

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

TOWN OF FALLSBURG ZONING BOARD MEETING

January 18th, 2017

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

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

NEW BUSINESS:

1. RICHARD AND ROCHAN NORBY – SBL# 20-1-31.3/31.4 - Requests an area variance for the reduction in side yard setback for an existing accessory structure. Zone: REC-1. Acres: 8.18. Location: 33 Midwood Rd., Loch Sheldrake.
 - Richard and Rochan Norby represented.
 - George Sarvis: You have the mailings?
 - Richard Norby: Yes I do.
 - Paula E Kay: Who prepared this?
 - Richard Norby: I have an architect.
 - Paula E Kay: Was it based on a survey?
 - Richard Norby: Yes a local surveyor.
 - Paula E Kay: Who did the survey?
 - Richard Norby: I don't know.
 - Paula E Kay: That needs to be found out.
 - Richard Norby: We own property on Midwood. 1 is 2.48 acres and 1 is 5.39 acres and we want to make both 3 acres and then move the existing home would move onto the new lot. We would build our new house on the other property. We would need a variance because there is an existing pavilion from when we bought it and it is 40 feet. It's 17 feet from the new parking garage.
 - Steven Burke: Anything else? Alright.
 - Paula E Kay: Are there any other structures that would be closer to the road than either of the main structures.
 - Richard Norby: No. We have a car port.
 - Steven Burke: Any questions?

- Paul Lucyk: How big is this pavilion?
- Richard Norby: It's rather large, I forget the square foot. I would get 40 by 60.
- Jason Pantel: Like a pole barn?
- Richard Norby: Yes, completely open inside.
- Paul Lucyk: Do you have pictures?
- Jason Pantel: Is it for entertainment?
- Richard Norby: Originally they had weddings there. We're thinking we could tear it down, we don't currently have a use.
- Steven Burke: Anyone else? The only question I have is the proposed house, is it an enclosed porch?
- Richard Norby: The deck in the back?
- Jason Pantel: The front.
- Richard Norby: I think there is some overhang but I don't think it's enclosed.
- Steven Burke: You have to let us know, if you decide to get it, I am going to stipulate that you said it wasn't enclosed.
- Richard Norby: I have the plans in the car.
- Steven Burke: We can open it up to the public. Please step up. No one from the public. Okay.
- George Sarvis: According to this one he submitted, it looks like he eliminated the proposed car port.
- Steven Burke: He did.
- George Sarvis: Okay. Mailings are good by the way.
- Steven Burke: Okay so we will close the public portion.
- Discussion.
- Richard Norby: That's this piece we're looking at. This is the existing pavilion.
- Steven Burke: Okay.
- Jason Pantel: If it wasn't for the pavilion....
- Steven Burke: Any violations George?
- George Sarvis: None.
- Steven Burke: Okay. We'll run down some of the criteria. Whether the benefit can be achieved by other means feasible to the applicant.
- All board members say yes.
- Steven Burke: Undesirable change in the neighborhood character or nearby properties?
- All board members say no.
- Steven Burke: Whether the request is substantial?
- All board members say no.
- Steven Burke: Whether request will have adverse physical or environmental affects?
- All board members say no.
- Steven Burke: Whether the alleged difficult is self-created?
- All board members say yes.
- Steven Burke: Lead agency, negative dec?
- Paula E Kay: Just a vote

