

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

## **TOWN OF FALLSBURG ZONING BOARD MEETING**

**January 16th, 2020**

Steven Burke, Chairman, Paul Lucyk, Thomas Little, Ilian Hutchinson, Neil Sapolsky, Steve Altman, Mike Bensimone, Larry Zierler, Board Members, George Sarvis, Code Enforcement, Paula E Kay, Deputy Town Attorney

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

### **OLD BUSINESS:**

1. BROOKSIDE ESTATES – SBL# 49-2-16 – Requests an area variance for the reduction in the front yard set back from the required 35’ to 0’ for a parking pad. Zone: HR. Acres: 8.40. Location: 67 Laurel Ave., So. Fallsburg.

- Randy Wasson represented.
- Steven Burke: Do we have the mailings for this one?
- Gregg Pitula: Denise told me all the mailings for all the projects are good.
- Paula E Kay: You did a presentation last month and you left the public open.
- Steven Burke: Yes. Anyone here from the public who would like to speak on Brookeside? No? Okay. We can now close the public portion. Board comments?
- Mike Bensimone: We spoke about it more last month. Personally it doesn’t have the right access right off the road. They have to enter the premises then hang a right of the building and go to the parking lot. As long as they have that separation hopefully it will result in less vehicles parking on the side of the road here.
- Steven Burke: I agree with you Mike. I am never in favor for going from 35 to 0 but in this case it doesn’t affect anything other than it is a massive variance in my head. The mailings were done. Any violations?
- Gregg Pitula: Not anymore. They are in the process of

redoing somethings.

- Steven Burke: You are okay with us going forward?
- Gregg Pitula: Yes. The only issue I had from a violation stand point which was addressed with the Planning Board was the neighbor was having issues with lights flaring into his house at night from the parking areas. We have a condition from the Planning Board that they require some kind of screening for the headlights and the lights from the parking lot.
- Randy Wasson: They moved the light to the other side of the driveway so it shines directly into Brookside.
- Larry Zierler: What are the regulations on lights?
- Gregg Pitula: There is no exact meter code to it but it says lights can't cause an annoyance to neighboring properties.
- Steven Burke: In some cases can't be on past a certain time.
- Paula E Kay: The Planning Board and town engineer will get the location of the light, the downward facing, where they are. All those things.
- Steven Burke: Some of these places have tennis courts and on Saturday night they are playing at 2 or 3 in the morning. We will go down the criteria. Whether the benefits can be achieved by other means feasible to the applicant?
- All Board members vote yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members vote no.
- Steven Burke: Whether request is substantial?
- All Board members vote yes.
- Steven Burke: Whether request will have adverse physical or environmental affects?
- All Board members vote no.
- Steven Burke: Whether alleged difficulty is self-created?
- All Board members vote yes.
- Steven Burke: Lead agency?
  - MOTION:
  - Mike Bensimone motions for lead agency. Ilian Hutchinson seconds. All in favor.
  - MOTION:
  - Neil Sapolsky motions for negative dec. Mike Bensimone seconds. All in favor.
- Steven Burke: Motion to approve or deny?

- MOTION:
- Neil Sapolsky motions to approve. Mike Bensimone seconds. All in favor.
- Steven Burke: Don't do anything before you go see the office.

2. CHESTNUT COURT – SBL# 39-1-94/95 – Requests an area variance for a reduction in the front yard set back from the required 150 feet to 75 feet for a caretaker's unit. Zone: R. Location: Laurel Ave., South Fallsburg.

- Jay Zeiger represented.
- Jay Zeiger: I was here 2 months ago on this project. We had the public hearing. Nobody at the hearing. The Board asked that we go back to the Planning Board to get their recommendations and thoughts before we came back. We were at the Planning Board last Planning Board meeting. I will give you the results in a minute. Those of you who are know this project has been pending in the Planning Board for quite some time. This project is an old bungalow colony. This buildings here are what you are looking at. This is what is there now. They haven't been inhabited. The town has been pushing to have the buildings removed. Part of the Planning Board process is that these buildings will be removed. We are removing a dozen or so dilapidated and deteriorated buildings. The project when done will hopefully look like this. The old buildings you saw were over here. That's being replaced by the pool and sports court. It is a townhouse development. The townhouses are around over here. There are playgrounds here. The community building here. This is where the houses will be situated. We are kind of far along in the Planning Board process. The proposal is to add a caretaker residence for the community. Someone who would live on a year round basis and be an employee of the development. He'd be there in the winter season if it is seasonal. We are not sure if it is going to be seasonal or year round yet. If it is seasonal he will be there. He will be responsible for maintaining the grounds and cleaning up. The Planning Board is in favor of a caretaker. The proposal is to put the building in one of the footprints of one of the buildings being removed which is over here. I left this page open because there is an existing driveway that has access to this building. The project driveway is over here. The residents will come in and go through here. The caretaker residence would be around here and it would a short driveway to service them. I have copies of the Planning Board's recommendations. The Planning Board was

generally in favor of the addition. They agree that a caretaker is appropriate and that the appropriate place would be at the entrance to the community. In fact it was the Planning Board that had suggested adding to the request a location for a compactor and a shed in the area of the caretaker. The shed would be for storage of lawnmower, small tools, and pool equipment. That kind of stuff.

