



Town of New Paltz Zoning Board of Appeals  
 Regular Meeting of Wednesday, June 9, 2021  
 Live-streamed/Recorded Remotely at 7:00 PM  
 Available on YouTube: <https://youtu.be/FiwvqT5xIgM>  
**APPROVED MINUTES**

Present: Leonard Loza, Chair  
 Steven Esposito  
 John Gotto  
 Amy Donnelly  
 Katherine Fuller

Absent: David Brownstein, Town Board Liaison

Also Present: Joe Moriello, Zoning Board Attorney  
 Stacy Delarede, Building Inspector  
 Alana Sawchuk, Planning and Zoning Secretary

***Welcome***

7:02

Chair Loza requests a motion to open the regularly scheduled June 9, 2021 meeting of the Zoning Board of Appeals. Ms. Donnelly moves. 5 ayes. Motion carries. Chair Loza notes that all members are in attendance, as well as the Zoning Board Attorney and Building Inspector.

***Public Comment(s)***

7:04-7:17

Ms. Barbara Petersen (22 Hummel Road) is in attendance to speak on behalf of Mr. Bob Hughes and fully endorses his statement regarding ZB21-28, 12 N. Putt Corners Road, Trans-Hudson Management, LLC. Mr. Hughes does not believe the variance requests should be approved.

Attorney Moriello does remind those speaking during the Public Comment period that the Public Hearing for ZB21-28 was officially closed at the May 12, 2021 meeting and that the comments given tonight are not part of the official application record.

Mr. Daniel Schneidewind (546 Albany Post Road) speaks on behalf of himself and 3 other residents regarding ZB21-28, 12 N. Putt Corners Road, Trans-Hudson Management, LLC.

Attorney Moriello reiterates that the Public Hearing has been closed and advises the Chair that no further comment such as this (clearly espousing a particular position on this application) continues.

Ms. Donnelly moves to close the Public Comment period. 5 ayes. Motion carries.

### ***Administrative Business***

- *Approval of May 12, 2021 Minutes*

Mr. Esposito moves to approve the May 12, 2021 Minutes. Chair Loza seconds. 5 ayes. Motion carries.

- *Quorum Check for Wednesday, July 14, 2021 at 7 PM*

All members plan to attend the July 14, 2021 meeting.

### ***Public Hearing(s)***

#### ***1. Area Variance***

ZB21-119: 19 Outlook Farm Drive

Applicant: Kris Schmitt

Zoning District: A-1.5

SBL: 86.3-3-2

7:18-7:39

Chair Loza moves to continue the Public Hearing for ZB21-119. Ms. Donnelly seconds. 5 ayes. Motion carries.

The Wetlands Inspector has gone out to survey the property and submitted a report which all members have read. Mr. Gotto confirms that he received all the materials from the Wetlands Inspector. Ms. Delarede confirms that she was also there for the inspection.

Chair Loza notes that based on the comments from the Wetlands Inspector, the location of the pool has been confirmed to be outside of the 100' buffer, which the Building Inspector also confirms.

Mr. Gotto appreciates the concern given to the wetlands boundary but does have a question about how the applicant revised their map as the Wetlands Inspector only inspected a single point, and not the entire length of the boundary.

Mr. Schmitt clarifies that the Wetlands Inspector did not measure the entire length of the boundary, but they did defer to the Inspector's professional opinion as to how far back the boundary had been pushed.

Mr. Gotto has no further issues with the pool location as submitted given comments from the Wetlands Inspector.

Mr. Gotto asks why the revised septic plan includes an additional septic site.

Mr. Schmitt clarifies that they included the original locations that were available in Town and County files.

Mr. Gotto asks a question about setbacks and the septic fields. Mr. Schmitt had referred to a “general rule” that’s followed by the Department of Health, but Mr. Gotto would prefer to be able to cite a more specific requirement.

Ms. Donnelly asks about seeing the location of where the wetlands boundary *was* and where it is *now*. The Building Inspector confirms that the applicant had submitted an older map with the original boundary as well as a new map within the last few weeks, and that the boundary has not moved much.

Mr. Schmitt addresses the septic setback again and asks Mr. Gotto if he’s assuming there is no setback requirement for the septic. The Building Inspector is not aware of a required setback for a septic field but does advise that it would likely not be wise to put a pool too close to one.

Attorney Moriello agrees that if there is a setback requirement the Board should not vote.

Chair Loza entertains a motion to adjourn the Public Hearing temporarily so that the applicant can find an official reference to septic setback requirements. Ms. Donnelly seconds on the condition that Mr. Schmitt provide whatever he finds in writing. 5 ayes. Motion carries.

