

**Village of South Blooming Grove Zoning Board of Appeals
Minutes of January 12, 2023 Meeting**

A meeting of the Village of South Blooming Grove Zoning Board of Appeals on January 12, 2023 in the Village Hall was called to order by Chairman Yehoshua Bittman at 8:05 PM. Chairman Bittman led a Pledge of Allegiance by all who attended.

Village Planner Tom Shepstone proceeded to do a roll call of the board. Board Members Yehoshua Bittman, Chaim Goldstein, Sholem Leiberman and Shmaya Spitzer were present for the meeting. Absent was Board member Pete Piampiano. Also present were Board Attorney Tad Barone, Village Engineer Al Fusco and Isaac Eckstein and Joel Sterner on behalf of the Village. A quorum being present, the meeting was opened for regular business.

Chairman Bittman moved and Leiberman seconded a motion to approve the minutes of the November 10, 2022 meeting. The motion was unanimously carried.

585 Clove Road

Chairman Bittman noted the public hearing on this application was closed and the board had heard from the Village Planner but had deferred action until now.

Shepstone reminded the board that the applicant, located in the RC-1 District, had requested a variance for a SEQRA Unlisted Action to increase the maximum building height from 40 feet to 46 feet. He further indicated the height variance was, in his professional opinion, warranted based on the fact the lot is sloping and difficult to work with unless there is a more height possible. Shepstone proceeded to review his suggested draft of a completed Part 2 of the EAF before you take action on the EAF and the resolution:

Chairman Bittman made a motion to adopt a Negative Declaration Bittman, which was seconded by Member Spitzer and unanimously carried.

Shepstone then presented a draft resolution that incorporated suggested findings with respect to the requirements of § 7-712-B of the New York State Village Law and the Village of South Blooming Grove's own code, which resolution was approved on a motion by Member Leiberman, seconded by Member Spitzer and unanimously carried. This vote is reflected in the following adopted version of the resolution:

RESOLUTION

WHEREAS, an application was submitted to the Zoning Board of Appeals (ZBA) by the above identified Applicant for the variances indicated above; and

WHEREAS, the variances sought to replace the an existing residential structure with a mixed office and retail use, as shown on a site plan prepared by its engineer was reviewed by Fusco Engineering as well as by its planning consultant, Shepstone Management Company; and

WHEREAS, the ZBA determined the application was reasonably complete and, following public notice, held a public hearing thereon on September 1, 2022, at 8:00 pm, which meeting was open to the public via remote means; and

WHEREAS, the hearing was continued to November 10, 2022, and closed on the same date after allowing members of the public to address the board and speak in connection with the application; and

WHEREAS, the ZBA has duly considered public comments received; and

WHEREAS, the ZBA has determined, for the purpose of review under SEQRA, that granting a building height variance is an “Unlisted” action thereunder; and

WHEREAS, the ZBA has, of this same date and as Lead Agency, declared that granting of the requested height variance will not have a significant adverse environmental impact on the environment, and

WHEREAS, in considering whether to grant or deny each of the requested variances, the ZBA engaged in a balancing test, weighing the proposed benefit to the Applicant against the possible detriment to the health, safety and welfare of the community, as well as consider the five statutory factors enumerated in the applicable law; and

WHEREAS, the ZBA herein has addressed the requisite statutory factors in approving the each proposed variance after a review of the recommendation and advice of its planning and engineering consultants, the ZBA members’ knowledge of the location of the site and the relevant surrounding areas and also such material and relevant public input as received; and

WHEREAS, the ZBA considered whether the requested Variance were substantial when compared to the nearby buildings, would improve the physical and environmental condition and character of the neighborhood, and whether the requested variance was the minimum variance required to promote the legitimate interests of the Applicant in due regard to the interests of the general public; and

WHEREAS, the ZBA believes the substantial evidence in the record supports the rationale for the ZBA's determination to grant the requested Variance;

NOW, THEREFORE, BE IT RESOLVED, that the ZBA of the Village of South Blooming Grove finds the Applicant has submitted all required materials, and met all applicable requirements as set forth in the Zoning Code and applicable law for the granting of each requested variance, subject to conditions set forth herein and/or limitations imposed by applicable law, based upon the following findings and determinations:

BUILDING HEIGHT VARIANCE

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:

Determination: No

Reason: This variance will not produce undesirable change in the character of the neighborhood or a detriment to nearby properties. The RC-1 District encourages mixed-use development and the neighborhood is characterized by other relatively nearby commercial development.

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:

Determination: No

Reason: The benefit sought by the applicant in this case cannot be achieved by some other feasible method because economic use of the small lot, given its slope specific limitations requires building slightly higher.

3. Whether the requested variance is substantial:

Determination: No

Reason: The variance is not substantial, amounting to but a 15% adjustment and is the minimum needed given the slope and height measurement criteria.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood:

Determination: No

Reason: The variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community with a use that put commercial services in walking distance of residential development as well as other services. As such, the variance will not cause any adverse impacts.

5. Whether the alleged difficulty was self-created:

Determination: No

Reason: The alleged difficulty was not self-created as the lot was always restricted by the slopes involved, its small size as well as the proximity of a small stream to avoided. It will also allow the type of development anticipated for the District

6. Whether the variance will comply with other Village variance criteria.

Determination: Yes

Reason: Allowing for already anticipated development under zoning for this District ensures the interests of justice will be served by allowing the variance. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

Upon the foregoing reasons and evidence in the record of the proceedings before the ZBA, the ZBA further finds that the foregoing variances are the minimum variance that should be granted to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The ZBA, therefore, hereby makes the following findings in connection with its granting the variances set forth above:

- (a) That the variance are not substantial in relation to the requirement and to other factors set forth herein and otherwise made applicable by relevant law.
- (b) That the effect of any increased population density which may thus be produced upon available services and facilities is not significant.
- (c) That a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties will not be created.
- (d) That the difficulties cannot be alleviated by some method feasible for the applicant to pursue other than this variance, or that lesser variances cannot alleviate the difficulty.
- (e) That, in view of the manner in which the difficulties arose and considering all of the above factors, the interests of justice will be served by allowing the variance.
- (f) That the variance will not cause adverse aesthetic, environmental or ecological impacts on the property or on surrounding areas and will not harm the general health, safety or welfare.
- (g) The difficulty addressed by the variance are not self-created.

The ZBA did not identify any detriment that would result to the neighborhood or community by reason of allowing the land to be developed with the variances requested. Moreover, the ZBA, taking into consideration the above factors, finds the benefit to the Applicant outweighs any potential detriment to the neighborhood or community, and, therefore, the requested variance is hereby granted. Nonetheless, the granting of the requested variance shall not relieve the Applicant from obtaining any other necessary approvals, permits, etc. for the use and development of the site.

NOW, THEREFORE, BE IT FURTHER RESOLVED

On a motion by Member Leiberman, seconded by Member Spitzer and carried by a vote of 4 Ayes, 0 Naes, with 1 member being absent, that the Zoning Board of Appeals makes the foregoing findings and determinations, and it hereby grants the above-stated

variances, which are subject to any conditions stated herein, and the within does not relieve the Applicant from obtaining any other permit, approval, and/or license required in connection with the proposed use of the site.

Chairman Bittman then made a motion to adjourn the meeting, there being no further business to be considered. This motion was seconded by Spitzer and unanimously carried and the meeting was formally adjourned at 8:35 PM.