

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

## TOWN OF FALLSBURG ZONING BOARD MEETING

October 20th, 2016

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

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

### OLD BUSINESS:

1. 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., South Fallsburg.

- Removed from agenda by applicant’s attorney.

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

- Jay Zeiger represented.
- Steven Burke: This is a rehearing.
- Jay Zeiger: Expanding on what the chairman said, we were turned down for a variance a couple months. One of the reasons being is that this board thought there were alternatives that should be explored. They thought there was an alternative that did not require a variance. This is what the house looked like before the addition. The applicant got a permit to build an addition over here. The addition was built for the applicant’s father who is 90 years old. The addition includes 2 rooms, there is a bedroom here and a den area over here. The contractor, when he went to build, came back to the applicant and said that the way you are building this is not the most feasible way of building this, because in

winter you are going to open the door here and the door is right out to the cold, all the cold will come into the living quarters. Same with summer with the hot air. It wasn't the most desirable, the contractor suggested building this little mudroom over here. The mudroom is 9 feet this way and 7 feet this way. It's 9 feet into the 20 foot setback, and 9 feet of this small area here. The applicant said that it was a great idea and that was the end of the conversation, the contractor went and did the work, never went back to George for a permit even though he had spoken to George, George never said yes or no. What the contractor thought I don't know, we have tried to reach him. He hasn't responded to the calls, he has been paid for the work he has done. They are not happy with this, we can't even go back to him to ask him why. So it was either turn tag on the mudroom or come for a variance. They did look at alternatives, and there really is no viable place to build a mudroom based on the configuration of the house. One of the requirements of the variance is it not be self-created, if it is it doesn't mean you aren't entitled to the variance. We submit that under these circumstances, it wasn't self-created, the applicant hired a contractor, they relied on the contractor to do the work and get the permits. They were told they had the permits and never told they needed something different. Yes you can say they should have known the law, but that's not their business. All the other requirements for a variance are satisfied, we talk about substantial. It's not mathematical, it's about taking a look at the situation and discerning if it has a material impact on the neighborhood, I think it is clear is has no impact. This is our second public hearing, we have had no neighbors come in. At the last public hearing, we had something from the immediate next door neighbor stating he had no objection to the mudroom. We submit there is no adverse impact on the character of the neighborhood, it is a small mudroom in a densely build community already. I think we satisfy all the requirements for a variance. In terms of working without a variance, the Town issued them a violation and they paid the significant sum of money. I believe they have been punished enough. Also have had to pay for me to be here many times.

- Steven Burke: Any questions? No, okay. The only thing I would like to say is I don't agree with this kind of stuff, but I do understand the situation. Unfortunately there is no recourse for the applicant to go after, to punish her again by not passing this variance would be a wrong doing. Letting my feelings be heard. I think the contractor should definitely be held accountable, he's not around so that is unfortunate for you. Mailings?
- George Sarvis: Mailings are good.
- Steven Burke: Anyone from the public want to speak on this matter? Public closed. Board comments? Nope. Let's go down the list. Whether the benefit can be achieved by other means feasible to the applicant.
- 3 board members say no, 1 says yes.
- Steven Burke: Undesirable change in the neighborhood character or nearby

properties?

- All board members say no.
- Steven Burke: Whether request is substantial?
- 1 board members says yes, 3 board members say no.
- Steven Burke: Whether request will have adverse physical or environmental effects?
- All board members say no.
- Steven Burke: Whether alleged difficulty is self-created?
- All board members say yes.
- Steven Burke: Do I have a motion?
  - MOTION:
  - Richard Levine motions to approve. Joe Puccio seconds. Jason Pantel opposes. Steven Burke in favor. Approval granted.

## NEW BUSINESS:

1 INTERMAK GARAGE, LLC – SBL# 35-6-1.1 – Requests an area variance for the reduction in front, side and rear yard set backs and use variance for a 48 x 90 storage building as a primary structure. (Variances were previously approved by ZBA). Zone: HR-1. Location: Cunes Rd., Hurleyville.

- John Makovich represented.
- Paula E Kay: We have his mailings.
- John Makovich: We are here for a use and area variance. I was here once before. It was approved. Where my problem came in, I scheduled to come here before I had my final survey. The surrounding lots are measured from the center of the road. The lot I am here for is from the edge of the road. That caused an issue with our approval.
- Paula E Kay: There was also a time frame issue.

