

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

TOWN OF FALLSBURG ZONING BOARD MEETING

January 19th, 2023

Larry Zierler, Chairman, Neil Sapolsky, Mike Bensimon, Ellyane Hutchinson, Board Members, Gregg Pitula, Gregg Pitula, Code Enforcement, Dylan Harris, Town Attorney

- Larry Zierler called the meeting to order at 7:00PM
- Meeting minutes from previous meeting accepted
- Larry Zierler: Please be aware that while the town of Fallsburg Planning Board will continue to review all applications based on merits and zoning code and other stipulations, Planning Board approval does not guarantee the issuance of water or sewer permit by the Department of Public Works due to the current and expect future constraints on the water and sewer system. This was discussed at an open public discussion during a joint Town Board, Planning Board, and Zoning Board of Appeals meeting on May 9th 2022. All water and sewer applications will be accepted or denied based on the existing facts and circumstances. Each application connection or extension to the water or sewer district will include a review by the town engineer and will be guided by the town engineer’s expertise and knowledge about the town’s water and sewer system. The public health, safety, and welfare for publicly available water and sewer systems information will be posted on the Department of Public Works. The Town Board is taking reasonable measures to address the water and sewer. Before we start this meeting I want to make a few statements. This is my last meeting. I have been on this Board for 26 years. I have been the chairman for 15 years. Due to some life changes for me and my wife we are moving forward. I won’t be on this Board anymore. I want to thank the supervisors and administrators I have worked under. Steve. Kathy Rappaport. Numerous Town Board council members. Secretaries. Paige and Denise were wonderful. All of the Code Enforcement Officers. The board members throughout the years. Each and every one of them don’t come here for anything other than that they care about the town. It is only the last few years they get paid. The only reason they get paid is I told them it costs us money to go to all of these sites. It used to cost me \$40 in gas to go to all of these sites. The few lawyers I had were excellent. They know everything these it to know about zoning. I am a little sad about it. I want to thank everybody.

OLD BUSINESS:

1. SUSAN GRANICK – SBL# 28-1-52 – Requests a 6 month extension on a previously approved front and rear yard area variances to put a single family dwelling on a pre-existing, nonconforming lot. Zone: R. ACRES: . Location: Brickman Rd., Fallsburg. Cross Roads: Countryside Way.

- Susan Granick represented.
- Larry Zierler: In this one we don't need proof of mailings because it is an extension. We have seen all the information in this situation. This is a request for an extension. You are requesting a 6 month extension on a previously approved front and rear yard area variance for a single family dwelling.
- Susan Granick: Yes.
- Larry Zierler: Is this your first request?
- Susan Granick: Yes.
- Larry Zierler: You are representing yourself?
- Susan Granick: Correct.
- Larry Zierler: What is the status of the property?
- Susan Granick: I was ready to go once the variance was approved but once I sent all the plans to the contract with all the inflation everything doubled. The mortgage rates doubled. I wanted to wait to see if things came down a little bit.
- Larry Zierler: You are taking a stay in terms of actual disruption?
- Susan Granick: Correct?
- Larry Zierler: It was a modular home you were putting on it?
- Susan Granick: No it is a stick build.
- Larry Zierler: So the rates.
- Susan Granick: Everything went crazy and I wanted to see if everything came down.
- Larry Zierler: What are our precedents in terms of?
- Gregg Pitula: If granted it would be her first request.
- Larry Zierler: It is possible this one could continue for a while
- Gregg Pitula: She would have to come back in 6 months and ask for a second extension if she doesn't start in 6 months.
- Susan Granick: I am hearing from construction that things are settling so I am hoping that within 6 months we will be able to go ahead.
- Larry Zierler: If things were equal this would take its course?
- Susan Granick: Yes. I am hoping. Literally they were telling us double of what a house would cost. We know lumber went up. I thought from a financial

perspective it would make sense to wait and see how things come down. I am hoping within 6 months things will settle. I don't know 100% but I felt it was the right decision.

- Larry Zierler: Any questions?
- Mike Bensimon: I will just say that the price of materials going up had to do with supply chain issues because of the result of the pandemic. I am in favor of extending however I don't think I would allow this specific reason to warrant another extension later on. I do hope we get the building going soon because to leave it open indefinitely is not what it was designed for. If you're only issue is the price of materials. In this case I don't have any issues with it.
- Larry Zierler: It means there could be an end to the number of extensions and if you had to bring it back it could undo the work.
- Gregg Pitula: She could lose her initial approval.
- Larry Zierler: Any other comments? No? Motion?
 - MOTION.
 - Steve Altman motions for approval. Mike Bensimon seconds. All in favor
- Gregg Pitula: You are granted the 6 month extension from today's date. If you are not going to make it within 6 months let us know and we will address it.

NEW BUSINESS:

1. CAMP SHOPRON – SBL# 39-1-74 - Requests 6 month extension for a previously approved area variance to allow an expansion of more than 25%. area variance for a height increase. kitchen/dining room building, shul and bunkhouse. Zone: R & B. Acres: 18.91. Location: 5555 SR 42, Fallsburg. Cross roads: Brickman Rd.

- Joel Kohn represented.
- Joel Kohn: This is a second request for a 6 month extension to a previously approved variance. The status of the project is the building plans have been submitted. We have received some comments and are addressing them now. Hopefully we will get a building permit within a week or 2 and be able to start construction. Hopefully we won't have to come back for another extension.
- Larry Zieler: What is the anticipated time you need for the project?
- Joel Kohn: They may start in 4 weeks but depending on the weather they may start later.
- Larry Zierler: How long do you think with everything?
- Joel Kohn: Once we start construction we would have to come back if the work is not done. It could 2 months, 4 months, 6 months. A 6 month extension will likely be the last extension. You have most of it gathered together already?

