

"Minutes are not official until approved by their respective board."

## TOWN OF FALLSBURG ZONING BOARD MEETING

**October 15th, 2020**

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

- Steven Burke called the meeting to order.
- September minutes approved.

### OLD BUSINESS:

1. SKOPPS COTTAGES – SBL# 27-1-17.2 – Requests several area variances to demolish a 750SF unit and replace it with a 3000 SF unit. Variances to exceed 25% expansion to 400%, exceed 15% allowable lot coverage to 24%, height increase for a 25' peak. Zone: R. Acres: 16.99 acres. Location: 305 Murphy Rd., Fallsburg.

- Joel Kohn represented.
- Joel Kohn: I am here for unit 33. We were here before the Board on June 11<sup>th</sup>. Then we had to come back for 239 and we were back on July 16<sup>th</sup>. We were back on August 21<sup>st</sup> when the owner of the home decided he was going to try to reduce the variance and try to reduce the proposed footprint of the home. Last month we could not get a 239 review on time. We got it late today. Just to refresh the Board this is a 750 square feet bungalow in Skopps. The original proposal was to replace it with a 3,000 square feet home which would be a 400% expansion. Last time we were here we reduced that to 2,000 square feet which was a 266% expansion. The lot coverage variance was going up from 23.66% to 24%. With the reduced footprint it goes from 23.66 to 23.79%. I did get a copy of the 239. The original 239 recommended disapproval. The 239 we received today recommended local determination. They do have some language for reducing the size of the unit.
- Steven Burke: The expansion went from 400 to 266%.
- Joel Kohn: Lot coverage is currently at 23.66% and was originally to go to 24%. With the reduced footprint it will go up 23.79%. It is .13% increase. It is minimal.
- Steven Burke: Still going with the 25 foot peak?

- Joel Kohn: I said 25 feet plus or minus. It will probably be a little lower because the building is smaller.
- Steven Burke: That was a 266% expansion.
- Joel Kohn: Again a 2,000 square feet home is a nice size but it is not that big. It is allowed in other types of uses in the same zoning.
- Steven Burke: Anything else?
- Joel Kohn: I think that is all what we have to say. I wish we could get the original.
- Paula E Kay: If the Board was going to approve the original the Board would need a super majority. The county said local determination but they still require substantial variances and suggests the Board work with the applicant to make substantial reductions.
- Steven Burke: So they are saying they want it less than 2,000?
- Paula E Kay: That is what they are saying. This Board did ask this applicant to reduce and send it back to the county. The applicant has done exactly what the Board has asked of them
- Steven Burke: Proof of mailings?
- Paula E Kay: Mailings were done. The public hearing was done several months ago. This is a lesser variance. There is no public tonight. It is just the Board's review of what you have before you and the changes.
- Steven Burke: Any Board members have any questions?
- Ellyane Hutchinson: It is 2,000 square feet now?
- Joel Kohn: Yes.
- Steven Burke: The 239 wasn't approved they said it was up to us. They want us to hold the applicant's feet a little closer to the fire but that is up to us. No violations?
- George Sarvis: No violations.
- Neil Sapolsky: How high is the peak supposed to be?
- Joel Kohn: I don't know exactly but it will be less than 25 feet. The zoning allows for other uses it is 35 feet.
- Ellyane Hutchinson: For bungalow colonies it is how much?
- Joel Kohn: There is no allowable height for bungalow colonies because it is an existing nonconforming. 25 is in line with all the other bungalows on this site as far as zoning requirements in this district.
- Steven Burke: Anybody else have any comments? Okay. We will start with the criteria. Whether the benefit can be achieved by other means feasible to the applicant?
- All Board members say yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members say no.
- Steven Burke: Whether request is substantial?
- All Board members say yes.

- Steven Burke: Whether request will have adverse physical or environmental effects?
- 2 Board member says yes, 3 members say no.
- Steven Burke: Whether the alleged difficult is self-created?
- All Board members say yes.
- Steven Burke: Lead agency?
  - MOTION:
  - Mike Bensimon motions for lead agency. Neil Sapolsky seconds. All in favor.
  - MOTION:
  - Mike Bensimon motions for negative dec. Ellyane Hutchinson seconds. All in favor.
- Steven Burke: Do I have a motion to approve or deny? The demolition of a 750 square foot unit replaced with a 2,000 square foot unit with a 25 foot peak. 266% expansion and the lot coverage to be 23.66. All correct?
- Joel Kohn: Lot coverage is 23.66 it will be 23.79.
- Steven Burke: Thank you. Do I have a motion?
  - MOTION:
  - Mike Bensimon motions to approve. No second.
- Paula E Kay: I just want to remind the Board you asked the applicant to reduce it. The applicant did reduce it. If you're not going to approve it at 2,000 square feet do you have any recommendation for the applicant? I feel we let the applicant go on for several months and it would only be fair to give some kind of recommendation to let the applicant go forward.
- Steven Burke: I would be favor of them going back and making new plans. I think we all agree. I will ask again. I have a motion on the floor. Do I have a second?
- Neil Sapolsky: Can I get clarification on what the county suggested?
- Ellyane Hutchinson: I thought we recommended last time that it be around 1,500 square feet.
- Steve Altman: Work with the applicant on further size reductions.
- Ellyane Hutchinson: It is still big.
- Steven Burke: If you feel that 1,500 would be fine with you then state it so we can let the applicant know. I can ask if he agrees to that or if he wants to come back again. If he agrees on that can we vote on it tonight?
- Paula E Kay: Yes. Because again you are making it smaller rather than larger.
- Steven Burke: So if someone out there wants to make it 1,500 I can ask the applicant if that is acceptable. If it is we can vote tonight and it could be over. If you have a recommendation please let us know.
- Ellyane Hutchinson: My recommendation is 1,500 from last time when we spoke about it. I still think that is excessive but given that is within the space with other buildings I think that is okay.

