

"Minutes are not official until approved by their respective board."

TOWN OF FALLSBURG ZONING BOARD MEETING

June 15th, 2017

Steve Burke, Chairman, Jason Pantel, Paul Lucyk, Richard Levine, Jonathan Schlossler, Board Members, George Sarvis, Gregg Pitula, Code Enforcement, Paula E. Kay, Deputy Town Attorney.

- Steve Burke called the meeting to order.
- May meeting minutes approved with corrections (Richard Levine present at meeting, not Joe Puccio).

OLD BUSINESS:

1 YESHIVA GEDOLAH ZICHRON MOSHE - Requests a 6 month extension for previously approved area and use variances. Zone: R-1. Acres: 23.99. Location: Laurel Park Rd., Fallsburg.

- Jay Zeiger represented.
- Jay Zeiger: The variance was granted 6 months ago, I guess it was 7 months ago. We asked to be on the agenda for last month. Randy and I sent an email asking to be added, it wasn't included on the agenda. We thought were added.
- Paula E Kay: It's fine, you're here.
- Jay Zeiger: This is to build a school. We had a couple variances granted. Subsequent to the variances being granted, the school had some fundraising. They also had a different designer.
- Steve Burke: Is that why they didn't do anything yet?
- Jay Zeiger: Yes, they have done somethings but they haven't been to the Planning Board yet. Maybe Randy can go through.
- Randy Wasson: This is the existing campus here, this parcel was not in the zone. It didn't allow for the school, one of the variances you granted was to let us put the school on this parcel across the street, here. This also happens to border the Fallsburg High School. We have requested the setbacks for this to match one of the other zones in town to match that allows schools and you granted that. In that

zone, that's the R-1 zone, it had a 100 setback and you agreed to that. We are a bit further back at 140 feet.

- Steve Burke: So nothing has changed.
- Jay Zeiger: We made our submissions and gave you all the reasons why we qualify for a variance. We meet the criteria, particular with the moratorium being in place, the entire time since the variance, nothing has changed.
- Steve Burke: Anybody have a problem with giving the six month extension? No? So you have your 6 month extension.

NEW BUSINESS:

1. GOMBOS BAKERY – SBL# 51-5-7.3 – Requests an area variance to allow a second business sign. Zone: B-1. Acres: Location: 5230 Main St., So. Fallsburg.
 - Allan Frishman and Lebbi Gombo represented.
 - Allan Frishman: He has always been a good store front, last year he redid the whole building, front and side. Sort of gave it a nice country look. He went in front of the Architectural Review Board for some items, but because he wanted to add this second sign, it's graphics. I don't even want to call it a sign. It's not your typical 4 by 8 sheet plastered on the building.
 - Paula E Kay: Allan if you have it you can just...
 - Allan Frishman: I don't. You guys don't have copies?
 - Steve Burke: They don't mail them anymore.
 - Allan Frishman: This is the proposal, all we want to do is put lettering on the building. Actually I think it aids the long expanse and breaks it up. It is a long wall. I think it is a great approach. He is working with Sullivan Renaissance to do the landscaping in the front, the back. If all the stores took the initiative that Mr. Gombo is taking, I think we would have a nicer looking South Fallsburg. Is a SEQR still required? You have that also. I know sometimes you're not.
 - Paula E Kay: This is commercial.
 - Allan Frishman: When doing a change of store front is it required for that? From a restaurant to a food store?
 - Paula E Kay: You're changing the use too.
 - Allan Frishman: Any questions?
 - Steve Burke: Anybody else have questions?
 - Jason Pantel: No, nothing but positive.
 - Steve Burke: Mailings George?
 - George Sarvis: Not not yet, I am getting to them.
 - Steve Burke: Any violations?

- George Sarvis: No.
- Gregg Pitula: Allan were you the one who represented at the ARB last year?
- Allan Frishman: Yes.
- Gregg Pitula: I believe that sign was approved by the ARB. They approved the design and logo. So you have approval from the ARB.
- Steve Burke: Okay, so we will open it to the public.
- Gary Kalchack: You do a great job on the inside, I see the sign there and this is the way it should be.
- Steve Burke: Anybody else? No, okay we will close the public portion. Board comments?
- Paul Lucyk: It is beautiful.
- Jason Pantel: Looks good.
- Jonathan Schlossler: Looks good.
- Steve Burke: Let's run down the criteria. Whether the benefit can be achieved by other means feasible to applicant.
- 4 board members say no, 1 says yes.
- Steve Burke: Undesirable change in neighborhood character or nearby properties?
- All board members say no.
- Steve Burke: Whether the request is substantial?
- All board members say no.
- Steve Burke: Whether request will have an adverse physical or environmental affect?
- All board members say no.
- Steve Burke: Whether alleged difficulty is self-created?
- All board members say yes.
- Steve Burke: Lead agency?
 - MOTION:
 - Richard Levine motions for lead agency. Jason Pantel seconds. All in favor.
 - MOTION:
 - Jason Pantel motions for negative dec. Richard Levine seconds. All in favor.
- Steve Burke: Another motion?
 - MOTION:
 - Paul Lucyk motions for approval. Jason Pantel seconds. All in favor.