- Steven Burke: How big is the shed?
- Jay Zeiger: We are looking at a small shed of 250 feet maximum. Or less.
- Steven Burke: Square foot?
- Jay Zeiger: Yes. The shed would be in back of the building so you would see the building and not the shed. The compactor would be screened. Both the compactor and shed would be in the back of the building. The general consensus on these projects is when the compactor is near the caretaker he makes sure he sees it on a daily basis. He makes sure whatever litter spills out is picked up. They would be behind and not visible. The house would be visible. The plan is to remove the existing house, everything that is there. The footprint of what is there would be the replacement house which would be a maximum of 1,200 square feet. That is the request.
- Ilian Hutchinson: This is a one story building?
- Jay Zeiger: Yes.
- Steven Burke: They would work out with you where you want the compactor?
- Jay Zeiger: No we would work that out with the Planning Board.
- Steve Altman: That's with the setback.
- Jay Zeiger: Yes.
- Steven Burke: Any questions?
- Mike Bensimone: I think I was at this project once. There is an existing structure there.
- Jay Zeiger: Several.
- Mike Bensimone: But with the caretaker facility you are talking about there is one not far from the road.
- Jay Zeiger: That's the one we are talking about. That is the one that will be removed
- Mike Bensimone: And you are rebuilding on the same foot print?
- Jay Zeiger: Exactly.
- Mike Bensimone: 75 feet. It didn't seem that close to the road. It is definitely visible from the road that's for sure.
- Jay Zeiger: The Planning Board may require screening or trees or planting or something. It is visible now. We are not

removing any vegetation or anything. We are leaving everything that is there except for the old deteriorated buildings.

- Ilian Hutchinsnon: That's the main trash for the whole complex? He's the one doing the trash?
- Jay Zeiger: Correct.
- Steve Altman: The building you are going to remove and replace would be a new caretaker. The existing building has no basement or foundation.
- Jay Zeiger: I don't know whether it has a foundation.
- Steve Altman: I used to live across the street from that. I don't think any of those things have basements.
- Jay Zeiger: I don't know what they are.
- Steve Altman: You never looked at a swap because further in you have all these activity kinds of things.
- Jay Zeiger: The idea is we don't want to have the caretaker, compactor, and the storage sheds next to the swimming pool.
- Steve Altman: There's nothing there now right?
- Jay Zeiger: No.
- Steven Burke: What he means is where they want to put the swimming pool. Could they put the pool somewhere else? Possibly, right?
- Jay Zeiger: The idea is also the caretaker provides security because you have to go past him to get into the community. It is more of a function than just find a spot anywhere.
- Steven Burke: What he is saying is the caretaker's spot could be moved back so you are in compliance and the pool could be put somewhere else.
- Steve Altman: Also the caretaker has his own driveway and access to his own abode. He is going to be able to see people who are trespassing by going into the main entrance?
- Jay Zeiger: He will have a higher chance than if he was in the back somewhere.
- Steven Burke: Did we open the public?
- Jay Zeiger: We left it open.
- Neil Sapolsky: The main entrance is where? How many feet is that?
- Discussion.
- Paula E Kay: They have to.
- Steven Burke: To come back here yes.
- Gregg Pitula: Jay you represented them in front of the Planning Board?
- Jay Zeiger: Yes.

- Gregg Pitula: They were in favor of having this?
- Paula E Kay: Yes. I was there. The Planning Board sent back a message stating they did not have a problem with it. Obviously they had to deny it because it doesn't comply with code. The Planning Board had to send it to you.
- Steven Burke: Okay. So we left the public open on this?
- Paula E Kay: No.
- Steven Burke: We closed it?
- Paula E Kay: Yes. Was this here last month? This was here for an extension a couple of months ago.
- Jay Zeiger: I was here for an extension last month. I was here for this in October or November. We asked to get on the Planning Board agenda. For whatever reason Denise missed it on the agenda and when I picked it up she had already published so we had to in December. We were here on this issue. We opened the public.
- Steven Burke: Maybe we didn't close it.
- Jay Zeiger: My recollection is we didn't close it.
- Steve Altman: That's what I think.
- Steven Burke: So we will continue. Anyone here from the public?
- AJ Pantel: First where is this place?
- Steve Altman: Next door to the Pines.
- AJ Pantel: That's what I thought. I'm not weighing in on anything specific to what your decision is here. I might shed some light on why this house is in the front. It is the simple fact that on Shabbas if the caretaker has his own life to live to access through the project is not only inconvenient it is also irreverent. That is why they want the caretaker is in front. I don't have any comment on where the garbage compactor or anything like that. I have a general comment which I brought to Steve Vegliante's attention and I got no satisfaction. Here is an existing property and I can't for the life of me understand why there is no 911 address assigned to it. I know there will be but it makes it extremely difficult. I know this has nothing to do with Jay or the Board.
- Steven Burke: That's fine but it doesn't pertain to this.
- Jay Zeiger: When the project gets built every house will have a 911.
- AJ Pantel: I understand that Jay but an existing bungalow colony not having a 911 address makes it difficult.
- Steven Burke: Take that up with 911.
- AJ Pantel: I'm talking to this Board. I'm in no man's land. I am here on another issue but I wanted to just add some information.