- Larry Zierler: You said there are some comments? Extensive changes?
- Joel Kohn: Depending on what you call extensive. It is a building with a retaining wall.
- Larry Zierler: Are they minor changes?
- Gregg Pitula: Yes.
- Larry Zierler: If it was something that was complicated. If it was something that was complicated would you have you do the plans?
- Joel Kohn: We're not expecting it to take longer than a week or two to be able to start. We should be able to start construction within 6 months.
- Ellyane Hutchinson: It will be as approved?
- Joel Kohn: Yes we are not changing it.
 - MOTION:
 - Ellyane Hutchinson motions to approve. Neil Sapolsky seconds. All in favor.

2. SUNRAY COTTAGES – SBL# 60-1-4.2 – Requests 6 month extension for a previously approved area variance to demolish unit #14 and replace it - exceeds lot coverage and height. Zone: R. Acres: 6.66. Location: 57 LaVista Dr. unit 14, South Fallsburg. Cross Roads: Lovers Lane

- Joel Kohn represented.
- Joel Kohn: This is for units 14 and (inaudible). The owner had some personal issue and they didn't prepare a building plan and they have an application that was not submitted to the Building Department yet. We hope it will be submitted within the next couple of weeks and we won't have to come back for another extension.
- Ellyane Hutchinson: This is the second one?
- Joel Kohn: Yes. He had some health issues. They stopped for a while. Essentially the same variance. No changes.
- Larry Zierler: 6 months can get you moving again?
- Joel Kohn: Yes. If we are not moving within 6 months we will come back to the ZBA.
- Mike Bensimon: You're not giving us much to go on here except for personal issues. I am trying to figure out the hardship
- Joel Kohn: It is still the same hardship as the original variance. The original approval takes time to get a detailed site plan. It takes time before you can submit that. Like the previous one. We had to get an extension because we didn't have site plan approval. This one is different. They could have submitted the

building permit application but they did not yet. Nothing has changed for the variance request.

- Larry Zierler: It is not for us to get into people's personal lives. I don't want to dig deep into that. But we don't have much to go on. If there was a personal situation to have lost six month what is to say that is going away. I don't want to get involved in someone's life. We need more information to know that this project will begin and that those issues will not continue.
- Joel Kohn: Maybe you are more comfortable granting a 3 month extension that is a compromise we can do.
- Larry Zierler: We want to get a sense that something is going to happen. Extensions are given for the purpose that we will see work.
- Mike Bensimon: It is pushing it for a second time based on this reading. I definitely wouldn't give it a third time. I am okay with it not but a third time I will not be okay with.
 - MOTION:
 - Ellyane Hutchinson motions for approval. Steve Altman seconds. All in favor.

3. GITTY RE LLC – SBL# 54-1-10 – Requests an area variance from the bulk table for the R zone to reduce the side yard set back from the required 40' for both sides to 28' for both sides. Zone: R. Acres: 0.34. Location: LaVista Dr., South Fallsburg.

- Allan Frishman represented.
- Gregg Pitula: There are 2 separate ones here. The first is 54-1-10.
- Allan Frishman: You all should have a site plan showing that the reason we are asking for the variance is because our side yards are reduce from 40 feet to 14 feet. The reason for that is the configuration of the lot has these 2 skewed property lines that makes it impossible to turn the house parallel to the street. By keeping it parallel to the street we have the condition of the reduced property lines. I made the suggestion of 2 stories. They said no. They are 2 brothers getting up in age. They don't want stairways. About 6 months ago one of their grandchildren roll downed the stairs and got banged up bad. We are trying to keep the house in the center of each lot. The lot parallel to the house is 92 feet. If we were able to turn the house we would end with a larger size setback on each side and it could be increased to about 18. That being said we still can't get it. If the lot was 100 foot which it is by the street. If we turned the house and didn't have the skewed lot lines we'd have the 18 feet on both sides. They are kind of strange looking lots. I don't know how they laid this out years ago.
- Ellyane Hutchinson: The lines are not parallel.

- Allan Frishman: No. Here's the road. That's how they were laid out in the subdivision 90 years ago. The road is here.
- Discussion.
- Allan Frishman: Here is the road. I have a 35 foot setback on each one of them. Here is the line. The two lot lines are viewed from the street. That would have been easy.
- Ellyane Hutchinson: It is in the center of each property?
- Allan Frishman: The center of each parcel, yes.
- Discussion.
- Gregg Pitula: You first put in a request to have the house in line with the property lines but then you wanted it straight with the street?
- Allan Frishman: We had to change it. I was given some misinformation about the distances on the sides. When I did more research I realized this was the only way we could do it. This is what we sent the second notice out for. This is what we are asking for.
- Dylan Harris: Who owns the lot between 10 and 11? Is that something that could get subdivided to give that extra width?
- Allan Frishman: I wish. It is a private lot. The guy is asking an enormous amount of money. He's never going to build there. That would be an easy solution.
- Steve Altman: If you combined the two lots could you put one house before the other?
- Allan Frishman: They are locked in. There is just so much room on the lots. 54-1-14 is the vacant one. They are identical lots. It would make a bad situation the best situation by centering the houses but they are not great lots. He wants the house designed this way so it is single level.
- Larry Zierler: He can build one way or another and can have a house.
- Allan Frishman: They would have to be turned 90 degrees. One of the reasons he wants to keep it in the direction it is being shown is it a very nice elevations for modular with the dormers. If you turn it 90 degrees all you are going to see the gable and the 3 little windows. When you're driving down the street nobody knows where the lot lines are you just see the neighborhood. This compared to just a gable.
- Larry Zierler: We're talking about 2 feet on each side?
- Allan Frishman: This variance is for 6 on each side. It would have been 8 if the lines weren't skewed. We're trying to put a house on 2 identical poorly designed lots.
- Ellyane Hutchinson: Each lot is like that.
- Allan Frishman: It is more lots.
- Larry Zierler: Nothing has changed since they bought these lots.

