

## AGENDA

### TOWN OF FALLSBURG ZONING BOARD MEETING – February 18, 2010

In attendance: Michael Kirtack, Gene Walkowiak, Steve Burke, Robert Cole, Robert Halprin, Richard Levine, George Sarvis, Deputy Code Enforcement Officer, Denise Monforte, Secretary, Ron Hiatt, attorney.

The Zoning Board of Appeals Meeting of the Town of Fallsburg was called to order at 8:00 p.m. at the Senior Center of South Fallsburg, New York on Thursday, February 18, 2010.

The following proceedings were held:

**-- Meeting will commence at 8:00 p.m.**

Chairman Burke asked if everyone accepted the minutes from last month. Walkowiak motion, Halprin second, all in favor, I.

### **ZONING BOARD DISCUSSIONS WILL BE HELD ON THE FOLLOWING:**

#### NEW BUSINESS:

DEMETRIOS VOUYIOUKLIS SBL# 65-1-11.56 - Requests an area variance for a front lot width reduction from required 200 feet to 165.74 s.f. as per bulk reg schedule 1 without public water and sewer. Zone: REC-1. Location: Renner Rd., Glen Wild.

- Certified mailings were verified by Denise Monforte.
- Tony Siciliano, land surveyor. I am here with Demetrios Vouyiouklis to request an area variance. The property is located on Renner Road. It is slightly over 15 acres, approximately 15.1 acre parcel. It is currently owned by Demetrios and his two brothers who bought the property in 1974 and they have owned it since. What they would like to do is a 3 lot sub-division. The only criteria that is lacking would be lot width. The way we have it proposed is that lot 2 and 3 would meet the minimum of 200 feet and Lot 1

would be short by approximately 30 feet. We measured the lot at a right angle and that is why you see that it is about 201 in the back and a little over 200 on the road but they are 200 feet measured at right angles across the lot. All three lines are parallel. So we are left with Lot 1, which only has 165.7 so we are requesting a variance for the lot width on Lot 1. The line between lot 1 and 2 now goes through a garage which Demetrios is going to remove.

- Burke, this is what exists now, correct?
- Siciliano, correct. There is 15.1 acres approximately. If you add up the 3 lots, it comes out to 15.1. The only thing lacking is the width for Lot 1. The three brothers have owned it since 1974 and they each want to have their own lot.
- Burke, any questions?
- Walkowiak, it says here that the garage shall be removed. When will this garage be removed?
- Demetrios, in 1 or 2 months from when the snow melts.
- Siciliano, of course, they would never approve the sub-division at the Planning board with that garage still standing there.
- Burke, any other questions?
- Discussion amongst board members.
- Siciliano, that is the neighbor's house that is like 1 foot clear of the property. That is an existing situation, that is the existing property line. We can't change that line. It has been there forever.
- Halprin, that has been there since forever.
- Siciliano, they are friends with the neighbor. They have known each other for years.
- Halprin, this lot on this side and this lot here and this lot here, do you know approximately how wide they are?
- Siciliano, yes. This one is 200 which would conform today. This one is less is in the 176 – 180 range and this one is much less. I am sure they are all grandfathered, I would imagine.
- Halprin, so this is going to come in like that? This one is an undersized lot too?
- Siciliano, those are existing lots.
- Halprin, I understand.
- Siciliano, those are the neighboring parcels.
- Burke, do you want to build houses on these?
- Demetrios, yes we would like the option to build.
- Burke, any other questions? No. Ok. Anything else? Ok that's it. I will open this up to

the public. If anyone would like to speak, step up. No? Ok. We will close the public portion.