- Steven Burke: Do I have a motion?
 - MOTION:
 - Paul Lucyk motions to approve. Jason Pantel seconds. All in favor.
 - Steven Burke: Make sure you see someone from the Building Department before you go further.
2. LEON GOLDENBERG – SBL# 29-1-11 – Requests an area variance to reduce the side yard set backs for a lot line change. Zone: REC-1. Acres: 1.20. Location: Maple Ave., Woodridge.
- Allen Frishman represented.
 - Allen Frishman: A little history on this property. Over a year ago, Mr. Gerka wanted to do something with his casino in the back, he wanted to replace it. At that time, his neighbor had a lot of concerns and was very vocal about it, Mr. Croaks.. Apparently what happened, Mr. Goldenberg wanted to cut this property all on its own and have rights of ways. Instead, Mr. Croaks is moving and sold his parcel to Mr. Goldenberg which works out, because now we're asking to cut this piece out and add it to Mr. Goldenberg's property. We are adding these three lines to cut this house out, eliminating the separation between the 2 parcels, that way he is independent of this parcel here. Right now, this is a tax exempt parcel because they run a school here and what he wants to do is add to his, pay taxes, but be independent. One of the concerns would be infrastructure, the electric, the plumbing, so on will not come onto this parcel. Everything comes toward the back so there would be no issue of cutting off that sewer and water line. That's the synopsis. You have the survey map. We're looking for not only the lot line change but the setbacks around the house. We are close, it's going in between the 2 existing buildings. It's about 3 or 4 feet on one side and 4 feet on the other. On the east side, that's the only way we could do it. He has to have easements written so either party can work on their buildings, so they wouldn't be locked in regardless of the future. That's something we don't have written up yet but will be part of the agreement. I'm sure this has to go to the Planning Board for the lot line improvement. Before we get into the nuts and bolts, we wanted to see you.
 - Paul Lucyk: What would happen, say 5 years down the road, the gentleman wants to sell. The one he just bought.
 - Allen Frishman: This line will disappear, both parties have all the easements in place. There's never a way that if he sells, the new owner can't deal with maintaining his parcel. That has to be written in the easement agreement.
 - Paul Lucyk: What about water and sewer?
 - Allen Frishman: Everything will be cut off on the existing connections on that parcel. It's easy because of the graves. He will now become independent.
 - Paul Lucyk: Is there city water and sewer on this lot?
 - Allen Frishman: He has a septic system for this parcel. You have the main house and a couple other bungalows, they've been removed. This one on the bottom is used for storage now. This one same thing, but he has agreed to remove that. That's also a plus because of the proximity of everything, because it is a fire hazard.

- Paula E Kay: So that is a shed?
- Allen Frishman: It's a tiny bungalow.
- Paula E Kay: I was concerned about density. Can we strike it or somehow put it on the map?
- Allen Frishman: Sure I can have a surveyor do that. He has no issues with that.
- Paula E Kay: And the other house on this lot?
- Allen Frishman: It's really just a storage building, it's the prior owner's wooden workshop.
- Paula E Kay: We haven't done a density calculation but there would be the new house, plus this house on 1.29 acres?
- Allen Frishman: We realize we have 2 nonconforming lots.
- Jason Pantel: I'd also be concerned with putting this large house on the septic system of the smaller house. When is the last time anything was done with the septic?
- Allen Frishman: I can't exactly say there. I think he said the tank was cleaned a couple years ago.
- Jason Pantel: It would have to conform to the size of the house. You have 2 houses now, the one you are adding is larger than what was there. Shouldn't a little engineering be done?
- Paul Lucyk: What is the square footage and how many bedrooms? That house is substantially large than what was there.
- Allen Frishman: I don't have that with me but I can come back with a plan. I am going to say off the top of my head, 3 or 4 bedrooms. I will have to verify that. Again, I'd have to talk to them, I believe there were several other bungalows that were removed. We still have the main house that still exists, and I think there were 2 others that the septic system supplied enough capacity for all the units. We're taking this one off, this is not used for occupancy whatsoever, bedroom to bedroom replacement is about the same number.
- Paul Lucyk: Year round house?
- Allen Frishman: He's not here all year round but it was a bungalow in that general area. Bedroom to bedroom count is probably the same in that we're not overtaxing the old system.
- Paula E Kay: Under the schedule of uses for the REC-1 zoning district, one family residences are allowed with public or central water and sewer, the minimum lot size is 1.5. Without public water and sewer, the minimum is 3 acres. This looks like it is 2 single family residences on this lot the way it is now. The way it would be. I don't see where that use is allowed.
- Allen Frishman: That's why we're here for the variances.
- Paula E Kay: You're asking for front yard and side yard. You may need a use variance.
- Allen Frishman: So it's a combination of area and use?
- Paula E Kay: If it is 2 single family residences on 1 lot, it looks to me you may need use variance as well. Unless you can figure out a way to pigeon hole it.
- Allen Frishman: I did mention them as nonconforming.
- Jason Pantel: It's nonconforming as it is, we're looking to improve it to make it

more nonconforming.