- Steve Altman: I am at a disadvantage because I don't have a picture. I don't know what it looks like.
- Gregg Pitula: I am working on that. You want a picture of Steve?
- Steve Altman: No the lot lines and the footprint. I see what you're trying to show me but it is difficult to see. These are 2 brothers?
- Allan Frishman: 2 brothers getting up in age.
- Steve Altman: If they combined the 2 lots and made a duplex it would fit there.
- Gregg Pitula: There is a property in between.
- Larry Zierler: You say 2 brothers supposedly? You are representing one?
- Allan Frishman: I am representing both.
- Steve Altman: They have families in these houses?
- Allan Frishman: He told me he is living in one and his brother and his family living in the other.
- Steve Altman: There is 2 families right?
- Allan Frishman: 1 in each house.
- Larry Zierler: Who is Gitty?
- Allan Frishman: I think that is the wife of the proposed. He owns both. It says Gitty Real Estate LLC. He is doing it for the one house. I am getting bits and pieces from my client. He says he bought both lots. He wants to be able to expand when his brother moves up here. He wants him here too. That's all I can tell you.
- Larry Zierler: I feel bad when we have to make a decision and that is all you can tell us. Are we dealing with a real estate company over here? Where they are trying to make something more sellable?
- Allan Frishman: He is getting up in age. He owns one house. He bought both lots. He wants to put the second house on the second lot for the eventual habitation of the rest of his family. It is an LLC. He created it that way. I don't know why. It is not for development purposes.
- Larry Zierler: There is no guarantee. He could be playing with these properties.
- Allan Frishman: There was a deed included. Did you get that? It doesn't matter. The deed is for both parcels. It is not for profit. He wants to move up here.
- Steve Altman: One house is already built?
- Allan Frishman: No.
- Steve Altman: Why doesn't he build two smaller houses that would fit the property?
- Allan Frishman: If he has to he will. I am trying to get the variance so he can keep the design of the house he designed already. It has a lot of things on the ground floor with a lot of bedrooms. He bought the set of plans. He had to put

down a deposit for each lot. The houses have not been ordered from the company yet.

- Steve Altman: Maybe there should be a stop order because this is another case of moving forward without finding out if it work.
- Larry Zierler: In other words doing your due diligence. The reality. The physicality is in front of you there. We get problems that are self-created. That is one of the criteria we have to consider.
- Allan Frishman: It is self-created there is no doubt. He can make it smaller. We are seeking the variance because he wants to be able to have the house that was designed. The plans cost him about 10 grand.
- Larry Zieler: He designed them knowing he would have this problem.
- Allan Frishman: I am told the person that designed it did not know the lot lines were skewed based on the 100 foot frontage. Then they said try to get a variance to keep the design. This is the 2 lots and this is the strip in the middle.
- Steve Altman: He didn't do his due diligence and now they want us to bail them out.
- Discussion.
- Ellyane Hutchinson: The question is do we prefer the building with this design? Or are we okay with it the other way?
- Allan Frishman: I am trying to get to the problem of how it was developed. A property is bought and you have intention to build on it. You look at it and envision your house.
- Larry Zierler: I am told that so and so made a mistake. I need to see an affidavit from that person admitting to that fact that he was supposed to design a different kind of house. This is the corrective measure of the mistake. The wrong house was designed for the lot.
- Allan Frishman: He wanted the length of the house. It is a modular so he wanted the length from the get go. He wanted a long house and single level.
- Larry Zieler: What he wanted from the get go was not going to fit that lot. He was going to need that variance. He went into the drawing stage with a certain desire and hoping he would get relief from this committee. This is something we need to determine.
- Allan Frishman: He can turn the house 90 degrees and you will see a simple gable end when you drive down the street. He is trying to say let's make this thing look nice. Each side yard will be 14 feet instead of 20. It is not for sale. He wants to live in one.
- Larry Zierler: This is to correct a mistake after it was made.
- Allan Frishman: I have given you all the information I can give you.
- Steve Altman: I understand but right now I would vote no.

- Neil Sapolsky: I wish he would have spoken out before he decided to do all of this.
- Dylan Harris: Do we have anyone from the public? It might be a good time to do this.
- Edward Cauley: I own 2 lots next to this property. I didn't see the paperwork for this but I am sure I will get it. I am concerned about how far the houses will be from my house. I am not opposed to having neighbors. The area is changing. I have some privacy issues. This may not have anything to do with you all. I have very low water pressure. They sent someone out to my house. The water trickles out in the summer. That person may want to know that. I don't know how they are going to get water. There was a well on my property but prior to buying it they made it into one tank. I just want to know how far they are going to be away from it.
- Allan Frishman: The closest corner is going to be 28 feet to the house. You have a deck?
- Edward Cauley: Yes.
- Allan Frishman: That will be a little closer. I measured it to the house because there was some concern about fire safety. I would say that's about 20 feet.
- Edward Cauley: 20 feet from the back of my deck?
- Allan Frishman: How wide is your deck?
- Larry Zierler: About 10 foot it looks.
- Allan Frishman: About 18 feet from the back corner. If that is an imposing condition I am sure I can have him plant some trees.
- Edward Cauley: My next question is the LLC issue.
- Allan Frishman: I am telling you the conversations I've had is he wants to live in the house and the other one is for family. I can't prove that any other way except for the discussions I've had with him. He is overseas right now.
- Joel Kohn: I don't know who the owner of this property is. It looks like a nonconforming lot and according to subsection 310-9.5 of the zoning code he shouldn't have to come for a variance at all for this property. It meant zoning requirements back then he should be able to get a building permit for this.
- Larry Zierler: Can we get clarification for this?
- Gregg Pitula: I was always under the impression that preexisting nonconforming you can still build on that lot but you have to meet the current side yard setbacks.
- Joel Kohn: If it can meet the setbacks that were place when it was created you don't have to come for a variance.
- Gregg Pitula: Dylan?
- Dylan Harris: My guess is that if it is a nonconforming lot that it is similar to one we had earlier. It is from a time before zoning was instituted. For that one the

precedent we had is that you would use the current code. You'd need to meet the setbacks and that is how we have treated it.

