



Town of New Paltz Zoning Board of Appeals  
 Regular Meeting of Wednesday, March 10, 2021  
 Live-streamed/Recorded Remotely at 7:00 PM  
 Available on YouTube: <https://youtu.be/0F-3A27ZPSs>  
**APPROVED MINUTES**

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

Absent:

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

***Welcome***

7:08

Chair Loza entertains a motion to open the regularly scheduled March 10, 2021 meeting of the Zoning Board. Ms. Donnelly moves. Mr. Esposito seconds. 5 ayes. Motion carries.

***Administrative Business***

- *Approval of February 10, 2021 Minutes*

Chair Loza moves to approve the February 10, 2021 Minutes. Mr. Gotto seconds. 5 ayes. Motion carries.

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

All members will be available to attend the April 14, 2021 meeting at 7 PM.

***Public Comment(s)***

7:10-7:11

No general comments were submitted nor was any member of the public in attendance to speak on a general matter.

Chair Loza moves to close the Public Comment portion of the March 11, 2021 meeting. Mr. Esposito seconds. 5 ayes. Motion carries.

***Public Hearing(s)***

***1. Area Variance***

ZB21-24: 290 Old Kingston Road

Applicant: Keith Libolt

Zoning District: R-1

SBL: 78.15-1-22

7:11-7:16

Mr. Keith Libolt and Ms. Patricia Brooks from Brooks & Brooks Surveyors are in attendance to speak regarding this application. The applicant is seeking an Area Variance regarding the location of a shed placed in the rear yard setback. The applicant had placed the shed in his yard without knowing about the setback requirement—resulting in the violation from the Building Department and the referral to the Zoning Board of Appeals. The topography requires a 30 ft. rear yard setback variance in order to place the shed 20 ft. off the rear boundary line.

Ms. Brooks reviews the 5 factors required to determine whether the Board will grant the variance request.

**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.**

The shed provides a safe area for storage and is not intended for any other purpose. It is not visible from any neighboring homes or Old Kingston Road; therefore, it does not create an undesirable change in the character of the neighborhood.

**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.**

Because of the topography of the site and location of the septic, it is not feasible to put the shed elsewhere.

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

The face of the request appears substantial, however the rear yard setback for accessory structures is the same as it would be for a principal dwelling, so the impact of the size and height of the shed is significantly less than a principal dwelling such as a house might be.

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

This would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood as it is completely surrounded by woods.

**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.**

Yes, it is a self-created difficulty as the applicant placed the shed without first obtaining a building permit. The applicant fully admits that he should have requested the permit prior to

construction, has paid the necessary fees, and appeared before the Zoning Board. The topography of the site however is not a self-created difficulty.

There were no written comments from the public regarding this application and there is no one in attendance to speak on it.

Mr. Gotto moves to close the Public Hearing for ZB21-24, 290 Old Kingston Road, Libolt. Ms. Donnelly seconds. 5 ayes. Motion carries.

## *2. Area Variance*

ZB21-28: 12 N. Putt Corners Road

Applicant: Trans-Hudson Management, LLC

Zoning District: B-2

SBL: 86.12-4-5.1

7:17-8:35

Ms. Donnelly moves to open the Public Hearing for ZB21-28, 12 N. Putt Corners Road, Trans-Hudson Management, LLC. Ms. Fuller seconds. 5 ayes. Motion carries.

The applicant's (Mr. Ary Freilich/Trans-Hudson) attorney, Ms. Kathy Zalantis is in attendance to provide a summation of this application and the requested variances. The applicant is applying for 3 variance requests, seeking relief from a second story as required by design standards and relief from design guidelines and bulk table use. and the allowance of a drive-thru for a food establishment. Ms. Zalantis explains that the proposed plan complies with most of the design standards for this district. Ms. Zalantis also notes that extensive revisions were made to the original plans after the property was rezoned.

Ms. Zalantis addresses a few comments that were made to and by the Board regarding this application. A Board member had asked if the Board had the authority to grant variances from design standards. This Board does have the authority to grant a variance from any provision of the zoning code. Another issue was whether the request for a variance from the drive-thru was a Use or Area Variance. Ms. Zalantis finds that there is no change being made to the essential use of the property, therefore it would be an Area and not a Use Variance.