- Allen Frishman: The advantages that we're taking this building off of this parcel.
- Jason Pantel: They're both nonconforming, but the lower one is more nonconforming. You're going to take the house from the more nonconforming and make the lesser nonconforming just nonconforming as the other one. With the septic, I think you would have to have some kind of test done or redo it. If the leech fields from the bungalow time, it could be even more.
- Allen Frishman: You're asking for information about the existing septic system. If the engineer says it is too old he can't find it, it needs to be rebuilt. That's a code enforcement issue, the engineer would have to redesign based on the bedroom count and he would approve the system, we would have to get a permit.
- Jason Pantel: That's something you have to do.
- Allen Frishman: He's not going to do that unless he gets a variance.
- Jason Pantel: I'd be interested to know for my own sake before I did it, but that's why we have a Building Department.
- Paula E Kay: I also think the application needs to be amended.
- Allen Frishman: You want to include a use variance?
- Paula E Kay: Unless you see something I am missing, I don't see 2 family homes being allowed in REC-1.
- Jason Pantel: If they're nonconforming modules.
- Paula E Kay: We would also need a lot area variance. It's less than 1.5 or 3.
- Allen Frishman: So basically you want a use variance for the 2 homes and you want it to include the reduction of the area on the top lot...
- Paula E Kay: I'm still just dealing with the bottom lot. On the bottom, we have 2 single family homes and it is less than 1.5 or 3 acres, without public sewer and water. We would need a variance for minimum lot size.
- Paul Lucyk: Was there a discussion about bringing city sewer to these lots?
- Allen Frishman: I think the line that runs from the sewer plant somehow travels to that area.
- Paul Lucyk: I think it would have to run toward the village. I think they were talking about bringing in some lots.
- Allen Frishman: I think they cannot have town water and sewer, I'm not sure. I will verify that.
- Steven Burke: We're going to open to the public, but 30 days is good?
- Allen Frishman: Can it be 60? I won't be here.
- Steven Burke: Sure. Anybody here from the public? No, okay we'll close the public portion. 60 days it is.
- Jason Pantel: We need the square footage of the building.
- Steven Burke: Before he leaves.
- Discussion.
- Steven Burke: You might as well give us the square footage of the building.
- Paul Lucyk: Set of plans with the number of bathrooms.
- Allen Frishman: I'll get you a set of plans with bathrooms and bedrooms, we will put in a use variance for the 2 homes and the reduction of the lot size. I'll try to get

something in about the septic system. They might have something. Do you recall them being 2 bungalow colonies?

- Paul Lucyk: It was a long time ago. 1 family bought 1 half, and then another family bought the other.
- Jason Pantel: It's 2 houses down on 1. It's rather antiquated.
- Allen Frishman: I don't know what the engineers can even determine. If they can't, we will have to design something from scratch.
- Steven Burke: See you in 60 days.
- Paula E Kay: You're going to redo this and everything?
- Allen Frishman: I have to.
- Paula E Kay: For the other variance.
- Allen Frishman: Alright, no problem.

3. LAUREL CREST – SBL# 56-1-1/39-1-90 – Requests an area variance to reduce the front yard set backs to install a detention pond, parking lot and for the existing buildings. Zone: HR-1. Acres: 20.67. Location: Laurel Ave., So. Fallsburg

- Jay Zeiger and Larry Marshall represented.
- Jay Zeiger: The project was approved previously for 64 units. There were 4 duplexes built, 8 units on the site. For a few years it sat and didn't go any further. The current owner has bought the property. All this green over here was not part of the original site. The original colony was just this. It was olive coned colony, there are 64 houses approved on this small area here. Over here, we have these buildings.
- Larry Marshall: The approved distance was 35 feet from the nearest duplex.
- Jay Zeiger: That's what you're looking at over here. The layout is similar but not exact. This was 17 acres. The property owner has bought 2 additional parcels, here and here. We are at exactly 40 acres. Same number of houses, 64. Now it is 64 on 40 acres. We're tinkering with some of the site, moving some of the buildings back.
- Larry Marshall: Previously as Jay stated, it was approved as 64 units at 35 feet off the front property line.
- Paula E Kay: What year was that? Before the duplex law? There was no 175 setback requirement.
- Larry Marshall: That development included a horse shoe shaped road, 2 access points to Laurel Avenue. What's not shown is some of the aspects of actual construction, mainly along the northern edge of the property is a retaining wall. A pool that was approximately 35 feet above the property that required a staircase, it was pretty high. It had 26 duplexes but then it had 3 plots where there were 4 separate buildings. In addition to that, the parking lot was really isolated along the northern edge. A small section on the easterly edge. A bank in front of the four duplexes and a large amount of parking near Laurel. The storm water for the facility to comply with the SWEPP was isolated to a storm water pond, which was designed to hold water permanently. It was right in the middle of the units, shown here. It's a little bit easier to see. In contrast to that, as Jay had stated, this was on

17 acres of property. That would leave the remaining 23 acres of land for development.