- Gregg Pitula: Anyone on Zoom?
- Steve Altman: Do we want to leave this open for the next meeting? Allan can come back with more data and maybe a better idea?
- Dylan Harris: Do you have a sketch plan of what the house might look like? I know you said the plans were paid for?
- Allan Frishman: This is the elevation of the front. Can you see that?
- Larry Zierler: We need to see what the other situation will look like.
- Allan Frishman: It would just be a typical gable end with 3 little windows.
- Discussion.
- Larry Zierler: We need documentation from the parties involved.
- Discussion.
- Larry Zierler: I need a comparison between the 2 situations. In the other situation give us an idea of the aesthetic. That could be a mitigating factor. We want to see things. We have to make decisions that are rooted in empiricism. Empirical facts. If there is any more documentation. I have a concern about someone that comes here representing a real estate company. Who is the party involved? We have 2 parties involved in 1.
- Discussion.
- Dylan Harris: I had a chance to pull up the 310-9.5 and the critical part of that section is that it says the Code Enforcement may issue. If it said shall it would be a different situation. Looking at precedent and how Code Enforcement has treated this I think you are at the right situation being at the ZBA to get the variance.
- Allan Frishman: If the information is brought in do we have a shot at this? Can I get an impression? I don't want to waste his time.
- Ellyane Hutchinson: My concern is the other properties are nonconforming as well. That 14C is pretty narrow considering there is a deck involved.
- Mike Bensimon: I think it is important to parse this out. It is different properties we are looking at here. For me neighbors is a big deal. Making sure they are happy. With the one property that is 5419. In this property with the 14 feet is still a good distance to the next house. Considering the neighbor is not here being against it I am inclined for the approving this one. The other one is where the corner is significantly closer. We want to make the neighbors happy. The mitigating factor is this narrow strip of property in between that is really unbuildable. You can get closer to that property without having as much of a negative impact. I would be more inclined of approving if this was moved over and you take away from the side yard from this side of the property as opposed to this one.

- Allan Frishman: I appreciate that suggestion. I didn't know if you would go that way.
- Mike Bensimon: It looks like that this was designed to be like a road. I would be happier going into that piece. Encroaching closer to that property than your neighbors.
- Ellyane Hutchinson: How wide is that?
- Gregg Pitula: 50 feet wide.
- Larry Zierler: You're the farther property?
- Allan Frishman: Yes.
- Gregg Pitula: He is an adjacent property to one of the buildings.
- Larry Zierler: He is 5412.
- Discussion.
- Larry Zierler: Nothing will ever be built there?
- Mike Bensimon: Check the bulk use table.
- Neil Sapolsky: Do we know that is unbuildable?
- Discussion.
- Mike Bensimon: You can't build on that. I'd rather push the house closer to that lot where it would have less impact than bring it closer.
- Allan Frishman: So turn one and not the other? That is something I'll discuss with my client.
- Discussion.
- Mike Bensimon: You know what our concerns are. My concern is especially the neighbor. If we can mitigate that I am pretty okay.
- Larry Zierler: I want to know what project is being presented to us. It is being presented as basically one project.
- Gregg Pitula: We have 2 separate agendas.
- Larry Zierler: It is the same company and the company is a ghost. We don't want to deal with ghosts. We want to deal with real people.
- Allan Frishman: I will get you what I can. Thank you.

4 . GITTY RE LLC – SBL# 54-1-11 – Requests an area variance from the bulk table for the R zone to reduce the side yard set back from the required 40' for both sides to 28' for both sides. Zone: R. Acres: 0.34. Location: LaVista Dr., South Fallsburg.

- Allan Frishman represented.
- Gregg Pitula: There was a second variance. They are pretty much exactly the same.
- Larry Zierler: The answer is in the added information.

- Dylan Harris: I think it makes sense for the record to have Allan give the presentation and then we can give the same marching order. This is lot number 11 which is item number 4.
- Allan Frishman: We are looking at reduced side yard from 20 feet to 14 feet. He would like to put the house parallel to the street. Almost parallel. That is why we are seeking the variance. That kind of says it all. Thank you.

5. Pomansky's Distillery, LLC (Alex Pomansky) – SBL: 46-4-23 – Requests Zoning interpretation to see if proposed use of a tasting room and distillery fit within the MX district. Zone: MX. Location: 112 Main St, Mountaindale.

- Paula Kay and Alex Pomansky represented.
- Paula Kay: This is an interpretation. It came to you from the Planning Board regarding the use. A little history the building had been used as a furniture manufacturer in the back of the building. The front was retail. Mr. Pomansky wants to manufacturer mostly vodka in the back of the building. In the front would be a drinking establishment which is a permitted use in the MX district. There is an operating permit given to the prior tenant in the building. That tenant moved out less than a year ago. We are going to come in and essentially it would be very similar if not the same use as previously there this year. I have a drawing that was done so you can see the layout of the building with the tasting room in the front and the distillery in the back. The street side is the tasting room. Nothing will be cooked. Any food for snacks they will bring in. If you have a flight of vodka maybe you want something to go with it. It is not a restaurant.
- Larry Zierler: Is the liquor license for the property?
- Alex Pomansky: I have a distillery license.
- Larry Zierler: Do you need a liquor license for serving?
- Alex Pomansky: I have a farm distillery license. It is like public farmers. If I buy at least 70 from the state farmers the state gives me.
- Steve Altman: It is hard for me to understand what the gentleman was saying. What is a tasting room? You taste the vodka and it is free? Or you sell somebody a drink for them to taste it?
- Paula Kay: Think of your craft brewery in the western end of the county. It is essentially like that for vodka. The vodka would be produced in the back of the building and sold. People can come and sit around and have a drink and a little appetizer and then go on their way.
- Steve Altman: So they pay for the drinks?
- Paula Kay: Absolutely
- Steve Altman: Don't you need a liquor license to serve drinks?

