

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

TOWN OF FALLSBURG ZONING BOARD MEETING

January 21st, 2020

Steve Burke, Chairman, Ellyane Hutchinson, Mike Bensimone, Neil Sapolsky, Thomas Little, Board Members, Larry Zierler, Alternate Board Member, George Sarvis, Marisol Torrens, Code Enforcement, Paula E. Kay, Deputy Town Attorney, Melissa Melko.

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

NEW BUSINESS:

1. ALTER TAUB – SBL# 24-4-5 – Requests a use variance to allow a multi-family dwelling in a B zone. Zone: B. Acres: 1.10. Location: 12 Riverside Dr., Woodbourne. Cross Roads: SR 52.

- Richard Krogan, Mr. Floyd, and Mr. Taub represented.
- Richard Krogan: I believe you wanted to talk to Mr. Taub about the endorsement?
- Paula E Kay: You're here. He is here. We are good.
- Richard Krogan: We are making an application for a variance to have the properties rezoned to RH residential housing from zone B. I will have Mr. Floyd talk about the project.
- Mr. Floyd: We have an existing building. The building is beyond repairs. What we are proposing to do is build a new structure which would be more in line with the community. That would consist of 12 units. 2 levels. Each unit would be approximately 600 square feet. We have adequate parking. We could meet all the setbacks for an HR zone.
- Richard Krogan: The background on it from what I gather is 12 Riverside Drive was built in 1920. It was sold on September 17th 1997 for \$70,000.00. Then sold again on July 8th 2006 for \$200,000.00. My client bought it on July 17th 2019 for \$30,000.00 at an auction foreclosure. Obviously he was responsible for paying the taxes and getting everything current. When he purchased the property he believed the property was zoned for multifamily. To his surprise it is not. His hardship is based upon the property being in the B zone and commercial which prohibits the multifamily units. We're requesting the change to be residential which the property

abuts that. My understanding is the next property is residential. We are requesting the use variance. We understand it is very difficult to get the use variance. He paid \$30,000.00 for the property and we have to demonstrate the financial hardship. He had to pay the back taxes of \$17,000.00. He hired an architect and engineer. He had to hire technicians for the demolition. Survey fees. Demo fees. I have included all of this in the supporting documentation and my letter dated November 25th. All his fees amount to \$116,550.00. As you heard from Mr. Floyd the structure is in bad shape. Despite all the money he has outlaid he has to get the building up to code. According to Mr. Taub he is not able to rent it as the commercial space. What lends credence to that is the property was bought at a foreclosure and initially in 2006 it sold for \$200,000.00 but in 2019 he bought it in \$30,000.00. A significant decrease in price. The local older hotels have gone out of business. There are new hotels in town but they have gaming. He is not proposed to do that or is it fair. I'm not sure it is permitted under your code there anyway. He is going to have to invest a considerable sum of money to improve and construct a new building there. The alleged hardship relating to the property is unique in that it doesn't apply to a substantial portion. Again we are abutting right against the residential. The structure is built like a multifamily residential structure. It is not looked to built commercial and its location is not conducive to an inn or hotel. The homes within the approximate location of the property are mostly residential and multifamily homes. It is unique to this property because we are asking the board to extend by 1 property. The requested use variance if granted won't substantially alter the essential character of the neighborhood as it is neighboring residential. We are saying the alleged hardship hasn't been self-created because my client unbeknownst to him relied upon the information available to him and that he thought it was a multifamily. I don't know if Mr. Floyd or Mr. Taub want to add anything.

- Mr. Floyd: We did some research on it too. It appears it has been called a multifamily for sometime. If I had went to the auction and it was posted as a multifamily and it was on the assessor's office as a multifamily I would assume what I was buying was a multifamily. I would not assume I would have to go beyond that. I have bought several properties myself and I have never had to question whether they are in the correct zone or not. I buy them at face value that they are there. This property has been there for some considerable amount time and listed as multifamily. I don't know when the zone changed or why it was taken out of that position and put into B. It is showing time and time again that people have tried to do something with this property and been unsuccessful.
- Richard Krogan: I don't know if the Board has any questions we may be able to answer at this time.
- Steven Burke: The only question I have was this information readily available when the property was purchased? Could the applicant have researched and saw it wasn't in the correct zone that he wanted it to be?

