

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

TOWN OF FALLSBURG ZONING BOARD MEETING

May 18th, 2023

Larry Zierler, Chairman, Neil Sapolsky, Mike Bensimon, Jennifer Lishansky, Steve Altman, Board Members, Gregg Pitula, Code Enforcement, Dylan Harris, Town Attorney

- **Larry Zierler** called the meeting to order at 7:00PM
- Minutes accepted from previous meeting
- Larry Zierler: The Town of Fallsburg Planning Board will review all applications on the merits and based on the Town of Fallsburg zoning code. The Planning Board approval does not guarantee issuance of a water sewer permit by the Department of Works. Due to the current and expected future constraints on the water and sewer systems that were discussed and open to public comments during the joint meeting on May 9th 2022, all water and sewer connections and applications will be accepted based on the then existing facts and circumstances. Each application connection or extension will include a review by the town engineer. It will be guided by the town engineer's expertise and knowledge of the town's systems. This information is posted at the Department of Public Works for public viewing. The Town Board is taking every reasonable measure to address the capacity issues.

OLD BUSINESS:

1. AERO STAR PETROLEUM – SBL: 21-1-22.2 – Requests an area variance for reduction in front yard setbacks from 35' to 24' and 27' and lot coverage exceedance from 40% to 54%, also new fuel islands setback from 20' to 36' from street line, and rear yard plantings buffer width from 20' to varying 5'to 30'. Zone: B, Acres: .39 Location: NYS Rt 42 & NYS RT 52.

- Glenn Smith and Tarik Gujar represented.
- Glenn Smith: We were here in March for a public hearing. We submitted the 239. That did recommend local determination. We are also going to have to do it if we get through the Zoning Board for the Planning Board. One of the issues you may recall is the DoT and the traffic and all of that. I

think the Board wanted to hear some comments from the DoT which you usually get with the 239 because the county submits the plan to the DoT. They don't do that with variances but they do that for the Planning Board review. That's why we didn't get any DoT review.

- Gregg Pitula: My only concern is that it is hard to make a left out of there when the traffic is coming down because they are stopped. You can't see the traffic coming from Woodbourne. I was hoping the DoT would chime in.
- Glenn Smith: I guess my point was the DoT went with the Planning Board on the technical.
- Scott Lederman: Is it possible to enter and exit from there?
- Glenn Smith: Yes. It is a safer way to do it.
- Larry Zierler: If you don't set it in place we are going to have a problem with wishful thinking on safety.
- Glenn Smith: Basically what the project is will be building the gas canopies and everything else. Move the buildings to the back of the property. Build a new pump canopy. The pumps are pretty much in the same area where the existing pumps and the building is now. At the last meeting the chairman read a letter from the owner of the other agency who had no issue with this property. A couple of comments. There is a drive through lane around the back of the building. We moved the water all the way to the back of the building. That should cut down on cars.
- Scott Lederman: That is for pickup?
- Glenn Smith: Yes. They can go out this way onto 42 and around this way to 52. The county 239 did issue local determination but they did recommend some landscaping. The Planning Board will want a whole landscaping plan. They said this is fine for the variance issue but they will want landscaping. I am showing around this whole curb (inaudible) anyway. Going out this way would be a full entrance but that will be with the Planning Board. I did find out since the last meeting there is a sewer line under this building. I am just showing this off of Gamble and this is behind the building. It comes on Route 52 and 42.
- Larry Zierler: Is it not usable?
- Discussion.
- Glenn Smith: The county wants light storm water, pedestrian circulation, and landscaping. We have this new sidewalk down along 52 here. It kind of ends here. There are sidewalks along 42 that cross over. It will probably be better to cross here than 42 or 52. There are several variances we are looking for. There are 2 front yard setbacks about 70 feet. There is 70 feet back from 52 and 70 feet from 42. The pump house is in the same place in the front yard as part of the variance. The lot coverage is 54%. That was essentially it.