2. 41 CHURCH ROAD, LLC. – SBL# 44-1-52 – Requests a use variance to allow a two family residence in an R-1 zone. Zone: R-1. Acres: more than ½ acre. Location: Church Rd., Mountaindale.
 - Jacob Billig represented.
 - Jacob Billig: This is a LLC wholly owned by Butch Resnick. The building on Church Road is basically in the middle of the hamlet, Mountaindale which has spent significant dollars fixing up the hamlet, both commercial and residential. What he is seeking for this piece of property, this building, is to divide it into 2 rental units.

We need the use variance to do that. Doing that would allow him to make 2 apartments. He has been renting the apartments, fixing up the commercial structures. The hamlet if you ride through it has been coming back, I think Mountaindale looks significantly improved. He would look for the board to exercise its discretion to grant a use variance. He cannot realize a reasonable return because the demand is for smaller department. He's been doing that in other units, dividing them up, making them either 1 or 2 bedrooms. This creates less expensive apartments. This creates less expensive apartments, therefore for workforce housing it makes more sense. Few houses are large enough, in terms of alleged hardship being unique, to really split. We think the uniqueness is there, it's significantly residential in the neighborhood. Dividing up and creating 2 apartments will not change the character of what is there, we think it will enhance we they continue to clean up the hamlet. The hardship is there is a workforce housing demand. If you have any questions, we gave all the different forms and the mailings are in.

- Steve Burke: Any questions?
- Paula E Kay: Is this map contiguous to any others?
- Jacob Billig: No we couldn't amend the zoning to do that. We would have went that route. We wouldn't want to seek an amendment that would create spot zoning. We think that given all the factors, the board would grant the use variance.
- Steve Burke: Any questions?
- Jason Pantel: I'm against it. R-1 are the most restrictive districts, not all of them are as remote as possibly Church Road is. It could set a precedent where the other people will come and try to split their homes in an R-1 district. I think the people who live in an R-1 district choose to live there because of those restrictions. I think starting to add 2 family homes into neighborhoods is a bad idea.
- Steve Burke: Any questions?
- Jonathan Schlossler: My only thinking is you said multiple times that turning this residence into a multi-family home will benefit the hamlet, how? Is there explicit plans for that? Is there contributions to the community?
- Jacob Billig: The applicant has spent tens if not hundreds of thousands of dollars refurbishing commercial and residential structures in Mountaindale. Although, not directly in the immediate hamlet street, we would submit to you that it is close enough. He basically rents to working people, so by having more families who work, you could have the commercial structures who work, you could then have the commercial structures have occupants and store. The overall plan to answer your question, if you look at Mountaindale 5 years ago and then look at it today, it is in different position because the buildings have been fixed and cleaned up, the buildings have been rented. His buildings are always a higher level of rental unit and tenant, we think that would address Mr. Pantel's issues, these are not section 8.
- Jason Pantel: I have supported zoning changes within a hamlet, those are business districts, which could buy everything around here and we might all live a little better. I think that no bad impression on Resnick, I think it will open a can of worms in places that other people might not want to open that restriction.

- Jacob Billig: That's why we are seeking the use variance, which you can on a case by case basis, grant or deny. Relative to the precedent, and trying to relate the 2 points to your question, there has been overall plan. Over the last 5 years, he has fixed up commercial buildings...
- Jonathan Schlossler: I am well aware of his beneficial contributions, what I am curious is how turning this property into a multiple family home and this R-1 district is going to be beneficial.
- Jacob Billig: Its proximity to the hamlet we think continues to allow working families or individuals that need a good rental unit, to rent. There is obviously a business motivation, but it fits in with what he has done within and around Mountaindale. When South Fallsburg was hoping when I was a kid, all the stores were occupied because there was a significant number of middle class. These rental units are basically geared toward middle class, whether it is single or family.
- Jonathan Schlossler: That's gentrification, not revitalization. If you're developing an area, changing an R-1 district, which is single family homes, middle income, the people who have largely been in the area for a while, then changing it one home to be multifamily, in addition to opening up a can of worms, it is a questionable move. I am going to say personally, I am against it.
- Jacob Billig: Of course you are entitled to your opinion, we would say that by bringing in working class families to our hamlet, that is the way to revitalize. There are lots of studies to support that. Again, with respect to the precedent, we would deserve your discretion given the track record of the developer, he is looking to put in a very clean 2 family. We think you should exercise discretion that way. We feel we meet the burden.
- Paula E Kay: My suggestion would be this, I don't see in the packet the board was provided the true dollars and cents evidence they need to make a decision. We need how much the property was purchased for, what the mark up value is, going through the uses that are allowed, why those would not be profitable.
- Jason Pantel: When the house was purchased also.
- Paula E Kay: I don't think they have that to fairly make a determination.
- Steve Burke: I agree.
- Jacob Billig: Can we open to public comment?
- Steve Burke: Sure but we don't close that.
- Jacob Billig: However the board wants to handle that and we could make an additional submission for the next meeting.
- Steve Burke: I think that is a good idea. I agree with what you said, there are 2 ways to look at it.
- Jonathan Schlossler: Just playing devil's advocate.
- Steve Burke: That's right and that is okay. You are not going to bring back Mountaindale by putting section 8 housing there.
- Jason Pantel: What has me is the fact that I know that a lot of Butch's support has been toward the casino coming and all these things happening. I think it is a sad state of affairs when it is the death of the single family home owner in Sullivan County. We have 2,000 or 2,500 square foot bungalows being built, and the burden of living here in a single family home is being placed on the single family home