Regarding the concept plan for this project—certain details such as utilities and landscaping would appear on the plan during Site Plan review, which can only occur if the applicant receives the requested variances. Ms. Zalantis explains that the applicant is fine with the Zoning Board conditioning their approval on the submitted Site Plan being similar to what is being reviewed by the Zoning Board. Some comments have continued to focus on the intent of the Gateway Zone which is not relevant to whether the Board should grant or deny the variance requests. Regarding the use of municipal sewer or water on the property, Ms. Zalantis again explains that the Village of New Paltz has indicated their consideration of this request, but the issue would be more formally addressed during Site Plan review. Ms. Zalantis again notes that the applicant is requesting variances that would create less density and result in shorter buildings than required by the zoning code, which is generally unheard of in zoning matters brought before Zoning Boards.

Ms. Zalantis reviews the balancing test for these variances.

**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.**

The applicant finds that no undesirable change would be produced in the character of the neighborhood as the building height is in keeping with nearby shopping centers. There is also a McDonald's and Burger King nearby that have drive-thrus.

**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.**

It would not be financially viable to construct a second story above the retail space, especially when the applicant is providing municipal uses like the Empire State Trail. The applicant also finds that it would not be feasible to get a food-tenant for that space, especially because of COVID, without having a drive-thru.

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

No, because they are seeking to do less than what is required by the code.

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

No, because the applicant is looking to create less density than what is allowed by the code. Any traffic issues will be studied within the context of Site Plan review. This project will also result in additional municipal space for the community.

**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.**

This is not a self-created difficulty as the client's property was rezoned after years of pursuing a zoning compliant plan.

Mr. Ary Freilich is in attendance to speak on behalf of his application. Mr. Freilich provides a brief history of his professional background. He was a practicing real estate lawyer for 12 years, as well as a Professor at NYU's graduate business school. Mr. Freilich lives in the city but has a home in Clinton Corners, NY, where he's lived for the last year. Mr. Freilich speaks to the number of other projects he is currently involved in. Mr. Freilich explains that this project was originally conceived of as a 16,000 sq. ft. shopping center with a CVS, but many residents had objected to that. Because of these objections, he had met with a committee comprised of the Village Mayor, Town Supervisor, and other Planning Board members to brainstorm a revised plan. During this process construction of the Empire State Trail began. Mr. Freilich agreed to include the trail in their plan. The Village Mayor had expressed possible interest in connecting Village water/sewer to the project. It was around this time that the Town Board passed two code changes that would make the project almost impossible to complete as revised. Mr. Freilich also mentions that banks are "skittish" about lending money to tenants that are not "well-credited" and speaks to the non-feasibility of having more than one story, as well as the convenience that a drive-thru would bring.

Ms. Janelle Peotter is a resident of New Paltz who is in attendance to speak in opposition to the variance requests being made.

Ms. Judy Mage is a resident of New Paltz who is in attendance to speak in opposition to the granting of the variance requests.

Ms. Lee Bell is in attendance in order to read a letter from Dr. Rose Rudnitski, who has written in opposition to the granting of the variances.

Ms. Ingrid Haeckel, ENCB Chair, is in attendance to speak in opposition to the granting of the variance requests on behalf of the ENCB.

Mr. Zach Bialecki is in attendance to speak on behalf of himself and Ariana Basco (New Paltz residents), in opposition to the variance requests.

Mr. Eric Perlman is in attendance as a resident of New Paltz and has been asked to read a letter from Ms. Kitty Brown (New Paltz resident) who wrote in opposition to the granting of the variances.

Ms. Zalantis responds to the comments given tonight and reminds Board members that they are being asked to consider items by the public that are not relevant to denying or approving the variance requests. The claims being made about traffic are unsupported and will continue to be studied during Site Plan review.

Mr. Freilich responds by saying that they are seeking to please a number of different parties and expands on their reasoning and intentions for the lot.

Chair Loza sees no reason to keep the Public Hearing open. However, Attorney Moriello expresses a concern regarding SEQRA review and the application before the Planning Board (PB20-13) and advises that the Public Hearing remain open until those issues are resolved.

Ms. Donnelly speaks to SEQRA considerations related to this project and doesn't think the Zoning Board of Appeals plays a role in that type of review.

Mr. Moriello mentions that depending on the nature of the SEQRA review, the Zoning Board might not be able to make a decision on the variances depending on whether the Planning Board has completed their SEQRA review.

Chair Loza makes a motion to extend the Public Hearing to the April 14, 2021 meeting. Ms. Donnelly seconds. 5 ayes. Motion carries.