- Dylan Harris: Was there any contact with NYSEG regarding the power lines and the proximity to the canopy?
- Glenn Smith: The lines actually serve the building. They will be taken down and redone. NYSEG will appreciate that for sure.
- Gregg Pitula: He is saying there have been issues with NYSEG going down the road. They like to have 25 feet or so. They are sending primaries to a roof structure. All of your setbacks are making them better right? The building now is more nonconforming than the proposals right?
- Glenn Smith: Yes. We are taking the building into the area more.
- Gregg Pitula: It is more conforming than it was.
- Larry Zierler: It is an improvement. Anything is better than what we have now.
- Jennifer Lishansky: I think the last time we saw you there was a mention of reducing the size of the building.
- Glenn Smith: I spoke with them on that. We still need the variances anyhow.
- Larry Zierler: Is that a standard building? Is that something that has been worked out with the industry? I know you have others. I looked at them. I am wondering if the blueprint is set. Do you have a standard size you are looking to put in?
- Tarik Gujar: It depends.
- Discussion.
- Tarik Gujar: Dunkin Donuts needs at least 40 feet.
- Neil Sapolsky: What is the size of the building now?
- Glenn Smith: 4800.
- Mike Bensimon: So you are looking to maintain that large size because you are hoping to get like that Dunkin Donut franchise. I have been there. My only concern is that it is a super small lot. There is 2 things in respect to the size. One is the size of the building because of the drive through. That could be a form of business expansion. The other thing is the gas canopies. You're going from 2 pumps for a total of 4 pumps to 12 pumps. Right now you have 2 for a total of 4. You are looking to expand to 6 for 12. That goes into my concern that it is a tight area. Imagine all the cars in there lined up just right. Someone might park in the middle one and you have to maneuver in there. There is also that line going behind the building. It is a really tight footprint and you're looking to do a lot on that tight footprint.
- Tarik Gujar: This is not a parking lot. Nobody will park there. It is the gas pump. 2 pumps is not enough. We need at least 6.
- Mike Bensimon: I understand your purpose. It is gas but also a parking spot. That is important. The 2 pumps you have there is a tight space. Having 12 cars in and out is a lot.

- Discussion.
- Mike Bensimon: You are looking to do a lot here. It is big expectations. I am just letting you know that my concern is the lack of space and the volume coming in and out of there. It could be a safety issue. We are going to be making a decision without that DoT comment. In a sense we want that comment to help allay our concerns. I just want to put that out there.
- Tarik Gujar: It is going to the DoT.
- Mike Bensimon: Did the DoT say it was too much traffic there? It is in their purview.
- Tarik Gujar: I am not sure what they will do based on the traffic.
- Scott Lederman: They can turn around and say you can only make left turns.
- Discussion.
- Larry Zierler: I am looking at a picture of the birds eye view. It is almost scary. I have to tell you the times I have had to buy gas there. Looking at what lies behind it is somewhat of a comfort that you do have expandable space. With a new entity and new building obviously you want to see more customers. I think there is a reasonable amount of space for you to place a new building. We are not the architectural review board. In considering what exists right now it is a worn building. Anything that is an improvement even if it comes at a certain cost in terms of space. You're not moving the business away. This is where you want to be. How many years do you want to be here?
- Tarik Gujar: About 2 years.
- Larry Zierler: What will it look like in terms of the other ones?
- Glenn Smith: Pretty much the same.
- Discussion.
- Larry Zierler: It gives us an idea of what the other buildings look like and what our experience is going in and out of that. I want to give analogous cases of these kinds of improvements or rebuilds.
- Glenn Smith: The one by Schmidt Wholesale on that end of Monticello is on two roads. You have cars coming in from both sides.
- Neil Sapolsky: That is a lot of cars. Do you have planters so people can't come in anyway they want to?
- Discussion.
- Neil Sapolsky: You can swing a tractor behind that for deliveries?
- Tarik Gujar: Probably not.
- Neil Sapolsky: Where would the delivery trucks go?
- Tarik Gujar: We don't really need it.
- Glenn Smith: You have 40 or 50 feet.

