

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

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

**November 12th, 2020**

Steve Burke, Chairman, Arthur Rosenshein, Thomas Doolittle, Larry Zierler, Neil Sapolsky, Ellyane Hutchinson, Mike Bensimon, Board Members, Marisol Torrens, Code Enforcement, Paula E. Kay, Deputy Town Attorney, Melissa Melko.

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

### **OLD BUSINESS:**

#### **1.CENTER FOR DISCOVERY -**

- David Fanslau represented.
- David Fanslau: Glenn Smith can't be here. He sent me the memo and the plans. The parcel as it stands right now is a 1.07 acre parcel which is the corner of Main and Cole. It has 2 older homes and 1 new 3 story commercial building. There are a few area variances that we are applying for. The goal is to take the new 3 story building and make it its own tax lot so the benefactor building the building can make it a taxable lot. I believe he has an application into the IDA for that purpose. It would separate out the Center for Discovery's other properties that would not be part of the lot. I would imagine you have copies of the memo. What he is proposing is a 3 lot subdivision which number 5 Cole Street would be a lot area reduction from 12,500 square feet to 4,150 square feet. A lot width reduction from 100 feet required to 37 feet. One side yard reduction from 10 feet to 1 foot. Boths side yard reduction from 30 feet to 11 feet and maximum lot coverage from 25% to 35.5%.
- Steven Burke: I don't have that can you give me that information again.
- David Fanslau: I'll go lot from lot. 5 Cole Street which is a house behind the Hurleyville General Store. It was its own lot at one point. It was combined for this project by the Planning Board. We need to separate it again so the new 3 story building can become its own tax lot.

- Steven Burke: You're going from to?
- David Fanslau: This red portion is what I am talking about right now in Glenn's colored map. That would be a lot area reduction from the required 12,500 square feet to 4,150 square feet. A lot width reduction from 100 feet to 37 feet. 1 side yard reduction from 10 feet to 1 foot. Both side yards reductions from 30 feet to 11 feet. The maximum lot coverage increase from the allowable 25% to 35.5%.
- Steven Burke: Okay.
- David Fanslau: That's the parcel in red. The next one would be the parcel in green on the plan. It is on the memo as the Aywunicki house named after the people who purchased it. That would have a lot area reduction from 12,500 square feet to 2,480 square feet. A lot width reduction from 100 feet to 16 feet. 1 side yard reduction from 10 feet to 3 feet. Both side yards from 30 feet to 6 feet. Rear yard reduction from 25 feet to 1 foot. The last is maximum lot coverage increase from 25% to 40%.
- Paula E Kay: For the Board and the public's edification can you explain why this is happening now as to opposed to previously? Also which parcel will be owned privately.
- David Fanslau: It would be the parcel in yellow would be the parcel that is a taxable lot. To take this back in time this project, the 3 story building and the parking, had received Planning Board site plan approval. The benefactor building the building has a desire for this. It is going to have for profit businesses in the lower level so the lot should be a taxable lot. In order for that to occur it needs to be its own sectioned lot. I believe the benefactor is going through an IDA application as well. For the purposes of why we are looking for the variances on the other two lots to be created is so that the 3 story building and the associated parking would be separated out from the 2 older houses that are on the currently combined lot.
- Paula E Kay: There was also a little bit of back and forth with Glenn about Aywunicki house is going to have 2 spaces associated with it. That variance is going to be reduced a little bit.
- David Fanslau: I don't have the changes in percentage.
- Paula E Kay: It will be less rather than more.
- David Fanslau: That would be the 2 spots that are immediately the end of the green colored section. Those are the spots you are referring to. They end right behind the rectangular green shaded parcel.
- Paula E Kay: Okay.
- Steven Burke: Those are the 2 parcels correct?
- David Fanslau: Yes. The variances we are looking for are the green parcel and the red parcel. We were just discussing the 2 parking spaces right behind the currently green shaded parcel would become part of that green parcel.

- Paula E Kay: Those variances as David listed them for the Aywunicki house will be less than what we noticed which is fine. If they were more we would have an issue.
- David Fanslau: Those 2 parking spaces are both 10 feet wide each. That would add 20 feet so the rear yard setback from the requested 25 feet to 1 foot would go to 25 to 21 feet if we are included those 2 parking spaces.
- Steven Burke: Okay. Anything else?
- David Fanslau: I think that is it. I think Glenn gave a short history which we just did about the background of the variances. I think there was one area variance approved back in September. Excuse me that is the application date. That is all the information.
- Steven Burke: Proof of mailings?
- Paula E Kay: Last time we took care of that. Last time we were waiting on the 239 from the county which came in with local determination. They have comments but it is local determination.
- Steven Burke: They had quite a few suggestions correct?
- Paula E Kay: Yes but remember in the event this board approves the variances it is going directly to the Planning Board. These are items two Planning Board members including the chair are watching tonight and I am sure these are items they will go over with the applicant to be addressed.
- Steven Burke: Anybody from the Board?
- Mike Bensimone: Obviously the variances required are substantial but the overall purpose is to subdivide this lot. I am trying to look at the application at what the heart of the hardship is. Specifically it makes it seem like this is something required by the regulatory agency and is not self-created specifically because variances are mandated by the County of Sullivan IDA for the requirement of IDA. We are not dealing with a governmental or regulatory agency as requiring this. This is a voluntary application for tax abatement. The hardship doesn't seem like anything required through a regulatory agency but it seems like the only possible hardship is whether or not this project would be financially feasible if this tax abatement wasn't granted which I am not seeing here. I guess my first question is if this tax abatement was to be denied or could not go forward would this project be able to go forward as is?
- Paula E Kay: We have to be careful. One of the reasons this project is because they are seeking IDA benefits but as a Board we have to be careful talking about tax abatements. That's not the purview of the Zoning or the Planning Board. You are looking at the application. If what you are saying that it is a self-created hardship I would agree with you. That doesn't mean the application fails by any means that's just one factor you look at in your review process.