- Steven Burke: Just to let this Board know you cannot make any decisions based on religion.
- AJ Pantel: That wasn't my point.
- Steven Burke: You did say Shabbas. We can't base any decisions on any religious implications at all. Whether it is Shabbas or whatever it is your decision cannot be based on that.
- Ilian Hutchinson: Is there an option to orient the building? It is going longways. The issue is it is closer to the road than what code has. Is there an option to orient sideways? It would give you more feet between. You're be further in. The building is oriented with the short side toward the street. If you go with short side toward the driveway you gain some feet. That would be my suggestion. It may still be in violation but less.
- Paula E Kay: What you guys can do is if you guys make a motion to approve at some point you can approve it with the condition that the orientation is shifted. You wouldn't need to change the variance because we don't know exactly. It wouldn't be more than 75 it would be less than.
- Thomas Little: Couldn't we suggest or say instead of 75 feet 90 feet?
- Paula E Kay: We don't know.
- Steven Burke: What is the length and width of the house?
- Jay Zeiger: This is probably closer to 75 feet where it is.
- Steven Burke: The front of the house you would like shifted toward the road?
- Ilian Hutchinson: It would set the whole building back because you would have that much room. And the access to the house would be at the driveway.
- Jay Zeiger: It can go back. I don't have the scale and they will need room for the shed. If your variance would be to go back as far as they can we can ask Joel again to measure.
- Paula E Kay: I don't want to do anything on the fly now. Would you be comfortable if the language said that?
- Ilian Hutchinson: That it would be oriented in a way yes.
- Larry Zierler: To mitigate the request.
- Steve Altman: What if we say instead of 75 we give them 60 feet?
- Paula E Kay: I don't know if we can do that because we don't have measurements.
- Ilian Hutchinson: Yes I would like it to say it will be oriented in a way that it can be set back as far as possible but still

accommodates them.

- Steven Burke: It will still be less than a variance than it is now. Okay.
- Jay Zeiger: I can also do a thinner builder and longer.
- Steve Altman: So does he have to come back?
- Steven Burke: No.
- Mike Bensimone: Anything to mitigate the variance a little bit I am happy with. I think it is a reasonable request to begin with so I would support it either way.
- Larry Zierler: I think this would show good faith.
- Paula E Kay: Did you close the public hearing?
- Steven Burke: Anyone here from the public like to speak? No? Okay I close the public portion. Let's run down some of the criteria. Whether the benefit can be achieved by other means feasible to the applicant?
- All Board members vote yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members vote no.
- Steven Burke: Whether request is substantial?
- Jay Zeiger: For the benefit of the new members I have said my piece 100 times.
- Steven Burke: I'll give you the definition. If you have a million dollars in the bank or you have a thousand in the bank it is substantial. It is a big difference.
- 1 Board member votes no, all others vote yes.
- Steven Burke: Whether the request will have adverse physical or environmental affects?
- All Board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All Board members vote yes.
- Steven Burke: Motion with the condition?
- Paula E Kay: A motion to approve with.
- Ilian Hutchinson: The existing building to be shifted toward the driveway. Away from the road. The replacement building to be oriented in a way.
- Steven Burke: For a not so substantial setback. Whatever they do has to be less.
- Paula E Kay: Let's add something that will tell the Planning Board it is a single story building.
- Gregg Pitula: Single story and 1,200 square feet max.

- Jay Zeiger: I think you should put the size of the shed at 250 max.
- Steven Burke: I did put that.
- Gregg Pitula: The last variance we granted for a similar thing ended up being a 2 story 7 bedroom condo.
- Discussion.
- Steven Burke: So I added single story 1,200 square foot max with a 250 square foot or less shed and the compactor.
- Paula E Kay: Now you have to go back before you make the motion for lead agency.
- Steven Burke: Right. Lead agency?
  - MOTION:
  - Mike Bensimone motions for lead agency. Neil Sapolsky seconds. All in favor.
  - MOTION:
  - Mike Bensimone motions for negative dec. Neil Sapolsky seconds. All in favor.
- Steven Burke: So with those conditions do I have a motion?
  - MOTION:
  - Neil Sapolsky motions for conditional approval. Mike Bensimone seconds. All in favor.

NEW BUSINESS:

1 BNOIS SPINKA (CAMP KRULA) – SBL# 39-1-86.1 – Requests several area variances to allow the reconstruction of 6 buildings (12 units) that were destroyed by fire. Zone: R. Location: Rt. 42, South Fallsburg.

- Joel Kohn represented.
- Joel Kohn: We were here last month. This is an existing bungalow colony on Route 42 and Gamble Road. It currently has 19 units. They had a fire last year that destroyed 12 units. They want to come back and replace those 12 units. As part of the process Code Enforcement has asked us to prepare a master plan for the entire site for anything they want to place in the future. In order to do that we have to change the use of the property from a bungalow colony to a duplex

development. By doing that even though it is existing there are some variances that will be required to do anything physical to the property. There will be about 5 variances just because of the change of use. They will be area variances. However there are some more variances that will be required as part of the development of the property. I don't know if the Zoning Board wants me to go through the variances or not. There is a total of 5 variances

- Steven Burke: More than that.
- Paula E Kay: If you count all of the variances it is more than 9.
- Steven Burke: I count 16.
- Joel Kohn: There are 9 types of variances.
- Paula E Kay: In total is 17.
- Joel Kohn: There are 17 total before the Board. I will go through the list submitted to the Board. Variance number 1 code requires a minimum setback from the driveway. This is an existing building that is 69 feet from the road which requires a variance because we are changing the use. Although we are not doing anything because we are not bringing it closer to the road we still need a variance. The proposed units 301 and 302 are encroaching on the front yard setback. Unit 302 is just a portion of the corner. 301 is replacing the building that is there now and it is about the same setback that exists not from the building to the road. It may be 5 feet more closer to the road than it is now. This existing building will have an addition to the back which will not bring it closer to the road but it is still within the setback therefore we do need a variance for that as well. That's variance number 1 which we consider minimal because they are existing. The second variance the code requires a minimum of 75 feet clearance setbacks from public right of way. This proposed gravel area will be 55 feet from the road. The newly located compactor area will be 57 feet from the road which is on Gamble Road. It is all clear there. We are not clearing anything. There are some trees over. We are just bringing it a little closer. It is not substantial. Number 3 code requires a minimum of 50 feet side and rear yard setbacks. The existing buildings are about 9 feet from the property line. The proposed buildings are at least 15 feet from the property line. If you remember last year we did the Riverside one. We made a deal that both of them can stay at least 15 feet from the property line. There are multiple buildings.
- Paula E Kay: We have that on the map.
- Joel Kohn: It may be substantial because it goes from 50 to 15 but the current buildings are only 9 feet. We are making improvements. Most of the buildings are less than 25 feet from each other. With this proposed development all of the buildings will have 25 feet separation. Number 4 the code requires a minimum of 50 feet from rear wall to rear wall. The proposed buildings 101, 103, and 105 are only 25 feet from the dining room. It is not necessarily rear wall to rear wall it is more rear to side. That is not listed in the code. We listed that as well. It still meets the 25 feet between buildings. Number 5 the code allows a maximum

