

**Town of Forestburgh
Zoning Board of Appeals
Minutes
February 14, 2022**

The meeting was called to order at 7:00pm by Chairman Carl Amaditz at the Town Hall, 332 King Road, Forestburgh, New York.

Members Present: Carl Amaditz, Chairman
 David Griffin
 Hilda Lehr
 Edward Pajak
 James Steinberg

Attorney: Javid Afzali

Recording Secretary: Billie Jean McGinnis

Notice of this meeting has been provided to the public by posting at the Forestburgh Town Hall, Forestburgh Firehouse, Forestburgh General Store, Town of Forestburgh website and has been published in the Sullivan County Democrat.

Chairman Amaditz started the meeting by introducing the ZBA members. J. Steinberg asked the gentleman who was videotaping the meeting to identify himself. Steven Barshov of Sive, Paget & Riesel P.C. spoke for the gentleman stating that he was his attorney and would speak on his behalf. He is working for his client, the applicant, to record the meeting to be sure to have an accurate record.

Lost Lake Holdings, LLC

Steven Barshov of Sive, Paget & Riesel P.C. attended on behalf of the applicant. Chairman Amaditz accepted the application received from the applicant dated January 20, 2022; one for Unit 303 and the second for fourteen additional parcels. They are seeking an appeal of the building inspector's denial of the building permit for Unit 303 and also the refusal to accept the permits for the additional fourteen parcels.

Mr. Barshov's recollection is that it was denied for the same reason. He doesn't think it was a refusal to review but instead an outright denial. Chairman Amaditz stated that the building inspector's letter will speak for itself.

Chairman Amaditz wants to discuss a proposed schedule and a calendar for the review.

J. Afzali suggested that Rules and Procedures should be discussed.

Chairman Amaditz entertained a motion to accept the Rules and Procedures that were disbursed to the Board members. Mr. Barshov interrupted asking if the Rules and Procedures are available to see. J. Afzali responded that they'll be available if they're adopted. Mr. Barshov confirmed that he cannot see the proposed rules either until they're adopted.

Motion made by J. Steinberg to accept the Rules and Procedures. Seconded by E. Pajak
Vote: All in Favor.

Mr. Barshov requested a copy of the Rules and Procedures so he can have an idea of how this will be set up procedurally. J. Afzali stated that as long as he accepts them as a *DRAFT* because we may have to do some technical clean up. B. McGinnis provided a copy to Mr. Barshov.

Mr. Barshov stated that it's his understanding that the ZBA hasn't met in quite some time. He asked if these are new rules or a re-adoption of old rules? Chairman Amaditz responded that this is a rewrite of the old rules. His concern is that somehow these rules were prepared and circulated. He doesn't know if the Board was given the opportunity to review them. J. Afzali responded that these rules have been considered and adopted.

Mr. Barshov is trying to ascertain how business is being done. He's asking the question because he called counsel and was told that she will not be handling this matter. He wants to know if she tendered a conflict or resignation to the Board? The Board hasn't met, so how is it that a decision has been made that she is not the attorney, that Mr. Afzali is counsel when the Board has not met. Who made this decision? How did this happen?

J. Afzali interrupted Mr. Barshov, reminding him that his comment was supposed to be short. His comment has been taken. A member of the public interjected and J. Steinberg reminded everyone that this is not time for public comment.

Mr. Barshov continued. He wants everything to be fair. He stated that Mr. Afzali needs to ethically recuse himself for two reasons. J. Afzali reminded Mr. Barshov that his comments were to be in writing and directed to the Town Supervisor. Comments are supposed to be short. Several people were talking over each other at the same time and were reminded by B. McGinnis that they cannot speak over each other for recording and documentation purposes.

Mr. Barshov continued stating that Mr. Klein, the town's attorney, was in the same position in 2014. Chairman Amaditz responded stating that we are not going to discuss this as Mr. Barshov was provided a letter and notice explaining the proper way to address this matter with the Town. Mr. Barshov interrupted the chairman again and was reminded by J. Afzali that the chairman is speaking and he cannot interrupt him.

Motion made by J. Steinberg for to go into executive session. Mr. Barshov interrupted asking for what reason. J. Steinberg responded for litigation. Mr. Barshov stated that there is no litigation pending or threatened. Again, several people were talking over each other. J. Afzali interrupted stating that Mr. Barshov cannot question the Board. Mr. Barshov again stated that the Board cannot go into executive session anytime you want. J. Afzali stated that Mr. Barshov is not here to advise the Board.

