

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

TOWN OF FALLSBURG ZONING BOARD MEETING

March 18th, 2021

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

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

OLD BUSINESS:

- 1 MOUNTAIN STREAM VILLAS – SBL: 29-1-4.1 – Requests a 6 month extension on a previous approved area variance. – Requests a 6 month extension on previously approved variances. REQUESTS AN AREA VARIANCE TO ALLOW A DUPLEX DEVELOPMENT. APPLICATION ORIGINALLY DENIED APPLICANT RETURNED ON 4/20/17 AND WAS GIVEN APPROVALS WITH SEVERAL CONDITIONS
- Jay Zeiger represented.
- Jay Zeiger: When we were here last time asking for an extension the project had previously 3 wells. The 3 wells they had provided approximately 30 gallons a minute of water. The development needs 24 or 26 gallons per minute. The complication is that the Health Department requires 100% redundancy so that if the wells providing the wells if they go down you need a backup source to provide 100% of the needs of the community. They needed to find another 26 or 27 gallons per minute. The last time we were here they were selecting the spot and getting the Health Department approval for where they were going to dig and working out an agreement with the Health Department and the town engineer in terms of the pumping test and testing the wells of the neighbors. When you dig for a well of this magnitude you have to not only confirm there is enough water you are getting that you are not drawing from the adjoining properties. They had to select what properties they needed and they have to get permission from their neighbors to put on the monitoring device on their well and get the approval. At the end of last

week I sent you the report. The 2 new wells were dug in November and December. We received a report dated February 22nd which showed that they had to hydro frack the two new wells and one of the old wells. Together they have 2 combinations of wells and each would provide the 30 gallons needed. This was the big step they had to get past to get to the next level and go to the Planning Board to get the rest of the project approved. Basically we spent the time from the last extension getting the protocols approved, digging the wells, and having the company that did the drilling issue this report. You can see the report is quite extensive and took them some time to do. We are moving in the right direction but we need more time to get there.

- Steven Burke: Any questions for Jay? No? Okay. I will just ask if anybody doesn't want to approve the extension? I have no problem approving the extension. Mike?
- Mike Bensimon: You know how I feel about extensions during the age of Covid. I probably won't allow it in 6 months unless there is something substantial going on. There is a lot of factors including the technical and the pandemic.
- Ellyane Hutchinson: I agree.
- Thomas Little: I agree.
- Steve Altman: I agree.
- Steven Burke: Okay you have your 6 month extension.

- 2. FALLSBURG HOLDINGS – SBL: 39-1-65 - Requests a 6 month extension on a previous approved area variance. – Requests a 6 month extension on previously approved variances. REQUESTS AN AREA VARIANCE TO REDUCE THE SEPARATION DISTANCE FROM THE ROAD FROM 16 FEET TO 8 FEET, MINIMUM AREA FROM THE REQUIRED 10 ACRES TO 4.75 ACRES, AND REDUCE THE NUMBER OF PARKING SPACES FROM 35 SPACES TO 29 SPACES. REQUESTS AN AREA VARIANCE TO ALLOW THE EXPANSION OF DUPLEX UNITS ON LESS THAN 10 ACRES AND TO REDUCE THE FRONT YARD SET BACK FROM THE REQUIRED 175 FEET TO 87 FEET. APPLICANT IS ALSO REQUESTING A VARIANCE TO ALLOW PARKING IN FRONT.

- Jay Zeiger represented.
- Jay Zeiger: This is on the cusp of being approved. They've been to the Planning Board a number of times. They've done most of the detailed engineering that is required for this project. The detailed engineering was reviewed at least once by the town engineer. I think there is a second set of drawings he is reviewing now. Going back in history a bit when this project first started there were three things needed from the Town Board to move forward. One was a zoning change. That was adopted and approved when the town changed the zoning laws in 2018 or 2019. They also needed an extension of the water and sewer district. Approximately 80% of the project is in the water and sewer district. To do the

project the applicant wanted to do they needed to be 100%. The Town Board gave approval at that time in 2018 or 2019 to go forward and that they would grant the extension. When we were at a workshop on the project about 5 or 6 months ago Mollie had suggested we go back to the Town Board to firm up the extensions and renew their commitment because a lot of water had been allocated since this project started. We wanted to make sure there was still capacity in the town's water and sewer district extensions. Basically we spent about 4 or 5 months with the Town Board. They wanted to see what the project that was being proposed. They asked to see alternate plans of what the project would look like or the viability of the project if the extensions were not granted. They asked for some other design changes. We spent 4 or 5 months with the Town Board. The Town Board in the February meeting renewed the approval of the extension. That hold on the project has been passed. We are now back in front of the Planning Board trying to finish up the engineering and the final pieces of the site plan. I expect within the period of this extension we will finalize and have approval. As an aside we are asking for an extension out of abundance of caution. We also want to keep you informed that we are moving forward in the project but during the process this property was a former bungalow colony. It had multiple buildings on the property that were dilapidated in need of repair. Once we got the zoning change and the commitment for the water and sewer and once we got the variance from you those buildings were removed. The property is in much better shape than it was before we went to you.

