

Minutes of the Zoning Board of Appeals Meeting held on November 10, 2021, at 7:30PM

Present: Karen Ungerer, Chairwoman
Kevin Abrams, Craig Brady, Andrew Zoumas

Also Present: Attorney Kelly Naughton, Mayor Timothy Egan,

Chairwoman Ungerer, opened the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on December 8, 2021.

1. Executive Session: N/A

2. Approval and Acceptance of Previous Minutes:

Motion was offered by K. Abrams, seconded by A. Zoumas, to approve and accept the minutes of the meeting held on October 13, 2021. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Zoumas
	NOES	0	

4. Action on Decisions:

A. Fischer -

Review decision for area variances to permit the subdivision of 2.07 acres into two lots for the construction of a new single-family residence. Whereas pursuant to Section 310-7, properties in the R-1A district are required to have a minimum lot area of 1.0-acres and a minimum side yard setback of thirty (30) feet. The application proposes a minimum lot area of 0.91-acres and a side yard setback of 12.2 feet. Said property at 7 Schunnemunk Road, HM SBL 204-1-36.2.

DECISION

§ 310-7: Minimum Lot Area for 1-Family Dwelling: Area Variance

§ 310-7: Minimum Side Yard Setback: Area Variance

The Village Code requires a minimum of 43,560 square feet (1 acre) per lot, and a minimum side yard setback of thirty (30) feet for a single-family dwelling and accessory garages. See Village Code § 310-7 and Chapter 310 Attachment 3.¹ The Applicant is proposing to subdivide a 2.07-acre parcel into two lots as follows: Lot 1 will consist of 0.91 acres for construction of a new single-family dwelling, and Lot 2 will consist of 1.16 acres and contain the existing buildings that are proposed to remain (2.5-story dwelling and a portion of masonry building that will be converted to a garage). The proposed subdivision will result in the existing masonry building that will be converted into a garage being located only 12.2 feet from the proposed side lot line.

Consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance, the Board balanced the benefit to the Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the requested variances were granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

1. Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than an area variance.
3. Whether the requested area variance was substantial.

¹ A 1-family dwelling is Permitted Use No. 1 on the R-3A Schedule of Zoning District Regulations (Chapter 310 Attachment 1), which is incorporated by reference into the R-1A Schedule of Zoning District Regulations (Chapter 310 Attachment 3). Buildings and structures incidental to the principal use on the lot, including carports and private garages, are Accessory Use No. 2 on the R-3A Schedule of Zoning District Regulations (Chapter 310 Attachment 1), and is incorporated by reference into the R-1A Schedule of Zoning District Regulations (Chapter 310 Attachment 3).

4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the difficulties professed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances, and whether the requested variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board considered the character of the neighborhood, which is residential, and reviewed the location of the new dwelling proposed on Lot 1 in context with the existing masonry building that will remain on Lot 2. The Board found that the portion of the Lot 1 property abutting the side lot line for which the Lot 2 setback variance is sought contains steep slopes, making it unusable for purposes of construction of a single-family dwelling. The Board found that the addition of one single-family dwelling and allowing the existing masonry building to remain would not result in an undesirable change in the neighborhood. The Board acknowledged that the proposed new dwelling would comply with the required setbacks. The Board also found that the proposed reduced lot area of 0.91-acres raised no adverse environmental impacts. The Board also acknowledged that steep slopes on proposed Lot 2 render it difficult to find a more suitable location for a garage and found granting the side yard setback for the existing masonry building that will be converted to a garage would avoid adverse impacts on physical or environmental conditions. Additionally, as noted above, the portion of Lot 1 abutting the noncomplying Lot 2 side yard is not suitable for construction and thus the proposed new residence on Lot 1 would not be impacted from the noncomplying side yard. The Board concluded that the variances requested would not alter the character of the neighborhood and would not have an adverse impact on the physical or environmental conditions in the neighborhood.