- John Makovich: Yes ultimately we let everything lapse, not just because of this. This had to be something I had to be involved in. We are back here for a use and area variance for a metal storage building. The zoning is HR-1. The metal building is really more because of the frame.
- Discussion.
- John Makovich: During the last I was asked for an approximate on this building, because we didn't have the right amount of acres, you did grant the approval, the problem is it isn't working now with the actual lot size. The problem was the building was the wrong size so I was asking for the wrong thing. The building was off by 7 feet.
- Steven Burke: Are you asking for more or less?
- John Makovich: The same thing with a better understanding of where the property line is.
- Paula E Kay: The use variance is because it is HR-1 and the storage building is not allowed.
- John Makovich: That area does not have that much housing.
- Steven Burke: It almost looks like a business district.
- John Makovich: I redid and sold 2 businesses across the road. I bought this property that has a big warehouse in front. There is a barn here, I cleaned up. There was a bunch of garbage laying around. The one side of the property is owned by the same company, Intermak. On the other side where we are asking for, I believe, is a 25 foot setback.
- Steven Burke: First we will do the use because if that doesn't pass then it can't go further.
- Paula E Kay: Do you want talk a little more about the evidence for your use variance?
- John Makovich: If I was to build a single family home or 2 family home, I highly doubt anyone would want to live there. I also doubt anyone would want to buy a house in what is close enough to an industrial house. Everything surrounding it is a warehouse. There is flooding that goes on back there. To put up any type of housing, can't say I wouldn't be able to do it, it just wouldn't be smart.
- Steven Burke: You're using this for yourself?
- John Makovich: Yes. It is for the garage space across the road. The building across the road, we added a second story to it, did the whole thing to it. Things happened with the other lots we were trying to purchase, the Center for Discovery got them. Then we were going to ask to put a building on the other side of those properties, we ended up selling them these properties as well. It was better for the town of Hurleyville. I didn't want to leave the area, so I went across the road and made a deal with Perry to buy his lots so I could do the same thing I was doing but on the other side.
- Steven Burke: Any questions?

- Peter Frunzi: No, I think the applicant point is well taken that the area being industrial is zoned HR-1, but probably shouldn't be. I don't consider it being a problem. Mr. Makovich's work is nice as well.
- Steven Burke: The only thing I said is even though that is HR-1 it is more like an industrial park back there. I have no issue with any of those buildings. There is no housing back there.
- Paula E Kay: I do believe the last time he was here, the use variance was unanimous.
- Steven Burke: So we'll do use first. Anyone from the public have anything to say? Alright public closed.
- Paula E Kay: You guys approved this on 5-21-15.
- Steven Burke: What happened?
- John Makovich: I worked on a big project out of the area.
- Steven Burke: I agree with Peter, I've been dealing with you for a long time and what you do is nice. Let's go down the use list. Cannot realize a reasonable return substantial as shown by competent financial evidence?
- All board members say no.
- Steven Burke: Alleged hardship is unique and does not apply to substantial portion of the district or neighborhood.
- All board members say it is unique.
- Steven Burke: Requested variance will not alter essential character of the neighborhood.
- All board members say it will not.
- Steven Burke: Alleged hardship has not been self-created?
- All board members say it is self-created.
- Steven Burke: Lead agency?
  - MOTION:
  - Richard Levine motions for lead agency. Joe Puccio seconds. All in favor.
  - MOTION:
  - Jason Pantel motions for negative dec. Richard Levine seconds. All in favor.
  - MOTION:
  - Richard Levine motions to approve use variance. Peter Frunzi seconds. All in favor.
- Steven Burke: So now I will go down the area list. Whether the benefit can be achieved by other means feasible to the applicant?
- All board members say yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All board members say no.
- Steven Burke: Whether request is substantial?

- 1 board member says no, 3 board members say yes.
- Steven Burke: Whether the request will have adverse physical or environmental effects?
- All board members say no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members say yes.
- Steven Burke: Lead agency?
  - MOTION:
  - Richard Levine motions for lead agency. Jason Pantel seconds. All in favor.
  - MOTION:
  - Richard Levine motions to approve the area variance. Peter Frunzy seconds. All in favor.

2 DUSAN SMETANA – SBL# 19-7-10 – Requests an area variance for the reduction of side yard setbacks from the required 10 feet to 2 feet for the construction of a 336 S.F. garage. Zone: HR-1. Location: 9 Laurel Lane, Loch Sheldrake.

- No show as of 7:30PM.

3 JOSEPH ROSSINI – SBL# 40-3-1 – Requests an area variances for front, side and rear set backs and lot coverage from 40% to 65%. Zone: B-1. Location: Corner of Rt. 42 and Old Falls Rd., Fallsburg.