footprint of 1,750 square feet per unit and a maximum inhabitable area of 2,750 square feet. The proposed rabbi's house is shown to have 3,900 square feet of inhabitable area. That is only one building on the property.

- Steven Burke: Why does he need a bigger house?
- Joel Kohn: I believe he has 13 kids. Number 6 is moving the rabbi's house close to the property line. Right now it is about 38 feet from the side property line. The variance is for 25. Number 6 is a duplex building in a development cannot have more than 2 dwelling units per building. An existing building for one has 19 units. We need a variance for that. Not to add more units but because it is existing and we are changing to a duplex development. Number 7 is the maximum lot coverage. A duplex development should not exceed 25%. With everything added it comes out 39.6%.
- Paula E Kay: Your map says 39.1%
- Joel Kohn: My mistake. Number 8 a duplex development requires 2 and a half parking spaces per unit and 1 parking space per 6 seats in a recreational club house. Total required spaces is 255 spaces. Right now with the same number of units as will be there are only 80 plus or minus parking spaces. There hasn't been any issues with the Building Department in the past for parking with this project. The only issue that happened was someone parked on an emergency access road. There really aren't issues about people parking on the road. Right now there are 80 plus parking spaces which equals to .88 parking space per unit. The proposed master plan last month only had about 100 parking spaces. The engineer was able to add another 30 some parking spaces. We now show 137 parking spaces which equates to 1.52 parking space per unit. That is a 72% increase in what is there now. Number 9 the maximum allowable density for a duplex development for this size would be 47 units. Currently there are 90 units on the property and the proposed is 90 units. It is existing.
- Paula E Kay: I am making sure you received the mailings.
- Steven Burke: They are good?
- Gregg Pitula: Good.
- Paula E Kay: Maybe we should take a moment and note the 239 for the record.
- Steven Burke: Okay. It says Project Camp Krula. Applicant JK Expediting. It is an area variance. Applicant requests several variances to replace 6 buildings with 12 units. State Route 42. Division of Planning. The New York State Department of Transportation have reviewed the materials submitted regarding the requested area variance at 5405 State Route 42 in South Fallsburg. The applicant requests 9 area variances, 8 of which were considered extreme, granting these variances would be a deviation from the current vision presented in the plan's Comprehensive Plan as reinforced by its zoning code. Because of the potential for the potential for the proposed variances to undermine the integrity of the town's zoning code and negate the ability of the town to utilize its zoning regulations to advance community goals for land use patterns we recommend

disapproval. Additionally we suggest the Board with the applicant to re-envision the site in a way that would be more closely conformed to the town's Comprehensive Plan and zoning code. New York State Department of Transportation's comments are attached for the Board's review. We'd like to echo their comment regarding safe transportation. Alternatives to and from the site. Note that the property is situated on the new Move Sullivan Public Bus route. Should the project move forward in some form there may be a potential to include a bus pull in. That was sincerely from the commissioner. Knowing that it has to be a super majority because they denied it. It is home rule. We could approve but it has to be 4 of the 5 to approve it.

- Steve Altman: What alternative do they have?
- Steven Burke: They could come back with a whole new plan.
- Ilian Hutchinson: This is their original layout right? This is different from what was originally proposed.
- Steven Burke: They could just build back in the footprint of what was burned down and they don't need to come here and they don't need to do anything. That's why they are here because they want a very substantial variance in my opinion.
- Ilian Hutchinson: The 301 exists already?
- Joel Kohn: There is a building existing that was part of the fire.
- Steven Burke: Any violations?
- Gregg Pitula: No.
- Steven Burke: Comments?
- Mike Bensimone: It is a lot to digest. In essence several buildings burned down and you are going to tear down the entire site to start fresh. It could be a good opportunity. On the flip side if you do nothing and put the same building and then hope that history doesn't repeat itself and cause another fire. I'm a little torn. I don't know if I am ready to vote on this tonight. I'd like to look at it some more. That's up to the Board.
- Steven Burke: Look at it and come back with some changes? That's what was suggested. Maybe you can come back with something less substantial.
- Mike Bensimone: Yeah I meant the rabbi's house is not only size wise very large it is close to the property line. There are some extremes here. A lot of these make sense. The majority of the project would look very nice and I'd like to move forward with it. I just have reservations of the extreme qualities of the request. I don't know if I'd vote on everything in one block. I'd like a little bit more time to focus. Maybe we can flesh it out building by building a little bit. Maybe poll the Board and figure out which areas are the most concerning to us. Mostly I don't have an issue. I have some issues with the setbacks. Especially since on another property it could be (inaudible). You are doing a lot to mitigate the fire issues from before. You are kind of asking for a lot. The vision is robust. It is a big difference from what is there now to what is proposing. I'm the first the go here

so I can't go with the flow. I'd like a little bit more time to look at it and break it down structure by structure to find what would be reasonable.

