

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

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

**June 18th, 2020**

Steven Burke, Chairman, Steve Altman, Thomas Little, Ellyane Hutchinson, Larry Zierler, Board Members, Melissa Melko, George Sarvis, Code Enforcement, Paula E Kay, Deputy Town Attorney

- Steven Burke called the meeting to order.

### **NEW BUSINESS:**

1. ASHTON CLARK – SBL# 8-1-18.2- Requests a use variance to allow a replacement doublewide manufactured home that is more than 12 years old. Zone: AG. Acre: +/- 2 acres. Location: Hasbrouck Rd. Woodbourne.
  - Ashton Clark and Glen Porter represented.
  - Steven Burke: We know the mailing are done. Let us know what you would like to do with this trailer and why we should vote it come to pass.
  - Ashton Clark: I would like to remove the trailer that is there now built in 1972.
  - Glen Porter: I heard from George that the roof on the 1990 double wide that the roof in need of repair.
  - George Sarvis: That was Steve.
  - Glen Porter: I just did that roof 7 years ago. When we put all this information in and we spoke to Denise before we were going to come in March. It has to come apart. We had everything already lined up. We have people to come move it and put in a new metal roof. Also to put in block skirting so it had extra space underneath there so the sewage and water was not sitting on the bare concrete. The house we are living in now is a 72. This is a 94. It is bigger. The house we are in now is a 2 bedroom. We have 4 children. This is a 3 bedroom. It is bigger and wider. The one we are in now you can tell the age.
  - Steven Burke: Do you own the property you are going to put this on?
  - Glen Porter: Yes sir. I spoke to several neighbors that live around us and since March several came and asked us how soon we are going to start the demo

because it is an upgrade. They've seen pictures of the new house. They are waiting for the new upgrade to happen.

- Steven Burke: Okay. We can't take any of that information because it is hearsay and nobody is here to speak on it now. We are going to hold it for over a month for the public hearing.
- Paula E Kay: There may be one member of the public hear. When you open it for public there is a phone number at the bottom. I am a little uncomfortable with unmuting because we don't have a name or photo. Maybe Melissa can text them to see if they want to speak?
- Melissa Melko: Yeah I will do that.
- Steven Burke: So you are okay with hearing the 1 person?
- Paula E Kay: Absolutely you should hear whoever is here and then make your decision about holding it open.
- Steven Burke: Okay Ashton anything else you can tell us to help with our decision?
- Melissa Melko: It is an iPhone and they would not like to speak.
- Glen Porter: I just think the new one would be a drastic upgrade.
- Paula E Kay: Where is it now?
- Glen Porter: 42 in Grahamsville just before you bend the hill at the old Sugarloaf Garage.
- Steven Burke: Do you have an address?
- Glen Porter: If you give me a moment I can text my brother for the address.
- Paula E Kay: So it is your brother's?
- Glen Porter: It is my brother's home that is having one delivered. They were supposed to be delivered in May and now will be delivered within 8 to 10 weeks from now. I am a standstill with him getting a new home.
- Steve Altman: You're delayed anyway. He is not going to give you what you want until he can move into something new.
- Glen Porter: No they have a camper.
- Ashton Clark: We have to take that one away so they can get what they want.
- Glen Porter: 7278 State Route 42 Grahamsville NY 12740.
- Steven Burke: Okay thank you. Anything else you'd like to tell us? This is your opportunity.
- Ashton Clark: I feel like it is an upgrade to the town.
- Steven Burke: Okay. Does anybody have any questions? No questions. Okay. There are violations right George?
- George Sarvis: Yes. For starting the building without a permit but that is coming down.
- Ashton Clark: That's down already. I sent Denise an email and she said she just had to send it over to George.
- Glen Porter: That was back in March. I took it down back in March.
- Steven Burke: That's the only violation?