owner. This is just another nail in the coffin for the single family home. It's a sad state of affairs when we have billions of dollars pouring in and we have to take a 1 family house and it's not economically feasible to rent it because you're looking for a not true middle class that will move to the area. It will be a rental.

- Steve Burke: What do you call the middle of the road job up here? 15 dollars an hour? There aren't many of those jobs up here. The average person is making 12 to 15 dollars an hour. That doesn't seem like a livable wage to me, I couldn't do it.
- Jason Pantel: I don't think duplexes and town homes are the future.
- Steve Burke: But that's why you are going toward rentals. There's no doubt about it that Butch is definitely, whatever he has done is done properly and well.
- Paula E Kay: That would go toward the uniqueness argument that Jacob has to make. Why this is a unique situation because...
- Steve Burke: There is no doubt about it that in the past 5 years that Mountaindale has looked a lot better.
- Jason Pantel: He has way too many brains to buy a home that he can't realize the potential. If it doesn't become a 2 family you might as well sell the farm.
- Steve Burke: Anyone here from the public here to speak on this? Okay, we will not close the public comments. I won't even go with Board comments because you know what we are looking for.
- Jacob Billig: We will submit some additional materials.
- Jonathan Schlossler: When you submit financials, what I would really like to see if feasible to include, is what he is planning to rent those apartments for. That would be really helpful.
- Jacob Billig: He does have an idea, it's not formalized. His rentals run on the low end for \$850.00 to \$1,500.00. I will find out specifically.
- Steve Burke: Or maybe what he has now that he is renting out.
- Jason Pantel: Comparable.

3. SUN RAY COTTAGES – SBL# 60-1-4.2 - Requests an area variance to increase the height of replacement buildings 16 and 18 to add a second floor on a bungalow. Zone: REC-1. Acres: 6.66. Location: LaVista Dr., So. Fallsburg.

- Jay Zeiger represented.
- Jay Zeiger: The property is up by Sun Ray Cottages. Sun Ray Cottages is a cooperative bungalow colony. Mr. Wertsberger and Mr. Goldberger own the houses that we are talking about that we are seeking the variance for. The variance is to request a second floor on a bungalow. Under your code, bungalows to go to the second floor is not permitted. We are asking for a variance. Elephant in the room, work was done without a permit.
- Steve Burke: Just on this one, or previous ones as well?
- Jay Zeiger: We're just talking about these 2.
- Steve Burke: Do you know if there were any done beside this one?