- Jay Zeiger: Future development.
- Jason Pantel: Usually when people go from 17 to 40 acres, it kind of spreads out a little bit. You say it is for future development.
- Larry Marshall: This would have left this for future development.
- Jason Pantel: What about as it is now?
- Jay Zeiger: The 64 units is the total to be built, the rest of the land would be forever green.
- Jason Pantel: Why wouldn't you move the houses back more rather than put the retention pond at 0 feet for a setback?
- Larry Marshall: The main reason for that is the existing slopes along the easterly edge of the property. And the depth of the rock. If you ride to the site or speak to Mollie, the 4 buildings at the top of site, these all encountered bedrock. We don't want to get further up into that, this is where it gets steeper and the bedrock gets shallow. We want to isolate it down into the area that was previously be proposed for development. In comparison to what was previously approved, the fourplex units have been removed in favor of duplex and single family. The 4 structures under construction are still on the outside loop. We can reduce the number of access points to Laurel Avenue. We would be utilizing the existing access to the south. To deal with the storm water treatment and detention, we have the storm water facilities along Laurel Avenue, the plans submitted show that the detention basin is 8 feet deep, since we have submitted those plans, we have finalized the storm water calculations and reduced the overall depth of that basin by 3 feet, it is down to 5 feet. That was a concern at the Planning Board when it was presented. We wanted to clarify it is not that deep.
- Jay Zeiger: This storm water retains water because of the way the system is now. Based on the comments of the Planning Board, we will hire a landscape architect to screen and surround the area down here.
- Paul Lucyk: Does the water from the detention pond, after the sand filters, does it run across the street?
- Larry Marshall: There is an existing catch basin right in this area here, that sends the water across the road. The intention would be to relay it to that basin. As opposed to the pond, these basins are not (inaudible), not short term or during wet weather. For a period of time, we're looking at a grass basin. Not standing water, cat tails, things like that. If the basin goes into failure and you see standing water, that's when the maintenance is required. For this facility, a maintenance application will be filed. That would all be taken care of.
- Jay Zeiger: In summary we are going from 64 units on 17 acres to 64 on 40 acres, no increase in houses or density, we are moving buildings further off the road so the construction will be set back from 30 to 110 feet.
- Jason Pantel: Are they subject to the 175 foot setback?
- Jay Zeiger: The reason we are here is because from the time of the original approval and now, the Town adopted the duplex law.
- Paula E Kay: If they had chosen to continue to build in the original site plan with

the buildings closer to the road, they could do so. They have adjusted, they are required to come to you.

- Jay Zeiger: We could do it with what exists, no permits or variances. We're trying to improve the property but that triggers the new law. The sentiment we have from the staff meetings and the Planning Board is that yes this is a nicer project but they had to turn us down because of the change in the law.
- Steven Burke: Therein lies the problem, you can do something, but you want to do something else.
- Jay Zeiger: Something better.
- Jason Pantel: Why is it being changed from the original layout?
- Abe Berkovic: It's a better layout. Basically, the previous plan was more cramped, there were a couple of buildings that were flops. To get to the pool is high up. It's a better layout, and I want to bring up one more point. Previously this plan did not have the opportunity to go to the ARB. One of the good things is that this plan will have to go to the ARB. If you go ahead with the variance, and then the Planning Board, then also the ARB. It is an opportunity for the Town to have a nicer project on something that was approved years ago.
- Steven Burke: 10 years right?
- Abe Berkovic: I believe they approved in '08. It's a little better layout.
- Jason Pantel: I realize you have a serious financial interest in this. If you eliminated some units, you'd have no problem meeting the 175 foot setback. From what you're telling me, the building is impossible on the other property you own. There are way too many options available, I don't see where the need is. Even with what you provided, your house is only 110 feet back. I realize you're doing us a favor by enhancing the project, I don't see any give whatsoever.
- Jay Zeiger: If you don't see any give, then you're not sitting here a fair and unbiased member of the Zoning Board.
- Jason Pantel: That's your theory.
- Discussion.
- Jay Zeiger: We need a variance for this project.
- Jason Pantel: Why can't you eliminate some homes?
- Jay Zeiger: We already have approval. You want us to build another...
- Jason Pantel: I didn't say, why can't you eliminate some units?
- Jay Zeiger: That's not the criteria for a variance.
- Jason Pantel: There are many things, one of them is they can't be done by any other means.
- Abe Berkovic: It's going to improve the character.
- Jason Pantel: I've heard this statement many times. According to your application, 175 feet to 0 feet is not significant. If it was that important it would have built 10 years ago. You have stepped in, the laws have changed, to me it doesn't meet the criteria of zoning. I know you think it is positive, and that is just my opinion. There's a lot of lip service here saying it is better, but only if it goes your way.
- Abe Berkovic: I respectfully disagree, we spent money to buy additional property. We're not adding units to capture money, we bought this additional property to make this a better property. If I were here asking for 25 or 100 more units, I am

here asking that the original build, 64 units. I spent a couple hundred thousand dollars to get this additional property to make it a better project for myself, and for the Town.

