

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, AUGUST 17, 2017 AT THE MONTEBELLO COMMUNITY CENTER. THE MEETING WAS CALLED TO ORDER AT 7:48 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	Rodney Gittens	Chairman
	Janet Gigante	Member
	Scott Goldstein	Member
	Jack Barbera	Member
	Carl Wanderman	Ad Hoc
Others Present:	Ira Emanuel	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk

Member Wanderman made a motion to approve the minutes of October 20, 2016, seconded by Member Barbera. Upon vote, the motion carried unanimously.

**Stonehedge Height Corp. – PUBLIC HEARING**  
**220 Spook Rock Road**  
**49.13-1-13**

Application of Stonehedge Heights Corp. for the Stonehedge Farms Subdivision, Preliminary Plat, the Applicant is requesting a waiver of the land use moratorium as set forth in Section 2 of Local Law No. 1 of 2016. The property, consisting of 11 lots from 16.68 +/- acres, is located on the east side of Spook Rock Road approximately 500 feet south of Topaz Court in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 49.13, Block 1, Lot 13 in an ER-80 Zone (Rural Preservation Overlay District).

In attendance was the applicant, Mr. Marsel Amona, Engineer for the applicant Stuart Strow, and the applicant's attorney Deborah Loewenberg.

Chairman Gittens read the public hearing notice and established that the posting, publication and mailing legal requirements were met. On the applicant's combined affidavit certification, Mr. Emanuel noted that the applicant was listed as "Stonehedge Heights Corp." but was signed by Marsel Amona. The applicant should be changed to "Marsel Amona" so the signature matches the application, he explained. A Corporation cannot sign an affidavit. It's not something that is so misleading, but it should be corrected, he said.

Mr. Emanuel said that this is a Type II action under SEQRA and is not subject to GML review by the Rockland County Planning Department, and that the applicant is here simply to request a waiver from the building moratorium.

Mr. Amona explained that he began Planning Board review for this subdivision back in 2008 while he was developing another subdivision, Fant Farm. As the market took a downturn, he explained, he put Stonehedge Farm Subdivision on hold to concentrate on Fant Farm. Once the market improved and most of the homes in Fant Farm were sold, he was ready to focus once again on Stonehedge Farm, only to discover that there was a new moratorium in place. Mr. Amona said that when he appeared before this Board last year for relief for the moratorium, he was under the impression that the moratorium would end by January 1, 2017. The Board did not grant the waiver but he was heartened by the fact that he would be able to begin site plan review again in the short term. The moratorium was extended to June 2017 and then again to December 31, 2017, creating delays that have caused him to endure

financial burdens, he said. He assured the Board that he understood there may be proposed zoning changes within the Comprehensive Plan that would affect his parcel and that he will comply with any and all change which will be reflected in the plans.

The applicant's engineer, Mr. Stuart Strow, presented the conceptual site plan and reiterated that the application for this project was initiated in 2008 and was put on hold for financial reasons. He then said that all recent changes comply with the proposed zone amendments as set forth in the draft 2017 Village Comprehensive Plan.

Mr. Strow told the Board that the property is uniquely zoned in that it is in the ER-80 zone which allows for an average density subdivision with lots of 25,000 square feet approximately. The property is also within the Rural Preservation Overlay District that has strict requirements, he said, notably the preservation of the corridor along Spook Rock Road that prohibits any disturbance or development within 200 feet along that road, and added that Fant Farm is in the same district and was subject to the same restrictions. In compliance with the district, he said that the existing dwelling on the parcel will remain and all new development will occur behind that existing house.

Mr. Strow explained that this property previously operated as a horse farm for many years and includes a large stable and an arena. The property is largely developed and paved with parking lots and structures that will all be removed. The wetlands in the rear of the property will not be disturbed, although there will be some disturbance within the 100-foot wetlands buffer, he said. Nonetheless, the area was already disturbed and in many respects this is a re-development project, and by the time of its completion, he said, there will be less impervious surfaces.

Mr. Strow then said he reviewed the Draft 2017 Comprehensive Plan to see if there are any potential district changes that could impact the development of the property and found that, though there are no proposed zoning changes, there are a few recommendations regarding the district that would affect some details of the development such as the types of curbs and pavement to be used and the preservation of large trees. He said the applicant will be glad to implement all proposed changes and hopes that these proposed changes are adopted by the Village as they will enhance the look of the project. Mr. Strow said that the applicant has the Village's interests in mind, will fully comply with all changes in the overlay district, and hopes the Board can fully understand the difficult position Mr. Amona is in at the moment.

Member Diaz asked whether or not the wetlands on the property are isolated. Mr. Emanuel said that, though it was good for exposition to see what the plan is, this Board is not reviewing the site plan, nor is Mr. Amona asking for any variances. Rather, he is asking only for relief from the moratorium so site plan review can occur, he explained. Member Diaz asked if there have been any changes to wetland regulations. Mr. Strow said no, not to his knowledge. Member Diaz then asked why Mr. Amona let the horse farm go. Mr. Amona said the previous owner was running it.

