

Minutes of the Zoning Board of Appeals Meeting held on September 11, 2019 at 8:00 PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Joseph DeVenuto, Gary Kestenbaum
Absent: None
Also Present: Attorney Robert Dickover; Sandra Capriglione, Planning Board; Tim Egan, Village Trustee

Chairwoman Ungerer, opened the meeting with the pledge of alligence and a moment of silence for those who perished 9/11 and for all those suffering in its aftermath.

1. Executive Session: The Board entered into executive session at 8:03 and returned at 8:17pm.

2. Approval and Acceptance of Previous Minutes:

Motion was offered by K. Abrams, seconded by J. DeVenuto, to approve and accept the minutes of the meeting held on August 14, 2019. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
NOES	0	

3. Action on Decisions:

A. Schwimmer –

Review decision for an area variance to permit the installation of an 8 feet high solid pool curtain around an existing in ground swimming pool. Said property is located at 21 Vanderbilt Dr., HM SBL 245- 1 -102.

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Village Law Section 7-712-b (c). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

Based upon the testimony and comments from members of the public the Board determines that an undesirable change in the character of this neighborhood or detriment to the neighbors in that neighborhood will result. It is noted that this determination is not based upon the Board's consideration of the Home Owner's private covenants that require architectural approval from the HOA Board of Directors but rather a consideration of the neighbors objections to the type of material being used for the fence.

The Board finds that the proposed fence will result in a serious, undesirable detriment to surrounding property owners.

The Board finds that there are alternatives available to the applicant to meet the perceived need for the variance because a fence made of complying material would obviate the need for a cloth or canvas material fence. Also, the applicant failed to demonstrate that a fence 8 feet in height was required to achieve the required privacy and the Board determined that alternative means were available to achieve that privacy including umbrellas and screens neither of which would require a variance.

Based upon the foregoing the Board finds that there are other alternatives which would meet the needs of the applicant making a variance unnecessary.

Considering that the applicant is requesting that the "fence" be permitted as a temporary structure which is also not permitted, that it be permitted to be 8 feet in height rather than 6 feet, and that it be permitted to be constructed of a cloth or canvas like material, the Board determines that in their totality the variances requested are substantial.

The Board determines that other than the aesthetic impact of the proposed fence upon the neighborhood that the variances will not adversely impact the physical or environmental conditions in this neighborhood.

The need for the variances are self-created in that the difficulty expressed by the applicant can be met by alternatives which would not require the requested variances and therefore the difficulty being experienced is self-created.

In employing the balancing tests set forth in Village Law Section 7-712-b (c), and taking into consideration the Board's findings as set forth herein, the Board hereby determines to deny the variances as requested. Chairman Ungerer, conducted a roll call of the Board which resulted in the following:

AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
NOES	0	

(Full decision on file at the Village Clerks office).

B. Cruz –

Review decision for a Special Permit to permit for the continued use of a 2nd dwelling unit for an individual family members (mother/daughter) pursuant to Section 310-35 of the Village Code. Said property is located at 39 Pleasant Dr. HM SBL 211-1-53.

The Zoning Board of Appeals has determined that issuance of the Special Permit will substantially serve the public convenience, safety and welfare; will not be detrimental to the neighborhood or the residents thereof; and will not otherwise be detrimental to the public convenience or welfare, subject to compliance in full with conditions hereinafter imposed pursuant to Section 310-35.

Now, therefore, the Zoning Board of Appeals resolves to issue this Special Permit as said proposal is depicted on the plans identified above and upon the conditions outlined below, and the Chairwoman (or her de- signee) is authorized to sign the plans upon satisfaction of those conditions below noted to be conditions precedent to such signing.

This approval is for one additional dwelling unit to be occupied by the mother (Gloria Hernandez) of the applicant, Kimberly Cruz, only, being a person directly related to the owners of the principal dwelling unit (i.e., the parents of Kimberly Cruz, an owner of the property), as described within the application packet. This approval hereby incorporates this description by reference, and this description of use and occupancy shall serve as the outer limit of the activities that can be carried out without amended approval being granted.

In the event the property is either sold or the additional unit is vacated, this special permit will become null and void. The property shall then be restored to its original single-family status and permanent cooking facilities (i.e., stove) shall be re- moved;

All facilities are subject to an annual inspection by the Building Department and the owner shall make the premises available for that inspection upon due notice from the Building Department. Failure to make available shall render this Permit null and void.