- Marty Miller represented.
- Marty Miller: We are looking to reactivate use of the property. This is a garage. It was built when were a lot younger. The plan is to use it again for the same as it was built, designed, and operated in that manner. It is in a B-1 zone and is property zoned. The new and improved map shows parking, the one that is facing the front will be the handicap space. The reality is that we're not planning to do anything new, except to take down this sign. Beyond that, the building is what it is, the 2 buildings are what they are, there setbacks are what they are. I'm reflecting we're using 60 to 65% of the lot space. The buildings preexisted before acquisition of this property. There have been no changes to the property. The only change that would come into play was about 20 years ago, the building that is designated a spray paint building was at one time a car wash. I don't recollect when it was converted. It was open back in the 90's. That's the situation, the property that surrounds this is owned by some municipality that is local to us, therefore I don't think the Town is going to concede any property to us. On the backside, the riverside, is owned by the Town. The manure side is owned by the County of Sullivan, the side facing the property is owned by (inaudible). We are

surrounded by nontax producing properties.

- George Sarvis: Will there be any storage containers?
- Marty Miller: Not that I am aware of. We don't have any in the plans. We're not planning anything other than use of the property.
- Steven Burke: So the front side and rear setbacks...
- Marty Miller: If you look at the map, you'll notice the building is irregularly shaped. We also have a questionable roadway. I'm giving you setback from what we believe are the roads. The front of the building is 10 feet off the road bounds. 10 feet off where George Fuller shows is a 3 rod road. On the side of the building, nobody knows what the round bounds are. I'm showing it from the 3 rod, he is also showing a 4 rod road. The pavement is where the pavement, the parking areas are where they have been for the last 30 plus years. The building is there likewise for that period of time. We're not increasing those setbacks or decreasing them. To the extent there is a side yard setback needed near the spray paint building, it is what it is. You will notice there is verbage on this map that predates our ownership, which says unpaved storage area. We're not anticipating using that unless the Town gives us permission. We don't own it, it's owned by the Town. It's not part of our site plan. I guess when George did the survey in 93, that's what he found on the site.
- Paula E Kay: Understand that if this board approves it, they go back to the Planning Board, and the Planning Board will look at parking and things with Marty.
- Steven Burke: So this is just reuse of what the property was.
- Marty Miller: Correct. We're not doing anything other than changing the sign to reflect the current applicant. That's it.
- Steven Burke: Any questions? You all know the property, corner across from Stewart's.
- Marty Miller: Unlike the other retail stores, this is not a volume location. We're not talking about significant entry and exit on an hourly basis. People come, vehicles are there to be repaired, they are there for the period of time to be repaired. We're not talking about substantially contributing safety issues.
- Peter Frunzi: The ownership hasn't changed?
- Marty Miller: The ownership changed 8 years ago.
- Peter Frunzi: Why wasn't this an issue then?
- Marty Miller: Because it was used as what it was used for and then it stopped being use. The owner is not the operator of an auto body repair. The owner wanted to make an investment in the town of Fallsburg, saw the property, saw potential and bought it. He's been making it available by renting it to others. The last occupant didn't need assistance from the board. Now we have an occupant or potential occupant who wants to go into the same use that it had been designed for. Since it had been discontinued, we are back.
- Jason Pantel: Shouldn't the last occupant have had to come here?

- Paula E Kay: No it was continuously used for auto body, then it was used for retail.
- Steven Burke: Wasn't something Underground there for a while? We will open it to the public. Anyone here? It has been a lot of different things there, but not a body shop. Mailings are good and no violations?
- George Sarvis: Mailings are good, no violations.
- Steven Burke: Okay, anybody here from the public?
- William Fusk: I've worked in that building from 98 to 2006, I have a good knowledge of that building. The property was maintained when I was there, in September the glass was very high. We cleared that down. Keep it neat and clean like it was 20 or 30 years ago. Don't let it be like some other places. Open for business on a daily basis.
- Steven Burke: Anyone else? No, public closed. Any board comments? Okay, let's go down the list for an area variance. Whether the benefit can be achieved by other means feasible to applicant?
- All board members say no.
- Steven Burke: Undesirable change in 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 effects?
- All board members say no.
- Steven Burke: Whether alleged difficulty is self-created.
- Peter Frunzi: Yes, and I will explain why. I bought a house under this condition, and I was told that as a buyer or renter, you bought it knowing that it was in violation. So yes.
- 1 board member says yes, 3 board members says no.
- Steven Burke: Lead agency?
  - MOTION:
  - Richard Levine motions for lead agency. Jason Pantel seconds. All in favor.
  - MOTION:
  - Richard Levine motions for negative dec. Jason Pantel seconds. All in favor.
  - MOTION:
  - Joe Puccio motions to approve the area variance. Richard Levine seconds. All in favor.

4 STAGEDOOR MANOR – SBL# 12-1-62 – Requests an area variance for lot coverage. Requests a use variance for a pre-existing non-conforming use for the replacement of an existing building. Zone: HR-1. Acres: 10.60. Location: 116 Karmel Jacobs Rd., Loch Sheldrake.