- Jason Pantel: I don't see the difference. When I drive by, I see the same thing, in the back where no one can see, it's exactly the same.
- Abe Berkovic: The ARB will have the chance to make sure it is improved.
- Jason Pantel: You have that acreage in the back, the only thing it would seem to purchasing the extra property was to reduce lot coverage. That argument was kind of moot.
- Jay Zeiger: We could have taken the extra 23 acres and built another 60 houses.
- Jason Pantel: What's stopping you from doing that?
- Abe Berkovic: We can put a zoning restriction.
- Paula E Kay: That's what I was going to ask.
- Abe Berkovic: Other towns do that open space restriction, I am open to that.
- Steven Burke: If you recommend it, the Planning Board would highly accept your recommendation.
- Paula E Kay: You can condition your variance on them putting a restriction the...
- Jason Pantel: Don't think that is the end of it. I don't agree with the 0 thing. On that issue yes, on the 175 setback with the 0 foot setback, it doesn't solve my issue.
- Paul Lucyk: I picture this place up and running. To see this detention basin and sand filter away from all those children is a better idea than in the middle.
- Paula E Kay: You're saying under the new proposal.
- Paul Lucyk: Right.
- Steven Burke: With the mote in the front.
- Paul Lucyk: It has to be done in the right way. You get engineers in there and make sure what has to be done the right way is done. This plan is better than that plan.
- Jason Pantel: But the new plan has 20 extra acres so there's no reason to have that plan.
- Paul Lucyk: He's not adding any new buildings.
- Jason Pantel: Why would you do that when you have all the extra property to avoid all that?
- Abe Berkovic: The layout of the property does not allow it, to do what you are saying. I want you to remember a couple things. It's in the hamlet. It fits in the character of the neighborhood, you have Hillside next door which has a similar type of development. You have the houses across the street. Some members of the ARB had mentioned to me that in the HR zone, they believe the 175 buffer should be done away with. It's done in other zones, in the hamlet it should be developed close. I think it fits in the character of the neighborhood. We spent money, we're not asking for a single more units. I think its important to be cognizant of that. We are opening ourselves up to the ARB, which if we continued to build it as is...
- Jason Pantel: Once again, there would be no need for the ARB if you followed the rules of the Zoning Board.
- Paula E Kay: He has to go to the Zoning Board.

- Abe Berkovic: I do have to go, I wouldn't have had to.
- Jay Zeiger: We don't have to go to continue the existing.
- Abe Berkovic: They can choose the color of siding, what people driving down Laurel will see.
- Steven Burke: With the restriction of no more building on the other property, you are okay?
- Abe Berkovic: Yes.
- Steven Burke: George, with the mote in the front, is there any way we can put a berm there? It's great what you're doing for your safety, but for people on the road it's not really great.
- Paula E Kay: I think the Planning Board asked for that.
- Larry Marshall: The bottom of this detention basin is at 1255. The elevation of this catch basin is at 1249. The bottom of the basin is 5 or 6 feet higher than the basin right here for reference. The berm is an additional 5 feet higher. When you're driving along Laurel, this is a berm that comes up and drops back down to create the basin itself then climbs back up to the site. The last thing I would want to do is preserve the safety in here at the sake of people driving. From that perspective, us as the site engineers, we have met with Abraham and owners extensively to discuss what we can do to make sure this is safe.
- Paul Lucyk: Safety will be key on that area.
- Larry Marshall: Safe and it looks good. Abe mentioned it a couple times, it subject to ARB review. They have committed to hiring a landscape architect to make sure that the views along Laurel are preserved to the maximum extent possible. Right now as it slated, there is nothing along Laurel Avenue. There is no requirement.
- Jason Pantel: If it was up to me, I wouldn't approve that either.
- Larry Mashall: And I agree with you, that's why we're here.
- Jason Pantel: From that to that, I will stay out of it you have heard my opinion.
- Abe Berkovic: The chair mentioned the mote, this is a preliminary design. It will change with the other boards, it might be something else.
- Steven Burke: Something with water in it.
- Larry Marshall: Only when it rains.
- Steven Burke: That could be all winter.
- Larry Marshall: Then it would be ice.
- Paul Lucyk: Ice can over the top too.
- Larry Marshall: This basin is designed to hold a 100 year storm.
- Paul Lucyk: Did you do the soil testing?
- Discussion.
- Paul Lucyk: How does the water get back in the ground? Are you just doing sediment?
- Larry Marshall: The 2 basins along the side are sand filters, they will treat the water.
- Paul Lucyk: So you're picking up the sediment.
- Larry Marshall: Yes. There will be pretreatment devices, then they will go into the sand filters which will remove the additional suspended solids. That will go into the sand filter, once it leaves, it will go into the detention basin. That basin will hold the

water back, and according to the state you have to hold the 100 year storm back 1 full day. The 10 and 100 year storms are attenuated to be held back to existing conditions, so that pipe will not see any higher peak than it currently does. When it rains like crazy...