- George Sarvis: There was some clutter around the property they got cleaned up.
- Steven Burke: Okay. Board comments?
- Ellyane Hutchinson: No comments I think if they are ready to go they should get it done as quickly as they can.
- Steve Altman: I agree. If we were voting I'd vote to let them proceed.
- Thomas Little: I don't see there is much of a difference. Upgrade of house and lifestyle.
- Mike Bensimon: I have difficulties on a technical standpoint. The difference being that the area variance you just need 1 out of the 5 criteria. The use variance you need all 5 criterias. I support the project I just don't believe the project meets all 5 criteria. As much as support it and think it would be an upgrade but from the technical standpoint I don't know it will meet all the criterias.
- Steven Burke: I understand. I feel the same way. Okay so we will open the public portion. Nobody wants to speak on that? Anybody here from the public? Okay. We are not going to close the public portion. We are going to hold it open. This also gives us an opportunity to look at the trailer at the 7278 Route 42 Grahamsville NY 12740.
- Ellyane Hutchinson: Keeping it open is a delay for 2 places?
- Steven Burke: Correct. We won't be voting on this until next month.
- Glen Porter: How is you going to look at it going to be different from me sending photos?
- Steven Burke: You didn't show us any pictures of the inside.
- Glen Porter: I wasn't told to. That's what Denise and Gregg told me to do. They just said the outside. That it didn't look like a shack. That there was no broken windows. The siding wasn't falling off. I did everything I was asked to do.
- Ellyane Hutchinson: Do we vote about whether we do a public hearing?
- Paula E Kay: You absolutely can.
- Ellyane Hutchinson: If we can keep the public portion open until next month or close it now?
- Steven Burke: We suggested in the work session that we keep it open.
- Paula E Kay: I'm trying to figure out a way we can work this out. Is there anything they can do at the site now?
- George Sarvis: I was going to ask what the timeline for the demolition is. Where they are going to stay during the demolition. And until the new unit gets put in with all the amenities, water, electric, and sewer hookups there is going to be time involved in all that which weighs against waiting a month. Are they going to be setting up a camper? You're going to move one out and move another to get it hooked up. Are you making arrangements?
- Glen Porter: I have my own well, my own septic tank. Electric is setup. My parents live around the corner in a 5 bedroom home alone. My wife and my kids are going to stay with my mother. The demo of the trailer will only be a couple days. I have

an excavator coming in with dumpsters. This was all set up we were ready back in April. Everything is still in motion they are just waiting on me to hear everything is a go.

- Steve Altman: Is there an asbestos issue here?
- Glen Porter: I have no asbestos in the home. It is paneled walls that's how old the trailer is. They were built with 2 x 3 walls with insulation just paneled over top.
- Steven Burke: What do you suggest Paula? Hold it open or go forward?
- Paula E Kay: You heard my concerns about public participation. We do have a member of the public hear that who may or may not be a neighbor. Melissa I do not know if you are aware or not if the person who does not want to speak is a neighbor. I would like for the applicant not to have to come back to the Board but I am still concerned about public notice because the mailings were not done for the meeting for tonight.
- Steve Altman: They hold no responsibility for the issue with the mailing.
- Paula E Kay: Yes it is their application.
- Glen Porter: It cost us \$80 to send the mailing before and you're asking me to do it again.
- Paula E Kay: This is an unprecedented situation we are all in because of the pandemic. This is the first time the Board has met since February. Your application was due to be held in March and the notices went out in March. Technically the notices did not have to be resent because of the emergency declaration of the governor. If the Board feels a degree of comfort that legally and technically there was no requirement to re notice. It is whether or not you feel there may be less public participation because the adjoiningers because of the notice or it may be that the neighbors are in favor and usually when they are in favor they don't come out. Usually you see the public when there is something they are unhappy with.
- Steven Burke: So the applicant did not have to redo the mailings?
- Paula E Kay: Technically.
- Steven Burke: I am goo with that. How about everyone else?
- All Board members agree.
- Steven Burke: I am feeling a little reluctance to go forward with this and vote on it tonight because I would like to hold the public open.
- Ellyane Hutchinson: Is it possible to email or phone call the neighbors so it is not delayed for another month?
- Paula E Kay: The problem with that is you are meeting tonight. If the neighbors are contacted and don't have an issue that is great. If they do have an issue then what?
- Larry Zierler: We have a problem that the same thing could happen next month.
- Paula E Kay: They had their notices for the March meeting.
- Larry Zierler: What says people are going to pay heed to it when you have this awkward kind of meeting?
- Paula E Kay: I don't think that is the issue. It is an issue whether or not anybody

who wanted to come in March realized it was tonight. Or there was nobody really interested in coming because they realized it was a good upgrade for the property.