- Larry Zierler: What the synergies between Dunkin Donuts and your establishment?
- Tarik Gujar: (inaudible)
- Scott Lederman: Could we say Dunkin Donuts could be McDonalds, Burger King?
- Tarik Gujar: No Dunkin Donuts.
- Larry Zierler: You have other cases of this partnership?
- Scott Lederman: It's not a partnership.
- Larry Zierler: It gives us a sense of what happened in other situations. Help determine the traffic pattern.
- Neil Sapolsky: It is an eye sore right now.
- Jennifer Lishansky: I love the opportunity to enhance with new commercial entities. It will look better. This is a long standing business with a long standing track record. Given the lot coverage how much of that moving from 40% to 54% comes from the fuel pump covers versus the building? For example if the fuel pump covers were to stay what would be the difference in lot coverage?
- Glenn Smith: It would be more than 40. I am not sure if it would be 50. It is interesting. The original building was 40 by 70. This canopy is 40 by 70. This canopy is what is there now as far as the building.
- Jennifer Lishansky: How much is the primary building?
- Glenn Smith: Lot coverage is the building an impervious areas.
- Scott Lederman: Are you making the pumps perpendicular to the building? Right now you come alongside the pumps.
- Gregg Pitula: From a code standard the lot coverage is calculated whether the canopy is there or not. The total lot coverage is encompassing all the paved areas and the building area. Even if you take off the canopy you still have the same amount of coverage because it is all black top. The fuel pumps are staying where they are?
- Glenn Smith: Yes
- Gregg Pitula: They're in an okay location where they are?
- Glenn Smith: Yes same spot.
- Gregg Pitula: That leaves room for the trucks and people to get around?
- Tarik Gujar: It probably makes it better.
- Larry Zierler: Any other questions from the Board? I will open it to public comments.
- AJ Pantel: This is my first knowledge that this was coming down the road. What is happening in today's typical gas station. People are so discourteous when they are done filling they leave it right under the pump. You'll never sell any gas. They just leave their cars there. This Rose Valley station seems a lot more compact than this floor plan. It works. When the delivery trucks are in and out of the way and there is plenty of

parking. I imagine this is modeled after that to some degree. With your landscaping to keep drivers from going over the road and pavement that will be a big plus. I heard a couple say that architecturally this will make it look better. One other thing about the electric lines. I think the primary lines is 15 from the center so 30 feet. I think the utilities run on this side of the highway so I don't think it will be an issue.

- Gregg Pitula: Anyone on Zoom?
- Steve Altman: He runs a good operation and I trust his plan.
- Larry Zierler: We will close the public portion. Violations?
- Gregg Pitula: No.
- Larry Zierler: Further Board comments?
- Mike Bensimon: I definitely have concerns about this. The good outweighs the concerns. I am generally in favor. I do hope the Planning Board does address some of these concerns.
- Larry Zierler: Lead agency?
 - MOTION:
 - Jennifer Lishansky motions for lead agency. Neil Sapolsky seconds. All in favor.
 - MOTION:
 - Mike Bensimon motions for negative dec. Neil Sapolsky seconds. All in favor.
- Gregg Pitula: Dylan?
- Dylan Harris: Yeah we are going to have to do a vote and review of each of the variances one at a time. Just so we can go through the process and have a record for each one of them.
- Gregg Pitula: There are 4 variances all together?
- Glenn Smith: Building front yard, canopy front yard, lot coverage, and rear property line reduced from 20 feet.
- Gregg Pitula: 5 variances.
- Dylan Harris: For the specifics the first one is front yard setback from 35 feet to 24 and 27. I think we can group those together because it is the same impact. The second one is lot coverage from 40% to 54%. Third is fuel island setback from.
- Gregg Pitula: You are going to write these up in resolution right?
- Dylan Harris: Yeah I will do the resolution but I have to make sure that we have a clear record just to track everything.
- Gregg Pitula: Start with the first one for the Board so they have it.
- Dylan Harris: The first one is front yard setback from 35 feet to 24 feet and 27 feet.
- Glenn Smith: That is 24 feet on the 52 side and 27 feet on the 42 side. 35 is required.