- Joel Kohn: I just want to point out that there is no planned units right now. The master plan should be in place in the next 10, 20, 30 years.
- Mike Bensimone: So you are essentially future proofing the property?
- Joel Kohn: That is correct. Right now there is only a plan to do 6 buildings which were the ones destroyed by fire. Right now the plan is to replace those buildings and the only other item being planned right now is to remove the pool from the front of property and relocate it to the end of the property.
- Mike Bensimone: So you are going to build 106 through 112?
- Joel Kohn: It is 110, 112, 114, 115, and 116.
- Mike Bensimone: If the request was just that it would be a lot more reasonable
- Joel Kohn: The request was just that and I understand the town asking for a master plan. It was the same with Riverside. We only came back to replace some buildings burned by fire and the town said to present a master plan for the entire site. That way when the time comes no one will try placing here and there. We did that for this site as well. I get what you are saying. Maybe there are some places we can tweak
- Neil Sapolsky: You guys are asking for a lot. We had a building moratorium in the town of Fallsburg and we wrote this wonderful Comprehensive Plan to halt and adjust. This is just going above and squashing all the hard work the Planning Board put in.
- Ilian Hutchinson: My suggestion would be to redo the plan to conform to the requirements. Specifically the 25 feet between buildings would be a big one.
- Joel Kohn: All the buildings are 25 feet.
- Ilian Hutchinson: Oh I see. Requires a separation of 50 feet from the rear wall. That's the new zoning isn't it?
- Steven Burke: The separation of the buildings is 25.
- Paula E Kay: That's a separate section.
- Joel Kohn: I wanted to make sure we were on the safe side with code. It is 25 feet apart. More than 25 feet. Right now the buildings are mostly less than 25 feet but this proposal will be more than 25 feet.
- Ilian Hutchinson: The side to side will be 25 feet minimum.
- Steven Burke: Correct. That's to prevent what happened.
- Gregg Pitula: 25 feet is for building separation to help stop fire spread and over building.
- Steve Altman: You need to help us help you. You need to mitigate the problems.
- Ilian Hutchinson: This feels like a rebuild.
- Steven Burke: Oh it is.
- Ilian Hutchinson: I think it should still conform wherever possible. You are essentially redoing.

- Paula E Kay: I will say this to help Joel a little out here. Because it is going to be duplex development in a bungalow colony there are certain items that even as the building exists today do not conform to the duplex development law. There are a lot of other things that are added because of building sizes and things like that which require greater variances than may necessarily need to be. I agree with the Board that the applicant needs to tweak this. The Board is now constrained by the County's disapproval which will make it harder to move forward.
- Ilian Hutchinson: Also move closer to the property density of 47.
- Steven Burke: So he would have to come back with a new plan? Which means a new drawing. If you would like them to come back with a different plan can you suggest just those? What he was looking to build which was substantial with those as well? It doesn't make sense if he is going to come back and spend the money to make a new plan. It costs a lot of money. Can you suggest something? Do you want 30 days?
- Larry Zierler: I see a glaring possible contradiction in that he might be putting up 6 new buildings now with a plan for expansion in the future which can have a different character in terms of the other featured buildings. In order to save for the aesthetics and integrity of the community itself they really need to decide on what it will look like. This is like a guessing game. Disaster is an invitation and opportunity to consider things in a much more comprehensive way. That is healthy. At the same time if it is going to lead to variances for patchwork buildings. I am hearing patchwork. I am hearing you are going to take care of what needs to be done right now and keep possibilities for the future and those are going to be duplexes. They could look different. Maybe what they need to do is already put in the uniformity of design to take care of what they might want for the future. If they are going to draw then draw it up as the best possible scenario that complies. Beautify and scale it.
- Steven Burke: They can beautify it. They can rebuild in the same footprint of the old buildings with new buildings.
- Larry Zierler: Would they be duplex buildings?
- Steven Burke: No. It's not. Let me ask you. If they built in the existing footprint do they have to be 25 feet?
- Gregg Pitula: No.
- Joel Kohn: Then there is no 25 feet. No emergency access.
- Gregg Pitula: We require within the 25 feet to have a 2 hour fire access.
- Steven Burke: My opinion on that is you have something you can fix if you want to without coming here at all. You're looking to make a single family house Trump plaza. First I want to commend you. Many times we get these projects without knowing the future plans. Then you get this variance and 2 years later you come in and tell us you want 40 more buildings. At least you are telling us from the

beginning. It may not be in your favor tonight but I am giving you credit in being honest about it.

- Joel Kohn: Mollie was the one pushing for that.
- Steven Burke: Any other Board comments? No? Okay.
- Joel Kohn: Before we go on we will go back to the drawing table. Maybe we can meet one day outside of the Board and discuss some options. The one thing I would like to ask the Board for tonight is about the pool relocation from the front to the back. The plans are already done for the pool and they have DOH approval. This is an old age pool. It is not up to today's standards. They do want to put in a new pool before the coming season if that is a possibility to grant the variances for the pool. Is that a possibility?
- Paula E Kay: Let me see.
- Joel Kohn: It is on this plan.
- Steven Burke: Does it still have to be a super majority?
- Paula E Kay: Yes.
- Joel Kohn: It is just something they want to get done this year.
- Neil Sapolsky: Are they just looking to setback?
- Steven Burke: In April they might.
- Steve Altman: That's 3 months away.
- Joel Kohn: We still need to get Planning Board approval for that. The DOH approved it.
- Steven Burke: Let's just take a quick poll.
- Paula E Kay: What number variance?
- Steven Burke: Would you be comfortable voting on just the pool?
- Paula E Kay: The only way I think we can do this is it would have to be a super majority and then Joel would have to amend the plans to show a variance for the pool. Take everything off.
- Mike Bensimone: You wouldn't need a 239 for that?
- Paula E Kay: Yes. The location.
- Joel Kohn: So the Board can vote on it subject to creating a separate plan?
- Paula E Kay: Only showing the pool.
- Steven Burke: It is going to be in the back.
- Joel Kohn: The pool itself is 50 feet from the property line. It is the fence and the filter system that is within the 50 feet.
- Steven Burke: I'll open it to the public. Anybody from the public like to speak?
- Joel Kohn: The public can speak about the entire project?
- Steven Burke: Absolutely.
- AJ Pantel: We have had some prior conversations over this project. Did you want to hear all the concerns from the fire district?
- Steven Burke: Sure.