This special permit approval does not authorize any construction. No indoor or outdoor amenities or accessory structures or outdoor fixtures-including but not limited to walls, mechanical units, etc.-may be constructed, placed or erected without approval of the building inspector or the Zoning Board of Appeals, as the case may be.

The homeowner and the intended occupant shall sign the special permit upon its approval by the Zoning Board of Appeals. Chairman Ungerer, conducted a roll call of the Board which resulted in the following:

AYES	3	Ungerer, Abrams, Brady
NOES	2	DeVenuto, Kestenbaum

(Full decision on file at the Village Clerks office).

4. Public Hearings -

A. The Shops of Woodbury, LLC –

Continuation of Public Hearing for area variances and interpretation. Applicant proposes to construct a commercial center and hotel having a lot area of 9.65 acres. The Applicant requires an interpretation of the

applicability of Section 310-27C(3) which requires a 25' landscape buffer in the front yard. In the alternative the Applicant is requesting a variance from the 25' landscape buffer. The proposed lot coverage is 76% of the site, whereas pursuant to Section 310-7 of the Bulk Regulations, the maximum development coverage is 65%. The Applicant is also seeking relief from Section 310-7 regulating side yard setbacks and Section 310-12B regulating setbacks for commercial centers from state and county roads. Said property is located in the IB Zoning District off of the intersection of State Route 32 and Locey Lane in Central Valley and is known on the Village of Woodbury Tax Maps as Section 225 Block 1 Lots 34.1 & 34.2.

Motion was offered by C.Brady, seconded by K. Abrams, to carry over and continue the public hearing to the October 9, 2019 meeting, as per the applicant's request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

B. Sofer –

Public Hearing for an amendment to an existing variance granted on September 12, 2018, to permit a tan insert to a 6ft high solid stockade fence, whereas said variance was granted to permit only white vinyl fencing. A variance is required pursuant to Section 146-7d, whereas proposed fence will be multi-colored. Said property is located in the R2A Zoning District at 14 Pheasant Run in Highland Mills and is known on the Village of Woodbury Tax maps as Section 247 Block 2 Lot 5.

Chairwoman Ungerer, stated this application was in front of the board in 2018, in the decision it states the applicant was allowed a white fence. The Board voted to rehear the application due to the applicant going to the building department and requesting a tan fence opposed to the white fence he was allowed in his application. The Building Department then issued him a building permit for the tan inserts. A resident then complained that Mr. Sofer put up a tan fence instead of the white that was allowed in his variance. Mr. Sofer was then issued a violation notice for the tan inserts. Chairwoman Ungerer, then stated the Board received the following letter from a resident:

"With regard to the matter of the appeal for the variance pursuant to section 146-7d for David Sofer at 14 Pheasant Run we have numerous concerns. It may seem as some are not relevant to this case, but we are trying to make a point.

When this permit was first applied for as a chain link fence, they said it was to keep our dog off their property; it was denied, and they reapplied for a second fence. This fence is not enclosed and the dog or any animal, domestic or wild could walk around it.

A second application was submitted for a "solid white vinyl fence," the same as ours. A ZBA board member asked if trees would work for their privacy and Mrs. Sofer stated, "They couldn't afford trees right now" and "we want the fence to keep the kids in the yard." Again the fence is not enclosed so it does not accomplish their goal. Additionally, after the installation of a smaller chain link fence, they did plant trees. Trees were planted on their side of the chain link fence further exposing their unsightly fence to us.

During the original ZBA hearing, one of the board members stated, "why can't we give them the same fence the Ader's have "and dubbed it "the Ader fence." They DO NOT have the same fence we have. We have a six-foot white vinyl fence with one foot of lattice. We were told we could not have a solid fence. They have lattice on one section and a FULL solid fence on the rest. Regardless of the color of the fence the fence installed is not "the same" as ours. We were not granted a variance for that type. Furthermore, Mrs. Sofer made it clear at the original hearing that if they were not granted the same fence as ours, the ZBA would be discriminatory in its decision.

Our concern, and that of the ZBA should be the precedent that would immediately be set in the event that this second application for a variance is granted. Mr. Sofer was granted a variance and chose not to comply with it. Accordingly, this second application should be denied. Approving it and thus creating precedent, allows for anyone or any entity to apply for a variance, be granted said variance, be non-compliant with the decision of the ZBA and simply reapply. How

would the ZBA explain to another applicant that their second application was denied; especially when those applicants having done their due diligence, either by themselves or with the assistance of counsel.

Lastly, while we realize the zoning rules allow a fence to be installed within six inches of a property line, we do not feel it is our responsibility to maintain "their" property nor are we comfortable being on their property due to their lack of pleasantness toward us as neighbors.