### ***Application Review***

#### ***1. Area Variance***

ZB21-28: 12 N. Putt Corners Road

Applicant: Trans-Hudson Management, LLC

Zoning District: B-2

SBL: 86.12-4-5.1

7:40-9:10

The Public Hearing for this application was closed at the May meeting and no further letters from the public were submitted. No comments made this evening will be part of the record with regards to the Board's decision.

Chair Loza asks if members have had an opportunity to read the May 5, 2021 memo from Attorney Zalantis.

Attorney Moriello speaks regarding the Board’s responsibility when deciding to grant a variance, that they are required to “...take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to health, safety, and welfare of the neighborhood or community by such grant.” In making this determination, the Board shall also consider the 5 questions typically asked (i.e., the balancing test).

Chair Loza proceeds through the balancing test for ZB21-28 and asks the applicant to respond to each.

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

Applicant's attorney responds, "No, as there are numerous surrounding 1-story retail buildings."

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.**

Applicant's attorney responds, "No, based on the comments that have been submitted from experts."

**3. Whether the requested area variance is substantial.**

Applicant's attorney responds, "No, it's not substantial because they are asking for less density and height."

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

Applicant's attorney responds, "No, it's a less dense development and fosters walking and bicycle use."

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.**

Applicant's attorney responds, "No, because the Town rezoned the property after a Site Plan application was submitted and had already determined the economic feasibility of the project." Attorney continues that even if it is considered self-created, that alone does not preclude the granting of the variance.

Chair Loza asks for questions/comments from Board members.

Ms. Donnelly, Mr. Gotto, and Mr. Esposito have no further questions for the applicant. Ms. Fuller asks for a definition of "public safety and welfare" from Mr. Moriello. Mr. Moriello explains that the courts have generally viewed those things as being an adverse effect on neighborhood appearances; property values; loss of tax revenues; decreased enjoyment of neighboring properties; or traffic hazards.

Chair Loza makes a statement pertaining to this application, finding that it would be reasonable to grant this variance as requested based upon his review of the 5 factors needed to perform the balancing test in granting the variance. Namely that, (1) the Chair would not find the granting of this variance to be a detriment to the community, especially because of its distance to residential homes (at least a mile away); (2) a second story would be cost prohibitive to the applicant; (3) the applicant is requesting less density; (4) the alleged difficulty was not self-created in light of the fact that the zoning was revised in the middle of their review before the Planning Board.

Mr. Gotto makes a statement pertaining to this application, finding that he would not recommend granting the variance based on the following: (1) The applicant's argument that their proposal will include a number of public amenities is not relevant to the Zoning Board, but even if they were, they are speculative, as the applicant has provided no proof of agreements with the Village, Town, or the Empire State Trail; (2) The applicant's request for this particular variance is in conflict with the Town's desire to "move away from the strip-mall/shopping center/parking lot character;" (3) The applicant has ignored the presence of successful two and three story structures in the area; (4) Mr. Gotto would have wanted further evidence from experts pertaining to the applicant's argument that they would struggle to attract certain tenants, and goes on to point out that the applicants have been unable to provide a single example of a situation where tenants refused to enter a lease in a proposed project because of a required second story; (5) The variance request is substantial given that the Town is requiring two stories and the applicant only seeks to construct one; (6) The applicant has not adequately proven that the alleged difficulty was not self-created. Mr. Gotto concludes that the decisions made by the Zoning Board must be based on factual evidence, and in this instance the applicant has failed to provide any, relying instead on simple assertions not backed up by evidence.

Ms. Donnelly does not think it would be appropriate for this parcel to support "traditional Village character," as it's too small and separate from the Village. The MSMU zoning that envisions a second story presumably does that in order to encourage this "traditional village character" (walkability and density), but this is not a walkable area. Ms. Donnelly agrees that a second story on this building would be too small to be of any decent use. It would also be offensive to put affordable housing in such a small space. Ms. Donnelly intends to vote in favor of the variance request.

Ms. Fuller agrees that the Board has a limited scope regarding this project, has concerns about the feasibility assessment that was submitted, and agrees that it's a substantial request. Ms. Fuller notes that she agrees with most of what Mr. Gotto mentioned in his statement favoring a denial of the variance.

No comments from Mr. Esposito.

Ms. Zalantis responds to comments from Mr. Gotto, stating that Mr. Gotto's position is not the standard for review for an application for an area variance and cautions that if the Board goes down that road, she believes that such decision would not be upheld by a court.