- Jay Zeiger: I am not aware. We got variances within this bungalow colony about a year or so ago, the variances were to build 3 new duplex houses, all 3 of them equivalent with the second floor. One of the units, unit 3, to extend that to a second floor. A variance was granted. Had the 2 variances for these 2 houses been submitted at the same time as the other 4 units, it would have been looked upon favorably since you gave the variance since you gave the variance for the duplexes for 3 new buildings, and you gave the variance to one of the home owners. There is a picture of another bungalow that already has a second floor.
- Steve Burke: So there was before, you're saying they had the same problem before.
- Jay Zeiger: No, the one that was there before was there before the zoning was adopted. There was one before the zoning was adopted, you approved variances for 4 additional.
- Paula E Kay: How many total in this development?
- Jay Zeiger: I have a map, it used to be 25. 31 with the 3 that were added.
- Gregg Pitula: There are 35. They took some of the duplexes.
- Jay Zeiger: There's no number 3.
- Gregg Pitula: Those 2 were turned 2 to 1.
- Jay Zeiger: There are a couple of numbers missing. It is low 30s. On the permit question, in May of 2016, a permit was submitted to the Building Department. With plans, to build a second floor. The time period involved would not have allowed them to build the second floor and occupy the summer of 2016. Their instructions to the contractor was just get us the first floor so we can just reside there, we will deal with the second floor afterward. The plans existed, they were attached. If you see the date the plans were done, they happened in February or March as being done. In March of 2017, these gentlemen spoke to their contractor and said they were ready to do the second floor, do you have a permit? You see the email saying everything is okay, go forward. That's their explanation. I give it to you only because I heard the discussion in your work session that this was an issue.
- Jason Pantel: Who is the contractor?
- Audience: Moe Litener.
- Steve Burke: Has Moe Litener been in this office before?
- Gregg Pitula: Moe is Sam Hultzer's right hand man. I don't know if he did the projects under Sam's direction or under his own.
- Steve Burke: Has Sam been in your office before?
- Gregg Pitula: They both have.
- Jason Pantel: So they know the rules.
- Gregg Pitula: Yes.
- Jay Zeiger: Let me finish. I have given you the explanation, there are 2 sides of the story. I would like you to accept their side. I don't think you have to. The Town has their side, we have ours. That's not the criteria you look at for a variance. The criteria for a variance is do you meet the conditions in terms of building without a permit, building past a stop order. I am not defending it, I gave you an explanation. They are the owners, the buck falls on them. If the Town wants to prosecute that issue, they have the right. I had spoken to the Building Department and said if we

could work out as a condition to the variance that there be a civil compromise and a penalty that we would do that.

- Jason Pantel: Can you bring Moe or Sam here?
- Jay Zeiger: Maybe yes, or maybe no. I don't think that's the issue and I don't want to get into that issue.
- Jason Pantel: I'd like to hear Moe's side of it.
- Jay Zeiger: I don't really care what you want Jason.
- Jason Pantel: You need to relax.
- Jay Zeiger: The criteria for a variance is not what Moe has to say or why Moe says it was done. The criteria for a variance, you go through it every week.
- Steve Burke: I agree with you Jay, but if a Board Member feels more comfortable hearing from someone else, maybe he would feel more comfortable saying yes rather than no. Right now, the way I am seeing it, it can't hurt you. It can only make their case stronger, because it doesn't fall on them.
- Jay Zeiger: Even though you saw the email, where the contractor says yes the permit is there.
- Steve Burke: I'm not the one asking.
- Paula E Kay: No matter what this Board does, there will be penalties for this. So we all are on the same page. There have been penalties, they have paid penalties, who paid those? You 2 gentleman or the contractor?
- Gregg Pitula: It was written from (inaudible)
- Paula E Kay: So the contractor paid and you were lucky. In this case, you can go after your contractor, but ultimately as the owner you are responsible. No matter what, we talked about this earlier...
- Jason Pantel: Let them sue the contractor.
- Paula E Kay: Right, exactly. What I am saying is the penalty for building without a permit is on each building. The Building Department can issue or we could do a civil compromise, but we are talking a couple thousand dollars per unit.
- Jason Pantel: Is that a lot?
- Paula E Kay: It is assessed again the home owners. I am talking about assessing the contractor. That's something that the board wouldn't do, but the Building Department. Is it a lot? I think it is.
- Jason Pantel: How much did the units cost?
- Paula E Kay: Our code has a per staff work order, subject to a fine between \$2,501.00 and \$5,000.00.
- Jason Pantel: It was 4 units originally?
- Paula E Kay: This is 2 units. This was 1 it is now 2.
- Gregg Pitula; They were duplexes turned into 1 unit. They were small units done prior, the original plans were to do a story and a half, when they hit a rock they couldn't go down. That's where the 1 story came into affect. The original plans I had seen was for 2 stories and was going to stay within the restricted height. They were going to fit it into the height allowed, but site conditions didn't allow that.
- Jason Pantel: There's a whole history here. It isn't like somebody decided to build a second story on their place. This was like through the process of not being able to go deeper to trying to build a second story on a house. This isn't amateur hour.

Then to violate the stop work order.