Additionally, the Board weighed whether a 0.09-acre variance from the minimum 1-acre lot size required for a single-family dwelling and a 17.8-foot variance from the minimum thirty (30) feet side yard required to permit the existing masonry building to remain were substantial. The Board determined that the request for a variance from the minimum lot size is not substantial, as it is only 3,797 square feet less than what is required – approximately 9%. The Board next considered whether the 17.8-foot variance for the side yard was substantial. In its deliberations, the Board considered the topography of the land, and that a portion of the property located beyond the masonry building is unusable. However, the Board concluded that this variance was substantial, as it results in a variance of greater than 50% from what is required.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. It determined that the alleged difficulty was self-created by the Applicant in seeking to subdivide the property into two lots that do comply with certain bulk requirements in the applicable zoning regulations. The Board considered that the Applicant did have alternatives available, such as removing the masonry structure in its entirety and creating irregularly shaped lots to bring both into compliance with the minimum lot area and side setback requirements. However, the Board agreed with the Planning Board's finding² that irregularly shaped lots are not preferred from a planning standpoint, and any attempt to reconfigure the subdivision to comply with the requirements from which relief is sought may create a need for different variances. The Board determined that requiring irregularly shaped lots and the removal of the masonry building (which houses a well) would not achieve the benefits of the practical subdivision layout sought by the Applicant, and supported by the Planning Board, and thus concluded that the benefit sought could not be achieved by another method feasible for the Applicant to pursue.

Finally, the Board concluded that the 0.09-acre lot size variance for proposed Lot 1 and the 17.8-foot side yard variance for proposed Lot 2 fulfilled the Board's obligation to grant only the minimum variances that it deemed necessary and adequate.

CONCLUSION

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variances described and discussed above, to the extent noted above, conditioned on the Applicant obtaining

² See Planning Board referral, dated May 13, 2021.

subdivision approval from the Planning Board, and hereby finds that the variances as granted are the minimum variances necessary to preserve and protect the character of the neighborhood.

Per § A316-9(E) of the Village Code, this decision shall expire if a building permit is not obtained by the Applicant within 180 days from the date of final subdivision approval by the Planning Board. The Board may extend this time for one additional period of 90 days if such extension is warranted by the particular circumstances. A motion by K. Abrams, seconded by C. Brady, to grant the requested area variance.

By Roll Call of the Board:

Chairperson Karen Ungerer -	AYE
Member Kevin Abrams-	AYE
Member Craig Brady-	AYE
Member Andrew Zoumas-	NAY

Motion Passed

B. Ferrara –

Review decision for a variance for the construction of a six (6) foot fence in the side yard. Whereas pursuant to Section 146-5(B), no fence shall be more than four (4) feet in height in any side yard. Said property is located in the R-0.25A Zoning District at 2 Schoolhouse Road in Central Valley and is known on the Village of Woodbury Tax Maps as Section 230, Block 7, Lot 28.11.

DECISION

§ 146-5(B): Height Limitations: Area Variance

Village Code § 146-5(B) provides that “[n]o fence shall be more than four feet in height in any front yard and side yard.” The Applicant is requesting a variance from this provision, in accordance with Village Code § 146-9, to permit him to construct a six (6) foot tall fence in the side yard along the southeastern property line that is adjacent to the property shown on the Village tax map Section 230, Block 7, Lot 8.2.

Consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance, the Board balanced the benefit to the Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the requested variance was granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

1. Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than an area variance.
3. Whether the requested area variance was substantial.
4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the difficulties professed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance, and whether the requested variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board considered the character of the neighborhood, which is residential, and reviewed the location of the proposed fence. The Board found that the proposed solid six (6) foot vinyl fence would blend nicely into the neighborhood, and that it would enhance both the existing home and the character of the neighborhood. The Board determined that the fence would not be visible from the nearest public road (Valley Ave) and would only be visible to people that are halfway down the private road (School House Road) on which the property is located. The Board also found that the proposed fence raised no adverse environmental impacts. The Board concluded that the variance requested would not alter the character of the neighborhood and would not have an adverse impact on the physical or environmental conditions in the neighborhood.

Additionally, the Board weighed whether a two (2) foot height variance from the maximum four (4) feet permitted was substantial. The Board determined that numerically the variance appears substantial. However, the Board considered that the fence will be located in the side yard and not extend into the front yard, and, thus, found that it has less of an impact on the neighborhood, which decreases its substantiality. The Board concluded that this variance was not substantial in this context.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. It determined that the alleged difficulty was self-created by the Applicant in desiring a fence that is taller than what is permitted under the Village Code. However, the Board recognized that the purpose of the fence is to provide the Applicant and his family with safety and privacy from the neighboring property due to specific issues that exist between the Applicant and neighboring property owner. The Board found that the Applicant has no alternative, other than to move residences, and that the fence will help limit the interaction between the neighbors. In that respect, the Board found that the alleged difficulty was not self-created. The Board also determined that there was no feasible alternative, as a four-foot fence will not give the Applicant the desired safety and privacy as the proposed 6-foot fence.

Finally, the Board concluded that the six (6) foot fence fulfilled the Board's obligation to grant only the minimum variance that it deemed necessary and adequate.