- Paul Lucyk: Is this designed for 2 inch rain, 4 inch rain.
- Larry Marshall: 9 inch rain in a 24 hour period.
- Paul Lucyk: Okay.
- Larry Marshall: I'm not talking about a little bit of rain, a 100 year storm event. These are not 100 year storm events based on archaic information, we use the newest information from NOAA that is developed on an annual basis.
- Jason Pantel: What about run off that doesn't go into the storm drains.
- Larry Marshall: Everything is directed there. The only thing we cannot pick up is the little bit of access road from Laurel. It's already there.
- Abe Berkovic: This road is built by the neighboring development, there is an easement.
- Larry Marshall: The only section we can't pick up is right here because physically we can't get in there. Keep in mind, look at where the storm water pond was previously, you tell me how you will get water from the parking lot and this whole section into a pond...
- Jason Pantel: You should have been around for 10 years ago for the Planning Board then. I agree with you 100%
- Larry Marshall: I understand your perspective, what we are saying is our basin is closer to the road, 175 feet than it should be. But we are doing better than was approved.
- Steven Burke: As long as you are doing something that better or safer for the rest of us, I have no problem with it.
- Paul Lucyk: Does this picture encapsulate the entire 40 acres?
- Abe Berkovic: You're looking at this, this is 40 acres right here.
- Jay Zeiger: You're only looking at...
- Abe Berkovic: All of this.
- Discussion.
- Abe Berkovic: Everything runs down this way and then it breaks over here.
- Discussion.
- Paul Lucyk: That goes behind the other development?
- Abe Berkovic: Yes that goes behind.
- Paul Lucyk: What I am looking at, if something happens and they say they want to buy that piece that goes up that road straight, if you're looking and they want to buy this piece from you and add more units, then you increase the amount of water...
- Jay Zeiger: Steve wants us to agree that there will be restrictions.
- Paula E Kay: You can put a conservation easement on it and you can get some tax money, if it is a true conservation easement which we can discuss at another point, there may be more security.
- Jay Zeiger: What you're requesting, we have agreed can't happen.

- Larry Marshall: No matter who owns it.
- Paul Lucyk: I have seen it around here, they start putting it up and they go into bankruptcy. Once that happens, someone else comes in and they want to...
- Paula E Kay: If it's a conservation easement or something that runs with the land, it is restricted from occupancy and there can be no building.
- Abe Berkovic: Ever again, yes?
- Paula E Kay: If we write it correctly and that's the intent, Jay and I will make sure that happens.
- Abe Berkovic: I have done a lot of work in other towns, they use it a lot. The only leeway they give is the Town Board has the option to bring back the easement. Other than that it stays with the land forever. We have done it on several projects.
- Larry Marshall: Just from a visual perspective, I'd like to point out that the proximity of the existing duplexes to the south, you can see that here on the right side view, also the right side of both presentations. This is the closest bungalow in the bottom right hand corner, if you look at that in relation to the proposed driveway for this property, you get a perspective how far back these duplexes will be. Basically the front of these duplexes will be about where this second unit is.
- Abe Berkovic: The houses on Hillside are closer than where this will be. They still have 4 or 6 units that can still be built right on the road. It is within the character.
- Jason Pantel: It's really not within the character. If it was, they wouldn't have changed the law to begin with. It didn't go over well to begin with and now the law has changed. It was within the character and that was deemed not a good character.
- Paul Lucyk: Is it possible to put in a closed system rather than an open detention pond?
- Larry Marshall: We've discussed that, you're talking a half million dollars or more for a closed system.
- Jason Pantel: So there is another way.
- Larry Marshall: That doesn't change the fact you would need 175 foot variance, your code does not reference whether or not underground, above ground, visible, nothing. That doesn't change the variance.
- Jay Zeiger: One last thing on the 175, that area is already disturbed. We're not coming in and taking an undisturbed area.
- Jason Pantel: It was disturbed because the last guy started it and abandoned it.
- Steve Burke: Are you finished with your presentation? Alright. Any questions? We will open it to the public. Anyone here care to speak? No? We will close the public portion. Violations?
- George Sarvis: No.
- Steven Burke: Okay. Any board comments? Paul?
- Paul Lucyk: I'm not in favor of the open detention pond on the property. That's what is bothering me, everything else is running out to the storm water system in the village. I am not happy with the detention pond. If there was another option of doing something where you had part of it with the underground and then part of it, if it was too much, maybe if they pumped it up.
- Larry Marshall: You can't pump storm water. The problem is with small events of

that nature, you can't rely on a mechanical device to help you.