- Steven Burke: Any other members feel that is sufficient to go forward?
- Neil Sapolsky: I would agree with what she just said. If that was recommended at the last meeting.
- Steven Burke: Joel?
- Joel Kohn: I looked at my notes from last meeting. We talked about 2,000 square feet. Some of the Board members said they would consider 2,000 square feet. Ellyane Hutchsinon did suggest 1,500 square feet but the majority of the Board was of the consensus that 2,000 square feet may work. Maybe we can do like 1,800 square feet. Further reduce another 200 square feet. I just texted the owner. If there is no choice I will work with him.
- Steven Burke: If anyone is willing to do 1,800 square feet let me know. We know the applicant is okay with that. If you are sticking with your 1,500 let me know. If you are willing to move a little bit.
- Steve Altman: Ellyane said 1,500 and even that is a stretch to me.
- Steven Burke: It looks like 1,500 is it.
- Paula E Kay: You have 2 Board members at 1,500. Do a straw poll and see.
- Steven Burke: Mike was at 2,000. Ellyane is at 1,500. Neil?
- Neil Sapolsky: I am good with a compromise at 1,800.
- Steve Altman: I am 1,500. Remember this structure is right on the road.
- Steven Burke: I'd go with the 1,800. I understand what you are saying. Joel would you be willing to go 1,750? The reason I say that is because I don't feel it is fair that we sent you back and you did come back. Not that you weren't asking for a lot to begin with because you really were. You have somebody willing to give you 2,000. 1 willing to give you 1,800. 2 that are willing to give you 1,500.
- Joel Kohn: Steve Altman said it is close to the road. Existing is 30 feet from the road and the proposed is to be 35.
- Steven Burke: I am willing to go with 1,800. We have 2 1,800s and a 2,000.
- Paula E Kay: Neil what were you?
- Neil Sapolsky: 1,800.
- Steven Burke: Mike would you be willing to go to 1,800?
- Mike Bensimon: Sure.
- Steven Burke: So we have 3 1,800s and 2 1,500s. Joel are you willing to accept 1,800?
- Joel Kohn: Yes.
- Steven Burke: Do I have a motion at 1,800?
  - MOTION:
  - Neil Sapolsky motions to approve. Mike Bensimon seconds. Steve Altman votes no. All others vote yes.
- Steven Burke: You have your motion. The numbers are going to change because you went down.
- Joel Kohn: The lot coverage will change with a fraction as well.

- Steven Burke: I am not willing to do the math in front of me. I made the motion you are going to replace the 750 square foot building with the 1,800 square foot building.
- Paula E Kay: How about no more than 1,800 square foot building.
- Steven Burke: Okay. Those are the conditions. You have your variance. Don't do anything until you speak to Code Enforcement.
- Joel Kohn: Thank you for working with the applicant on this.

NEW BUSINESS:

1. CHESTNUT COURT TOWNHOUSES – SBL# 39-1-94/95 – Requests a 6 month extension from previously approved area variances. Several variances were granted from the Townhouse law and for the location of the caretakers residence.

- Jay Zeiger represented.
- Jay Zeiger: We were in front of you on 2 separate occasions. The first was at the very beginning of the project. We needed 3 or 4. I didn't make it back to picking up my file. They were small variances. 1 was like 10 acres and they were at 9.8 or 9.9 acres. All area variances. Those were granted at the beginning of the project. The project then went through the development stage and through the engineering and the Planning Board. The town engineer review, the town planning review, and the consultant's review. This is the first extension. There was the COVID gap so it was probably 8 or 9 months ago. We were back and asked for the caretaker's house. It was allowing the caretaker house to be closer to the property line than what the code required. That variance was granted with some conditions that the caretaker house be on one of the footprints of one of the houses being demolished. And that instead of being facing the road on length it would face on width which pushed it back a bunch of feet. That variance was granted as well. If you had asked me in August I would have said we are scheduled to be approved in September. We were at the September Planning Board meeting. There was a draft resolution the Planning Board had and it turned out that there was no record that the notice of lead agency to the third parties such as the DEC. The Planning Board could not act in September and pushed it back until August. Somewhere along the way our engineer had forgotten to send out the notice. He sent it at the beginning of October but there is a require 30 days. We could not act in October it has been pushed off to November. We already heard from the DEC acknowledging lead agency is okay. We expect to be approved at the November Planning Board meeting and to start construction immediately after approval.
- Steven Burke: This is just a request for a 6 month extension?