CONCLUSION

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variance described and discussed above, to the extent noted above, and hereby finds that the variance as granted is the minimum variance necessary to preserve and protect the character of the neighborhood.

Per § A316-9 of the Village Code, this decision shall expire if a building permit is not obtained by the Applicant within 180 days from the date of this decision. The Board may extend this time for one additional period of 90 days if such extension is warranted by the particular circumstances.

A motion was made by Member K. Abrams, seconded by Member A. Zoumas:

- Chairperson Karen Ungerer- AYE**
- Member Kevin Abrams- AYE**
- Member Craig Brady- AYE**
- Member Andrew Zoumas- AYE**

Motion Passed

5. Public Hearings -

A. Beer World –

Continuation of Public Hearing requesting variances from: (1) Section 310-32(B) to exceed the square footage for a retail establishment; (2) Section 310-30(D)(2)(d) to allow an additional wall sign in excess of what is permitted; and (3) Attachment 11 of Chapter 310 to allow additional wall sign area in excess of what is permitted. Said property is located in the LC Zoning District at 159 State Route 32 in Central Valley and is known on the Village of Woodbury Tax Maps as Section 226, Block 1, Lot 9.2.

Mr. Dominic Cordisco, Mr. Larry Marshal and Mr. Louis Dicostanzo were there on behalf of the applicant. Mr. Dominic Cordisco stated an alternative site plan was submitted and Mr. Larry Marshal went through their submission which is below. In response to concerns expressed by Village of Woodbury Zoning Board of Appeals members, the enclosed Site Plan provides an alternative building/store size for the Beer World store proposed at 159 NYS Route 32. The building has been reduced in size from a total exterior footprint of 15,110 square feet to 13,105 square feet. Similarly, the proposed Beer World retailstore has been reduced from 11,840.5 square feet to 10,860.5 square feet with the RedemptionCenter reducing from 3,000 square feet to 2,000 square feet. The parking area has been similarly adjusted with the total number of parking spaces reducing from 50 parking spaces to 43. As a result of the adjustments, the total lot coverage has reduced from 47.1% to 42.1%.

Similarly, adjustments have been made to the proposed signage. The applicant proposes one (1) free-standing sign near the entrance, two (2) wall mounted signs, and two (2) directional signs located above the entrances to the building. The free-standing sign will be a 2-sided, internally lit pylon sign designed with each side having an area not exceeding 20 square feet. The free-standing sign has been designed in accordance with Village of Woodbury Zoning Code Section 310-30D(2)(a) to have a maximum overall height of 12 feet with a bottom edge no closer than 7feet to finished grade. The two wall signs will each have an area of approximately 15 square feet with the total sign area not exceeding the permitted 30 square feet. The wall sign on the northeasterly corner will contain the words "Beer World" inscribed over a blue and green globe. The wall sign on the easterly side of the

building will be a small globe with individual letters spelling "Beer World". Directional signs stating "Entrance" and "Redemption" are proposed to be installed over each entrance. Each directional sign will not exceed three (3) square feet and are exempt from sign regulations in accordance with Section 310-30E(8). Details of each non exempt sign has been enclosed for the board's records. With the adjustments, no variances are required for the proposed signage.

The limits of clearing have been clearly shown via a purple line in the site plan. The alternative site plan (enclosed) decreases the limits of disturbance to the neighboring house on the westerly side of the site by approximately 20 feet.

In order to fit the variety of product that each Beer World store provides and to make the store profitable, the retail portion of the store must be roughly 11,000 square feet. The most recently constructed Beer World store in Pine Bush has an overall footprint of 9,900 square feet and is (1) unable to fit the variety of product that Beer World is known for, (2) unable to provide the customer the proper Beer World shopping experience (narrow aisles), and (3) unable to be a profitable store. Any further reduction in the store size proposed in the Village of Woodbury would not be a viable option for Beer World.

The redemption center is an area of the building where anyone may return cans and bottles that have a New York State refund. By law, any beverage with a deposit that is sold at the Beer World store must be able to be returned at the same location. To operate, the redemption center will obtain a redemption center registration from New York State Department of Environmental Conservation (NYSDEC). Empty bottles and cans are dropped off by customers, counted, and the appropriate refund is issued. The bottles and cans are then sorted in separate bins/containers. The bottles are not cleaned or rinsed at the redemption center. The only water usage in the redemption center is for the cleaning of counters and floors as required. The empty containers are then picked up by a New York State certified recycler and processed at their facility under New York State recycling guidelines. The redemption center of the store is vital to the Beer World shopping experience. Customers must have a separate entrance to bring returnable cans/bottles into the store to keep any odors from the redemption area out of the retail store area and to avoid leaking bags being carried through the stopping areas. The larger redemption area allows all cans and bottles to be stored inside the store and avoid any exterior storage in canisters or dumpsters. The redemption area on the alternative plan has been reduced to the minimum size Beer World executives feel is required for the Village of Woodbury market.