- Mr. Floyd: He would not have had any knowledge. He would have bought it at face value like anyone else that was buying it. He would have seen he was buying a multifamily. He would not have known until he contacted me and I am trying to have it comply with the zone. Other than that he would not have had any idea. He would have went in there and do what he is trying to do. Rehab an old building. Fix it for the cold. Get rid of the violations. That's what he was trying to do when he got a stop order.
- Steven Burke: So at the auction itself it was listed as a multifamily?
- Mr. Floyd: Yes.
- Paula E Kay: Can you show us that? Also whatever material is given to you at the auction does not bind the Board or the town. The town doesn't provide that information. When you are buying at the auction you are always told you are buying at your own risk.
- Mr. Floyd: That may be but don't you think with this property having the history that it has that the assessor's office or the town selling it would tell somebody right away that this building does not comply?
- Paula E Kay: I don't think it is their responsibility. It is your client's responsibility to ask whether or not it complies with what their intended use is.
- Mr. Floyd: Again he is buying at face value. He does not have that knowledge.
- Paula E Kay: I understand but he can get that knowledge or it is his risk. Sometimes you take a risk and it works out really well and again when you are buying at auction you are buying at your risk.
- Mr. Floyd: I have bought several properties through the town and the county. The risk is your risk on the condition not the zoning. I have never had anyone tell me that.
- Paula E Kay: I guess you are luckier and this has never come up before. In this particular issue there is a zoning issue. That is why you are here.
- Steven Burke: It is also a county auction not a town auction correct?
- Paula E Kay: Yes.
- Mike Bensimone: Mr. Krogan do you feel the auction had a duty to disclose the nonconforming structure?
- Richard Krogan: Yes I do.
- Mike Bensimone: If that is the case and there is misfeasance on their part then however we decide you would have some redress with them, don't you think?
- Richard Krogan: It is debatable if we would. It may be my client's belief but also driving on the street and seeing the surrounding properties you may also be lead to believe it is a residential area. My client in his due diligence could drive down the street and would have reason to believe That this is a residential area where does it end?
- Steven Burke: We just had a case last month where it ended right at that particular property. I don't know if that applicant knew either that they weren't able to build a residential. It just so happens they didn't qualify because they didn't prove to this

Board they needed the variance. Sometimes it happens that way unfortunately. I don't know about you if I was going to buy a piece of property and I was going to invest all this money I would make sure I was doing it correctly. I would probably hire a lawyer which is the smartest thing you can do. Not only now but before.

- Marisol Torrens: About where the property ends. I ask myself that question today and I had my secretary look at it. I didn't ask if it was the rear or the side but one part of his property is where the zoning is Residential but then the borderline jumps to B. We looked back on the maps and in 2011 it was Residential B and the zoning changed in 2018 so the building was there. You are saying that place is being a B zone for a long time,
- Paula E Kay: Another option is if you are adjacent to residential zoning district you can request a zone change from the Town Board which is a much less onerous process than a use variance from this Board.
- Richard Krogan: I would have thought we would have had to exhaust all of our remedies before we can go to the Town Board.
- Paula E Kay: No. They are completely different actions. I don't know if the town would entertain it but you can always request a zone change.
- Ellyane Hutchinson: They would need a special permit anyway even if it was residential to do a 12 unit building. In this zone they are right across from a business and next to a business as well.
- Mr. Floyd: We did approach the Town Board on this property. They said they could not act on it that the Zoning Board would have to act on it.
- Paula E Kay: I believe they said they didn't choose to act on it. The Town Board does not have to act on a zone change request. It is completely discretionary. I think that is good information for this Board too.
- Steven Burke: They would rather not do that they would rather it comes through the Zoning Board.
- George Sarvis: From Code Enforcement's point of view if the applicant had applied for a permit he would have gotten all the information right up front before sinking anymore money into it. He started to work and that is when we found out.
- Steven Burke: So besides it not being zoned the applicant was starting to do work without a permit.
- George Sarvis: And had he applied for the permit we would have given all the information.
- Steven Burke: But they know when they start to do work that they have to require a permit. You should be seen or go to the town Code Enforcement. Mr. Floyd did you direct your client to do that?
- Mr. Floyd: Yessir.
- Steven Burke: Did your client do that?
- Mr. Floyd: We did go to the Building Department and research where the building was sitting and found out that it was in the B zone. From there we were advised from the Building Department to submit a set of plans and that would get us over

to the Zoning Board.