- Jay Zeiger: We are not in court.
- Jason Pantel: You are in court.
- Jay Zeiger: If you think you are judge and jury, then I ask you to disqualify yourself.
- Jason Pantel: I am allowed to speak my mind.
- Jay Zeiger: You have to speak your mind within the context of what the project has. You are not charged with determining if they violated the law or not.
- Steve Burke: That is true.
- Jason Pantel: You did though, you did violate the law.
- Jay Zeiger: That is a punishment we will have to deal with on that side of the table, not yours.
- Jason Pantel: If you build without a permit, but you don't violate any of the zoning laws, then you don't have to come here. When you do violate the zoning laws, this is where you have to come.
- Jay Zeiger: No, you are wrong. We come here when we want to build something...
- Jason Pantel: You're not supposed to come here after you build it.
- Steve Burke: We understand everyone's frustration. His part, on this Board's part. We hear this over and over again. I understand on your part, you are always defending these things that shouldn't happen. I understand you part. Whether it is their fault or not, that is why we would like to see and question the builder.
- Jay Zeiger: I'm not defending the building with the permit. What I am arguing, notwithstanding that it is built or not built, the criteria we are coming to you for is to get a variance. Do we meet the requirements for a variance? That's where your responsibility is. Paula, George, and Mollie, and the courts. That's the obligation. If the contractor comes here and says, and you already see his email that yes you have a permit, according to Gregg he has already paid a fine. The issue is not whether the contractor is right or wrong, whether they are right or wrong. That's bad behavior at somebody's level. Blame the contractor. I don't want to make the presentation here. We are here to build a second floor.
- Jason Pantel: You built it.
- Jay Zeiger: For permission to...
- Steve Burke: Permission to have something you shouldn't have done
- Jay Zeiger: Call it what you will.
- Steve Burke: Is it something that was built, that shouldn't have been built and already exists?
- Jay Zeiger: Yes.
- Paula E Kay: You've seen Jay over and over with clients like this, we've never seen these particular clients. No offense, so they are new to this custom, Jay is not.
- Jay Zeiger: I didn't give them the advice to go build.
- Jason Pantel: This is a coop, how do things get built?
- Paula E Kay: You are experienced, you know how things work a lot more than they do and we don't want whatever issues, it has nothing to do with your clients. We have to look at each application fresh without prejudice.

- Steve Burke: There have been cases that have come before where somebody built something, they built a room, the contractor did it. They showed them plans, it was different plans than what the contractor actually did. We didn't make the woman take down the extra room. We voted no, then the whole community came in because they cared about it. It was a room for her grandfather and we did let it go. Again. That was almost the same, nothing is really the same, but almost the same. We did ask for more information. The room was filled up with the community. Maybe that changed because that month because she did get the variance. We weren't going to make this woman pull down, this was in a community that I am sure that everyone else besides her is going to want a mudroom so they don't lose their heat. Every case is different, every applicant is different. If somebody wants more information, that's up to them. I am okay with what you have given me. We will go forward with this, nicely.
- Jay Zeiger: Again, the question that you are being asked is to grant an area variance to add a second floor to a bungalow. Within this bungalow colony, there are already 3 new duplex buildings that are the equivalent height to what they are asking. There are units, 16 and 18...
- Steve Burke: I just need to stop you there. We allowed a loft without a bathroom.
- Jason Pantel: Not a second floor.
- Jay Zeiger: The duplexes have second floors.
- Steve Burke: Correct George?
- George Sarvis: Loft area, no bathroom. The duplexes are on the same property, down the back are 2 story.
- Jason Pantel: We didn't have anything to do with the duplexes did we?
- Gregg Pitula: Planning Board approval.
- Paula E Kay: The idea is similar.
- Steve Burke: Relatively.
- Jason Pantel: But we didn't allow a second story on a bungalow. Just to clarify, we did not approve a second story on a bungalow in Sun Ray, we approved a loft without a bathroom.
- Steve Burke: That is what we approved.
- Jay Zeiger: There's the duplexes there.
- Steve Burke: Would it matter if they are looking to put a bathroom on the second floor?
- Jason Pantel: I would say so.
- Paul Lucyk: Where are the plans?
- Jay Zeiger: They are attached to the application.
- Steve Burke: What if you told that the Board would favor something like this without a bathroom. We have done this already, you have to give a little bit to what we ask because you are in violation, not us. We have to be understanding.
- Audience: We are Brooklyn guys. We set up a contractor. It cost us extra money to put it this year.
- Steve Burke: So we approved something with a second floor with no bathroom in Sun Ray once. Would that be an issue to you?
- Discussion.