Mr. Emanuel, explaining the chronology of this application, said that this is the second time Mr. Amona is before the ZBA for a waiver of the moratorium. The first in December of 2016, the Board made a finding with respect to the horse farm, learning that Mr. Amona's company had a contract with the owner of the property, Mr. Minetto, to purchase the property. At some point, not long before this applicant appeared the first time for the waiver, Mr. Minetto required the contract to close and the property to be sold.

Mr. Emanuel noted that relief from the moratorium is based on some specific hardship endured by the applicant, then asked how what the applicant is going through is any different from what any other owner that has developable property is going through. Ms. Loewenberg said it is important to remember this project dates back from 2008 and therefore is a pending application. There is no expiration of the

papers initially submitted to the Planning Board, she added, and said that it has been very difficult for her client financially. She then said she was unaware of any other developer in the same situation in the Village.

Member Wanderman asked if the moratorium prohibits some of the preliminary reviews, for example, CDRC review. Mr. Emanuel said this was discussed the last time and that Mr. Amona appeared at CDRC in December 2016 and in May 2017. Mr. Amona said they stopped because they could not go on to the Planning Board under the moratorium extension. Mr. Strow said those appearances were in anticipation of the moratorium being lifted, but it was extended each time. Mr. Emanuel said that it will be lifted after December 31, 2017.

Member Gigante said that things have not changed since December 2016 and that even though the Village Board of Trustees has reviewed it, the Comprehensive Plan Commission will hold an open house in September which may render more changes. Mr. Amona said that, at last October's ZBA, he was told to hang on and wait a while longer until the moratorium was lifted, but it was subsequently extended two more times. Meanwhile, he said, the property has been sitting empty for two years and he's been carrying over \$130,000 in property taxes on top of the interest and the mortgage. He said he finds it increasingly difficult to maintain this pace and further explained that he is worried that the Village will again extend the moratorium. If any new changes come to the Comprehensive Plan, he said, he would be happy to comply with those changes.

Member Diaz said that he understands Mr. Amona's hardship but noted that he didn't have to let the horse farm go. Ms. Loewenberg said Mr. Minetto was the one running the horse farm and did not want to continue due to his health issues. Member Diaz said that, according to the minutes from the October 2016 ZBA meeting, Mr. Amona dismissed the horse farm without knowing there was a moratorium in place. Mr. Amona explained that he had no choice but to close on the property or risk losing it altogether.

Chairman Gittens opened the public hearing. No one wishing to speak, Member Barbera made a motion to close the public hearing, seconded by Member Wanderman. Upon vote the motion carried unanimously.

Chairman Gittens said he understood Mr. Amona's hardship, noted that this is a tough decision to make, and asked the Board to put the matter to a vote.

Member Barbera said he feels this has gone on long enough and that the waiver should be granted. As far as the Comprehensive Plan goes, he added, if there are any conflicts, it will be addressed by the Planning Board. Member Gittens agreed with member Barbera and noted the burden Mr. Amona is enduring. Member Gigante said that she does not feel comfortable granting the waiver while the Comprehensive Plan is still in draft form and subject to changes. Member Wanderman said that, as a member of the Comprehensive Plan Commission, he is aware that the Commission has completed its study and is now at the point of recommending implementation to the Board of Trustees. Even though the applicant has suffered financially, he said, he will vote to deny the waiver since the applicant will only have to wait three more months until the moratorium is lifted. Member Diaz said that he understands the difficulty the applicant is experiencing, but said that there are rules and protocols that must be followed and therefore he denies the waiver.

Member Gigante made a motion to deny the application for a waiver of the moratorium based upon the statements that were set forth, seconded by Member Wanderman. Upon vote, the motion carried.

Mr. Amona said he felt that this decision is very unfair because he'd been waiting a year and a half, during which time he was told to wait three more months, each time only to find that the moratorium

was extended. He then asked if the Board would grant an automatic waiver in the event the moratorium is extended. Mr. Emanuel said he appreciates Mr. Amona's position, but that the ZBA does not know whether or not recommendations of this Comprehensive Plan will affect this project, or even be accepted by the Village Board. For this Board to conditionally grant a waiver in the event the moratorium is extended would be an abdication of their responsibility to the Village Code. The Board has rendered a decision and it is appropriate to stop the discussion. Mr. Amona's displeasure is noted, he added.