- Burke, board comments? We will start with you Michael.
- Kirtack, I don't have any.
- Cole, so each lot will only contain 1 house or building right? 1 family?
- Demetrios, that's right
- Burke, that is all it can based on the size of the lot.
- Cole, so next year they are not going to come back and want to add another?
- Burke, right now he is only looking to split the lot. It is not for building.
- Siciliano, he wouldn't be able to split it because he is in a 3 acre zone. Every lot there is 5 acres or so.
- Burke, any questions or comments?
- Halprin, going down the check list here, I don't think it will be an undesirable change. Benefits, you get 3 lots, you've got one parcel, it meets the gross acreage, it is just shy about 30 feet. The neighboring lots, two of them are undersized already. It won't have an adverse affect, I don't believe because the neighboring lots are about the same. They have had the property for 30 some odd years, since 1974. I am leaning towards approval.
- Levine, no comment.
- Burke, I don't have any comment either. It is relatively simple.
- Burke, lead agency?
- Halprin, so moved. Walkowiak, second. All in favor, I.
- Burke, negative dec?
- Walkowiak, so ordered. Halprin, second. All in favor, I.
- Burke, do I have a motion?
- Halprin, I make a motion to approve.
- Cole, second.
- Kirtack, I'm in favor of it.
- Walkowiak, I approve also. It is not going to change anything in the neighborhood or the district itself.
- Levine, I approve.
- Burke, and I approve too. Relatively simple, it is not changing anything. Your next step is to see them. The only thing that I want to add to that is that I want a reasonable time frame for that garage to be moved. Is 90 days reasonable for the building to be removed?

- Sarvis, yes pending all approvals because you have to go to the planning board for sub-division or did you already go?
- Siciliano, no, that would be our next step.
- Sarvis, after all approvals on the sub-division, 90 days is fair.
- Siciliano, 90 days from the approval of the Planning Board?
- Burke, right because you can't start until then anyway. So it is granted, good luck.
- Siciliano, thank you very much. So what is the next step? Do we have to file something?
- Monforte, come to our office. Are you going to come tomorrow to return the sign and get your deposit back?
- Siciliano, I can't tomorrow but I can do it next week.
- Monforte, okay so come Monday and get an application for a sub-division.
- Siciliano, do we get some sort of documentation of the outcome of the variance?
- Monforte, there will be a variance decision, yes.
- Siciliano, do we have to file that?
- Monforte, no.
- Hiatt, there will be a record of it through the town clerk and this clerk and the planning board will get a notice.

MOUNTAIN MAVEN SBL# 40-2-4/6 - Requests an area variance for a side yard set back from the required 20 feet to 10 feet for the placement of a 3000 s.f repair garage as per bulk reg schedule 1 Zone: B-1. Location: Rt. 42, Fallsburg.

- Certified mailings were verified.
- Bill Satler, Adler Engineering. We are representing Mountain Maven. This is the owner Yosef Becker. We are before the planning board seeking an approval for a 3000 s.f. garage. Shown over here on the left hand side of the site map. A problem arose because these were 3 separate lots at one time and they have since been combined but there is a 10 inch water main feeding the other side of the Neversink River and that is right where the building wants to go. So we met with Will Illing out there and we laid out exactly where that pipe is and we discussed many alternatives and Allen Frishman, the owner, Joe, myself and Will Illing agreed that if we could get an approval from the ZBA rather than a 20 foot buffer from the property line and make that 10 feet. Next to the chain link fence we will putt natural plantings there for a blind and then we will stay

10 feet away from the water line. Normally they will want 20 feet for that as well but because the property has been filled they feel that it is so far below ground that there would be no adverse affect so that we can continue with the plans as drawn.

- Becker, it was Will Illing who actually suggested that he did not want to move the pipe because of the age of the pipe. He was especially concerned about moving it because the road, it only goes one size down to another size and they just didn't want to move it. They requested that we try to find another way to move the building.
- Satler, the tie in is actually on the other side of route 42 and it is old concrete asbestos pipe which you don't really even want to breathe on it.
- Burke, (to Sarvis), were you aware of the conversation?
- Sarvis, no I wasn't privy to it.
- Becker, Allen Frishman was at that meeting with Will.
- Burke, what is it a water main?
- Satler, a 10 inch water main that feeds that whole other side
- Burke, so you want to drink from it but you don't want to breathe on it.
- Halprin, it's ok to drink just not to breathe. Asbestos is completely harmless if it is not airborne.
- Satler, the other thing is that in the zoning they want cars under repair to be parked behind the building. Because it has been leveled, it is quite a drop off so we are showing, because he is going to keep the existing garage he just won't be using it, they will store the cars over there behind the fence, out of site and behind the gate. They are not in the business of wrecked cars or body work so all these automobiles that are being worked on might need a starter or alternator, brakes, shocks, tires.
- Burke, I have never seen any junk cars there.
- Satler, they are not junk cars and we are stipulating that in the site map.
- Becker, we are also a dealership so there will always be cars that may be there for an amount of time on the property anyway. We try to keep a clean business.
- Burke, well the existing place you keep pretty nice, I have to say.
- Satler, this is really just an issue of not waking up that old water main that is there.
- Kirtack, just out of curiosity how come they couldn't have gone this way towards the existing building, like over here somewhere?
- Satler, because the topography doesn't give us much clearance on the road frontage for parking, people safely pulling in and pulling out.
- Becker, it is a very steep grade there, it drops off very quickly.
- Kirtack, they could have pulled in over here where the old garage was, just curious.