- Steven Burke: That's all now in the water and sewer district now?
- Jay Zeiger: Correct that the Town Board has approved extending the water and sewer district for the project. Our engineer is preparing a map plan and report which documents the terms and conditions of the extensions. The geographic area of the extension. The limitations and number of houses. The manner in which the water would be supplied. Once that report is prepared and approved by the town engineer then we have to have a public hearing to discuss the extension. After the public hearing we need to get the town to sign a formal approval resolution which is filed with the county. The hardest point is getting past the Town Board saying yes and then to the engineer to do the map plan and report which he is working on.
- Steven Burke: Any questions for Jay? No? Okay. Another simple vote.
- Mike Bensimon: This is just an extension right? The variance was already done?
- Jay Zeiger: The variance was already granted. The description that is on my agenda is a little more. The variance was to put the caretaker at a closer distance than the setback.
- Steven Burke: So we are just granted the existing variance?
- Jay Zeiger: You are just extending the viability of the existing variance. We are not asking for anything more of that.
- Mike Bensimon: So yes for the same reason before. It looks like it is moving

forward. The Town Board is looking into it. We might as well let that process go through.

- Ellyane Hutchinson: I agree.
- Thomas Little: I approve.
- Steve Altman: Agree.
- Steven Burke: I also approve. You have your extension.

NEW BUSINESS:

- 1. DR. SEAN & ALLISON WALL-CARTY – SBL: 58B-3-14 - Requests an area variance to place a pool in the front yard. Zone: PUD, Acres: 44.89x97. Location: 62 Meadowlark Lane.
- Sean and Allison Wall-Carty represented.
- Steven Burke: This is like an old situation?
- Sean Wall-Carty: Yes.
- Steven Burke: Tell us what we agreed to in the summer.
- Sean Wall-Carty: We agreed to placing the pool at the side yard because of the way the house was facing. We assumed the front door was the front of the house. According to the town code the front of the house is actually what is between the road and the first part that hits that part of the road. We just have to change the language. The position doesn't move. The structure doesn't move. None of the other stuff moves. It is just changing the word side to front.
- Steven Burke: Okay. We discussed this beforehand and we knew what we were looking at. Do you have anything you want to add?
- Sean Wall-Carty: Nope that it is it for now.
- Steven Burke: Anybody have any questions? No? Okay. Proof of mailings?
- George Sarvis: All good. No violations.
- Steven Burke: Even better. If there is no one from the Board that wants to ask questions I will open it to the public.
- Lauren Decozi: I am the neighbor. I am here to speak about the variance I understand they were not granted the last time they came before you because front yard variances were never approved. I would like you to, before you vote on this or take another look at it, that you look at the photographs I sent. The structure that was built around the temporary pool is crooked, not plum, not level. It moves when the wind blows. It was left there all winter even though the pool was taken down. It is a very unsightly situation that can be seen from the road because it is in the front yard. I forwarded you some photographs to George this afternoon and I was hoping that all of you could see them prior to deciding on this variance again. It was my understanding there was never a variance granted in a front yard in the woods. Am I correct?
- Steven Burke: This variance was granted for the position of where the pool is. The

wording was different which is why they are back here now.

- Lauren Decozi: It still does not take away from the fact that the location of the pool is right near my basement window. If the pool were to breach my basement would be flooded. There's no question. Last summer by the end of the summer one of the stanchions on the pool was at an angle and it looked stressed after the entire summer of the pool being used. I was very concerned about it breaking.
- Steven Burke: Did it break?
- Lauren Decozi: It did not. I would at least request everyone look at the photographs. It really is unsightly. It was left this way all winter.
- Steven Burke: Let me ask. Did all the Board members get to look at the photographs?
- Lauren Decozi: I don't believe they have. I forwarded them to George today.
- Steven Burke: What time did you forward them?
- Lauren Decozi: Sometime in the early afternoon.
- Steven Burke: That may not enough time for people to look at it. Maybe not everybody did.
- Lauren Decozi: Did anybody see the photographs?
- Steven Burke: I did not.
- Thomas Little: I did not either.
- Lauren Decozi: I would request that you at least look at the photographs before you make your decision.
- Steve Altman: Did we grant the variance based on the pool would be taken down in the fall?
- Steven Burke: It is a temporary pool yes.
- Lauren Decozi: It is not a small pool. It holds a lot of water. It is not made of rubber. I'm not saying it isn't strong enough to hold the water that is there. It is a lot of water there. The fence around it was not done professionally. It is really unsightly.
- Steven Burke: Would you feel better if the applicant decided that they would put a stronger structure?
- Lauren Decozi: No. It is not about the strength of the structure it is the design of the structure.
- Steven Burke: You just said the structure was shoddy.
- Lauren Decozi: When the wind blows it moves. To me it was not installed properly. I don't know if footings are required when you put in a fence of this kind.
- Steven Burke: If they agreed to put something strong around the pool would that alleviate the concern?
- Lauren Decozi: The water would still go through and damage my property.
- Steven Burke: So the structure of the fence is not an issue. You don't want it there no matter what?
- Lauren Decozi: I think if you looked at it you wouldn't want it there either.
- Steven Burke: I am trying to see if we can come to a compromise.
- Lauren Decozi: It is a very tight space. The property lines in the community are

whacko. It is less than 5 feet from my property line. The planters Mr. Carty put there are on my property line.