- Steven Burke: Did you start work before? Did you go to the Building Department after you started work and got the violation?
- Mr. Floyd: We went after we got the violation.
- Steven Burke: That's fair. You're not the only one that does this unfortunately.
- Mr. Floyd: I didn't come on board until they got the violations and they asked me to do things the proper way.
- Steven Burke: They should have called you first. Any Board comments before we open to the public? No. Okay. Are you done with your presentation?
- Richard Krogan: I have one comment. One of the Board members said there are businesses surrounding it that are working. They are certainly not like this structure. It is not like a bicycle store can go into this. This was an inn. It would be perfect for residential housing as the way it is structured. It is not a store front that can be easily converted from store to store.
- Ellyane Hutchinson: Yes it was an inn so that is a business entity not a residence.
- Richard Krogan: It is also not a grocery store setup. It is a little different and harder for a business to start operating.
- Ellyane Hutchinson: And it looks like a teardown.
- Richard Krogan: Yes it is in need of a lot of love.
- Steven Burke: Anybody else? No? Okay let's open it to the public. Anyone from the public? No? Okay we will close the public portion. We already know there are 2 violations. 2 is correct?
- Paula E Kay: There is a stop work order.
- Steven Burke. Okay.
- George Sarvis: Mailings are good.
- Steven Burke: Okay so we will go to Board comments.
- Thomas Little: This for me would be tough to approve. Taking into consideration what I have heard and what I have read. I think if you are taking the requirements of buying a property you need to do the due diligence. It is not like you are spending a few hundred bucks. I know what you are saying about face value but this is not face value. You need to do your due diligence and homework. It will be tough for me to approve this.
- Mike Bensimone: I agree with Thomas wholeheartedly. There are so many other uses that can be done. If you want to live there you could do home occupation. Living over the store dwelling. Bed and breakfast. Even hotels under the right circumstances. Then so much more. It is a great property. It is right on the river. I hope that if this applicant doesn't get this variance does do something great with the property.
- Ellyane Hutchinson: I have nothing to add I agree with everyone else.
- Larry Zierler: It is a difficult precedent. You have to do your due diligence. I can hear the person's desire to make it more suitable but on the other hand I see us going down a slippery slope.

- Neil Sapolsky: I would agree you have to do due diligence. If I am looking to buy a business and I go to a business broker and he is telling me they do a million dollars a year gross and there is 20 years on the lease and I buy without looking and he then has a year on the lease, that's my problem. I didn't investigate it well enough. I would have a hard time approving this as well.
- Steven Burke: Like I have said in many of my comments there were many carts put before the horse on this one. We will do a lead agency.
 - MOTION:
 - Mike Bensimone motions for lead agency. Ellyane Hutchinson seconds. All in favor.
 - MOTION:
 - Mike Bensimone motions for negative dec. Ellyane Hutchinson seconds. All in favor.
- Paula E Kay: Let's go through the criteria. Cannot realize a reasonable return substantial as shown by competent financial evidence.
- All Board members answer yes the applicant can.
- Paula E Kay: The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood?
- All Board members vote no.
- Paula E Kay: The requested variance will not alter the essential character of the neighborhood?
- 4 members vote yes, 1 votes no.
- Paula E Kay: The alleged hardship has not been self-created?
- All Board members vote it is self-created
- Steven Burke: Now we will take a motion to approve or deny.
 - MOTION:
 - Ellyane Hutchinson motions to deny. Thomas Little seconds. All in favor.
- Steven Burke: When you buy from auction you don't have to hire a lawyer?
- Paula E Kay: You don't ever have to hire a lawyer. Should you? Yes. Should you get title insurance and a municipal search? Yes?
- Ellyane Hutchinson: They are posted in advance so you have time to research. It is a phone call usually.
- Steven Burke: You are giving the section lot numbers weeks beforehand. It would be wise to hire a lawyer. I think if this gentleman went to Floyd beforehand it would have been different.

Ellyane Hutchinson motions to adjourn. Mike Bensimone seconds. All in favor.