- Satler, if we take this building and move it over here, what happens is that you will need so much fill brought in and you can't build on freshly filled ground.
- Kirtack, no you can't. I am just wondering why.
- Satler, we exhausted every possibility.
- Becker, we are also trying to keep some separation from the house. We don't want to have the garage on top of the house.
- Burke, any questions?
- Walkowiak, the only question I have is relative to its closeness to the river. Is there any conservation easement that you might have from the federal government?
- Satler, the project did go before the county for a 239 review. I haven't read the review yet but I was told tonight that it did come back favorable.
- Burke, yes it is
- Satler, the planning board does have some concern with the river so that is why we are having a grease trap for any runoff of oils that might possibly be spilled on the ground so it runs through a grease trap separator first before discharged down the bank. That is about it so far. We are still in the process with the planning board.
- Walkowiak, one more question. I have been down there when we had a flood a few years ago. The water had backed up behind the bridge that is on the crossroad there and I am just wondering if a grease trap there, the amount of water that we had laying there because of the plug that the bridge had across the river, if it ever got into this grease trap of yours, we are going to be putting a lot of grease into the river.
- Satler, that water would have to rise 40 feet for that to happen. If that were to happen, the grease trap would be the least of our concerns. From where the garage is proposed to the water is about a 40 foot drop in elevation, maybe more. We are showing 40 feet.
- Kirtack, you are showing 50 feet
- Satler, to actual water it's a 50 foot drop
- Kirtack, that is a heck of a drop
- Satler, I really don't think the water is going to come up that high.
- Walkowiak, that is my only concern. When that river backs up, everything gets flooded around here. I have seen stuff where the river flooded over down in Woodbourne. I sure would like to know what was the easement of the Neversink River at that time. That was a ways downstream, but I am going to do a lot of investigating so you sure better know what you are talking about.
- Satler, it is unclear about whose responsibility it is if we cannot get this variance to move the water line but it looks like it would fall on the town.

- Walkowiak, it is not a matter of water lines, it is a matter of water elevation.
- Halprin, that is not an issue before this board. The issue before this board is the 10 foot variance. That is a planning board and a NYS DEC issue.
- Walkowiak, I see the large size trap that they have here. I wonder if it floods, how much oil we are going to have all over the beautiful town of Fallsburg.
- Discussion amongst board members.
- Walkowiak, I will be talking to the U.S. engineers.
- Hiatt, you have to determine whether there will be an adverse impact on the physical or environmental conditions. So you have to determine if this 50 feet is a big deal or not.
- Halprin, 10 feet
- Burke, 50 foot drop you are talking about
- Hiatt, right
- Walkowiak, we are not talking about the 100 year floods anymore, we are talking about the 500 year floods. God almighty have we got problems.
- Halprin, I have no questions but I have a couple of comments for you, Bill. You are going to have to deal with the waste oil registry and the DEC. They may not look kindly at the oil/water separator, which isn't an issue before this board.
- Satler, what that separator is for is that we are filling a recycling waste oil pipe from inside the building. Should a couple of drops leak out from this containment area over here, that has a floor drain in it which will go to the separator. That is 1000 gallon separator on a 275 gallon oil tank.
- Halprin, I am just letting you know that you are going to have to deal with petroleum bulk storage because any quantity of waste oil or used oil stored in a stationary container has to be registered with petroleum bulk storage under 612, 613 and 614. The boys in New Paltz might not look kindly to a separator. If you are going to have the oil/water separator, it has to be controlled with a valve that is locked and it has to be monitored when it is discharged. A speedies permit is required, but you know all this. I am just saying this for point of information, it has nothing to do with tonight.
- Burke, any other questions? Anything else? Ok.
- Burke, we will open it up to the public. Anybody from the public here that would like to speak on this matter? No. Ok. We will close the public portion.
- Kirtack, I don't have any comments. I already asked my question when he was up here.
- Walkowiak, nothing
- Halprin, I am wondering if it would benefit the town to replace that existing water line because the water line is from the year of the proverbial flood. It's old.