- Jay Zeiger: Yes. It turns out that based on the provisions that were in the government's executive order the first set of variances need to be renewed in October. The second group of variances is renewed in November. I am asking that both be renewed for 6 months from today.
- Steven Burke: We just going to take a poll.
- Mike Bensimon: With the pandemic any extension in front of me I am going to approve.
- Ellyane Hutchinson: Yes.
- Neil Sapolsky: Yes.
- Steve Altman: Yes.
- Steven Burke: I am in agreement. You have your 6 months.

2. EINHORN SUB-DIVISION – SBL# 60-1-10.2 - Requests a 6 month extension for a previously approved area variance for a proposed 4 lot sub-division to create half acre lots without public water and sewer where 3 acres are required for each lot

- Jay Zeiger represented.
- Jay Zeiger: We initially applied for a 4 lot subdivision. We went back and forth and the variance agreed to was 2 lots. We have since been to the Planning Board and our engineers. Our engineers are floating around with the town engineer about what they are going to do with the sewage disposal. The choice is between 2 septic systems or connecting to the town system. The property is in the town sewer district so they are allowed to extend. There have been some engineering complications as to where to connect and whether there is a pump station there. Whether it is privately owned or town owned. The engineers and the Code Department is trying to work through those issues. At the same time the applicant has been doing some soil tests to see if a septic alternative is viable.
- Steven Burke: Okay again this is just an extension. If you are willing to give the applicant 6 months. Is this the first?
- Jay Zeiger: Yes.
- Steven Burke: So Mike?
- Mike Bensimon: Yes.
- Ellyane Hutchinson: Yes.
- Neil Sapolsky: Yes.
- Steve Altman: Yes.
- Steven Burke: And I say yes. Okay so you have 6 month extension

3. ALTER TAUB – SBL# 24-4-5 - Requests a use variance to allow a multi family use in a B zone. Zone: B. Acres: 1.10. Location: 12 Riverside Dr., Woodburne. Cross roads: St Hwy 52.

- Applicant did not appear.

4. THE CENTER FOR DISCOVERY – SBL# 34-9-12.2 – Requests several area variances to sub-divide the parcel into two non-conforming lots. Zone: MX. Acres: 1.07. Location: 234 Main St., Hurleyville. Cross Roads: Mongaup Rd.

- Glenn Smith and Michael Lindsay represented.
- Paula E Kay: While we are waiting for Glenn was there any public wanting to speak on this application? Melissa how do you want to see the public?
- Melissa Melko: At the bottom of your Zoom screen there is a reaction button. Click on that and you will see hands that look like they are clapping or a thumbs up.
- Paula E Kay: Will you see it if their camera is off?
- Melissa Melko: Yes it would come up in the participants list but I don't see any.
- Michael Lindsay: My father is the applicant.
- Paula E Kay: If we can't get Glenn back we are going to ask you to speak a little bit.
- Glenn Smith: Can you hear me now? Can I try the shared screen again?
- Paula E Kay: Yes. Before you get into the actual variance can you explain to the Board who the applicant is and why this application is happening now?
- Glenn Smith: This was 3 separate lots 2 years ago and it was combined into a single lot by the Center for Discovery who owns the property to permit that new building to be built. The new commercial building is 4 retail shops downstairs and 2 floors above it with a total of 8 apartments. We came to the Zoning Board for the height of the building. It was a little more than 35 feet. We got a variance on the building height. The Center still owns the property. We pay taxes. They can't have other buildings on the property. This down here was a prior nonconforming lot.
- Paula E Kay: Glenn the Board cannot hear you. I think what we are going to have to do is what we were going to have do anyway is put this over to the next meeting. The county could not get the 239 done. The Board can't hear the presentation. It is going to make it very difficult for them and the public. Let's do a do over next meeting when the Board can vote and listen and respond to you properly. I think he is gone. Does that make sense Steve?
- Steven Burke: That makes perfect sense. We will postpone it to next month. We will have the 239 and hopefully better connection. We will give him 30 days.
- Paula E Kay: Glenn can you hear us?
- Glenn Smith: I hear you yes.
- Paula E Kay: Hopefully next month everyone will have better wifi and we will have

the 239.

- Steven Burke: Motion to close?

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