- Tom Schultz and Cindy Samuelson represented.
- Tom Schultz: I am here for an area then a use variance. I'll speak of the area variance. We have notarized copies. I have 1 that was returned.
- Paula E Kay: Did you do separate mailings for each request?
- Tom Schultz: I believe all 1.
- Paula E Kay: So each envelope have multiple notices in 1?
- Discussion.
- Steven Burke: We are okay to go forward?
- Paula E Kay: Yes.
- Tom Schultz: The area variance we are going for is for various buildings on the property. They are replacing. It is a very old building. They are going to take both of them down and put up a new one. They are over their lot coverage. Their existing lot coverage is 21.7%, they are going from a little over 2,100 square foot existing building to a proposed 2,800 square foot building. The building is only 60 by 40, so 2,400 square feet, the extra 400 comes to cover the entrance, stairs. We're only increasing the lot coverage from 21.7%, with all the new building and entrances, it will go up to 21.7%. Also they're moving a little further away from the existing building. About 19 or 18 feet apart from the existing building. When they put up something new, they will do the 25 foot separation between that building.
- Steven Burke: What's the exact amount of more square footage?
- Tom Schultz: It's going to go to 2,830.
- Steven Burke: Do you have the additional square footage you will use?
- Cindy Samuelson: They're going from 2,158 to 2,400 for the building. Then their pathways, one path is 101, one path is 163.
- Steven Burke: I just need the total.
- Cindy Samuelson: 2,830. It's covered area.
- Tom Schultz: It's increasing 672 square feet is the increase from the existing to proposed. It's .1%. It is a very minor increase.
- Steven Burke: That's the tower building.
- Tom Schultz: Yes.
- Paula E Kay: What's the use of that?
- Cindy Samuelson: That's the residence for myself and my family. We've been around for 41 years. My parents lived there, now my kids decided they didn't

want to live in it. There are bedrooms for myself, my kids, and hopefully my grandchildren.

- Joe Puccio: The tower building will be your new home?
- Cindy Samuelson: Yes. I think on the original plans it shows 15 rooms. The configuration less elongated, so we'll have better space between current other buildings.
- Tom Schultz: Yeah we will have 25 foot separate between the buildings.
- Steven Burke: Do you live in that house now?
- Cindy Samuelson: No we have our own.
- Steven Burke: The camp is an asset to the town of Fallsburg and the hamlet of Loch Sheldrake. We used to get crazy calls for the fire department but that stopped.
- Cindy Samuelson: This has been a process for about 6 months, I don't want to but we have to do it.
- Steven Burke: Does anybody have any questions? First of all we are going to make a decision tonight if this is a camp. What I am told, we don't have any rock bottom for this. Is it a camp or school?
- Paula E Kay: The application is for a camp. What they're going to do is vote to formalize.
- Cindy Samuelson: We don't call ourselves a camp, we only operate during the summer. All of our literature states theatrical training center.
- Paula E Kay: You fall under camp.
- Cindy Samuelson: Okay, we never say camp. For our marketing purposes, that hurts. We are a training center in the summer.
- Paula E Kay: It is just for zoning purposes. You can call yourself whatever.
- Steven Burke: We'll deal with the use part first. Does anybody have any question on the area use? Anybody from the public like to speak on this matter? No? Public closed. Let's go down the list. No violations?
- George Sarvis: No.
- Steven Burke: Lead agency?
  - MOTION:
  - Richard Levine makes a motion for lead agency. Joseph Puccio seconds. All in favor.
  - MOTION:
  - Richard Levine makes a motion for negative dec. Joseph Puccio seconds. All in favor.
- Steven Burke: Let's go down the use part. Cannot realize a reasonable return substantial as shown by competent financial evidence?
- All board members say no.
- Steven Burke: Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood?

- 1 board member says yes, 3 say no.
- Steven Burke: Alleged hardship will not alter the essential character of the neighborhood?
- All board members say no.
- Steven Burke: Alleged hardship has not been self-created?
- All board members say it has not been self-created.
- Steven Burke: We have to vote you being a camp.
  - MOTION:
  - Richard Levine motions to approve the applicant as a camp. Joseph Puccio seconds. All in favor.
- Steven Bukre: Let's do the area variance. The tower building.
  - MOTION:
  - Richard Levine motions for lead agency. Joseph Puccio seconds. All in favor.
  - MOTION:
  - Richard Levine motions for negative dec. Joseph Puccio seconds. All in favor.
- Steven Burke: Whether the benefit can be achieved by other means feasible to the applicant?
- 3 board members say no, 1 says yes.
- Steven Burke: Undesirable change in the 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 the request will have physical or environmental effects?
- All board members say no.
- Steven Burke: Whether the alleged difficult is self-created?
- All board members say no.
- Steven Burke: Motion?
  - MOTION:
  - Richard Levine motions to approve. Joseph Puccio seconds. All in favor.
- Steven Burke: You are approved on both.