- Becker, they don't want to.
- Satler, Will was adamant that they do not want to touch it.
- Halprin, ok.
- Burke, would you feel more comfortable if something was given to you in writing from Will?
- Halprin, no I trust Bill. I have known Bill for years. He would not mislead us.
- Burke, I don't doubt that the pipe is in bad shape.
- Satler, originally when we were before the planning board we had shown that the pipe be relocated and Will worked very hard with us to do everything except touch that pipe because it would have to be triple wall pipe, they couldn't just take out a portion of the asbestos concrete pipe and once you touch it, where does it stop crumbling and he said please go to the ZBA and make this go away.
- Halprin, in other words, we are going to save the town a lot of money if we approve this.
- Satler, most likely.
- Kirtack, I would like to verify something. Are they saying that if they put the building somewhere else, they have to move the pipe? Is that what they are saying?
- Satler, I have proof in the deed if you want to see it.
- Kirtack, no, no I am just wondering if that was the case.
- Burke, it has to be determined who has to move the pipe
- Satler, it says in the deed that it looks like it is going to be the town
- Burke, it looks like but you don't know
- Satler, we didn't go the attorney route yet, we figured we would do this first
- Kirtack, what I am saying is if you decide to move the building elsewhere, someone is going to have to move that pipe
- Burke, yes
- Satler, yes
- Becker, it seemed that even if we had offered to cover the expenses he still did not want to touch this pipe. Expenses notwithstanding, he just did not want to move the pipe
- Burke, would you be willing if that is what had to happen?
- Becker, we would have to see because the issue right now is that the town was originally given the opportunity to purchase an easement for the pipe back in the late 1940's and that offer expired back in February of 1948, I believe, and they never acted on it. It is not real clear. It was run along an old property line that used to be there so maybe they felt at that time that they did not require an easement but now that it is in the middle of our property, without an easement it is unclear whose responsibility it is.

- Satler, moving this pipe will also involve digging up route 42 and it's not very often that I get to see Will intimidated by a project like that.
- Levine, if you do get the construction, how are you going to safeguard that pipe from breaking from the construction equipment?
- Satler, well first we are staying away 10 feet minimum, I think we are showing 12 feet. The pipe would normally be about 5 feet under ground, but because the property has been filled in, it is about 15 feet under ground, so there is no real concern of us hurting the pipe. We met for a couple of hours with Allen Frishman and Will Illing and this is what we worked out as being the easiest pill to swallow.
- Burke, any other comments? No. Ok
- Burke, lead agency?
- Cole, motion. Halprin second. All in favor, I.
- Burke, negative dec?
- Cole, motion. Halprin second. All in favor, I.
- Cole, motion to approve and pass it on to the planning board
- Halprin, let me go down the list. It is not going to create an undesirable change in the neighborhood because this is already a business district. The benefit cannot be achieved by any other methods because the town is deathly afraid to move that water main. The area variance is not substantial because it is not going to impact anything. That fence is already there?
- Burke, yes
- Halprin, the proposed variance will not have an adverse affect or impact on the physical environment or conditions in the neighborhood. You are going to keep a beautiful, maintained property right?
- Becker, yes
- Halprin, this is definitely not self created because it's a town water main. Minimum variance needed so I second the motion to approve.
- Kirtack, I'm ok with it
- Walkowiak, I'm not satisfied until I do a little more investigating so I am going to say no.
- Levine, I approve
- Burke, and I approve also. Next step is the planning board.

MAYER SILBER SBL# 39B-1-11- Requests a area variance for the re-establishment of a third home on an undersized parcel as per bulk reg schedule 1 with public water and sewer. Zone: R-1. Location: Laurel Park Rd., South Fallsburg.

