

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

TOWN OF FALLSBURG ZONING BOARD MEETING

January 20th, 2022

Mike Bensimone, Chairman, Ellyane Hutchinson, Neil Sapolsky, Steve Altman, Scott Lederman, Board Members, Larry Zierler, Alternate Board Member, George Sarvis, Denise Monforte, Code Enforcement

- Steve Burke called the meeting to order.

NEW BUSINESS:

1. JOSEPH AND GITTY EINHORN – SBL# 60-1-10.2 – Requests a 6 month extension of a previously approved area variance. **VARIANCE WAS APPROVED FOR A TWO LOT SUB-DIVISION.** Requests an area variance to allow a duplex home on each lot. Zone: R. Acres: 2.06 acres. Location: Corner of Lovers Lane and Route 42, South Fallsburg. Cross Roads: Lovers Lane.

- Jacob Billig represented.
- Jacob Billig: I am seeking a six month extension. Since we were before you last time the applicant has drilled some wells to see the water capacity. There is about 25 gallons a minute. He has more than enough water capacity. This Board had granted a variance which we are seeking a 6 month extension for 2 single family units. Based on the well testing he has done some engineering and he would like to approach the Town Board to see if they would approve additional units with the zoning change. The only purpose for tonight is the 6 month extension. He has spent not only money on water testing but on engineering for the Planning Board approval process for the 2 units. If the Town Board won't consider additional units he would then apply to the Planning Board to seek site plan approval for the 2 units. We seek a 6 month extension for that.
- Mike Bensimone: So it sounds like there was progress over the last 6 months. It isn't sitting stagnant right?
- Jacob Billig: Yes he has definitely spent money on engineering and moving forward. Truth be told if the applicant can add a unit or two it is more cost effective in terms of construction and development. There are a bunch of

duplexes around that area. Whether the Town Board will approve that I can't predict.

- Larry Zierler: The last one was predicated that there was no city water or sewer. There was nothing connected across the street. There is a cut off in the middle of the road. That is not going to change. We are still dealing with wells. He may have more wells than other places but we are not discussing those places.
- Steve Altman: The only thing we are discussing is an extension on the 2 houses?
- Jacob Billig: That is correct. He will prepare for the next step to see what we can do. Given the fact that you have given him the variance, prior extensions, and for the Board's edification he is in the sewer district. We did solve that. He is not in the water district but he does have sufficient wells he has drilled himself.
- Mike Bensimone: Any other questions? Do I have a motion to approve or deny?
 - MOTION:
 - Neil Sapolsky motions to approve. Steve Altman seconds. All in favor.

2. SHALOM YAKOV – SBL# 17-1-12.8 – Requests an area variance to allow a gazebo to remain closer to the road than the primary structure. The gazebo was built without a permit. Zone: HR. Acres: 2.20 acres. Location: 1070 SR 52, Loch Sheldrake. Cross Roads: Zimmerman Rd.

- Shalom Yakov represented.
- Shalom Yakov: I just bought this house last year. I didn't know the law with gazebos. For example I wanted to build it in the back. I called the Building Department. I didn't try not to do a permit. I want a small gazebo.
- Steve Altman: Can you move the gazebo?
- Shalom Yakov: No I won't be able to move it. Just to the front it is going to be an issue. To the back I have 2 or 3 trees. It wasn't worth it to buy the gazebo. I spent so much money on it. I won't be able to move it. I just want to knock it down and build it again.
- Denise Monforte: Is it a poured foundation?
- Shalom Yakov: It is concrete for the posts.
- Mike Bensminone: So a concrete ramp and concrete posts? It sits on top?
- Shalom Yakov: Yes. We dug a hole and put 5 by 5s. We poured concrete around it.
- Steve Altman: The issue is that you did it without a permit.
- Shalom Yakov: I didn't know I had to do any permit on my property for stuff like that.
- Steve Altman: You built it by yourself?