- Steve Burke: That might be a compromise, there was an error made and no one wants to see you take this thing down. I don't know about anybody else. I don't want to see you take it down. I also want to get something in return to guarantee that it won't be a second floor of a rental. That might be an option that we might go down.
- Paul Lucyk: This is just showing an attic.
- Steve Burke: So there is plumbing and a bathroom there. It might be a condition.
- Jason Pantel: Is there a kitchen on the second floor?
- Discussion.
- Jason Pantel: This goes back to voting on the R-1 thing.
- Paula E Kay: Let's let them finish. Get everything on the record.
- Jay Zeiger: There are several criteria for a variance. To me, the biggest criteria, and this goes back to and is similar to the R-1. You want to look at the character of the neighborhood, you have all single family and now you are adding 2 family. That is not consistent with the character. Over here, it is the opposite. We have an existing bungalow colony with similar bungalows within that colony.
- Jason Pantel: The difference is they are all nonconforming.
- Jay Zeiger: I also gave you a picture of the bungalow colony across the street that also has many 2 family bungalows and most of those were done by variances by this board. That is LaVista. There is a precedent for it. At the end of the day, you have seen some of the pictures. Some the pictures within this bungalow colony, if you look at what existed here.
- Jason Pantel: That's what we looked at last year.
- Jay Zeiger: But you're looking at the picture there. You're talking about a substantial improvement within the colony, a substantial improvement within your community. That's to the second criteria, is there any adverse environmental issues as a result, and I would submit that there isn't any adverse conditions. The environmental conditions are positive by the variance. Another variance criteria is substantial, for the benefit of our new member, the question about substantial is not a mathematical question to say that you are going from 1 floor to 2 floors, therefore you are increasing the height by 10 feet. Substantial always has to be in the context of does it have a substantial impact, not is substantial. The leading case on substantial is a height variance for a flag pole, the Town had a 35 foot height variance, someone wanted to put a flag pole of 100 some odd feet, the Town Zoning Board said that is substantial because you are almost tripling the size. The court said that is not the test for substantial, they said to look at it and does it have a substantial impact, is there anything adverse about it that is material? If the answer is no, then it is not substantial. In this case, I would make that argument that it is not substantial because it is within the existing bungalow colony, the only ones impacted on it are by the neighbors within the colony. They couldn't have gotten to where they would be building without permission from the board of the coop to begin with. The community is in favor. Certainly for the people who are impacted in the surrounding areas, there is no adverse impact to them. I would submit that it is not substantial, so 3 of the 4 criteria I think we strongly fit. The issue of self-created, my argument is it is not, if I own a single family house, I

can a build a second floor on my house. When these bungalows were built, there was no prohibition about building a second floor. The zoning code came after the bungalow was built. The only way you can increase the size on the height is because of the changing in zoning law. When the property was built, that rule didn't exist. It became nonconforming because of the change in zoning. I would say the hardship is not self-created, it is due to the change in the zoning law. I saw a couple of chuckles when I started on this fourth criteria.

- Steve Burke: I think it was on the second criteria, all the way to the fourth. I give you a lot of credit, I think you are great at presenting this stuff that...
- Jason Pantel: That nobody else would do.
- Steve Burke: I'm not going to say nobody else.
- Jay Zeiger: Jason, I would say that you disqualify yourself because you have already made up your mind.
- Steve Burke: I don't think he did. What I am trying to say is...it is what it is. It is something that was done illegally, you shouldn't have done it. It's there already, there's no doubt, you aren't asking for permission. You did it already. There's no greater slap in the face to this Town and that office, then when you do things like this. Certainly to this Board. We have had this 100 times, it's the same story. We've gone out on a limb, and we've done this. We have granted permission to do what you asked for that shouldn't have been done. We've took back something which is what my suggestion was, to take back something. I think that you should have something removed. I'm not going to say the whole floor. I think you are prejudging this a bit too much. I think as a lawyer, you are trying too hard. You can't defend something like this. You are saying you aren't defending but in my opinion you are. I'm going to give you one example, there are all kinds of different neighbors and neighborhoods. Some developments don't care if the windows from this house to this house are this close together. Some don't mind living one on top of another, they don't care if a fire truck can get down there. They just want to get as many people in there as they can. We have to look at safety issues, fire issues. We have to look at density. There is a lot that we have to look at that certain developments could care less about. They just don't care. We've been down that road before. We had people that wanted to put bedrooms 10 feet from the road. They didn't see a plow truck in the winter, shooting the snow that would break the window or maybe go off the road and kill the kid in the bedroom. They need the bedroom and that's all they care about. I'm going to say we stop here, we ask Board comments. You know my stipulation. We've granted something similar with no plumbing on the second floor. That will assure me that not too much living will go on up there. You did it already, it was wrong, you are going to be punished by them. That has nothing to do with us. Any comments?
- Paul Lucyk: I'm getting tired of things like this happening and coming in front of us, after everything has been done. I don't know what to say. The financial hardship, there's nothing there that I know of, unless you can prove something.
- Steve Burke: If anything, they do have a financial hardship now because it will cost them most money to bring it down.
- Paula E Kay: That isn't part of criteria.