- AJ Pantel: I will address the pool first because that was one item we didn't discuss. It just dawned on me to be consistent with what our desires are I had questioned Joel about whether or not there would be fire hydrants installed. Which would of course mean a water main and a whole system to supply the project. It is no obvious that is not going to necessarily happen. We are going to just address the pool. Right now the pool is in the front. The proposal is to bring it here to the west side toward the back here. Assuming the pool gets moved to be consistent with what we ask for at the Raleigh project I'd like to have a dry hydrant there that would be tapped into the pool for the event of a fire. There are no hydrants along this private road here. I don't recall if there are any hydrants on Gamble Road. There very well may be. At this moment during construction it is a small price to pay to enhance the chance of having a water supply that currently doesn't exist. I had pointed out to Joel that currently this is an existing emergency exit that enters the property off of Route 42 here. There are no hydrants within the entire body of the bungalow colony. In the event of a major fire we have to drop a five inch line and bring it on these service roads. This is the proposed road. The existing road is not laid out the same way. It comes in here and goes over here. It would benefit the entire project currently as well as in the future. That's all I have to say on what you are going to consider tonight. This emergency exit the fire district had always requested that it be extended in here long enough to get a truck fully off the road before we get through the gates. That is being accomplished regardless of what happens. There is a second entrance here that is basically a dead end road. It currently would allow access past this multifamily building here. The grade and angle of approach to come in off the road for specifically our aerial ladder truck it is too steep. If we can include this regrading of this emergency entrance here to allow access into the site from a second means that would be appreciated. We talked about on page 3 there is a computer generated simulation of the radius of the private road. I complimented the engineers. It is quite creative. The thing to be aware of on any of these emergency roads is the turning radius. You have to give consideration to fighting a fire under the water cases. At night in the snow. At some point in time they were year round homes. At some point in the time they will all be occupied. Consideration has to be given that these radiuses have to be traveled instead of being hung up on a curve.
- Larry Zierler: There is a formula for it.
- AJ Pantel: We went with the formula and it didn't work out.
- Steven Burke: 25 feet right?
- AJ Pantel: It didn't work out. That's what this computer simulation works out. It looks better on paper than in actuality.
- Larry Zierler: There has to be compensation.
- AJ Pantel: To be perfectly frank the engineer used a program that has the truck turn at 43 feet and our truck is more at 42 feet. This is conservative to a point.

The 8 and a half foot width and the overhang of the basket over the front end. It's not a consideration of the Board at the moment but these emergency roads are as intricate have to be well thought out. The one advantage that this project has to its favor is there are no internal fences planned for this. That helps immeasurably. As we discussed there is no interior parking whatsoever. That's a big plus. The other thing is over here on Route 42. It continues over here. This gravel roadway comes out here. This was always represented as an emergency access to over here. Currently with prior evolutions of this development we asked for a sign to be posted. I just talked to the owner's representative and the roadway is going to be kept clear. These emergency roadways need to be maintained to be accessible. Last but not least we ask for a directory of all of these emergency entrances to illustrate to first responders where the units are physically located. I wanted to update everybody on what we are looking for.

- James Legari: First I want to tell the Board I think anytime a developer comes in and improves some of these ancient bungalow colonies they need to be commended for attempting to do that. I don't think it is just good for them financially but it is good for us. I have to commend Neil for particularly pointing out the effort for the year that the town and the Comprehensive Review Committee put together for a new plan. 3 of those members now sit on your Board. I guess my point is that if we are going to if we are going to make this big of a change to accommodate this building then generally speaking the whole Comprehensive Plan should be put in the bottom drawer and the back drawer. If this is going to happen then the plan has no value.
- Steven Burke: Anybody else? Okay we will close the public portion. Any violations?
- Gregg Pitula: No.
- Steven Burke: Board comments? Let's run down the criteria.
- Paula E Kay: Let's clarify why you are talking about.
- Steven Burke: I am still looking at the entire project.
- Steve Altman: He's not asking about the entire project.
- Joel Kohn: I don't want to vote for the entire project. I think we will go back to the drawing table.
- Steven Burke: Should we have voted no on the entire project and then go to the pool?
- Paula E Kay: No I think he is redrawing the remainder.
- Joel Kohn: We will put it off for 30 days and rework it. Go back to the county. Just the pool tonight.
- Steven Burke: Okay dealing with just the pool. Whether the benefit can be achieved by other means feasible to the applicant?
- All Board members vote yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?

- All Board members vote no.
- Steven Burke: Whether request is substantial?
- All Board members vote yes.
- Steven Burke: Whether request will have adverse physical or environmental affects?
- All Board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All Board members vote yes.
- Steven Burke: Lead agency?
  - MOTION:
  - Mike Bensimone motions for lead agency. Neil Sapolsky seconds. All in favor.
  - MOTION:
  - Mike Bensimone motions for negative dec. Neil Sapolsky seconds. All in favor.
- Steven Burke: Do I have a motion to approve the variance on the pool only? It still has to be 4 out 5.
  - MOTION:
  - Mike Bensimone motions to approve the pool variance. No second motion.
- Steven Burke: Do I have a motion to deny?
  - MOTION:
  - Illian Hutchinson motions to deny. Steve Altman seconds. Neil Sapolsky denies. Thomas Little denies.
- Steven Burke: Okay your motion was denied.
- Joel Kohn: See you next month.