- Steven Burke: That doesn't have anything to do with the planets.
- Lauren Decozi: The pool is very close to my property line also hence the need for a variance. It is less than 15 feet from my property line.
- Steven Burke: Okay. Is there anything else you'd like to tell us?
- Lauren Decozi: Only that I wish you would look at the photographs.
- Steven Burke: Okay thank you.
- Lauren Decozi: You're welcome and thank you. I am grateful to be able to participate in this meeting.
- Steven Burke: Anybody else from the public?
- William Johnson: I am a neighbor of Dr. Wall-Carty and Allison as well. I wanted to publicly support their application as well. It is my understanding that the variance has already been granted. There are some wording issues right that are being worked on. I want to give them my support in the fact that I have heard the complaint. I am weighing the complaint versus some of the benefit that is coming. The tough time that the entire community is having. The residents of Fallsburg have lost all of our town facilities which included 2 pools. We are able to get back outside at this point but we don't know if the pools will open. The Wall-Carty's are providing a great service. Not for just their family they have invited many families there. I believe that should be weighed in with the decision as well.
- Steven Burke: Anybody else?
- George Sarvis: We reviewed the pictures the neighbor sent and the previous temporary pool was provided with a temporary barrier that did not survive the winter. If and when this new application is granted and the building permit is granted it will have to comply with all the applicable New York State rules of property maintenance section 303 which would dictate the size of the fence, the size of the holes if it was chain link, and the materials used. What is there now is not necessarily going to be what will be approved with the building permit. Keep in mind it was Covid last year and everything was approved on a temporary basis. That permit was open and closed. It is time for a new permit for the permanent placement of the pool which will be compliant with all the applicable codes.
- Steven Burke: I just know that if it is approved that they comply with section 303. Okay. Anybody else want to say anything?
- Marisol Torrens: I second what George said. It was something temporary. All the parks and the pools are closed as well. I am a parent as well. The kids drive us nuts at home so something that could distract their mind and relax them is a good thing. At least he put up a fence. I have seen other places that did not put up a fence. Once he gets the new permit it has rules and regulations that have to be followed.
- Steven Burke: Okay thank you. Anybody else from the public? No? Okay. We will close the public portions. Board comments?

- Steve Altman: I would like to see those pictures.
- Steven Burke: Anyway we can see those pictures now?
- George Sarvis: No. They were sent to Jen and we reviewed them from Jen's desk.
- Marisol Torrens: It was those little chain link fences that you put under your deck.
- George Sarvis: It was basically lattice.
- Marisol Torrens: That was what it was. A couple of weeks ago we had strong winds. Maybe with the wind it went away. Again everything was temporary. Now that he has been educated he is doing what he has to do.
- Ellyane Hutchinson: This permit is just to approve the one that was already done based on the wording. He has to do another permit when this one expires?
- George Sarvis: That is correct.
- Steven Burke: Any other Board comments?
- Mike Bensimon: I went to the property during the summer and looked at how everything was situated. It seems to make sense. It is a small property to begin with. There is not a lot to work with. With regard to the public comments about the flooding and the basement. That is not something you can anticipate and if it does it becomes a civil matter. It is in the owner's best interest that it doesn't happen. Like before I am for this application.
- Steven Burke: Any other Board comments?
- Thomas Little: I approve and accept this as long all of the safety protocols are put in place. I remember this from the last go around. As long as the fence is up for me I think this is the second go around. Just approving of something that was already approved is enough for me to approve it again. I think the second go around for summer number 2 if there are some other reinforcements to make sure all is good I am totally fine.
- Steven Burke: Like I said one of my conditions is going to be they comply with the section and the fence material. They are going to have to go through Code Enforcement anyway. If we approve I am making that condition anyway. Let's run down the criteria. Whether the benefit can be achieved by other means feasible to the applicant?
- 3 Board members vote yes, 2 vote no.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- 4 Board members vote no, 1 votes yes.
- Steven Burke: Whether request is substantial?
- 4 Board members vote no, 1 votes yes.
- Steven Burke: Whether request will have adverse physical or environmental effects?
- 4 Board members vote no, 1 votes yes.
- Steven Burke: Whether the alleged difficulty is self-created?
- All Board members vote yes.
- Steven Burke: Lead agency?