- Burke, this board has an issue to deal with first, right George?
- Sarvis, that is correct. Before this applicant is heard, the code enforcement office feels that this applicant is here for an interpretation, if not the variance. We are hoping that you guys decide on whether or not this applicant needs to be here. These are pre-existing, non-conforming homes on and undersized lot. There are a couple of things that come into play here. There are 3 homes and the bulk requirements are an issue, set backs are an issue. We have in our zoning book for the grandfather clause. After two years, you lose your grandfather rights. But there is one sentence at the end that says this shall not apply to residential lots. We don't have a definition of a residential lot and our code books clearly states that for interpretation we need to come here and we are requesting an interpretation and if you do indeed interpret that the applicant should be here then Mr. Proyect will proceed and make his argument for a variance.
- Hiatt, I might add that when this question has been brought to the code enforcement office before, they typically have declined to be in favor of these things. Mr. Proyect correctly points out that it doesn't apply to residential units. However, there are a number of parcels out there with more than one house on the property from a long time ago, before there was zoning, before the bulk zoning, the side yard and front yard set off and all of those. It says here that he is looking for relief from the R-1 zoning requirements, which if you look at the zoning requirements, is basically most of them, not just the bulk. However, these are residential units. Like the code enforcement office has in the past done, when they saw a bunch of these together they said this is more commercial because it is several and they can become rentals which makes them commercial and not so much residential. I understand that in this particular case they say they want it for their family and that is all well and good but ultimately you have to think down the road if they are sold, are they going to stay for just 1 family, there are three buildings. There is a lot of balancing going on here. This particular area there are a lot of houses all grouped together so you wouldn't really notice a difference anyway. I think the biggest distinguishing factor here is that when the applicant bought the property, he spoke to one member of the code enforcement office who had a different idea than another code enforcement officer and he thought he could refurbish and rebuild. So he relied upon one of the code enforcement officers with the determination

that he could and in reliance on that he went and bought this property, fixed up the second one and now he wants to do the third and then the code enforcement office saw that they had an internal dispute given the fact that they relied in good faith upon the representation which now appears to be to their detriment. In my opinion, this is not self created because they didn't realize and were told otherwise. So the code enforcement office generally doesn't like when you have a lot of these pre-existing units that don't meet the bulk requirements and side yard set offs and so forth. They don't like to do it because they could become commercial. In this particular case, I think it is distinguishable because the applicant relied in good faith upon interpretation of one code enforcement officer and he spent the money and fixed up one and he wants to work on another and they say wait you can't do this. So that, I think, is the distinguishing factor in this particular case of it not being self created. If you look at the other factors, they have always been there. They were real houses. I don't know what size they are but they are not bungalow size are they? No. So that is the distinguishing factor. I know they don't look favorably upon a whole lot of houses that don't meet the side yard or bulk requirements because of the commercial nature.

- Kirtack, I thought that from what I've learned from taking code enforcement classes that they don't consider things like that commercial. Commercial is considered things like stores. Houses and even apartments are considered residential, they are just considered multi-family residential so if you throw the term residential out there, it applies to that.
- Hiatt, maybe so but if you take a look and that is another reason why it belongs in your lap. In different places they talk about, for example there is non-conforming lots of record and they talk about a structure on a lot and here there is 3 structures. They are going to have to comply with the department of health's standards as far as the sub-standard lots, page 84, 130-9.5B a certification from an engineer that it complies with the DOH because some of these buildings are close by and as George tells me, we have to make sure that they are fire proof and so forth.
- Discussion amongst board members regarding the section in the book that Ron Hiatt referenced.
- Proyect, Mr. Hiatt, would you mind if I presented to the zoning board a copy of the law?
- Hiatt, that is fine with me. I am just trying to give you a little back drop. What Mr. Proyect says is correct about the residential, I just wanted to give you a background of what Code Enforcement has done generally and how this one is separate. I think people are lined up and ready to come in and change things where there hasn't been a use in a long time so I am trying to do distinguish it.