2 SILVER POND ESTATES – SBL# 28-1-29 – Requests an area variance to allow an increase in height of an existing bungalow for a second story. Zone: REC. Location: Katz Rd., Fallsburg

- Joel Kohn and Isaac Morganstein represented.
- Paula E Kay: So the owner is Silver Pond Estates LLC.
- Joel Kohn: Isaac is the owner of unit number 11. I don't have big maps for that. I have what was submitted with the packet. It is a small bungalow colony. He needed more room for his family. His mother lives right next to him and she has a disabled child. His father passed away a couple years ago. He needs more accommodation in this unit. He hired a contractor to do the job. He thought the contractor submitted the proper plans and permits. The contractor was not from around here he was from Orange County. He just came up and did the work. He got caught be the Building Department for a

violation. That is why we are here tonight. It was an existing bungalow colony. In order to build anything we need a variance. The building right now is about 21 feet. With the addition it is about another 6 feet higher. It will be about 27 feet high. It isn't that high but we need a variance for that because bungalow colonies are not that high.

- Steven Burke: So you want a variance for what was built already?
- Isaac Morganstein: Yes for what they built.
- Steven Burke: So you don't want to add anything?
- Isaac Morganstein: Yes.
- Ilian Hutchinson: So this is built already?
- Isaac Morganstein: Yes this is a current picture.
- Ilian Hutchinson: So it is currently 27 feet high?
- Isaac Morganstein: Yes. It was 21 feet and now it is 27 feet.
- Steve Altman: You can't occupy it without a permit?
- Isaac Morganstein: I have to get a permit and inspections done.
- Neil Sapolsky: So you don't want to go higher?
- Isaac Morganstein: No.
- Steven Burke: Right it shouldn't be as high as it is.
- Joel Kohn: Preexisting it was 21 feet to here. This is what was added. It is still within the height limit of the zoning in the area which is 35 feet but it is a bungalow colony.
- Steven Burke: It was also done without a building permit. I understand your point in blaming the contractor but ultimately you as the property owner are at fault. That is why you are here. It is basically simple. It is there already. There are lots of violations.
- Joel Kohn: We had a discussion in the work session about open permits. They got notified a few weeks ago about it. It was right after I submitted the application. They went through the open stuff. A letter was sent to them and they started to take care of that. I don't think there are any active violations.
- Gregg Pitula: I don't see any active violations on the property just the expired building permits which is normal. This is old stuff.
- Paula E Kay: Are there open permits on this particular dwelling unit?
- Gregg Pitula: No.
- Steven Burke: Would Code Enforcement be okay if this variance is granted? Would you be okay with us voting on it tonight with the condition that all permits be closed? Or do you want them all closed first?

- Gregg Pitula: No sense in bringing it back. We can make it a condition that this can't get a CO until they work on the other open permits.
- Paula E Kay: How about all open permits have to be rectified on or before the end of March? I don't want to get into a position where Gregg's office has to go out and take something out of a unit.
- Steven Burke: March 31<sup>st</sup>?
- Joel Kohn: I think March 31<sup>st</sup> is too short because an engineer has to go out and look at everything that needs to be done.
- Paula E Kay: So give us a date.
- Joel Kohn: It might take two or three months.
- Paula E Kay: I don't want to get into June.
- Joel Kohn: The middle of May?
- Paula E Kay: How about let's say the beginning of May with the understanding you can go to the Building Department and ask for an additional 20 days? I don't want it to get dragged on.
- Steven Burke: The beginning of me means May 1<sup>st</sup> with an additional 20 days.
- Paula E Kay: Per the Building Department
- Gregg Pitula: Are you going to be responsible for helping close out permits for the rest?
- Joel Kohn: Yes. One of the Board members emailed me.
- Steve Altman: Are these structures are up to code?
- Paula E Kay: It does not comply with code.
- Steve Altman: I've only been on this Board for a year. What happens when someone breaks a law and builds a building with a permit?
- Paula E Kay: In this case they can come here and ask the Board. I don't think it is egregious.
- Steve Altman: If people find out you can do these things and then ask for a variance to get away with it.
- Gregg Pitula: I don't know if we have the jurisdiction to tear something down. We can deny the variance but then we would have to take legal action.
- Steven Burke: For every day the building is not taken care of.
- Paula E Kay: The justice part where it would go first you can only get monetary. You cannot tell them to do something. The town would have to file with the county.
- Steven Burke: And in this case they're not removing the whole house. They are removing what they did.