- Steve Altman: What are there 3 neighbors?
- Paula E Kay: No there were quite a few.
- Glen Porter: They gave me for anyone up to 300 feet. I went all the way down to the Neversink campgrounds. I have 3 immediate neighbors right next to me. Mr. Powell, Kenny Terbush, and Delaney's sister who rents the trailer at the end of Hasbrouck Road. I only have 3 immediate neighbors.
- Larry Zierler: You have the phone numbers?
- Glen Porter: Powell I only speak to him when I see him outside. I don't cross paths with Terbush because we are on conflicted schedules. The neighbor in front of us never come out of the house.
- Steve Altman: Are they also in single or double wides?
- Glen Porter: Powell is in a single wide. The neighbor above me is single wide. Terbush is in what I'd say is a modular home.
- Steve Altman: If we were gambling people we would bet they are for you than against you.
- Glen Porter: I know more Powell is because he asked me about the approval and he felt I was getting the run around. He works for the town.
- Paula E Kay: I appreciate your comments about him. It sounds like he knew to be here.
- Glen Porter: I am sure everybody that reads the Democrat knows. We didn't know about we had to have someone notify us. Somebody sent my wife a snapshot of the Democrat with her in the business mail.
- Melissa Melko: We just had a 917 number join.
- Steven Burke: It sounds like we can kind of give you an idea on what our opinions are on this but I am going to hold the public portion open because it is not a gamble. I can't take the chance of somebody wanting to speak and not be given that opportunity.
- Ellyane Hutchinson: If someone had a grievance what kind of a grievance would cause a change in the decision?
- Paula E Kay: That would be up to the Board and you guys can make a determination on how you want to act tonight. Ellyane you can call the question on whether or not to go ahead tonight.
- Ellyane Hutchinson: I'd like to raise the question about taking a vote today and see if that is something everyone else agrees with. Otherwise we are stuck with next month anyway. It is a motion.
- Paula E Kay: We have a motion from Ellyane to make a determination on the Clark application.
- Steve Altman: Second.
- Steven Burke: Anybody else?

- Paula E Kay: Because we are transcribing this can you say your name when you make a motion?
- Steven Burke: Ellyane made the motion and Steve Altman seconded.
- Ellyane Hutchinson: Does Tom have to say yes?
- Paula E Kay: Yes. Tom, Larry, and Mike.
- Larry Zierler: I'm sort of two worlds on this one. I do understand the sensitivity of wanting to dot our I's and cross our t's. It is an unusual situation because something happened a long time ago and somebody has been waiting. By all rights it would be great to be expedited. In an abundance of caution it might be prudent since we have a good feeling for delaying a month but we are allowing our system to the best job for us.
- Paula E Kay: What if the Board votes tonight? We hold the public hearing open for 7 business days. We will contact all the adjoiners that were noticed. If there are any comments of concern then they will come back next month. If there are no issues with the application then after the 7 days they can move ahead.
- Larry Zierler: That is fair. The only thing we are not allowing for is someone to come out of the wind. Out of the other direction. I don't think we have to worry about that. We're looking for stakeholders.
- Steve Altman: So it is a delay of 7 days.
- Paula E Kay: 7 business days.
- Steven Burke: Are other Boards acting in that way?
- Paula E Kay: They are doing variety. Planning Boards are leaving public hearings open for 10 business days. This is a ZBA so we have adjoiners who are directly impacted. There's nobody here aside from our one public member. A lot of times as you guys know when there is real opposition not only does public attend but you get letters. We didn't get anything on this application. We didn't get anything in February and March when it was originally noticed. I would like some time so Denise and the Building Department can reach out to see if there is any opposition or comments on the application.
- Steven Burke: From the consensus of what I am getting everyone feels this is an improvement. Even myself once the applicant said they were going to put a metal roof on and block skirting. I would like to see the trailer. That was my issue. Even if I don't see the inside I would still like to see what the trailer looks like. It is 27 years old. I understand you're replacing a 72 with 93 but we are still in the 19s. My opinion is if you guys want to go forward that's up to you. To me it is kind of weird holding it open. Voting on it tonight and giving them permission to do it then in 6 days saying we have too much opposition. These are strange times. Nothing we are going to be doing has ever been done before.
- Steve Altman: Ellyane do you want to amend your motion to match Paula's suggestion?
- Larry Zierler: Can't we see the trailer?
- Paula E Kay: You have photos in your packet?