### ***Application Review***

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

ZB21-24: 290 Old Kingston Road

Applicant: Keith Libolt

Zoning District: R-1

SBL: 78.15-1-22

8:35-8:57

Mr. John Gotto speaks to the substantial size of this variance, but recognizes the necessity given the topography of the site.

Chair Loza considers other feasible options that the applicant might pursue besides being granted the variance.

Ms. Brooks speaks more on the topography and why it makes the request of the variance necessary.

Ms. Donnelly asks about the location of the septic field to the shed right now. The applicant believes that the only flat area on the property is where the septic is.

Ms. Fuller asks if the applicant would end up needing another variance once the relocation began.

Ms. Delarede speaks to the structural concerns with the gravel-lift suggestion that would act as an alternative to being granted the variance.

Chair Loza asks if Board members or the Building Inspector has any further comments. Chair Loza proceeds through the Balancing Test with the applicant.

**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 responds, "No."

**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 responds, "No."

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

Applicant responds, "Yes."

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

Applicant responds, "No."

**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 responds, "Yes."

Chair Loza asks the Board if there's any further discussion.

Mr. Gotto understands the need for the relief but is concerned about “chipping away” at Town zoning. Ms. Fuller agrees.

Ms. Donnelly doesn’t believe that granting the request would have a significant impact on the community.

Ms. Fuller agrees with Mr. Gotto in terms of zoning, but it’s unique in terms of topography. Additionally, the uniqueness in question would limit the impact that this zoning change would have on the rest of the Town.

Chair Loza requests a motion regarding this application. Ms. Donnelly motions that because the change in location of the structure (shed) is minor enough that it cannot be viewed from the road or neighboring properties that the variance be granted as shown on the submitted map. Chair Loza seconds.

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

5 ayes. Motion carries.

## ~~2. Area Variance~~

~~ZB21-28: 12 N. Putt Corners Road~~

~~Applicant: Trans Hudson Management, LLC~~

~~Zoning District: B-2~~

~~SBL: 86.12-4-5.1~~

~~0:00-0:00~~

## 3. Area Variance

ZB21-70: 6 Spies Road

Applicant: James Geiser

Zoning District: A-3

SBL: 78.3-2-22

9:03-9:12

Mr. James Geiser is in attendance to speak on behalf of his application. Mr. Geiser and his wife are interested in building a swimming pool on their property. It would be in an area that is not visible from the road or to neighbors as it is in a heavily wooded area. Because of the boundaries of the property, it was considered a corner lot, and it is the applicant’s understanding that corner lots cannot be built on. The couple is retired and have been interested in having a pool for some time. They now feel as if they have the time and money to do so.

The Building Inspector speaks regarding this application and clarifies that it’s not that the applicant can’t build on a corner lot, but that you cannot have a pool in a front or side yard, hence the request for a variance.

Chair Loza moves to set a Public Hearing for April 14, 2021 at 7 PM. Ms. Fuller seconds. 5 ayes. Motion carries. The Building Inspector confirms that this application does not require county referral.

*4. Special Use Permit*

ZB19-280: 139 State Route 208

Applicant: Angelo Ruotolo

Zoning District: R-1

SBL: 86.4-1-34

9:12-9:55

Mr. Joe Moriello has provided a Draft Resolution denying this application per a motion that was made at the February 2021 meeting. Mr. Moriello confirms that no notices for the Public Hearing have ever been sent nor has any completed affidavit been provided to the Planning and Zoning Secretary.

Mr. Ruotolo is in attendance.

Mr. Esposito confirms he has still recused himself from reviewing this application.

Chair Loza requests a motion to deny the applicant's request for a Special Use Permit in the R-1 district. Ms. Donnelly seconds.

Attorney Moriello advises the Board to read through the drafted Resolution in its entirety.

The attached Resolution/Decision was read aloud and then duly adopted.

The Secretary takes roll:

Chair Loza: AYE;

Mr. Esposito: ABSTAINS;

Mr. Gotto: AYE;

Ms. Donnelly: AYE;

Ms. Fuller: AYE.

4 ayes. Motion carries. The motion to deny the applicant's request is approved.

Mr. Moriello advises that the Decision in its entirety be filed with the Planning Board office and the Town Clerk's office, stamped with the date of filing.

***Adjournment***

Ms. Donnelly moves to adjourn the March 10, 2021 meeting. 5 ayes. Motion carries. The meeting adjourns at 9:56 PM.

Respectfully submitted by,

Alana Sawchuk



Planning and Zoning Secretary