The actual water demand of a typical Beer World store and redemption center typically does not exceed 250 gallons per day. Water used within the store is isolated to the restroom toilets and sink and mop sink. While bathrooms are available to customers in the store, they are rarely used by anyone other than staff members. The site plans provide calculations for the sewage generation rates based upon NYSDEC estimated rates. These values are significantly higher than the actual water usage is anticipated to be for the store. Beer World stores only receive deliveries during normal business hours (9am to 6pm). Deliveries from the store typically do not exceed one per day. While the delivery vehicles are mandated by New York State to be equipped with backup alarms, the hours and infrequency of deliveries will not impose any significant adverse impacts to neighboring property owners.

The proposed site plan does not propose any disturbance of any wetlands. No federally or state regulated wetlands are located on the project site. The wetlands noted in the provided Environmental Assessment Form are located on adjoining properties.

Stormwater runoff from the building and parking areas will be conveyed to treatment retention facilities designed in accordance with all appropriate NYSDEC and local regulations. Runoff from impervious surfaces will be treated by NYSDEC approved practices that reduce runoff and promote infiltration of the stormwater into onsite soils. Stormwater runoff will be attenuated to existing levels and will be directed to follow existing drainage paths. As currently designed, runoff will be directed to a bioretention basin, subsurface storage chambers, and an infiltration basin located on the east, north, and westerly sides of the proposed building. The bioretention basin is a stormwater filter that will contain water for a limited time (24 hours) after a storm event, will contain a limited depth of water (less than 2 feet), and will primarily appear as a lawn/landscaped area in the area between the store and NYS Route 32. The location of the stormwater basins is determined by existing topography on the site and existing drainage paths. Basins must be located in areas on the site that allow for the capture, treatment, and detention of runoff from proposed impervious surfaces. A full Stormwater Pollution Prevention Plan (SWPPP) has been prepared and was previously submitted for review.

A Phase 1 Archaeological Investigation was completed for the site by Alfred Cammisa of Tracker Archaeology, Inc. Copies of the report have been enclosed for your records. Said report was submitted to the New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP) for review. A letter was received from NYSOPRHP on September 30, 2021, stating "No archaeological sites were identified by the survey. Therefore, it is the opinion of the OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project."

Chairwoman Ungerer then opened it up to the public for comment, no one from the public had any comments at this time. Chairwoman Ungerer then stated they received the 239 from the county on September 2nd that was left for local determination. Attorney Naughton stated she must go over the SEQRA documents and present her findings to the board. C. Brady made a motion, seconded by K. Abrams, to carry over the public hearing and allow council to report her findings to the board at the next scheduled board meeting.

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Zoumas
	NOES	0	

B. Levy --

Public Hearing requesting variances for the reconstruction of a single-family dwelling that was destroyed by fire from Village Code Sections 310-7, 310-43, and 310-43.1. Said property is located in the R-3A Zoning District at 999 Route 32 in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 201, Block 1, Lot 20.

The board discussed the damage from a fire at the residence but stated the masonry structure was not damaged on the house that was built in 1870. They discussed the plans with the applicant and requested the applicant supply a more detailed plan along with measurements for review at the next meeting.

Motion was offered by Chairwoman Ungerer, seconded by K. Abrams, to continue the public hearing to the next scheduled meeting. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Zoumas
	NOES	0	

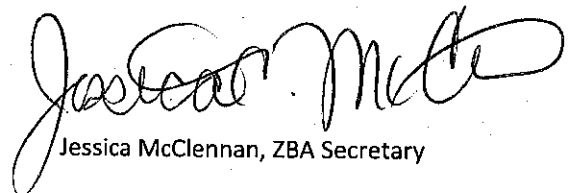
6. Building Inspectors Report: N/A

7. Deliberations on closed Public Hearings

8. Adjournment

With no further business to discuss, a motion was offered by Chairwoman Ungerer, seconded by K. Abrams, to adjourn the meeting at 8:48 PM.

ADOPTED	AYES	4	Ungerer, Abrams, Brady, Zoumas
	NOES	0	


Jessica McClennan, ZBA Secretary