- MOTION:
- Mike Bensimon motions for lead agency. Ellyane Hutchinson seconds. All in favor.
- MOTION:
- Mike Bensimon motions for neg dec. Ellyane Hutchinson seconds. All in favor.
- Steven Burke: Do I have a motion to approve or deny with the condition that they comply through Code Enforcement town section 303 with the fencing and the materials used in the future?
 - MOTION:
 - Ellyane Hutchinson motions for conditional approval. Thomas Little seconds. Steve Altman opposed. Mike Bensimon approved. Steven Burke approves. Motion passes.
- George Sarvis: Just to be sure that was 303 of the New York State codes?
- Steven Burke: Yes New York State. The Town of Fallsburg is going to adopt them because he has to become compliant. Mr. and Mrs. Wall-Carty you have your variance.
- 2. HARMONY HILLS – SBL# 36-1-28.17 – Requests several area variances to reduce the required front yard set back from the required 175 feet to 35 feet, side yard set back from the required 50 feet to 20 feet, to increases the density from 25 units to 31 units, and to increase the lot coverage from 25% to 27.6% to build a caretakers house. Zone: R & PRD. Acres: 8.36. Location: 404 Laurel Ave., South Fallsburg. Cross Roads: Brickman Rd.
 - Joel Kohn represented.
 - George Sarvis: Can I start with this property is required to have a 239 review because it is within 500 feet of a county road and it has not come back yet.
 - Steven Burke: We are going to hold the public on this. We are not going to vote. We are also waiting for the 239. We are going to hear the public if there is public. We are not going to vote. Have you been to the Planning Board?
 - Joel Kohn: Yes I have and I understand that it was discussed that the Planning Board will hold another public hearing on this before the Zoning Board will vote on it. I do also want to make sure the 239 has been sent to the county.
 - George Sarvis: It has.
 - Joel Kohn: This project is Harmony Hills. It is a duplex development consisting of 30 units on 8.3 acres. It is on Laurel Avenue. It has about 6.86 on the east side of Laurel Avenue and about 1 and a half on the west side. Is it better if I share my screen and show the site plan?
 - Steven Burke: Absolutely.
 - Joel Kohn: The proposal is to add a caretaker's house on this side of Laurel Avenue. They are in need to have a caretaker's home. It is something needed for

the community and the development. They will need 3 variances from the Zoning Board to get that approved. There will be a variance for density. Right now they have 30 units. Only 25 are allowed through the duplex code. We will need a variance for density. The second will be lot coverage. The maximum lot coverage is 25%. A driveway and the caretaker's house will be a total of 27.6% lot coverage. There will be a need for a front yard variance. Duplex code requires 175 feet front yard. This is only 35 feet from the front which is the same as a single family would be in this zoning. The side yard setback is required 50 feet this will be only 20 feet which is also the requirement for a single family home. In reality this is the same parcel as the duplex development but you could look at this as a single family home on the side of the ride which won't bother anyone and there won't be any crossings.

- Steven Burke: Anything else?
- Joel Kohn: That is it for now.
- Steven Burke: Board questions? No? Okay. I have a question. I know each and every one of these projects are the same. You want to get the most of what you can on a lot that is only but so big. I do understand that. I understand why. You could easily solve the caretaker's situation by reducing one of your units. Instead of going for 31 units and go for one less and make that a caretaker's house.
- Joel Kohn: This is already an existing project. It is not being built. It is not a new project. It has been built out in 2014 and 2015.
- Steven Burke: I understand. What is it you want to do then?
- Joel Kohn: There are 30 people that have homes in this development and now they want a caretaker's home.
- Steve Altman: So all of the homes are occupied or sold or rented?
- Joel Kohn: Correct.
- Steven Burke: So what about the density from 25 to 31?
- Joel Kohn: What I am saying about today's zoning code they are allowed 25 units. If this was a vacant piece of property they would only be able to put 25 units. There are already 30 units. We are now adding one more so 31 units versus 25 allowed. We are just asking for a variance for 1 additional unit.
- Steven Burke: Again the wording is not the way I understood it. That is why I am asking that question. You are asking for 1 more unit for the caretaker.
- Joel Kohn: Correct.
- Steven Burke: All those units are bought and sold?
- Joel Kohn: Yes they are all occupied since 2015.
- Steven Burke: Do you want to put the caretaker's house inside the development?
- Joel Kohn: This is kind of inside and outside. This is right across the street if you saw the map. It is not within the development but close enough.
- Ellyane Hutchinson: There was a note that this was agreed when the variance was first issued that it was not to be built on that side because of storm water drainage.
- Joel Kohn: That was part of the Planning Board notes and that is what we are going through the Planning Board process to get that off of the site plan. That is

why the Planning Board wants to hold a public hearing on that as well.

- Steven Burke: Any other Board members have any questions?
- George Sarvis: I'm not a Board member but I have a question. Where the proposed caretaker is on the other side street I see there was a note on the previous site plan that it would be a conservatory and there would be no buildings built on that. Do I have the right property and if I do can you elaborate on that?
- Joel Kohn: Yes you do and that is the same question Ellyane just asked. This is in front of the Planning Board for the matter of removing that note from the site plan. This is why the Planning Board wanted to have a public hearing on that as well.
- George Sarvis: So I am thinking about the right property.
- Joel Kohn: Yes.
- Steven Burke: Anybody else from the Board have a question for Joel? No? Okay. We will open it to the public. If there is somebody here we will let them speak. We are also not going to close the public. Anyone here from the public?
- James Legari: As an observer I've been watching this Board and the Town Board for a number of years. It seems to me that developers present a plan, often times before the Town Board before they get to the Planning and Zoning Boards, and they make whatever changes and agreements they have to make to get the plan approved. In this case I have been told is that when they made the original plan they agreed and the town agreed there would not be anymore building on this property or property associated with this development. We are back here again for all of the reasons the chairman eluded to. As a business they want to make maximum use of the investment they put in. I don't think it should be done for two reasons. One in this case storm water drainage going back several years the town and Code Enforcement agreed they needed this drainage. The developer agreed and it is in writing. So now we are back here wanting to make another change. I urge that this Board, the Planning Board, and the town not allow these things to continue. There is another reason for this. When the development was originally put together everybody that was interested in the development walked away knowing that the town agreed this was all said and done. Now we are back here again. I will quote the attorney representing this group. I think he said a little while ago no we are not concerned about a tunnel or a bridge but we will do as often do and come back for that later. I urge that the Zoning Board uphold what the town and various boards already agreed to and not allow these things to continue.
- Steven Burke: Anybody else from the public?
- Steven Arby: I appreciate the opportunity to comment on the construction proposed by the Harmony Hills on Laurel Avenue and the variance being requested. From recent Planning Board meetings I have attended I understand that the caretaker home being proposed would be on a section of the property which has been restricted to stormwater management. In February the Planning Board stated that the area of the property was set aside not to be built on. That was also my understanding when I attended a public hearing back in 2012. The