- Mike Bensimon: Alright I see. I would see the financial implications. If we did not find hardships sufficient enough to grant all these variances then we'd have to do it based on one of the other criteria at our discretion. Technically if it was a financial hardship that wouldn't be financially feasible for this project to go forward if the tax abatement or the application did not go through. Typically we would be able to see some sort of financial analysis or something that would help us come to the determination that this project can't go forward unless this application was allowed to be submitted. Which we have not really seen.
- Paula E Kay: Those are criteria for a use variance. You are exactly right. Alleged hardship is unique. Cannot realize a reasonable return. You have before you is an area. What you are looking at is whether the benefit can be achieved by other means feasible to the applicant. You guys will go over all these things. Whether it is an undesirable change in the neighborhood. Whether the request is substantial which yes it certainly is substantial. Whether the request will have adverse physical or environmental effects. Whether the alleged difficulty is self-created and I agree with you that this is self-created. The financial hardship is not necessarily something to look at for an area variance.
- Mike Bensimon: When considering it we would have to look at all the hardships if the applicant was alleging there was a hardship involved. We can approve if it meets one of these criteria which it can easily do that because it doesn't have any environmental impact alone then we can approve even though it does not meet the other 4.
- Paula E Kay: Correct.
- Mike Bensimon: Okay that is one thing to consider. Aside from the plans I think it would be beneficial to see what the financial impact is to the neighborhood or to the owner as another piece of information when coming to our final determination. All I have in front of me is a lot of variances to override our zoning rules but really no hardship associated with it. That is the only comment I would have.
- Steven Burke: Anybody else?
- Ellyane Hutchinson: Is it possible for the green property to go all the way out to the street? If we are separating them out into separate properties if that property were to come up for sale you'd have this bizarre circle around it. If it went to the street then it would be the full strip.
- David Fanslau: There would be an easement that goes over this parcel. The 30 space parking lot is required for the site plan. Keeping the parking lot as part of the parcel for the 3 story building would be beneficial for complying with the site plan.
- Steven Burke: Anybody else?
- Larry Zierler: I recently drove by it. The building is partially half built. All these other things are now being considered. Why wasn't that done before construction

began?

- David Fanslau: Basically there wasn't a need for the Center to divide the building at the time. With the uses of the new 3 story building to have it on its own SBL would be beneficial to the tax assessor's office so that use would be clearly separated from the other uses that the Center has for the other 2 houses on the property. Right now it is all a 1 acre parcel that is exempt from taxation. The houses we have shown on here in the red and green are both parcels that house Center staff that support the Center's nonprofit program. This process if the variances were awarded would align the yellow shaded portion to be its own tax lot and that would assist the assessor in appropriately assessing the parking lot and the 3 story building. It really is separate from an IDA process.
- Steven Burke: I just want to make it clear that none of our decisions should be based on whether the property is taxable or not. That has nothing to do with the variance. It should have nothing to do with your decision. Anyone else have any comments? The only comment I have is the appearance of anything that has been done or is there now is not going to change. The building is there and the 2 buildings are in the back. The only thing that will change is an imaginary property line so the applicant can receive IDA funding. That is all I have to say. Anybody else? No? Okay. David are you done?
- David Fanslau: Yes.
- Steven Burke: We will open it to the public. Anybody from the public like to speak? I am guessing there is nobody from the public. We will close the public portion. Any violations?
- George Sarvis: No violations.
- Steven Burke: Any other Board comments before we go down the list? No? Okay.
- Thomas Little: I have to recuse myself.
- Larry Zierler: Quid pro quos and the appearance of it. I am hearing the word benefactor. The benefactor has, rightfully so as an investor, an interest in the IDA and making the building more marketable. I am just asking for a point of information that might be a quid pro quo. Is that something we should be concerned about?
- Paula E Kay: There is no precedent. I am not sure what you mean. The benefactor has a long standing interest in the community because he has a child at the Center and he wants to make an investment in the Town of Fallsburg.
- David Fanslau: When I described that it was a distinction between a building that the Center for Discovery had actually built and was building as opposed to another entity. It is simply another entity that has built this building and is not a building the Center is building.
- Steven Burke: Anybody else?
- Neil Sapolsky: I think it is important what was said that the building is up already.

It is just changing some imaginary lines. That made me comfortable.

- Steven Burke: So we will go down some of the criteria. Whether the benefit can be achieved by other means feasible to the applicant?
- 4 board members vote yes, 1 votes no.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All board members vote no.
- Steven Burke: Whether the request is substantial?
- All board members vote yes.
- Steven Burke: Whether the request will have adverse physical or environmental effects?
- All board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- All board members vote yes.
- Steven Burke: Okay as I wrote down what Mr. Fanslau stated. I wrote it all down the way it was presented to us. I am not going over all the various variances. Lead agency?
- Paula E Kay: This came directly from the Planning Board. I don't think you need lead agency or neg dec.
- Steven Burke: Do I have a motion to approve?
  - MOTION:
  - Neil Sapolsky motions to approve. Ellyane Hutchinson seconds. Mike Bensimon opposes. All others approve. Motion approved.
- Steven Burke: You have your application granted.

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