- Steve Altman: It is like a loophole that other people can get away with.
- Gregg Pitula: We have instituted fines in the past. We have similar cases. There have been large fines paid. There has been a lot of stuff that had to be addressed to bring it into code.
- Paula E Kay: And Steve it is completely your decision based on the facts.
- Steven Burke: Let's open it to the public. Anybody from the public?
- Isaac Morganstein: I am the owner of the unit. I want to start by thanking you all. I apologize for all these violations that occurred. I am not a builder. I have never done anything in this realm at all. I went out and looked for a contractor. He came and he was discussing code up and down. At the end of the day he did what he wanted to do and didn't let me know. I was shocked that I got the violation. I immediately called the bungalow colony and stopped work immediately. I told the guy to pack up and go. If I had the choice I would not go through this again. The cost between hiring people to go through repermitting and do everything properly. It is one little room. I don't know if that is a concern you want to attack. The other aspect the reason I expanded is the need became bigger. My father passed away 6 years ago. My mother has a bungalow a couple bungalows down. On Saturdays she comes over to my place. I have a disabled brother that comes up every week. I have 9 kids. The whole combination of everything together lead to remodeling. I put the new room into the equation. That guy failed me.
- Paula E Kay: The name of your contractor?
- Isaac Morganstein: The company is Campus Structure near Pine Bush.
- Steven Burke: They know the codes in Orange County.
- Gregg Pitula: This bungalow colony increase in height code is strictly a Fallsburg zoning code in the bungalow colonies.
- Steve Altman: You still have to go for a permit.
- Gregg Pitula: Correct. If the contractor would have filed a permit with our department we would have denied the permit for the addition. If he would have come to us like he was supposed to we would have had to deny it and we would be talking about that. Instead we are putting the cart in front of the horse.
- Paula E Kay: Did you pay for the permit?
- Isaac Morganstein: The price was the cost and the work.
- Paula E Kay: He didn't break it down for you?
- Isaac Morganstein: He didn't break it down. Also he

was discussing code. He took a license of electrician. Plumbers. Everything he was doing was to conform but he didn't do the actual thing.

- Larry Zierler: Are you happy with the shell?
- Isaac Morganstein: No I am not happy. Going back to permits if they require things to upgrade or change obviously we will have to do that.
- Gregg Pitula: You are going to have Mike or someone come out to look to see if addition can bare the weight?
- Joel Kohn: It will have to be in the engineering report.
- Gregg Pitula: If the Board does approve it the first thing we have to do is make sure the structure underneath is capable of supporting it. We are going to need an engineering report then we can go from there with the code stuff.
- Steve Altman: Why don't we get the engineering report before we approve?
- Steven Burke: That's what I am saying. Why don't we postpone it for 30 days until we know? Are you comfortable going forward with this pending the engineering report?
- Board members state being comfortable.
- Steven Burke: Okay so we will go forward. If it does vote.
- Steve Altman: I am not comfortable.
- Steven Burke: So 4 people are comfortable and 1 is uncomfortable. So we will go forward. Obviously all open permits on this property even though it has nothing to do with you. Anyone from the public like to speak? Public portion is closed.
- Joel Kohn: I just want to point out that there are other bungalows in this colony that have 2 stories.
- Steve Altman: They got permits.
- Joel Kohn: Yes. I am not denying that fact.
- Discussion.
- Ilian Hutchinson: The other buildings got variances or was the law changed?
- Joel Kohn: I believe until 2006 or 2007 you were allowed.
- Gregg Pitula: By the pictures it doesn't look like the addition is creating a new fire hazard to any of the neighbors.
- Steven Burke: Board comments?
- Mike Bensimone: I've never been of the philosophy that you should penalize someone because they didn't ask for permission first. It is definitely negative but you have to look at the merits of the case itself as if they

came to you first. That said I am not a fan of adding second stories to bungalows. However it already exists in the area. It is not the entire second floor it looks like just one room. Obviously there is a need for it. Provided that everything is up to code and the structure is sound I don't have much of an issue.

- Gregg Pitula: Anytime anybody does anything like this we always ask for an engineer to look at the structure underneath.
- Neil Sapolsky: What year was the original bungalow put up?
- Gregg Pitula: I don't know. We have had it in the past we had the contractor dig protective gears.
- Neil Sapolsky: I am with you. Engineering report.
- Steven Burke: Steve any comments?
- Steve Altman: I've said my comments.
- Steven Burke: Whether the benefits can be achieved by other means feasible to the applicant?
- All Board members vote yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members vote no.
- Steven Burke: Whether request is substantial?
- All Board members vote no.
- Steven Burke: Whether request will have adverse physical or environmental affects?
- All Board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All Board members vote yes.
- Steven Burke: I just want to make one statement on this type of project that we see many times in the town of Fallsburg. How I am going to determine if I am going to vote no a project like this is that it is definitely not good to do something you shouldn't have done before you come here. It really is a slap in the face to the town and this Board. Your problem is with the building. Something was done improperly. How I vote on projects like this and I look at it before it was built. I look at it as if you were asking before you did it. That makes me feel a little better. Yeah I am angry it was done the wrong way. Does that mean you have to be punished and fined? If I was willing to vote on it before why wouldn't I be willing to vote on it now? I'm not happy that it was done the way it was done.
- Ilian Hutchison: My decision was based on the fact that it was legal before and we don't know how long it has been. It was legal to the other buildings. You are still at fault because of the contractor but that was my deciding factor.

- Steven Burke: That is just how I do it. Lead agency?
  - MOTION:
  - Mike Bensimone motions for lead agency. Steve Altman seconds. All in favor.
  - MOTION:
  - Mike Bensimone motions for negative dec. Steve Altman seconds. All in favor.
- Steven Burke: Do I have a motion with all these conditions? One is pending engineering report approval. All open permits on property must be closed out on or before May 1<sup>st</sup>, 2020 with an additional 20 days granted as per the Building Department.
- Paula E Kay: That means if the Building Department sees they were working diligently as opposed to at the end of the 30<sup>th</sup> and they don't get started.
- Gregg Pitula: I am not going to hold this guy hostage if someone he doesn't know has a unit that isn't diligently working on closing those. That isn't fair to him. As long as the place is working on closing permits.
- Steven Burke: Okay that's fair. Do I have a motion?
  - MOTION:
  - Mike Bensimone motions for conditional approval. Neil Sapolsky seconds. Steve Altman denies. All others in favor.

Mike Bensimone motions to adjourn. Neil Sapolsky seconds. All in favor.