- Paula Kay: That was what he was just explaining.
- Larry Zierler: There is a more comprehensive license. A farm distillery license where you are buying your supplies for distillation where a percentage of it is bought locally.
- Paula Kay: If there is any other license other than what my client already has. Again we are here tonight for an interpretation but this is going back to the Planning Board after you guys make a determination. Then of course to the Building Department because they have to issue an operating permit again for this location.
- Alex Pomansky: It is wholesale, tasting room, and retail.
- Larry Zierler: Do you feel that you will be able to do enough business with a tasting room and food brought in? I ask this because I have seen situations where people say they will not be making food then change their mind.
- Alex Pomansky: No we don't plan to make money from this. We plan to have people taste it then buy it.
- Dylan Harris: This is just for an interpretation. All of these questions are going to be dealt with by the Planning Board if and when it goes back to them
- Steve Altman: What is allowed in the MX zone?
- Gregg Pitula: Drinking and establishments is an allowable use. The manufacturing is not on the bulk tables as an allowable use but the manufacturing was in place there so the business would be continuing that use. The plan was to come to the Zoning Board to just make sure we could fit it in with the drinking establishment. Under the drinking establishment zoning for an interpretation. Dylan said something when were talking the other day about a mixed use with the manufacturing.
- Dylan Harris: When we were discussing the manufacturing portion of it we think would be likely fitting into a nonconforming preexisting use. Manufacturing, whether it is furniture or alcohol for this purpose, it is still manufacturing. Since that was going on in the last year that can pass onto the next tenant. If more than a year had passed that preexisting use would have subsisted and it would not longer exist. Since it hasn't been over a year that manufacturing is still a use that can be done.
- Larry Zierler: You know the levels of manufacturing?
- Paula Kay: It is manufacturing or it is not. There is an operating permit for manufacturing. As your attorney has said it has been less than a year since that use has ceased. That same use can continue.
- Larry Zierler: Under the manufacturing clause there is no really way to control the extent of the manufacturing. You could have one type of manufacturing that has negative effects.

- Paula Kay: I don't disagree but I think the Planning Board will grill us about these things.
- Larry Zierler: Right now it is in there and it is safe. There is opportunity for that to be transferred. All manufacturing is not equal.
- Paula Kay: Under the code there is a use table. Manufacturing is in the code. It is not clear. There are levels but this is just yes or no.
- Dylan Harris: In the zoning code manufacturing is defined as any process whereby the nature, size, or shape of articles of raw materials are changed or where articles are assembled or packaged in quantity. It is a pretty open and broad definition.
- Paula Kay: I think that has been the definition for some time.
- Gregg Pitula: What and how it is being manufactured is under site plan review. They just wanted our guidance to make sure we can fit it under the drinking establishment slash manufacturing use that was already there. They didn't want to just label it a drinking establishment because it wasn't truly just a drinking establishment. They wanted the Zoning Board to make an interpretation that it would fit into the drinking establishment as part of its continuation with the manufacturing.
- Ellyane Hutchinson: It is still manufacturing but I have concerns because it is a very different kind of manufacturing than furniture. Cooking fires.
- Paula Kay: No cooking fires.
- Ellyane Hutchinson: There is still fire involved.
- Discussion.
- Ellyane Hutchinson: Manufacturing is allowed in mixed use.
- Paula Kay: We also need a blessing on the front portion because we are going for retail.
- Larry Zierler: Comments from the public?
- Dylan Harris: There is no public for interpretations. The public will have their chance in front of the Planning Board.
- Gregg Pitula: Every use has its own requirements. Whatever use it becomes we require those conditions. If this becomes a distillery then whatever fire safety equipment needs to be in the building to operate safely we will make sure all that is in place before we issue an operating permit. Anything that has to be added or anything required we make sure is there before issuing.
- Ellyane Hutchinson: Is there a difference in (inaudible)?
- Gregg Pitula: A restaurant has a certain amount of parking. Retail has designated parking spots. Each use has designated parking. We are on a public street so there is public parking. There are several parking spots in front of this building.

- Ellyane Hutchinson: They are also next to the fire house and there is a large section where they can't park.
- Dylan Harris: That is all Planning Board.
- Steve Altman: I move to approve.
- Gregg Pitula: Dylan can you give us the wording proper they are going to be voting on?
- Larry Zierler: There is no motion here.
- Ellyane Hutchinson: Do we agree that it is similar enough to retail and manufacturing to stay the same?
- Dylan Harris: First and foremost I would have the chairman to ask everybody and get the yay or nay that this fits into the restaurant and drinking establishment under mixed use. We can put it on the record at least that it is a preexisting nonconforming use for manufacturing. I think what makes sense and I mentioned it to Paula earlier that if the Board agrees then I can pull together a resolution so it can go to the applicant and the Planning Board so they have it written out and clearly know what the findings are.
- Larry Zierler: I suggest we consider that definition as to whether or not that this is still a mixed use with the purpose of the restaurant and manufacturing purpose. Are we in agreement for this location?
- Paula Kay: I think how your attorney just phrased.
- Gregg Pitula: It isn't going to be a restaurant.
- Larry Zierler: Eating and drinking space. And production.
- Ellyane Hutchinson: Label it a manufacturing space first?
- Gregg Pitula: The manufacturing isn't really the issue here because that is a continued use. They just want to fit the use in properly as essentially a mixed use between a drinking establishment slash restaurant slash manufacturer.
- Larry Zierler: We can't say manufacturing doesn't happen there now. We can't find any problems in the manufacturing piece of it. I think the question is the mixed use definition.
- Paula Kay: Eating and drinking establishment.
- Larry Zierler: There has to be outgrowth of the manufacturing for there to be a tasting room. It would not make sense to manufacture and have people taste the product.
- Gregg Pitula: Dylan they will vote that the interpretation will work and you will draft?
- Dylan Harris: Yes I just want everyone to agree that the interpretation of the Zoning Board is that this property fits into the restaurants and drinking establishment criteria under mixed use district and that it is also a preexisting nonconforming use as far as manufacturing goes and a year has not passed. If

everyone can agree with that I will pull together a resolution next week and we will be set.