- Larry Zierler: Whether an undesirable change will be produced in the character of the neighborhood or the detriment of the nearby properties?
- All Board members vote no.
- Larry Zierler: Can the benefit sought be achieved by the applicant by another method other than the area variance?
- All Board members vote no.
- Larry Zierler: Whether the requested area variance is substantial?
- All Board members vote yes.
- Larry Zierler: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or surrounding district?
- All Board members vote no.
- Larry Zierler: Was the alleged difficulty created which will be relevant but not necessarily preclude granting the variance?
- 1 Board member votes no, all others vote yes.
- Larry Zierler: Motion for the variance?
 - MOTION:
 - Neil Sapolsky motions for approval. Scott Lederman seconds. All in favor.
- Larry Zierler: Now we are onto the next.
- Dylan Harris: The next one is lot coverage from 40% to 54%.
- Larry Zierler: Okay. Whether an undesirable change will be produced in the character of the neighborhood or be detrimental to nearby properties?
- All Board members vote no.
- Larry Zierler: Can the benefit sought be achieved by the applicant by another method other than the area variance?
- All Board members vote no.
- Larry Zierler: Whether the requested area variance is substantial?
- All Board members vote yes.
- Larry Zierler: Whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district?
- All Board members vote no.
- Larry Zierler: Was the alleged difficulty self-created?
- 4 Board members vote yes, 1 votes no.
- Larry Zierler: Lead agency?
 - MOTION:
 - Mike Bensimon motions for lead agency. Jennifer Lishansky seconds. All in favor.
 - MOTION:
 - Mike Bensimon motions for negative declaration. Jennifer Lishansky seconds. All in favor.

- Dylan Harris: The next one is fuel islands.
- Glenn Smith: The fuel islands are supposed to be 50 feet to the property line. We have 35 feet to the property line on the 52 side and 20 feet on the 42 side. Zoning specifies 50 feet from the pump island to the property line.
- Larry Zierler: Lead agency?
 - MOTION:
 - Mike Bensimon motions for lead agency. Jennifer Lishansky seconds. All in favor.
 - MOTION:
 - Neil Sapolsky motions for negative dec. Jennifer Lishansky seconds. All in favor.
- Larry Zierler: Whether an undesirable change will be produced in the character of the neighborhood or be detrimental to neighboring properties?
- All Board members vote no.
- Larry Zierler: Can the benefits sought by the applicant be achieved by the applicant by another method other than the area variance?
- 4 Board members vote no, 1 votes yes.
- Larry Zierler: Whether the requested area variance is substantial?
- All Board members vote yes.
- Larry Zierler: Whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district?
- All Board members vote no.
- Larry Zierler: Was the alleged difficulty self-created?
- All Board members vote yes.
- Larry Zierler: Now we have a motion to approve.
 - MOTION:
 - Neil Sapolsky motions to approve. Scott Lederman seconds. All in favor.
- Dylan Harris: The 4th one is the rear yard planning buffer. That ranges from 5 feet to 20 feet and it needs to be 30 feet.
- Glenn Smith: It needs to be 20 feet in the back in the rear yard. It varies.
- Jennifer Lishansky: You had asked since the beginning for a drive through road.
- Glenn Smith: The reason is so there is a lot of buffer area.
- Gregg Pitula: He gave us a letter.
- Larry Zierler: Lead agency?
 - MOTION:
 - Mike Bensimon motions for lead agency. Jennifer Lishansky seconds. All in favor.
 - MOTION:

- Mike Bensimon motions for negative dec. Jennifer Lishansky seconds. All in favor.
- Larry Zierler: Whether an undesirable change will be produced in the character of the neighborhood or be detrimental to neighboring properties?
- All Board members vote no.
- Larry Zierler: Can the benefits sought by the applicant be achieved by the applicant by another method other than the area variance?
- All Board members vote no.
- Larry Zierler: Whether the requested area variance is substantial?
- All Board members vote yes.
- Larry Zierler: Whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district?
- All Board members vote no.
- Larry Zierler: Was the alleged difficulty self-created?
- All Board members vote yes
- Larry Zierler: Now we have a motion.
 - MOTION:
 - Scott Lederman motions to approve. Jennifer Lishansky seconds. All in favor.
- Gregg Pitula: Now number 5.
- Dylan Harris: I only had 4.
- Steve Altman: You had 5 you joined the first two together.
- Glenn Smith: You did the pump canopy islands as one. The pump canopy has to be part of the 35 feet of the front yard to the property line. That reduction is required from 35 feet down to 2 feet on the 52 side and 1 foot on the 42 side. That's the 5th variance.
- Mike Bensimon: Is that in your application because it is not on the agenda?
- Discussion.
- Larry Zierler: Was it noticed to the public?
- Gregg Pitula: Dylan?
- Dylan Harris: It is not on the agenda but it was on the application.
- Larry Zierler: The setback is now to?
- Glenn Smith: 2 feet on the 52 side. The 42 side is 1 foot.
- Gregg Pitula: It is in his letter. We have a new girl typing these in the office.
- Dylan Harris: Yeah some of the numbers were backwards which made it a little tricky.
- Gregg Pitula: I don't see a problem. We had public hearing two times and we noticed it will all these numbers.