- Paul Lucyk: Can we deem the second floor uninhabitable that they can't live up there?
- Steve Burke: To me anybody can do what they want up there, but I am asking for no plumbing.
- Paul Lucyk: I am going to ask for no electric.
- Steve Burke: You can, but they have to have a light.
- Paula E Kay: I don't think we can do that.
- Gregg Pitula: It's not legal, I don't think we can.
- Steve Burke: Plumbing yes.
- Jason Pantel: It's labeled an attic on the drawing. Attic has a whole separate electricl...
- Paul Lucyk: Enough for one light and..
- Jason Pantel: Enough for one light and a receptacle.
- Gregg Pitula: I will look at it. We don't look at the electrical.
- Steve Burke: If that can be done, we will put it in.
- Gregg Pitula: I don't know exactly when it comes to electrical.
- Steve Burke: What if we word it as limited to the least possible electric by law?
- Paula E Kay: Why don't we look at how we worded the other one?
- Steve Burke: Well the other one we didn't do electric stipulations.
- Paula E Kay: Why wouldn't you want to mirror that? Why don't we look at that language?
- Steve Burke: Okay. Is that okay? You have the electric stipulation.
- Paula E Kay: I am just concerned about what we can and cannot do.
- Paul Lucyk: This is one of the stipulations, you can do that all you want and once everything is signed off..
- Steve Burke: That's out of our control.
- Paul Lucyk: That's one of the things where...then everything is changed.
- Steve Burke: That's in everybody's house.
- Paul Lucyk: Is there anyway of making...not putting the proof on the Building Department, an inspection? For the next so many years it doesn't get changed?
- Gregg Pitula: You have your right to privacy. If a person owns that house, you have no right to go in there.
- Steve Burke: If somebody gets a variance with stipulations then they violate the stipulations, what is the recourse?
- Paula E Kay: Bring them to court.
- George Sarvis: Revoke the CO.
- Steve Burke: Then they can't live in the building at all
- Paula E Kay: Legally.
- Jason Pantel: You don't have a CO for it now, right?
- Gregg Pitula: The building has CO for 1 floor. In other words, it was a completed CO last summer when they finished building the units with 1 story. Now that they have done work to them, I would say I don't know if the CO has a stop work order on them, is the CO still legal? Now they have altered the structure that it should need an electric survey and they need an engineer's report that everything is

inhabitable on the first floor. If you guys approve, I would have to say an engineer would have to go there because we can't see any of the construction because it is covered up, and an electrical survey would have to be done to make sure anything in the walls...

- Steve Burke: It will cost them thousands to remove the plumbing.
- Jason Pantel: They would have to remove some of the sheet rock to look at the electric. That's up to the electrical inspector.
- Paula E Kay: And the engineer.
- Paul Lucyk: Is this in city water and sewer?
- Gregg Pitula: Yes.
- Steve Burke: Do you have an amendment to your stipulation?
- Paul Lucyk: I don't want to be too harsh, but...
- Gregg Pitula: For the safety of the people and the rest of the community, I'd rather see something done right with the proper inspections than somebody do it after the fact, after we give them approval with a loft with nothing, then they do it illegally to get it compliant. You're putting the neighbors at risk if there is fault wiring, once you occupy your house, it is your house. Unless there is a fire at your house, and the fire chief takes over the scene, it's your castle and nobody goes in.
- Paul Lucyk: Are those the plans for the building? Is there an electrical plan?
- Steve Burke: Let me ask Paula. If we got all the inspections done, and it came out to your approvals, with the plumbing removed, I know the biggest person against is not against it anymore. Would you be okay with that?
- Paula E Kay: With the electric.
- George Sarvis: Yeah.
- Steve Burke: What do you think about that?
- Paul Lucyk: I know but... I have the same feeling they will do another unit.
- Jason Pantel: Without the plumbing okay.
- Steve Burke: And getting the full inspection to satisfy the Board.
- Paul Lucyk: And let them know what they can do.
- Steve Burke: A public notice.
- Jay Zeiger: Within the community.
- Jason Pantel: To say that further free building for it cannot be...
- Jay Zeiger: Paul, contrary to no plumbing, I don't want to argue that it's not fair because I will lose. If we came to you before they built it, and went for a variance, we probably meet the criteria like the other houses in the community. At least let them finish and live in the houses they have.
- Discussion.
- Steve Burke: If they pass we are okay.
- Jason Pantel: With the plumbing gone.
- Steve Burke: Fines paid, plumbing out, and passing all inspections.
- Gregg Pitula: An engineer has to come in and give me a sign off on what he wants done. Whether he wants walls ripped open.
- Paula E Kay: Mollie and I will find out, I'm sure Jay will help us, figure out the officers, then send them a letter that this can't happen again in the community.