Harmony Hills stormwater basin is currently a wooded area and my property adjoins it on Laurel Avenue. For years I have understood that this land could not be built on. From my perspective construction of a caretaker home in this location would have a significant impact. I am opposed to the variances being proposed. There were meetings on this project as far back as 2007. I recall from the meetings from the Planning Board it was clear to have no buildings on the west side of Laurel Avenue. This was to only be for stormwater. In 2012 in order to be able to build to the extent where the 15 duplexes are now on the east side they agree not to build on the west side of Laurel Avenue. I understood this was a significant condition of the Planning Board's approval and this is important to me. In a public hearing on this project in April 2012 I stated I was concerned about traffic and noise on the road adjacent to my property. In the meeting I was told there would be no people building or anything on the same side of property other than stormwater. Then the development was constructed and has operated for over 6 years without a caretaker on site. I don't see why the caretaker could not be on the east side of Laurel Avenue. I want to speak briefly about why I find these requests for variance to be substantial, detrimental, and self-created. First they are requesting approval for 31 units and maybe they aren't quite there yet when only 25 would be allowed from the current zoning. My concern is that this is a substantial increase in the homes and the homes already fill the property on the east side of the road. To ask for permission to build on the west side on the stormwater site would be detrimental for me and my neighbors. Second they are requesting approval to increase lot coverage to 27.6% when only 25% is allowed. I want to raise the importance of open space and having open space on any project supports the overall character of the neighborhood for all residents. Laurel Avenue is already a busy area and open space is limited. Increasing lot coverage by adding a unit is not supportive of the environment on Laurel Avenue. I have a couple other brief points to mention. The applicant wants to reduce the front side from 175 to 35 and on the side from 50 feet to 20 feet. The front is a huge reduction. The purpose of the setback is to support safety and space between properties. Needing such large changes shows that the site is not appropriate for a home. We know it wasn't designed to fit a home. The purpose of that side of the property was to be stormwater only. The project would have an adverse impact. I brought up the increase in noise, light, the traffic next to my property. It would compromise the open space which was agreed to. For all of these reasons I respectfully ask the Board to not approve these variances. Thank you for hearing me.

- Steven Burke: Anybody else?
- Mauve Tour: I am attorney from Albany New York. We have been retained by the SYDA Foundation to address this application. One of the things that has caused me a little difficulty is exactly what we are hear to talk to you about. There is the proceeding before the Planning Board. We have also been monitoring that. The Planning Board has not acted yet so technically you folks don't have anything in

front of you this evening except to talk about this application. I thank you for taking the time to do that because I think this is a very important application for the foundation and the community. If you look at this application what became really clear to me is it does not qualify for these variances. Chairman Burke you did a great job of going through the requirements for variances. I think if you look at this application you will find these variances are more substantial than they've been represented to be. This is why the foundation opposes it. This restriction that is currently part of the site plan prohibits any structures on this area of the property. That was a bargain for restriction. In exchange for that restriction they got to have 30 units. In exchange for that restriction they had to have the stormwater on that separate parcel. Back in 2007 according to the minutes of the Planning Board the prior development had a caretaker cottage. When they decided to increase the size of this development and go from 7 units to 15 duplex units it did not include the caretaker cottage. That was a choice that was made. However it was a choice that was given consideration of density of this unit. In making that choice they also made a choice to give up development rights on the other side of the right. The first argument for a variance is that it is a necessity. While we have heard they would like a caretaker cottage and they need a cottage we have not heard why. It goes to say that this Board has the right to say show us your need. Show us that this creates an undue hardship and that you can't use your property. You've heard all the comments about the undesirable impacts of this. It is not a residential parcel. It is a parcel that is part of a duplex development. In looking at the impacts on the neighborhood you have to look at not just the adjoining neighbors but also the foundation. The foundation has been located there for over 40 years. They have been a good neighbor. They used these areas as walking paths. There are meditation areas. Taking down the woodland area will have an impact. In terms of the benefit to be achieved it really isn't clear what the benefit is except for convenience to the development but it is very clear what the detriment is to the community. The other question is can this be achieved by other means. Again Chairman Burke you asked can this be done on the parcel. I listened while Mr. Kohn indicated that the other parcels are occupied. That does not indicate that there isn't one available for this purpose. I think that is a legitimate issue. There is also other faces on the parcel. They chose to fully develop this parcel. There is a swimming pool. There is a basketball court. They does not mean there is not an area available within that section of the property that they cannot have the caretakers cottage. They may not want to do that because they already have maximum coverage and they would have to make adjustments. The community should not suffer a detriment because they want an additional benefit in addition to what they already asked for. These are substantial variances. There is one variance that is not even mentioned. In looking for the setback reduction there is also a buffer requirement on single family homes. There is supposed to be a 75 foot wooded buffer in front of the property. You saw when we looked at the site