- Larry Zierler: Do we all agree?
- All Board members agree
- Mike Bensimon: The manufacturing piece is not an issue here. That is existing and nonconforming. It hasn't gone more than a year without use to revert to the current requirements. Because it has been a constant use that is not the issue. The manufacturing of alcohol is allowed without question. It really has to do with the tasting room in the front. Another piece that is not a question and something I like is that the grain is local from local farmers. That is not an issue. The piece here is the tasting. Any which way I look at it whether you want to call it a bar that serves 1 drink only or not, it strikes me as a drinking establishment. Just that one little piece is all I need to focus on and it makes most sense to me. Yes. The issue is not the manufacturing because it is an existing nonconforming. It is this tasting room here. Again whether you want to call it a very limited drinking establishment I still look at it as a drinking establishment.
- Dylan Harris: I agree with Mike on that. I just wanted to bring it up and have the discussion and get it on the record so the Planning Board has documentation of it. That is why we included the manufacturing.
- Larry Zierler: So we are voting on the front end.
- Steve Altman: We are voting on what Dylan said he is going to write.
- Gregg Pitula: You voted. Everyone said yes.

6. Lakeland Estates – SBL: 53-4-7.1- Requests variance to reduce required lot size of 12,500 sf to 11,136 sf. Zone: HR. Location: Morris Drive.

- Larry Zierler recused himself.
- Joel Kohn represented.
- Gregg Pitula: Do we have to do anything Dylan?
- Dylan Harris: Not really. Any time we have recusal we will just have the Board member go into the back so there is no influence in propriety. Mike has experience running things so he can act and go over this section. Just move forward like any other matter.
- Joel Kohn: This is a 21 lot subdivision on Lakeland Drive. They want to separate the property. They are proposing a 21 lot subdivision but we are here for one specific lot. It is only 11,136 square feet instead of the 12,500 square feet required in the HR zoning. Essentially it is a reduction of 1,364 square feet for the one specific lot. Just to explain to the public. This is not an entire subdivision it is just that specific lot. We will have a public hearing for the rest of the subdivision.

The highlighted in blue is the lot we are seeking the variance for. This is already cut off from the rest of the project. There is no connection to the rest of the property.

- Mike Bensimon: I think there is a little bit of confusion. When just getting the agenda without the paperwork I assumed it was 1 property. Then I saw they wanted to apply 11,000 square feet to the entire property which would allow you to make like 30 something units. However now when I got the packet and I looked at everything I see the issue is not all this other building. It is this one piece here. If we do nothing or deny a variance then all these properties will still be built with the exception of this small piece. I wanted to clarify that for everyone because there is talk about the density and a lot of important things. However I don't think the public really understands what we are voting on. This was one parcel and was owned by one owner. Over the years they subdivided pieces of it as pieces were sold and built on it. It looks like that this is what is left and they are looking to build on what is left. The piece we are looking at is oddly shaped.
- Gregg Pitula: I have it up for Zoom because I don't know how many people are from Zoom.
- Mike Bensimon: Can I ask some questions?
- Joel Kohn: I know limited information.
- Mike Bensimon: Can I assume that at some point that some of these properties belonged to Lakeland?
- Joel Kohn: I am not sure.
- Mike Bensimon: Here is my issue with this. If we are talking about one piece of land that is too small to build on. We are just talking about 1. We can see the hardship in that because the property is too small to be built. However if you look at the other properties in the neighborhood it is not out of the character of the neighborhood to have small properties. It really comes down to the timing here. The timing is whether or not this was self-created. If the owner of this property had subdivided it down to this piece and created it as a nonconforming lot that is wholly self-created. If at the time it was subdivided the person could still build on it because we could build smaller at that time and then the zoning changed that is a different situation. That creates a little more of a hardship. If the developer or the owner had intention of subdivided it down to where it is nonconforming beforehand then it is self-created. Without the records it is hard to make that distinction. Do we have history?
- Gregg Pitula: I don't have any history on the property.
- Joel Kohn: If the Zoning Board denies the variance this property will still be here and they will still build the house. This is just a cleaner way of doing the subdivisions. They could make this line here and they are still technically one

property. This could be a portion of this property and the rest will meet the requirements. This is just a cleaner way of doing the subdivision.

