
- Dove Parazini: Another point on the other side, there is no space on the other side. We would have to tear down the buildings on the other side.
- George Sarvis: Most likely public hearing will be held open.
- Steven Burke: So we will leave it open.

Richard Levine motions to close. Jason Pantel seconds. Meeting adjourned.