- Shalom Yakov: I did it with my crew.
- Mike Bensimone: Would it be possible to take a skid steer and move it? It doesn't seem that big. The footings are in concrete but you could move it and put it on another set.
- Shalom Yakov: I don't think it is possible. I don't think we can lift it. This is my first time doing something like that. It is not my job. I am a mover. I don't see how we can pick it up and move it.
- Mike Bensimone: So you understand the zoning law as it is written does not allow an accessory structure. Any kind of structure can't be in front of the house. If you look around at your immediate neighbors you don't really see that. Every house is setback at the same level. This is out of the character of the neighborhood. It doesn't look ugly or imposing in any way. Some of us might have an issue with it being relatively close to the road. It does look like there is some sort of wooden fence there. However it is still the zoning law. This Board has taken different stances when it comes to an applicant building something illegally and then come to approve something like that. Some would automatically hold one point against. On the flip side applicants will come and say it is a hardship after spending so much money. We have to see both sides. Me, personally, I treat such cases as if it hasn't been built yet and we are looking at the merits of the case. We are looking for the hardships or if it meets all the criteria to be built. I am going to treat it like it hasn't been built yet because technically it shouldn't have been built yet. Each Board member will have their own question or comments. I am not saying it is this massive ugly thing. It is nice but there are some issues here. Personally I do believe something of this size and weight can survive being moved without causing major damage. At this point I will open to Board comments.
- Steve Altman: Two things. One, even if he can get a permit to place it where it is. Number two he doesn't have a permit.
- Larry Zierler: This is a main road it faces. We have to be mindful. Even if there was pressing need we would be asking questions if it is safe. Safety is an issue. Children will be playing there. I can't in good conscience look the other way. It is serious. There is a reason we don't place structures in front of the house.
- Denise Monforte: Mailings are good.
- Mike Bensimone: Violations?
- Denise Monforte: Just this building.
- Denise Monforte: The side setback is 10 feet right?
- Denise Monforte: Yeah accessory structures are usually 10 feet. Unless it is 576 square feet then it is 30 feet.
- Denise Monforte: I think he said it was a 10 by 12.

- Shalom Yakov: About 120 or 130 square feet. Two weeks ago I sent dimensions. 12 by 13?
- Neil Sapolsky: What's on the back side of the house?
- Shalom Yakov: That is all trees.
- Mike Bensimone: Do you have a shed back there?
- Shalom Yakov: In the back? Yeah a shed in the back. I bought the house like that.
- Steve Altman: You have an advantage. You are a builder. I think you can figure out how to move it.
- Shalom Yakov: How many feet does it need to go back for it to be legal?
- Neil Sapolsky: It has to be on the other side of the house.
- Mike Bensimon: It can't be in front of the house.
- Larry Zierler: The zoning laws are created to take in the sensitivities of everyone in the neighborhood. This can create an eye sore. I am not saying this is an eye sore. I have seen people with a little bit more flair this looks pretty common. It is not out of the ordinary. Even if it jazzed up the front of the house we still have to consider the laws in totality.
- Mike Bensimone: There are a lot of issues here. From safety, aesthetics, to neighbors and setting precedents.
- Neil Sapolsky: It is a safety issue more than anything. I think it looks okay but it is so close to that road. I know that road.
- Shalom Yakov: I didn't plan to do this illegally. If I have to remove it I will do whatever has to be done. I am on the safety team but in the front yard where all the grass is where the kids play.
- Steve Altman: How old are your kids?
- Shalom Yakov: My oldest is 13 and my younger is 2 years old.
- Steve Altman: A kid can go run across the yawn when there is no gazebo and the car can see them. There is a possibility and the view of the driver is blocked by the gazebo.
- Shalom Yakov: I have 2 trees there. I built a swing. Do I have to remove that?
- Mike Bensimone: It is not considered an accessory structure.
- Denise Monforte: It is landscaping. Playground equipment the Zoning Board or Building Department does not have jurisdiction over.
- Larry Zierler: It is still not such a great thing. The fact that you have as much grass as you do I watch my grandchildren with me now. I watch how fast they run. The grass is one thing. This is inviting menace. It is a threat to safety. I hope when they are playing in the front yard I hope there is always somebody watching them. That is enough of a responsibility. To have something that will pull them into the yard with greater frequency is a concern.