- Steve Burke: So plumbing removed, and all inspections by engineer, electric, whatever to satisfy the Code Enforcement office. That will be a stipulation by me and a couple other Board Members. All fines paid.
- Paula E Kay: Except by the Building Department, pursuant to our code.
- Paul Lucyk: Is the fine something....
- Jason Pantel: Up to \$5,000.00 per building.
- Paul Lucyk: Is that a slap on the wrist?
- Paula E Kay: This is not a developer. The Building Department is fining individual home owners.
- Steve Burke: All plumbing removed from second floor.
- Jason Pantel: What I would like to say, we are about to pass the Comprehensive Plan.
- Paula E Kay: We are about to review it.
- Jason Pantel: With the new code coming up, there are arguments that people don't know what is going on, things that aren't addressed. I don't think the Comprehensive Plan addressed second stories on bungalows. It's going to continue to run through as it was.
- Paula E Kay: You have to comment on that.
- Jason Pantel: I'm going to do so on Monday. There's a reason why the law was passed. Back in the day it was okay to drink and drive. Back in the day you could build a house however you wanted, it's the not the way it is anymore. This has to end here.
- Jay Zeiger: That's the purpose of asking for a variance.
- Jason Pantel: You are correct, asking for a variance.
- Steve Burke: We will open to the public.
- Gary Kalchack: It makes me so angry when you build and then come back and ask for a variance. Personally, Steve you are extremely tolerant and great at making a compromise. I would say take it down, more and more we have people who accidentally didn't know anything. I am concerned, unless this development is far away from the street and no one can see it, I drive by this place all the time. More and more buildings get built higher and higher. I don't want more 2 story buildings. The dictionary states 1 story bungalow. I think this affects the community extremely. It may not affect you guys, but to see these buildings getting taller and taller, nobody enjoy tall buildings unless you are in New York City. Also, even the lawyer, you, have said look across the street and you see 2 stories there. That's an excuse that everyone else has them. This is a horrible precedent.
- Steve Burke: I hope it does after you speak to them.
- Audience: I have one questions, the one you were talking about where you guys didn't allow a bathroom. Was that also an unfinished attic?
- Steve Burke: I don't know if we did.
- Jason Pantel: It was drawn out as a small bedroom with dromers.
- Audience: I would say stipulate it as an unfinished attic. I know my dad was looking for something more that says people won't live here. If you make it unfinished. Also, just like Gary, this is a very bad precedent. I'm seeing it where how do you know people are saying okay, these people are getting away with it and just a fine.

I will just build and pay a fine, and then I have my thing, instead of coming here legitimately. That's why it is terrible this is happening.

- Steve Burke: It's not just paying a fine, it is going to cost them thousands of dollars to continue. If they get the variance.
- Audience: With the stipulations but I have seen it before where they are told to just pay the fine and they continue. How does the prevent other people from coming here and saying okay, I built this, now I want you to approve it, I will pay a fine.
- Steve Burke: Anybody else? Alright we will close the public portion.
- Jason Pantel: Are we voting?
- Steve Burke: Yes.
- Jason Pantel: I say no, the season is coming.
- Steve Burke: Right now it is in violation. If they don't pass any of these...
- Paula E Kay: They can't do anything. The stop work order can't be lifted unless and until they have to tear it down or they get the variance.
- Steve Burke: The only thing we don't have is them taking it down. That's how I see it.
- Jason Pantel: How about not getting a CO until they get it done?
- Steve Burke: They won't get a CO until they get that stuff done.
- Paula E Kay: They can't do any of work on the building.
- Steve Burke: Until they get a variance.
- Paula E Kay: Because of the height issue. If they don't get a variance, we can't even start looking at the integrity of the building.
- Steve Burke: Any other comments? No, we will run down the criteria. Whether the benefit can be achieved by other means feasible to applicant?
- All members say yes.
- Steve Burke: Undesirable change in neighborhood character or nearby properties?
- All members say yes.
- Steve Burke: Whether request is substantial?
- All members say yes.
- Steve Burke: Whether request will have adverse physical or environmental affects?
- All members say no.
- Steve Burke: Whether alleged difficulty is self-created?
- All members say yes.
- Steve Burke: Lead agency?
 - MOTION:
 - Jason Pantel motions for lead agency. Richard Levine seconds. All in favor.
 - MOTION:
 - Jason Pantel motions for negative dec. Richard Levine seconds. All in favor.
- Steve Burke: Do I have a motion with all the stipulations to grant or deny?
 - MOTION:
 - Richard Levine motions to approve with all listed stipulations.
- Paul Lucyk: What are the stipulations?
- Steve Burke: All fines pursued Building Department per building, all plumbing

removed from the second floor, all inspections up to date by licensed engineer and must pass code, electrical inspection as well.

- Paula E Kay: All fines paid.
- Steve Burke: All fines pursued and paid.
- Paula E Kay: That should be the first thing that should happen.
- Gregg Pitula: I don't want to see any occupancy of the structure until the engineering is done.
- Jason Pantel: Don't have Moe do the work.
- Steve Burke: If you get this, you really should do this properly. Do I have a second?
 - MOTION:
 - Richard Levine motions to approve with all listed stipulations. Paul Lucyk seconds. All in favor, with emphasis on stipulation.

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