- Mike Bensimon: You're saying lot 2 which has 13,787 square feet.
- Joel Kohn: Lot 3 and 4 may be adjusted somewhat. We are short 1,364 square feet with 1,377 being 1,287 square feet more than we need. We may adjust some of the other property lines but they can achieve the number of lots. The number of lots and homes is not in question whether the Zoning Board grants or denies. This is just cleaner.
- Mike Bensimon: You're saying because you have more room to work with on the property you can add the extra 1,400 square feet by taking it off another property across the street. However now you create this situation where there is little sliver of land that is not attached. That is a way to go if you are denied. It doesn't look clean. They do have a right to build if we deny them.
- Steve Altman: Which number lot?
- Dylan Harris: 1. Lot 1. Upper left corner.
- Mike Bensimon: You see how it is oddly shaped? Part of it touches Lakeland and main part is on Laurel. It is kind of odd to create that off the bat. It seems it was created in the past to make other properties conform. I don't have the history so I don't know if the zoning allowed building of that size when it was created or if the developer had purposely created an undersized lot to make other things fit. Then it is self-created. Joel makes the argument that even if we deny he can easily fix that by taking some property from across the street and adding to it. This is a cleaner way of doing it where we don't have properties across the street like that.
- Joel Kohn: I don't know the legality of it but there is some sort of rule if the road crosses between 2 lots it is an automatic subdivision. They can probably take all these 6 different pieces of land and have them subdivided. I am not sure on the legality of it without going to any board because of the road crossing. It just another piece.
- Dylan Harris: I'd have to look into that. I haven't run into that kind of piecing like.
- Joel Kohn: It doesn't make sense to begin with why the county kept it as 1 tax parcel when they are spread out over 6 different areas.
- Mike Bensimon: It looks like it was one massive parcel and then over the years it was split up.
- Joel Kohn: It is like 6 different pieces.
- Dylan Harris: That is really strange. I will have to look into that. That is pretty abnormal.
- Ellyane Hutchsinon: This was not under one tax map on this property?
- Joel Kohn: No. They will meet all the setbacks so they can build on this property.
- Mike Bensimon: If we were just talking about lot 1 and it was its own parcel.

- Joel Kohn: You can build.
- Mike Bensimon: But it is nonconforming. You are saying that because the lot lines existing from a time when it was allowed to be built on it should automatically apply?
- Joel Kohn: I will give the same code section I previously cited.
- Discussion.
- Mike Bensimon: That is something to consider. I think at this point if the Board has no questions I will open it to the public. We will do in person then open it to Zoom.
- Keith McGiper: I have some papers I want to distribute to the Board. This is a map. First of all to somewhat answer Mr. Bensimon's answer to the history of this thing. My understand is my property which is the one to the west and the one to the north and the rest of these were originally owned by Charles Brian who subdivided my property for himself. The one next to it for a brother of his. The ones that were already subdivided he sold out. I think, and I don't have evidence for this, this existing lot is the way it is because it is swampy and it is not suitable for building. As far as the panhandle I don't know if that was going to be road or what. The map I prepared and gave to you shows that if you take the total area of the entire lot, I got from county GIS, 10,895 square feet. However the purpose of having a minimum square footage for a building lot I don't know if that is so you have space beyond the building or what the reasoning is. If you take off that panhandle that is sort of like the 50 foot wide thing that was discussed earlier you won't be able to build anything. The actual squared off area is more like 8,800 square feet. I can't show this to you with the tax map if you go and look at it yourself the northwest quadrant of this area is soupy unless it is very dry time of year. If you walk across it you will get water ponding around feet just from your weight. That's my guess why it hasn't been built on. I do want to question the propriety of saying yes you can build a building there even though it is slightly under 25,500 square feet because the actual usable area is closer to 6,000 square feet. If you look at a contour map of this area it is a little bowl. If you go to the west the land slopes up very sharply to get to 42. There is always runoff from 42 coming off and ponding there. My house to the northwest of this there is always some water seeping in my basement. Any house built here is going to have significantly more problems with water. Personally I think that this land probably needs to remain, I don't like the term but, wasteland. As far as the subdivision itself that is a different Board and I will talk to them when it comes up. On the note about the runoff coming down 42. This road does not have storm drains. All the runoff is likely going to interfere with anyone's quiet enjoyment of this house. Thank you.

- Anita Meyer: I reside on Lakeland. When they bought the property they knew what our codes were and how much land. Now they are trying to change things. We live in a development that the homes are on almost an acre. I don't want to have a bunch of little properties with homes on it. It is not in our development's interests. We don't want neighbors on top of us. They knew that when purchasing. Why give them a variance?
- Mike Bensimon: Anyone else? Let's open it to Zoom.
- Steven Burger: As much as Mr. Kohn's reasoning might be logical to lower the requirements lot size to 11,360 what I am concerned about is much more important than that one particular small lot. As we mentioned in the beginning there are 21 other lots. That might set a precedent to all the other lots in case they want a future variance to knock down the size for the other ones as well. We will have an entire neighborhood with a very strong precedent. 17 years ago I purchased my home and spent a lot of money making it nice. The most important consideration I had in purchasing this home was the aesthetics. The neighbors. The surrounding areas which had that requirement of 12,500. In my case to the right there were wetlands which I believe they are ignoring to put 4 lots on the right side. The lake is right there on the property to the right. He is putting 4 homes right there. There is a ditch that takes care of all of the runoff on the entire run and it cuts right into that last lot before my lot. What they are going to do with that I don't know. That is a wetlands. That is also the reason I purchased this home because I know it would be aesthetically a nice home. For somebody to come back later and change things around like this woman who spoke before me. We were here first. We lived here for many years. We pay taxes. We don't want a different kind of environment come upon us. We want to keep it that way. We feel we have the right to have that maintained. If a big construction company comes in they are basically pushing us out. It isn't the American way to do things. Having said all of that I would like more information for this development. Who is the developer? Is there a study for infrastructure? Can the sewers handle all these homes?
- Gregg Pitula: This is all Planning Board stuff. This is for the one variance for the one lot. Your concerns are completely valid concerns. We are at the Board to address the one individual lot.
- Steven Burger: Then let me address what is relevant to what you just said. I do oppose the reduction from 12,500 to 11,360 as I am afraid it might be something that the Zoning Board may have to look at again in the future. I would request that this developer would put a covenant on this. He should get approval with a covenant that would state that this reduction is only for and not for any other precedent. Then take note in the records that there is no other reason in the

future to reduce those lots as well. They should be a covenant that they should not come to you guys and ask for that.