- Paul Lucyk: It's the feasibility.
- Jay Zeiger: In comparison to what we are proposing to what we have, if we start out that this is a better system than what's already there in the middle of the site, we start out going better, we may not hit your perfect world, we are making what everyone seems to agree is a better improvement, can we rely on the Planning Board and the ARB to make your concerns about the safety and visibility mitigated because that is their job to do? We are not opposed to mitigating what we can, we think we are going from..
- Paul Lucyk: If I were to approve a vote yes that they would need to adjust their spring appropriately?
- Jay Zeiger: Or to mitigate the...
- Jason Pantel: Aesthetics.
- Jay Zeiger: And the safety issues.
- Jason Pantel: How about not putting a pond in at all to discuss safety issues. On the old plan. If it is so dangerous.
- Abe Berkovic: Can I suggest if you are open to your approval being conditioned on a hard look by the Planning Board.
- Steven Burke: That is going to happen anyway.
- Paul Lucyk: When do you go to the Planning Board?
- Abe Berkovic: We were there last week?
- Paula E Kay: They had to deny it because of the setback issue.
- Abe Berkovic: They denied it so we could come here, to take a hard look on this and we should get a landscape architect to work with us to work on the aesthetics.
- Paula E Kay: Also the safety.
- Jay Zeiger: Paula was at the staff meeting, I'll let her give her sentiment, I think universally, everyone agreed this is a much better situation. It's the change in the zoning.
- Jason Pantel: I believe there is enough space to keep your 175 foot buffer, with 40 acres it seems impossible to me that this is the way it has to be. Even if you didn't need your sand filters where they are, even the houses aren't setback 175 feet, they're 110 feet. It's a compromise only beneficial to the developer and that's the only reason this plan is viable.
- Joe Puccio: I think the aesthetics from the road side should be addressed. I think it's a lot safer because I know there will be a lot of children in there. People local walking or driving down the road, it has to be pleasing. Whatever has to be done.
- Neil Sapolsky: It's going to look better that way, just the 5 homes with nothing blocking it, no landscape. Safety, with children there and it is right in the middle of the development. For the water flow also, it seems much better the other way.
- Steven Burke: Let's run down the criteria. Whether benefit can be achieved by other means feasible to the applicant?
- 3 board members say yes, 2 say no.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- 4 members say no, 1 says yes.

- Steven Burke: Whether request is substantial?
- All board members say yes.
- Steven Burke: Whether request will have adverse physical or environmental affect?
- 4 board members say no, 1 says yes.
- Steven Burke: Was the alleged difficulty self-created?
- All members say yes.
- Steven Burke: We need both today.
 - MOTION:
 - Jason Pantel motions for lead agency. Paul Lucyk seconds. All in favor.
 - MOTION:
 - Jason Pantel motions for negative dec. Paul Lucyk seconds. All in favor.
- Steven Burke: Do I have a motion? Before I go any further, my restrictions are going to be a conservation easement so that you are done with the 64, that gives us a guarantee, and the berms the ARB will take care of, but I am addressing that so they have it. Is that okay? Okay. Do I have a motion to approve or deny?
- Jay Zeiger: Do you want to clarify the variances?
- Paula E Kay: It's on the application.
- Steven Burke: It says on my paperwork the front yard from 175 to 0.
- Jay Zeiger: Yes for the retention pond.
 - MOTION:
 - Joe Puccio motions to approve. Neil Sapolsky seconds. Jason Pantel denies. All others in favor.
- Abe Berkovic: Just for the record, I wasn't the original developer.

4. MENDEL PINKASOVITS – SBL# 49-1-4 - Requests an area variance to reduce the front yard setback to construct a single family residence. Requests a use variance to construct a single family residence. Zone: NB. Acres: +/- .50 acres. Location: 89 Pleasant Valley Rd., So. Fallsburg.