J. Steinberg reminded the Board that there is a motion on the floor to go into executive session. J. Afzali explained to Chairman Amaditz that under Open Meetings Law, Section 108, an exemption to the Open Meetings Law applies when the Board needs to seek legal advice and those are attorney-client privilege. Mr. Barshov interrupted again stating that Mr. Afzali has been told five times that he goes into executive session illegally. He's trying to help the Board. J. Steinberg stated that help is not needed as we have our own attorney.

Town Supervisor, Dan Hogue, attending as a member of the public, interjected stating that things are getting out of hand.

J. Steinberg again stated several times that there's a motion on the floor. Mr. Barshov interrupted stating that the Board is about to go into executive session illegally. He wants the Board to know that it's being done illegally. They need to state a reason for it. The Board is not stating a proper reason. When they're done, they'll talk about their illegal executive session.

Motion made by J. Steinberg to go into executive session. Seconded by E. Pajak.

Vote: All in Favor.

J. Afzali made it clear for the record. We are going into executive session under section 108 of the Open Meetings Law that allows for communication between Board and attorney to discuss what will be protected under Federal and State statutes which includes attorney-client privilege matters. So this type of discussion would be authorized as exemption to the Open Meetings Law.

J. Steinberg invited J. Afzali to attend the executive session.

The Board entered executive session at 7:11pm.

Motion made by J. Steinberg to return from executive session at 7:21pm with no decisions made.

Seconded by H. Lehr.

Vote: All in favor.

Chairman Amaditz would like to request a full permit record from the Building Department and also to set a schedule for receipt of this record and the department's response to this appeal.

Motion made E. Pajak to obtain full permit record from the Building Department.

Seconded by J. Steinberg.

Vote: All in favor.

Chairman Amaditz suggested to hold a meeting on March 15th at 7pm to hear the motion. After a discussion, Mr. Barshov would like a copy of the record presented to be sure it's a complete record.

J. Afzali explained to Chairman Amaditz that it's customary for the petitioner to receive a copy of the record to coordinate and be sure it is agreed that it's a complete record. Chairman Amaditz advised Mr. Barshov that he will hear from Mr. Gabbard.

Motion made by J. Steinberg to schedule the next meeting for March 15th at 7:00pm.

Chairman Amaditz confirmed that will be enough time to receive the records and have them reviewed in time for that meeting. J. Afzali asked if that will be enough time to review the appeal as presented.

Mr. Barshov asked if there will be opportunity to respond to the submissions. He asked if it could be calendared tonight so everyone can plan. He doesn't want to meet unnecessarily.

Chairman Amaditz would like to calendar for 30 days but doesn't know how voluminous the records are as the building inspector is not in attendance. J. Afzali stated that there was a sizable FOIL request and records were already compiled and should be easily accessible.

Motion amended by J. Steinberg to request full permit record by March 1st and hold a meeting on March 15th at 7pm. Seconded by D. Griffin.

Vote: All in Favor.

Mr. Barshov had a request. Chairman Amaditz acknowledged. Mr. Barshov presented a document to B. McGinnis to be distributed to the Board for review. "Back in 2014, this is what Mr. Klein did. He reported that the attorneys representing Merriewold filed an application with the ZBA seeking them to review and interpret the opinion of the Code Enforcement Officer's opinion on the definition of recreational use. Obviously, I represent the Code Enforcement Officer and the Planning Board, I can't represent the Code Enforcement Officer and the ZBA at the same time. There was a motion made by to retain special counsel because of what Mr. Klein had done. So I would submit to you that you should think about this because that is what your attorney has done previously." Chairman Amaditz responded that the Board will take this under advisement.

Mr. Barshov continued. Chairman Amaditz reminded him that there was only one thing that he wanted to bring up. Mr. Barshov stated that this is related and it's also an ethical questions. "Mr. Afzali is going to need to be a witness on this matter. He is going to need to participate because the claim has been made that Mr. Gabbard relinquished his responsibilities and gave them to Mr. Afzali."

Chairman Amaditz interrupted stating that we are not here to discuss this. The Board is here for interpretation at his request. Mr. Barshov would like his objection on the record. He continued "Mr. Afzali is required ethically to resign from his position as ZBA counsel for this matter because he cannot be both witness and he cannot advise you. I'm telling him this as a matter of professional courtesy and I'm telling the Board that this will be a problem for you going forward. I'm just letting you know. He should be recusing himself. I would appreciate getting advice from your ZBA attorney because that's who should be opining, not someone who is self interested in this way." J. Afzali directed Mr. Barshov several times to please stop giving the Board advice. Chairman Amaditz stated that it's a matter for the Town Board if they desire to discuss it. If they see fit, they will make a change.

Motion made by J. Steinberg to adjourn the meeting at 7:31pm. Seconded by H. Lehr.

Vote: All in Favor.