- Dylan Harris: I have my notes. We discussed it at the first meeting. It was in the application. The agenda is just what will be discussed.
- Mike Bensimon: Does it have to be on the agenda for public noticing? Whether or not it just has to be in the application?
- Dylan Harris: It doesn't have to be in the agenda because the application is all public record. It was discussed at the first meeting 100% and today as well. I believe there was plenty of notice on it and availability to look at the applications.
- Larry Zierler: We are now moving to that one. The proposed will be 1 and 4?
- Glenn Smith: The proposed will be 1 foot off the Route 42 side and 2 feet off of Route 52.
- Larry Zierler: The lines are not necessarily correct.
- Glenn Smith: The canopy is out here right now.
- Larry Zierler: I see.
- Neil Sapolsky: Those canopies are higher than the tractor trailers.
- Gregg Pitula: It is an improvement to what is there now. We are fitting it into the zoning that was written down after they built.
- Larry Zierler: Lead agency?
 - MOTION:
 - Mike Bensimon motions for lead agency. Scott Lederman seconds. All in favor.
 - MOTION:
 - Scott Lederman motions for negative dec. Jennifer Lishansky seconds. All in favor.
- Larry Zierler: Whether an undesirable change will be produced in the character of the neighborhood or be detrimental to neighboring properties?
- All Board members vote no.
- Larry Zierler: Can the benefits sought by the applicant be achieved by the applicant by another method other than the area variance?
- All Board members vote no.
- Larry Zierler: Whether the requested area variance is substantial?
- All Board members vote yes.
- Larry Zierler: Whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district?
- All Board members vote no.
- Larry Zierler: Was the alleged difficulty self-created?
- All Board members vote yes.
- Larry Zierler: Motion to approve?
 - MOTION:

- Scott Lederman motions to approve. Mike Bensimon seconded. All in favor.

NEW BUSINESS:

1. SKOPPS – SBL: 27.-1-17.2 (Unit 17B) – Requests area variance to allow a second story addition with an increase of 3ft in height. Zone: R, Acres: 16.99.

Location: 305 Murphy Rd.

- Taken off agenda

2. 5201B Main LLC – SBL: 52.-5-13 – Requesting an area variance to allow subdividing off the warehouse building from a 10 ft setback to allow a 2 ft rear setback. Zone: MX, Acres: 90x165. Location: 5201 Main St., South Fallsburg

- Joel Kohn and David Spencer represented.
- Application heard first at meeting
- Larry Zierler: Proof of mailings?
- Gregg Pitula: The one Joel is representing is good.
- Joel Kohn: He is looking to add more warehouse space. This is Route 42. This is Lake Street. This is 52. There is a building to the back with a parking area. We subdivided off the property and developed minimums we have to meet. There is no minimum setbacks in the front or side yard. The only setback is in the back which is supposed to be 10 feet. Being there is a shed there and with accommodations for the owner there is only a 2 feet setback. There won't be any physical changes on the property. It is just making this separate. This is the lot line. This is the building. As you can see there is no side yard setback. It will be a single lot line. They have a shed over here.
- Jennifer Lishansky: Can you talk about trucks coming in and out? There are already a lot of trucks parked right next to that.
- Joel Kohn: We can discuss that. It is more a Planning Board matter. There is a setback for the ingress and egress.
- David Spencer: It is not what it is meant for. It is meant for overstock of merchandise for when we get shipments. It stays there. There is no workers there all day. They are all at the main area. It is all strictly stock.
- Dylan Harris: Everything comes in by van and not by truck. Is that correct?