plan on the screen that is a parking area. That too will change completely. The neighborhood, the community, the feel for those adjoining properties. We are looking at a 76% reduction of the setback of the buildings but we haven't discussed what is going to happen to the buffer that is supposed to be in front of residential properties in your community. The side yard buffer is also a 60% reduction. This is not the same as a single family house. They used this portion of the property for development. They now want to put a caretaker there. That is more akin to home occupation. Home occupation would mean that this is part of the development itself. They would ask that you consider this very carefully. It sounds like it is a small increase in lot coverage going from 25% to 27% but the 25% max out coverage was achieved by bargaining the development rights away on the other side of the property. You are getting a little bit of a bait and switch here. We come in and we want to say we want to maximize development on this parcel. Now we want to go beyond the maximized and we want to use the stormwater area for a caretaker cottage. That brings us to the environmental impacts. There is nothing in this application that evaluates the stormwater impacts. There is nothing in this application if you add more impervious surfaces such as the house, such as the driveway that it won't impact the stormwater management for the other 30 units. That has not been provided and that is critical information because that was the very purpose of this parcel. I don't think the Board can ignore that this is a self-created hardship. They built the development. They did not put in a caretaker cottage. They sought to maximize every square inch of this parcel and now they want to go even further. At this juncture it is before the Planning Board and they have to decide if they are going to lift that prohibition they wisely put in place when they considered this initially. Right now you can't act but we ask you that you consider all of these factors as you weight whether or not to let this application to go forward. We did submit written comments today and I do not know if your Board received them. I would note that on your public notice it says they have to be submitted before 4 o'clock the day of the hearing. I understand that ZBAs are tough. I have sat on my ZBA for years. If you need comments earlier particularly if you are going to continue this hearing we would like to know when is a reasonable time to submit comments so you have them for full consideration. I may want to be heard again and may have some additional comments when we come back before you. I think this is an application that demonstrates why variances can be really detrimental to neighbors and the overall feel of your community. I thank you and ask you consider the written comments when you get them. We ask on behalf of the foundation that this application when it is put to a vote be denied.

- Steven Burke: Anybody else from the public? No? We are not closing this public portion because there were people who were here tonight that should not feel like they were wasting their time. Joel we are not voting. I think we will end it here.
- Joel Kohn: That is fine. Thank you
- Steven Burke: You got the gist of what was agreed upon years ago. I do agree

with it but I am just one person. Hopefully we will see you next month.

- 3. ECHO LAKE PROPERTIES LLC – SBL: 37-1-6.2 – Requests 2 area variances: minimum floor area to go from required 1200 sf to 660 sf and side yard set back from required 20 feet to 14 feet. Zone: R. Acres: 60x139. Location: Sea Isle Dr.
- Jay Zeiger and Gilbert Gordon represented.
- Jay Zeiger: This property is located in the Echo Lake community. It is part of a subdivision that was approved long ago in the 50s or 60s. The subdivision created a whole bunch of small sized lots including this one. There is a lot of houses built in that subdivision. Many of the houses are smallish houses which are consistent with the size of the lot. If you look at the original subdivision application which was approved you will see there are many houses shown as proposed and where they would be located. Many of them with a 10 foot setback which is what the subdivision contemplated at the time of the approval. What has happened since that subdivision map was approved is the town established zoning districts and put this property in the R zoning district. We are not subject to the above requirements of the R zoning district. 1 is the house needs to be 1,200 square feet and the second that there is a 20 foot requirement for the side yards. What we are proposing is 2 variances. 1 is a smaller house at 660 square feet and the second is a 14 foot side yard instead of the 20 feet. Again the 14 feet is more than what is shown on the original subdivision map when it was adopted but it is less than the 20 foot required. We understand that the R zoning district also requires half acre lots. We don't know the variance on the size of the lot because we are a pre existing lot. This lot is .15 acres and this is a lot that under the current zoning would never be allowed to be created. The other thing you will see is the lot has some issues beyond being a small lot. It is adjacent to the town pump station and it has a forced easement on the lot which kind of cuts out the areas of development. I sent you a picture of the house is proposed. The idea is to have a completely all glass wall. The wall you see is pictured from the lake so it would have a nice view from the lake and be attractive from the lake. We are going to keep as many trees as we can to keep it wooded. We are requesting 2 variances to allow this house to be built on what is an existing undersized lot.
- Ellyane Hutchinson: There were no buildings on this lot before?
- Jay Zeiger: No this has been a vacant wooded lot. It was never built on.
- Steve Altman: Are you saying all the surrounding houses in this sub development are on the same sized lots and the same sized footprints as you are proposing here?
- Jay Zeiger: I have the subdivision map that is attached and yes the subdivision had many small lots of this size. There are many houses in this community that is

of similar small size. There are bigger lots. This builder is Gordon Gilbert. He himself has built houses in this community that are larger than this. Generally it has been a combination of several of the existing lots that were then put together. In this instance Mr. Gilbert only owns this lot and he can't do it as a lot combination. The size of the lot is existing and there is not adjacent lots he can build. I don't know if you've seen any of the lots he built along Echo Lake. All the new lots on Echo Lake are the ones Gordon built including the one he lives in.