Attorney Moriello recommends that the Board get very specific in how they make this determination. As an example, if the variance were to be granted, would it have an adverse effect on property values?

Chair Loza does not see how new construction would have an adverse effect on any of the property values in the district, as the present state of the property has a much more adverse effect on the neighborhood than what's been presented.

Attorney Moriello states that in any decision by the ZBA for an area variance, it is not whether a particular project is "good" or "bad" for the town and reviews again the requirements that the

board must take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community. In making such determination the board must consider and balance the “five criteria” previously reviewed.

Chair Loza would like to propose a resolution regarding the approval of the area variance ZB21-28, 12 N. Putt Corners Road, Trans-Hudson, considering the following:

**WHEREAS** the decision of this Board is to weigh the benefit to the applicant against detriments to the community with regard to the five questions asked on the area variance application, it is this Board’s decision to determine if granting this variance will be a detriment to the health, safety, and welfare of the New Paltz community;

**WHEREAS** the initial request for a drive-thru has been removed and that the area variance seeking relief from the second story requirement as defined by the Main Street Mixed Use (MSMU) and the Bulk Table Use (BTU) is still requested;

**WHEREAS** the property owner (Ary Freilich, President of Trans-Hudson Management Corp.) has stated that an entrance and exit stairwell, hallways, and elevator are not only cost prohibitive but a large loss of their space and will decrease the usable first floor occupiable space;

**WHEREAS** discussed at previous meetings the proximity to the NYS Thruway will create excessive noise from cars traveling and exhaust from their engines;

**WHEREAS** this location is not a residential area and residential homes are more than one mile down the road to the North;

**WHEREAS** with regard to any traffic impacts this location was in front of the Planning Board years before the land for the fire station and police and courts was even purchased;

**WHEREAS** this application is requesting less density than was initially requested in the original submission;

**WHEREAS** the Ulster County Planning Board (UCPB) made a suggestion to build the second story for aesthetic purposes. This is not practical and is cost prohibitive. This suggestion provides no benefit to the applicant;

**WHEREAS** in making its decision, the Board has found there will be no detrimental effects to the health, safety, and welfare of the New Paltz community;

**WHEREAS** this determination is supported by records and deliberation of the Zoning Board of Appeals in the Town of New Paltz;

**WHEREAS** in making that determination the Board has found and determined,

1. There will not be an undesirable change produced in the character of the neighborhood nor a detriment made to nearby properties by the granting of the area variance;
2. The benefit sought by the applicant cannot be achieved by some method other than an area variance;

3. The requested variance is not substantial;
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
5. The alleged difficulty was not self-created.

**THEREFORE**, be it resolved that the Town of New Paltz Zoning Board of Appeals grants this variance requesting relief from the MSMU and BTU requirements with respect to a second story as requested by Trans-Hudson Management, LLC be granted.

Chair Loza: AYE;  
 Ms. Donnelly: AYE;  
 Ms. Fuller: AYE;  
 Mr. Esposito: AYE;  
 Mr. Gotto: NAY.

4 ayes. With a super-majority the motion carries and overrides the UCPB recommendations.

Discussion was had that the variance is conditioned upon the submission to the Planning Board as part of site plan review of a plan substantially conforming to that submitted to the Zoning Board and approval of such plan with such revisions and modifications as finally determined by the Planning Board. Applicant's attorney confirmed that understanding and indicated her consent.

## *2. Area Variance*

ZB21-119: 19 Outlook Farm Drive

Applicant: Kris Schmitt

Zoning District: A-1.5

SBL: 86.3-3-2

9:13-9:18

The applicant has returned with specific reference(s) related to the septic setback requirements.

Chair Loza entertains a motion to close the Public Hearing for ZB21-119. Mr. Esposito seconds. 5 ayes. Motion carries.

Chair Loza requests a motion to approve the variance request for ZB21-119 based upon discussions had by the Zoning Board of Appeals at their May 2021 and June 2021 meetings. Mr. Esposito moves, Chair Loza seconds.

Mr. Esposito: AYE;  
 Chair Loza: AYE;  
 Ms. Fuller: AYE;  
 Mr. Gotto: NAY;  
 Ms. Donnelly: NAY

3 ayes. Motion carries.

***Adjournment***

Ms. Donnelly moves to close the June 9, 2021 meeting. Mr. Esposito seconds. 5 ayes. The meeting adjourns at 9:20 PM.

Respectfully submitted by,

Alana Sawchuk  
Planning and Zoning Secretary