- David Spencer: There might be a truck once in a while to offload. We are planning that with the Planning Board. It is very little trucks coming over there.
- Mike Bensimon: The warehouse is only for overstock. Any plans to put in (inaudible)?
- David Spencer: Nope. No water facility. The building is not changing at all.
- Larry Zierler: What is the issue of the setback?
- Joel Kohn: This warehouse is already in use. He is arranging with the park owner to buy this property so he can own that warehouse. This is the proposed lot line for that warehouse.
- Discussion.
- David Spencer: I just want to buy the land. I want to make sure it conforms.
- Dylan Harris: I think the issue is that it is a pre existing nonconforming use but by subdividing it you have to get the setback area variance because it is turning it into a new lot so it loses the nonconforming setback. That's the crux of the issue.
- Discussion.
- Mike Bensimon: It is an asset instead of a rental lot.
- David Spencer: Correct a very big asset. Any employees we add will all be at Pleasant Valley.
- Scott Lederman: What is the nature of the shed presently? If that shed wasn't there it could be 10 feet correct?
- Joel Kohn: It is not just the shed. This is what it looks like right now. I have a picture of the shed as well. This is the shed. This is 42.
- Larry Zierler: How long has it been there?
- David Spencer: The business has been there since 2014. I have been in Fallsburg since 2010.
- Larry Zierler: Alright public comment.
- AJ Pantel: I am a member of the fire department speaking on a personal basis. It just so happens I wired this building when it was built. It was built for a warehouse. Obviously Mre. Spencer would like to continue using it as a warehouse. There is going to be no change in operation since inception. There should be no negative impact and it will help the business stay in Fallsburg. It is a great idea.
- Larry Zierler: Any other comments?
- David Lori: I would like to say that it will help. He is great to employees. I don't think there is an employee that works there that would say any different.
- Larry Zierler: What do you do for him?
- David Lori: I do RX transportation.
- David Spencer: You are a Fallsburg residence.

- Gregg Pitula: From a Code Enforcement standpoint there has been interest to do a lot of things with this building. They didn't have the proper parking for a business like they wanted to. Restaurants and businesses. It only works as a warehouse. I have had a relationship with David and anything he says he sticks to his word. We have no issues with Dave or his businesses. He is just asking to own the lot so he has to split it off. The parking isn't changing. The clearances around the dumping isn't changing. It is all staying exactly the way it was.
- Larry Zierler: Anyone online?
- Gregg Pitula: Nobody raising their hands.
- Larry Zierler: We will close the public portion. Violations?
- Gregg Pitula: No.
- Larry Zierler: Board comments?
- Mike Bensimon: It is a derelict commercial area. The commercial properties in this area are split into two tops. One is retail. There you have foot traffic. The surrounding area is different parcel sized areas which is pretty much all warehousing commercial properties. It is in line with what we would like. I would hope the person who owns it now will even take where the bollards are and turn that into a retail store. By splitting it that makes it easier. I think it helps the area.
- Larry Zierler: When we see businesses get sold they are put on the market and large buildings become a whole different subject. I think we have a few manageable properties. I think that is a very good point. We want to see more businesses. Lead agency?
 - MOTION:
 - Mike Bensimon motions for lead agency. Jennifer Lishansky seconds. All in favor.
 - MOTION:
 - Mike Bensimon motions for negative dec. Jennifer Lishansky seconds. All in favor.
- Larry Zierler: Whether or not an undesirable change will be produced in the neighborhood character to the detriment of the neighborhood and nearby properties?
- All Board members vote no.
- Larry Zierler: Can the benefit sought be achieved by the applicant by another method other than the area variance?
- All Board members vote no.
- Larry Zierler: Whether the requested area variance is substantial?
- 2 Board members vote yes, 3 vote no.
- Larry Zierler: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

- All Board members vote no.
- Larry Zierler: Was the alleged difficulty self-created? Which shall be relevant but not necessarily preclude granting of the variance?
- 2 Board members vote yes, 3 members vote no.
- Larry Zierler: Do we have a motion to approve?
 - MOTION:
 - Scott Lederman motion to approve. Mike Bensimon seconds. All in favor.

Larry Zierler motions to adjourn. Jennifer Lishansky seconds. All in favor.