- Steve Altman: Do we have a picture or a site plan to see the sizes of the other houses? I understand some lots were melded into one lot and a bigger house was put on it. To me if the majority of the houses are similar to what you are proposing then I would think positively.
- Gordon Gilbert: I think quite a few houses were built back when this development was started back in the 60s. I think it may have been a REC1 zone back in the day which required only 600 square feet minimum of building. I would say at least half are built that way. According to the sketch we sent in from the original plan they are all built to 10 foot side setbacks. They appear quite close. I guess another point would be if you were to use the current R setbacks of 20 feet with 35 in the front and 25 in the back you would only have a footprint of 800 square feet. It isn't even possible to build 1,200 square feet unless you do 2 stories. It is kind of like different zoning setbacks are being forced on these tiny lots. Basically the house we are proposing is much more beautiful than the existing cottages. It is similar in size, setbacks, and characters to the ones that are there.
- Steven Burke: Any other questions? Board comments? No? Okay. Violations?
- Marisol Torrens: No violations and mailings are perfect.
- Steven Burke: I didn't go into the development. Is it true that most of these buildings that are existing are similar as far as lot size?
- Marisol Torrens: Yes. They are small. It is a small area for lot size. There is an underground line on the bottom that is why he is forced to build a lot smaller.
- Jay Zeiger: That is the forced main easement.
- Steven Burke: Anybody else have any questions? Okay we will open it to the public. No? Okay. We will close the public portion. Board comments?
- Steve Altman: I have no problem with this.
- Thomas Little: No comments.
- Ellyane Hutchinson: No comments.
- Mike Bensimon: No comment. I do have a question. The owner has owned other properties in this development? Built and sold them?
- Jay Zeiger: Yes other than the one he lives.
- Mike Bensimon: Which is not this one. Is he looking to build this for somebody? Is he looking to build this to sell?
- Jay Zeiger: He has a customer he is building for.
- Mike Bensimon: Thank you.
- Steven Burke: I don't have any questions either. We will run down the criteria.

Whether the benefit can be achieved by other means feasible to the applicant?

- All Board members vote no.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members vote no.
- Steven Burke: Whether the request is substantial?
- All Board members vote yes.
- Steven Burke: Whether the request will have adverse physical or environmental effects?
- All Board members vote no.
- Steven Burke: Whether the alleged is self-created?
- 4 Board members vote yes, 1 votes no.
- Steven Burke: Lead agency?
 - MOTION:
 - Steve Altman motions for lead agency. Ellyane Hutchinson seconds. All in favor.
 - MOTION:
 - Steve Altman motions for negative dec. Ellyane Hutchinson seconds. All in favor.
- Steven Burke: Do I have a motion to approve one area variance for minimum floor area from a required 1,200 to a 650 and the second is for a side yard setback from 20 to 14? We are doing these together. I have a motion to approve from Steve.
 - MOTION:
 - Steve Altman motions for approval. Ellyane Hutchinson seconds. All in favor.

- 4. REFUAH HEALTH CENTER – SBL: 50-5-15.2 – Requests 2 area variances for relief from the maximum lot coverage of 25% to a proposed coverage of 46.6. And a variance to allow the manufactured office trailers onsite. Zone: B. Acres: 2.33. Location: 36 Laurel Ave.
- Jay Zeiger and Mike Reilly represented.
- Mike Reilly: This is a diagnostic center. We are here looking for 2 area variances. One is to allow the modular type buildings that are on site and being used as offices right now. The second is relief from the maximum lot coverage requirement. This particular use in this zone allows for a maximum of 25%. Right now we have a site plan that has been preliminarily reviewed by the Planning Board that has a proposed lot coverage of 46.6%. I would make note that when you look at the bulk regulations in the Business District that the majority of the uses have a max lot coverage of 50%. Even just regular offices. This falls under diagnostic center and that has a maximum of 25%. If you look at the site plan provided you will see that

we tried to improve the site. There is not a lot of parking or walkways. We tried to improve that by adding a parking lot. We are required to have 28 spaces and we have 36 shown. 2 entrances instead of 1 and both have decent site distance. Concrete sidewalks. That is what we are proposing.