- Burke, in this particular case it is different because he was told one thing so even if we do consider this it is a separate case from the line of people that are behind here.
- Hiatt, that is correct and it certainly distinguishes it.
- Burke, they were told that they could do this.
- Hiatt, yes.
- Burke, so the first thing we have to do is determine whether he should be here or not? Am I understanding that correct?
- Hiatt, I would say that it is up to you. The code enforcement office didn't really want to rule on this. They have, in the past, talked about it and there were people who were unhappy because the chief code enforcement officer said that it was more commercial or that there was more than one and that there were a bunch of requirements. Mr. Proyect who reads the code, comes in with a different opinion.
- Burke, so let's take a consensus on this board.
- Kirtack, I am of the opinion of what I said. I have learned from taking the code enforcement classes that I have taken, that these are not considered commercial and that anything, even apartments that you are renting out are considered multi-family residence, they are not considered commercial so even when you build, you build by multi family residence not by commercial standards so my opinion of that is that it is a residence area.
- Burke, so you feel they should be able to do this without coming to us?
- Kirtack, yes
- Proyect, before you poll the board, can I just expand upon what George and Mr. Hiatt said?
- Burke, no because I want the board to make their decision first.
- Proyect, but I think it has bearing on their decision.
- Hiatt, I think he ought to be allowed to say what he thinks
- Burke, ok. You have the floor.
- Proyect, thank you. George and Ron were talking about a chapter of the zoning board that deals with non-conforming. Let me just go back in time to about the early part of 1940. A gentleman by the name of Mr. William Dobbs purchased this property and within the next 5-8 years he constructed 3 dwelling units on it. As Ron said, when Mr. Silber was purchasing this, he did check with the building department and the building department did say no problem, you can renovate. As a matter of fact, while this unit was occupied, a permit was applied for on building #2 and was duly granted by the Town of Fallsburg building department so if there was a question of not more than 1

dwelling unit can be on a parcel of land in an R-1 zone then why was this issued. The town already said, you can have the second one but there was a stipulation and the stipulation was that this back corner of what is called dwelling #3 has to be removed because it is too close to building #2 which the applicant did comply with figuring that once he took it off, he would be allowed to replace the square footage as an addition on this side and receive a permit and that is what he applied for and was denied.

- Burke, when did he apply and get denied?
- Proyect, a couple months ago. When I originally met with Mr. Frishman, he said that I would need to apply for the variance which I complied with and submitted an area variance. But, I just want to go over the law. This chapter of the law deals with non-conformity and if you read section 130-9.3 sub part C, it says non-conforming residential use. It says that of which such non-conforming use shall be exempt from the provisions of 130-9.3 A meaning this portion of the code. It specifically talks about non-conforming uses of a commercial nature and bungalows. It doesn't talk about residential units on residential lots. The section of law ends with the following statement, "this section does not apply to residential lots." Zoning came into effect on August 1, 1968 in the town of Fallsburg. This lot then and this entire area was zoned R-1, residential. It was updated in 1988 and was still zoned R-1 residential and was updated approximately 2 ½ years ago with a master plan and it re-names an R-1 zone. As Ron said, when Mr. Silber bought it, a representative from Adler Engineering approached the Town of Fallsburg as Mr. Silber did when he was purchasing it and the representative for the Town of Fallsburg building department at that time said no problem, you will be able to get building permits for all three for renovations. That is why the man purchased it and ironically, there are 3 employees of the Town of Fallsburg Code Enforcement office and 2 of them believe that it is the applicant's lawful right
- Hiatt, I don't want any evidence about what they believe in. Based on the law and not people's opinions.
- Proyect, ok fine.
- Hiatt, you are doing ok without it, Steve.
- Proyect, there may be an interpretation of the law. All laws have interpretations. This particular law that deals with non-conformity talks about residential uses being exempt from this particular law. And it doesn't talk about it once, it talks about it twice. Obviously, residential, non-conforming lots are exempt from this law. Thank you.
- Hiatt, Allen just didn't want to take the responsibility himself, he would rather it come from the board.
- Burke, so I have your answer.

- Kirtack, well since he spoke, I still stick with what I say because as you heard, I agree with what he said before he said it.
  - Halprin, I agree with Mr. Proyect that this property is exempt because it is a residential property and it clearly states that residential properties are exempt. How much clearer can it be? It says it not only once, but twice.
  - Levine, I agree with him.
  - Walkowiak, I agree with him.
  - Halprin, I make a motion to adjourn.
  - Kirtack, second.
  - Meeting was adjourned at 8:55 pm
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- No new applications will be heard after 10:00 pm.

Denise Monforte, Clerk, Town of Fallsburg Zoning Board