- Steven Burke: You suggest we vote on it tonight with a 7 day?
- Paula E Kay: You have an existing motion that was seconded and that was it. That motion doesn't go anywhere. I made a suggestion if someone is interested in that you can turn that into a motion. Or it sounds like you're heading toward leaving everything open until next month. Someone needs to make a motion.
- Steve Altman: Did we finish the vote on Ellyane's motion?
- Steven Burke: We did.
- Steve Altman: So everybody voted no except Ellyane and I?
- Steven Burke: No. 2 people voted yes and everyone else did not vote.
- Paula E Kay: I believe they voted no.
- Steven Burke: I didn't hear it.
- Ellyane Hutchinson: Zierler voted no, correct?
- Larry Zierler: Correct.
- Steven Burke: Okay. Do we have any other suggestions? I suggest we can give the applicant an opinion of whether we feel it is a strong improvement. They can get a little idea of our comments. Then we vote on it next month and be totally safe in the realm of the law. We can move forward another way which was given to us by our attorney. I would be more than happy to lead with some comments to let the applicant at least know if we are kind of in favor. For me anyway. I am in favor the project. I just would like to hear from other people.
- Larry Zierler: You're saying the spirit of the moment is such. The spirit of the group is such. As a take away.
- Paula E Kay: I have another option. You could allow the applicant to move forward at their own risk. The Building Department will allow the applicant to move forward. They won't issue any violations as they move forward. We just hold everything open until next month and vote on it then.
- Ellyane Hutchinson: That's fine with me.
- Paula E Kay: We've done that before. That way the applicant can move forward but we are holding it open just in case there is something the adjoiners have something to say.
- Steve Altman: Are you going to call the three neighbors?
- Paula E Kay: I'm not going to call anybody. We're just going to hold it open until next month. The public hearing.
- Ellyane Hutchinson: They can move forward right away?
- Paula E Kay: Yes. George shook his head he is okay with that.
- Steven Burke: At their own risk. If they move the trailer there and something comes up then it is at their own risk. It opens up a can of worms.
- Larry Zierler: That's like placing a stumbling block in front of a blind person.
- Paula E Kay: I don't predict any issues. We're just trying to keep you guys moving forward, keep the applicant moving forward. If there was someone who had major opposition somebody would have most likely said something.

- Steven Burke: Let's not go down that road. Let's just have the meeting tonight. Let's just vote on it. Is that okay with everybody?
- All members agree.
- Steven Burke: Public portion is closed. Any Board comments?
- Mike Bensimon: I still want to say I haven't heard any extenuated circumstances that would at least get past the self-created hardship part let alone all 5 criteria for the use variance. That's just my observation.
- Steven Burke: Do you have the use variance criteria in front of you?
- Mike Bensimon: I don't have the checklist. I just have the Department of State's guidance in front of me. Speaking of the auto rules and case law.
- Paula E Kay: I am pulling it up for you.
- Thomas Little: I have it.
- Steven Burke: Is it alright to have Thomas read them?
- Paula E Kay: Yes.
- Thomas Little: Whether benefit can be achieved by other means feasible to applicant?
- 3 Board members vote yes, 3 vote no.
- Thomas Little: Undesirable change in neighborhood...
- Paula E Kay: Tom are you reading use or area?
- Thomas Little: Oh area sorry.
- Paula E Kay: It is okay. I have them. I will read. The applicant cannot realize a reasonable return on his or her investment provided that lack of return is substantial as provided by financial evidence. The applicant sent in the finances so you see what the bills are. Essentially this means there is no other use for the property that they are financially able to do.
- 4 Board members vote yes, 1 votes no.
- Paula E Kay: The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood?
- 3 Board members vote yes, 2 vote no.
- Paula E Kay: The requested use variance if granted will not alter the essential character of the neighborhood.
- All Board members vote it will not alter the character.
- Paula E Kay: The alleged hardship has not been self-created.
- 3 Board members vote it is not self-created, 3 Board members vote it is self-created.
- Paula E Kay: So now we need a motion.
- Steven Burke: Lead agency?
- Paula E Kay: Nope.
- Steven Burke: Negative dec?
- Paula E Kay: Nope.
- Steven Burke: Do I have a motion to approve and if the applicant is still on and

they approve to put a metal roof and block skirting. With that agreement do I have a motion to approve or deny?

- MOTION:
- Ellyane Hutchsinon motions to approve. Steve Altman seconded. Thomas Little approved. Mike Bensimon disapproves. Larry Zierler approves. Steven Burke approves.

Steve Altman motions to adjourn. Ellyane Hutchinson seconds. All in favor.