- Jay Zeiger: Just to throw in on the lot coverage. Part of the lot coverage that is contributing is the old building which is not being used. The long term objective is to remove that building. We don't believe it is capable of being occupied or if it would be economically feasible to something that could be occupied. We are trying to get the cost of removal and that is still in process. It was a former school building and at the time the building was built asbestos would be the fire material of choice. The building is full of asbestos. The cost of removal is going to be enormous. We are trying to work with the site with what is there. Once that building is removed lot coverage would go down.
- Steve Altman: I'll tell you how old that building is. I went from kindergarten to 6th grade there.
- Steven Burke: Anything else?
- Jay Zeiger: I think Mike covered the highlights. There is maybe 25 or 30 items on the bulk table in this zoning district. 80% or more have a 50% lot coverage. Although we are going from 25 to 46 within the community and the character of the neighborhood we are within what most of the properties would be allowed anyways. If it were a professional office it would be at a 50% lot coverage.
- Ellyane Hutchinson: And that lot coverage does decrease when that building is taken out?
- Jay Zeiger: Yes sure.
- Steve Altman: The footprint of that building is the majority of the land.
- Steven Burke: My stipulation with this is I always like to get something to give something. The front parking lot that is there now is horrendous. I would like to know what your plans are to do anything with that. That would be a condition for me. That parking lot is dangerous. I've been there many times. I've used the facility. I think they are great. I think they are an asset to the community. I think they are great to have for the town. I am also not happy with how things are situated.
- Mike Reilly: I'll share my screen and show what we are proposing.
- Jay Zeiger: He wants to do that. He will share his screen.
- Mike Reilly: On the left side here is the existing site. You can see the trailers are in the hatched and cross hatched. There is one entrance. There is maybe 6 to 8 delineated parking spaces. Very poor gravel surface in front of the offices and it goes over in front of the old school building as well. There is some old fencing that is not installed correctly. This is what we are proposing to do. We are proposing a full blown parking area in front of the building here. All the way in front of the school as well. Handicap parking. A concrete sidewalk along the parking. On the downhill side we are proposing a timber guide rail which will be a bit of a drop off when we grade the parking lot. I think it will be much more improved. This will all be asphalt

- paved. It will look nice in the end. That is what we are proposing.
- Steve Altman: What about rainwater?
 - Mike Reilly: We are trying into the existing infrastructure along Walden Avenue. We will disturb less acres and won't need a full blown SWEPP but we will preparing a basic version.
 - Steven Burke: What about that front parking lot? Can I get something on that?
 - Mike Reilly: That front parking lot will be completely revamped. It will all be blacktopped again. It will 6 spaces. A couple of handicapped. A loading space right in front of the offies. Then plenty of parking all the way.
 - Steven Burke: Some kind of berm or timber fence?
 - Mike Reilly: When I grade this out there will be a little bit of a drop off when we create the flat area for the parking lot because it is on a hill. What I proposed was a timber guide rail. Something that looks nice along the downhill side there to keep the cars on the parking lot.
 - Steve Altman: The open space will be grass?
 - Mike Reilly: Yes the area below the parking lot between the parking and Laurel will be grass. I imagine the Planning Board will require landscaping.
 - Steven Burke: I will suggest Planning Board oversight on this if you do get it.
 - Jay Zeiger: We are required so we are okay with that.
 - Ellyane Hutchinson: I need to step away for a few moments. I will be back as quick as I can.
 - Steven Burke: Anybody have any questions?
 - George Sarvis: Is there any accommodation for the buses?
 - Mike Reilly: I thought the buses could park in the northern part of the parking lot right here. Because I have some excess parking you could probably fit 3 or 4 buses right here and have plenty of parking. Right now I have 8 extra spaces.
 - Steve Altman: It shows you creating another entrance?
 - Mike Reilly: Yes Mollie requested that. She thought it would help with circulation.
 - Steven Burke: I think that second driveway is good. The buses won't destroy the main one. Anybody else have any questions?
 - Thomas Little: Just out of curiosity how long will a project like this take? If you were breaking ground today?
 - Mike Reilly: It could take less than a month with the right contractor.
 - Steven Burke: We addressed the paving and drainage. Okay any other questions? Board comments?
 - Mike Bensimon: It is my understand that this organization is a medical center. They have a reputation for accepting all members of the community. Therefore I consider them a public good. I would approve as is or with some stipulations.
 - Steven Burke: Anybody else? Let's open it to the public. Anybody from the public? No? Okay. We will close the public portion. Do we wait for Ellyane? I think we can go forward with 4 members. Are you okay with that Jay?
 - Jay Zeiger: Yes.

- Steven Burke: Board comments?
- Steve Altman: I am okay with this.
- Thomas Little: I am okay with this as well. Mike said it best. The betterment of the community and what they offer South Fallsburg is good.
- Steven Burke: I agree. As far as being an asset to the community there is no doubt about it. They service everybody. I am happy they are there. I am not happy with that front parking lot. It is dangerous. I see it from my car's light. There is very little space to turn around. You are going to address that. I am sure the Planning Board will hold you to that. Let's run down the criteria. Whether the benefit can be achieved by other means feasible to the applicant?
- 2 Board members vote no, 2 vote yes.
- Steven Burke: Undesirable change in neighborhood character or nearby properties?
- All Board members vote no.
- Steven Burke: Whether the request is substantial?
- All Board members vote yes.
- Steven Burke: Whether the request will have adverse physical or environmental effects?
- All Board members vote no.
- Steven Burke: Whether the alleged difficulty is self-created?
- 3 Board members vote yes, 1 votes no.
- Steven Burke: Lead agency?
 - MOTION:
 - Steve Altman votes for lead agency. Mike Bensimon seconds. All in favor.
 - MOTION:
 - Steve Altman votes for negative dec. Mike Bensimon seconds. All in favor.
- Steven Burke: Before I go any further mailings and violations?
- Marisol Torrens: Mailings are good and no violations.
- Steven Burke: Motion to approve?
 - MOTION:
 - Steve Altman motions to approve. Thomas Little seconds. All in favor.

Steve Altman motions to adjourn. Thomas Little seconds. All in favor.