Because of this the lawn on their six inches went uncut until we approached their landscaper and asked him to properly maintain it. Village code should be amended immediately to ensure adequate access to the homeowner's/business owner's property without having to enter the neighboring property. In our case we've extended an olive branch providing our phone number to the landscaper in order to grant him access so he can maintain the neighbor's property. It still goes uncut unless we ask.

The aforementioned were factors in our original apprehension regarding this fence being installed. The Sofer's have shown on occasion that they do not care if their property is properly maintained granting them approval for a variance applied for after the fence was installed would be approving of their actions.

It is for these and many other reasons that we caution the Woodbury Zoning Board of Appeals to vote overwhelmingly no on this second appeal.

Thank you in advance for your anticipated courtesies, I remain, Cliff Ader."

Mr. Sofer stated that he was in trouble because he was issued a building permit and then a violation on top of the building permit he received. He questioned the "trustworthiness" of the building Inspector. He then stated that the tan inserts matched his house perfectly, it was more expensive, and it makes the neighborhood look much nicer.

G. Kestenbaum, stated he believes the building department issued the building permit in error due to applications usually not being specific with the color an applicant is allowed to have.

With nothing further to discuss, and no comments from the public a motion was offered by K. Abrams, seconded by J. DeVenuto, to close the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

C. Reineke Vite –

Continuation of Public Hearing for an area variance to permit the construction of a single-family dwelling on a preexisting lot having no frontage on a public roadway or suitable roadway improved to the satisfaction of the Highway Superintendent. Said property is located between 97 and 101 Smith Clove Road in the R2A Zoning District and is known on the Village of Woodbury Tax Maps as Section 218 Block 2 Lots 88.

Mr. Justin Kimple, the Attorney for the applicant stated the applicant, Lynn Vite, the owner of tax parcel no.: 218-2-88 seeks a building permit to build a single-family dwelling. The applicant also owns parcel 218-2-89. Tax parcel no: 218-2-88 does not have road frontage with a street or highway placed on an official map. Parcel 18-2-89 has frontage on Smith Clove Road. Parcel 218- 2-88 and parcel 218-2-89 are separated by a parcel, not owned by the applicant, parcel 218-2- 85.231. This parcel has a home built upon it which has access to Smith Clove Road over parcel 218-2-89. Essentially, the applicant's parcel that she seeks to build upon is separated from her parcel with frontage on Smith Clove by parcel 218-2-85.231, which has a pre-existing structure and driveway which is already being utilized by two homes. The owner of parcel 218-2-85.231 has agreed to grant an easement crossing that property as shown on the previously provided map. The access to the applicants proposed single family home will be an extension of the already existing driveway. He also stated that there is no emergency vehicle issue as stated by the emergency services.

J. DeVenuto asked a question about the rear setback on a triangular shaped piece of property -- was this

setback 50 feet as it was not shown on the plat? Mr. Kimple replied that the setback was shown by the broken line triangle on the plat. The board went back and forth discussing ownership, when the property was acquired and made a suggestion to possibly obtain divorce contracts/obligation records.

Chairwoman Ungerer, stated since the submittal from the applicant was only received the day before, she needs time to overlook it. She also suggested that the applicant ask the building department for prior decisions and applications related to this type of thing. She would like to see specific cases that are similar to what the applicant is asking for.

Motion was offered by Chairwoman Ungerer, seconded by C. Brady, to continue the public hearing to the October 9, 2019 meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

5. Building Inspectors Report: N/A

6. Deliberations on closed Public Hearings:

A. Sofer

K. Abrams, stated there is nothing in the law that says the ZBA has to tell an applicant what color fence they are allowed to have. It only says they are not allowed multi-colored fences. Chairwoman Ungerer, stated that the color somehow got into the original decision she then stated that the applicant asked, he came before them for the variance, and he went and received a building permit. C.Brady, stated that there should not be a stipulation of color and going forward they should not have color stated in the decision.

C.Brady, made a motion, seconded by K. Abrams, to grant the variance for the modification of the variance to allow the applicant to keep the white posts and tan inserts in the fence that he has up. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

7. Adjournment

With no further business to discuss, a motion was offered by Chairwoman Ungerer, seconded by K. Abrams, to adjourn the meeting at 8:58 PM.

ADOPTED	AYES	5	Ungerer, Abrams, Brady, DeVenuto, Kestenbaum
	NOES	0	

Jessica McClennan, ZBA Secretary