- Jay Zeiger represented.
- Steven Burke: This is 2 variances correct?
- Jay Zeiger: The application is for both the use variance and the area variance. I have a new map and one to the Town. This arrived today, the primary difference between this map and the other submitted, the building envelope if you will, was moved back. Under the new map, it is a 35 feet setback from the road. We no longer need an area variance.
- Paula E Kay: Oh so you only need the use variance.
- Jay Zeiger: Correct. We meet the side yard in both instances, both sides. The requirements are 10 feet on each and side and 20 feet in the back. The rear yard has this crazy triangle piece, but to the back of the property we are way more than required. We need a use variance, the property has for many years had a single family dwelling on it. A tree fell on the property and did substantial structural damage to the property. The Building Department requested that the building be demolished, which it was, we are looking to replace with a new dwelling. Although

the property is in a MD zoning district, which is business. Residential dwellings are not allowed in the MD district. The location of the property is along other residential properties, so it's not inconsistent with what is already there, and the same as what was there previously. I have a schedule of what is allowed in the district. Art gallery, fitness, banks, etc. Our problem is that it is a very small lot and you can't fit any of those uses on that lot. We don't think a commercial type property would be appropriate.

- Steven Burke: So a tree fell on this. There was a home?
- Jay Zeiger: Yes it was a single family house. We want to build another single family house. The tree was removed, the house was removed, and we want to replace it with a single family house.
- Steven Burke: Same size?
- Paula E Kay: It is bigger, right?
- Jason Pantel: Doesn't it have to be in the same footprint?
- Jay Zeiger: Even if it wasn't bigger, because the house wasn't occupied for a year, then they don't have an as of right to build on the same footprint. The surveyor put a building envelope and the building has to fit within the envelope, with the moving of the envelope to the new location, we meet the front yard setback.
- George Sarvis: We don't want it in the same footprint, it was much closer to the road. Regardless of the tree, it was crap anyway. The tree did us a favor.
- Jason Pantel: It's still less than the approved acreage.
- Paula E Kay: There isn't an area variance anymore. It's just the use variance because there are no single family homes in this district.
- Steven Burke: And because it was unoccupied for 2 years, right?
- Paula E Kay: That's why they don't get grandfathered, but no matter what single family homes aren't allowed.
- George Sarvis: It hadn't been occupied in my almost 12 years working for the Town.
- Steven Burke: Anything else?
- Jay Zeiger: That's the presentation, we went through the criteria. We believe we meet much of them. I went through the code in the uses, with the parking requirement it isn't practical.
- Paul Lucyk: On your plan, did they (inaudible) that one corner of the house?
- Jay Zeiger: Yes to stay within the 10 foot...
- Paul Lucyk: So they backed it up to the 35 feet.
- Jay Zeiger: We backed it up from here to here, what you see is 25 but what is here is 35. If this was square, it would run into the 10 foot. The condition of the variance is that the house, whatever is built, must be built within the building envelope.
- Paul Lucyk: On the lot to the left or right, is that a residential home or commercial?
- George Sarvis: To the right is residential, to the left is the old accessory structure to the office supply place. The big metal building. Commercial.
- Joe Puccio: Is this where the cross used to be?
- George Sarvis: Yes.
- Joe Puccio: The old house is gone?

- Jay Zeiger: Yes.
- Joe Puccio: They can put the new one in?
- Jay Zeiger: Yes.
- George Sarvis: They have a very nice residential to the right, and then residential across the street.
- Steven Burke: Mailings?
- George Sarvis: Mailings are good. Any questions? No. Open to the public, anyone here? No. We'll close the public. Any violations? No okay. Any board comments?
- Paul Lucyk: Putting in new, getting it cleaned up. I think it is a positive thing. City water and sewer, should be in good shape. It's a small lot and they just have to figure with the 35 feet you have enough for a little parking space.
- Jason Pantel: I think it is good.
- Joe Puccio: I'm good.
- Steven Burke: I am okay with something new. Let's run down the criteria. Cannot realize a reasonable return substantial as shown by competent financial evidence? We didn't get any evidence.
- Jay Zeiger: We can't build any of the allowable uses, so we can't get any return.
- Steven Burke: That's your evidence.
- All board members say no.
- Steven Burke: Alleged hardship is unique and does not apply to substantial portion of the neighborhood?
- 3 board members say it is not unique, 2 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?
- 1 board member says it has been self-created, 4 say it has not.
 - MOTION:
 - Jason Pantel motions for lead agency. Joe Puccio seconds. All in favor.
 - MOTION:
 - Jason Pantel motions for lead agency. Joe Puccio seconds. All in favor.
 - MOTION:
 - Paul Lucyk motions for approval. Jason Pantel seconds. All in favor.

Joe Puccio motions to close. Jason Pantel seconds. All in favor.