- Scott Lederman: The truth of the matter is you can't have a structure in front of the house. The second thing is you can leave the swing is what we are basically saying. The main issue is you can't have a building in front of your house. You move it to the side or sell it.
- Steve Altman: There is another option. This lot of yours is pretty deep.
- Shalom Yakov: In the back there are trees.
- Steve Altman: There are trees you can remove.
- Shalom Yakov: This was something that (inaudible).
- Scott Lederman: What did you put up first? The gazebo or the swings?
- Shalom Yakov: The gazebo.
- Scott Lederman: Because you wanted a play area?
- Shalom Yakov: My children mostly play in the back. When we are in the front they come to the front. I think I did it most likely for myself to sit and drink coffee.
- Mike Bensimone: I didn't close the public portion. Does anyone want to comment?
- George Sarvis: I want to point out we used the word move on several occasions. We do have the word disassemble. You would salvage the majority of the wood with the exception of the shingles and the 4 posts. The vast majority of this could easily be disassembled.
- Mike Bensimone: Let's go over the criteria. If nobody else wants to speak I am going to close the public portion.
- Denise Monforte: There is no one looking to speak.
- Mike Bensimone: Okay first let's have a motion to dedicate the ZBA as lead agency.
 - MOTION:
 - Neil Sapolsky motions for lead agency. Ellyane Hutchinson seconds. All in favor.
 - MOTION:
 - Neil Sapolsky motions for negative dec. Ellyane Hutchinson seconds. All in favor.
- Mike Bensimone: Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties?
- All Board members vote yes.
- Mike Bensimone: Can the benefit sought be achieved by the applicant be achieved by another method than the variance?
- All Board members vote yes.
- Mike Bensimone: Whether the requested area variance is substantial?
- All Board members vote yes.

- Mike Bensimone: Whether the proposed variance will have an adverse effect or negative impact on the physical or environmental condition of the neighborhood or district?
 - 1 Board member votes yes, all others vote no.
 - Mike Bensimone: Was the alleged difficulty self-created?
 - All Board members vote yes.
 - Mike Bensimone: Motion to approve or deny?
 - MOTION:
 - Steve Altman motions to deny. Neil Sapolsky seconds. All members vote to deny.
 - Mike Bensimone: However you want to salvage it. What is the timeline to get this done?
 - Denise Monforte: Technically once the motion is made and the Zoning Board has acted they are supposed to remove it immediately unless you set a condition or a time frame. If you don't say anything it would start right away.
 - Mike Bensimone: Can we request the Building Department to give them 90 days?
 - Denise Monforte: You can put it on the condition of the decision letter.
 - Discussion.
 - Mike Bensimone: 90 days enough?
 - Shalom Yakov: We are not planning to be here in the summer. I will try. If I won't be able to do it in 90 days. I will try to remove it within the week.
 - Larry Zierler: We want to give you the best circumstances to remove it. Try to do it now.
 - Neil Sapolsky: I would suggest that in 90 days the ground will be very soft.
 - Mike Bensimone: Once you get close to the summer season it is there already.
 - Neil Sapolsky: It just that the ground is really soft.
 - Mike Bensimone: 6 months?
 - Neil Sapolsky: May 31st?
 - Shalom Yakov: That should be fine. Do I need a permit to remove it?
 - Denise Monforte: No.
 - Shalom Yakov: I still need a permit to relocate it in the back?
 - Denise Monforte: No you would get a permit to install a gazebo in the back.
 - Mike Bensimone: You still need a permit to put it in the back.
 - Shalom Yakov: I will remove it. Thank you so much
- Ellyane Hutchinson motioned to adjourn. Neil Sapolsky seconds. All in favor.