- Gregg Pitula: Anyone else from Zoom? No other hands raised.
- Dylan Harris: We did receive a few letters and emails. Do we want to read the names? Not the whole thing but to demonstrate that they did send in some thoughts and email.
- Gregg Pitula: We have a letter from Brian Gold representing his parents Raymond and Judy Gold. They have a letter that was read by the Board about the impact of the development and variances. There is a lot in this letter. Not all of it pertains to this. It pertains to the entire development with the sewer and water. We will have this passed onto the Planning Board. We have another letter from Raymond and Judith Gold in opposition of the minimum lot size set forth. Madelin Weisman and a resident of 36 Lakeland Drive is not in favor of the minimum lot size. Mary and Ellen Breski are in opposition. One more. From Dana Heckler we have a legal notice from a house on Hemlock Street not in favor of minimum lot size. Those are the letters we received.
- Stacey Bresky: I just had a question. Are the letters everyone submitted made part of the record?
- Gregg Pitula: The Board is passed down through the Boards and will be part of the record for the project.
- Dylan Harris: Yes they will be part of the certified record.
- Mike Bensimon: Anyone else from in person or Zoom before I close the public? Okay at this point I will close the public portion. I'll kick it back to Board comments.
- Steve Altman: I would like to say a few things. When I was a young fellow about 10 years old I believe Decker Street had Deckers Pond. The water from that pond came across Route 42 next to what some of us know as the Griff property and then the Stoneman property. It was the Fain farm. Their son moved to Hollywood and wrote the song Love is a Splendid Thing. Deckers Pond was covered over. The stream was routed underground. That is why it is a permanent wetland. That is why it is a swamp and it is probably unbuildable. If we came to a vote you can imagine how I will vote.
- Mike Bensimon: Thanks. Any other Board comments.
- Ellyane Hutchinson: I am also opposed to this. It is a new build and it is not in the spirit of what is around. Given that it is a pretty small lot I am in favor.
- Jenn Lishansky: I just wanted to echo what has been said by Steven and Ellyane. I agree this lot is quite small. In the context of the estates it is a substantial change. Also the concerns and comments of the neighbors would

have the neighborhood quite impacted by this build. I very much hear that and agree.

- Mike Bensimon: Any other Board members?
- Neil Sapolsky: This is not built yet.
- Gregg Pitula: Any lot of record that wants to be built upon especially if it is in a wet area would need to be looked at an engineer. There are ways of building on any piece of property. If it is voted upon and the lot does get a reduced size, the house or whatever they build upon it would also have to be reduced in size. They would have to build a minimum of a 1,200 square foot house. They are showing a 1,500 square foot home can fit on the lot and meet the required setbacks of the zone. We do have a minimum lot size requirement of 12,500 square feet of minimal lot. If the lot was all by itself preexisting nonconforming lot like the one on LaVista from tonight anybody could build on it. Right now this lot is still part of a bigger combination of other lots. This all still has to go back to the Planning Board for the approval of the subdivision. This is just a design that Reilly Engineering has come up with. They are trying to get all the lots approved. They sectioned them out to be all conforming lots except for this one without a lot line change that would take it across the street. Any lot is considered buildable if an engineer says that they can drain the water this or that way. Bring in fill. It is all case by case. If the rest of this development is built every single lot will be case by case basis. Whether or not it is too close to a stream. If it is DEC wetland. If there are setbacks. If it is a real DEC wetland there is a setback from the water they can build on. Each lot will be looked at given they are approved to the subdivision.
- Joel Kohn: We are just looking at this one lot. We are not looking at the rest of the subdivision. That will have to be approved by the Planning Board where there will be a public hearing. This house would be able to built whether the Zoning Board grants or denies the variance. It is just a matter of being a clean subdivision or having a piece of the lot on the other side of the road. In regards to the wetlands, a wetland delineation was performed by a wetland biologist. It shows some wetlands on the subdivision but on the Planning Board it will be show more clearly for the subdivision. Some of the lots might be adjusted because of that. On this particular piece of property there weren't many qualifying wetlands on the property. They would be technically able to build the house on that property. With regard to setting a precedent I don't see how this would set a precedent for the rest of the project as this is a unique piece of property with two sides of it as roads. You don't have another piece of property that would have this situation.

- Dylan Harris: Would you be willing to have a condition on this that no other lots of the 21 on the subdivision as it currently exists could be undersized? Something to that effect?
- Joel Kohn: I don't see an issue with having that.
- Dylan Harris: I know all the lots on the subdivision map are over the 12,000. I think it might make a lot of people feel a lot better about where things stand and where they end up.
- Joel Kohn: I am trying to text to see if it will be an issue. I don't think it would be an issue.
- Mike Bensimon: Whether we allow it not they would have to come back for a variance for any lot under the 12,000.
- Dylan Harris: I am just looking at it as far as precedent. I don't necessarily agree would create one but it at least assuages that potential concern.
- Joel Kohn: I don't think it would be an issue.
- Mike Bensimon: Anyone else? Let's move on. Let's start with lead agency?
 - MOTION:
 - Ellyane Hutchinson motions for lead agency. Neil Sapolsky seconds. All in favor.
 - MOTION:
 - Neil Sapolsky motions for negative dec. Ellyane Hutchinson seconds. All in favor.

- Mike Bensimon: Whether an undesirable change will be produced in the character of the neighborhood detriment to nearby properties?
- Neil Sapolsky: They are going to build on it either way. I guess not no.
- All Board members vote no.
- Mike Bensimon: Can the benefit sought be achieved by other means?
- All Board members vote yes.
- Mike Bensimon: Whether the requested area variance is substantial?
- All Board members vote no.
- Mike Bensimon: Whether the proposed variance will have an adverse impact on the physical environmental conditions of the neighborhood?
- All Board members vote yes.
- Mike Bensimon: Whether the alleged difficulty was self-created?
- All Board members vote yes.
- Mike Bensimon: Do I have a motion?
 - MOTION:
 - Steve Altman motions to deny. Neil Sapolsky seconds. All in favor. Motion denied.

- Joel Kohn: Thank you.

Neil Sapolsky motions to adjourn. Ellyane Hutchinson seconds. All in favor.