Member Wanderman said that in the event the Village Board does adopt the Comprehensive Plan, there will not be a need for the applicant to come back to the ZBA for a waiver. Mr. Emanuel said yes, at a point in time the moratorium will be lifted and there is a lot to be done after adoption, but that will not affect the moratorium. He noted that the Village did remove the moratorium for certain non-residential districts upon recommendation of the Comprehensive Plan Commission. A similar condition was not made with respect to residential districts, he said, and suggested that Mr. Amona could petition the Village Board to do so. This Board must consider hardship and uniqueness of the application, but the Village Board uses discretion. Perhaps relief can be found that way, he added.

### RESOLUTION NO. ZBA 01 OF 2017

#### DENYING A VARIANCE FROM LOCAL LAW NO. 1 OF 2016 (MORATORIUM LAW) TO STONEHEDGE HEIGHTS, INC.

WHEREAS, the Village Board enacted Local Law No. 1 of 2016 ("Moratorium Law"), which established a moratorium on certain applications to the Planning Board and Zoning Board of Appeals for a period to end not later than January 1, 2017; and

WHEREAS, the Moratorium Law exempted certain applications from its effect, and provided a method to obtain an exemption from this Board for non-exempt applications in the event of "undue hardship"; and

WHEREAS, Stonehedge Heights, Inc. ("Stonehedge"), successor in interest to Joon Management One, Inc., is the applicant for a proposed subdivision entitled Stonehedge Farms; and

WHEREAS, on October 20, 2016, Stonehedge appeared before this board to seeks a waiver from the provisions of the Moratorium Law on the basis of hardship in order to continue processing the proposed subdivision; and

WHEREAS, at that time, this Board denied the application for waiver, without prejudice to reapply if the moratorium was extended beyond January 1, 2017, based upon the following findings of fact:

1. Stonehedge is the current owner of the subject property, having purchased it from Scott Minetto in or about June 2016.
2. The subject property is designated on the tax map of the Town of Ramapo as Section 49.18, Block 1, Lot 13, and is known as 220 Spook Rock Road.
3. Stonehedge and its predecessor have common ownership.
4. Stonehedge and/or its predecessor had a contract to purchase the property from Mr. Minetto, and for approximately the last four years was paying the real property taxes on the property on behalf of Mr. Minetto.
5. Stonehedge's predecessor had applied to the Planning Board for subdivision approval in January 2008, but had not received a negative declaration, or preliminary or final subdivision approval.

6. Stonehedge's predecessor's application was stopped by the prior moratorium law adopted in 2008. Stonehedge claimed that it was content to allow the application to lay dormant because of the downturn in the real estate market that began in 2008.
7. Neither Stonehedge nor its predecessor had made any application or attempt to re-start the application in the ensuing eight years, until now.
8. Upon questioning from this Board, Stonehedge's representative testified that "it was fair" to say that Mr. Minetto had demanded in May or June of this year that Stonehedge close on the property or cancel the contract. As a result, Stonehedge closed on the property.
9. Stonehedge claimed that it had been preparing to restart the application now because of the rebound in the real estate market, but that the application had been stopped by the Moratorium Law.
10. Stonehedge applied for a variance and exemption from the Moratorium Law by letter and application dated October 5, 2016, received by the Clerk to this Board on October 6, 2016.
11. Stonehedge further claimed that the property no longer produced income because the horse farm run by Mr. Minetto was no longer in business, however, under questioning, this Board determined that the horse farm was no longer in business because Mr. Minetto forced Stonehedge to close on the property.
12. As a result, this Board finds that the financial hardship was self-created, and that the primary reason that the applicant wishes to restart the application now is because it is now the owner of the property and is incurring additional costs and expenses.
13. Further, this Board finds that there is no reason why the application, having lain dormant for the past eight years, must be re-started prior to the expiration of the current moratorium on or before January 1, 2017.
14. In addition, this Board notes that nothing in the Moratorium Law prevents Stonehedge or any other applicant from seeking review from CDRC, which is a condition precedent to any application to the Planning Board. The need for such review cuts the effective length of the remaining moratorium by as much as one to two months.

; and

WHEREAS, subsequently, the Village Board enacted Local Law No. 4 of 2016 by which said moratorium has been extended for a period to end not later than June 30, 2017, and thereafter enacted Local Law No. 3 of 2017 extending the said moratorium for a period to end not later than December 31, 2017; and

WHEREAS, Stonehedge reapplied for a waiver from the provisions of the Moratorium Law based upon hardship; and

WHEREAS, on August 17, 2017, this Board held a public hearing on this application pursuant to due notice.

NOW, THEREFORE, BE IT RESOLVED, that this Board hereby makes the following findings of fact based upon testimony and evidence given at the public hearing:

1. Stonehedge appears to be relying upon the same facts and arguments as it had made at the October 20, 2016, public hearing, having submitted the same narrative summary dated October 5, 2016, but having added a claim that the draft of the Comprehensive Plan recommended to the Village Board by the Comprehensive Plan Commission makes specific mention of the subject property but does not recommend any changes to the zoning treatment thereof (Stonehedge did not provide this Board with a copy of the recommended plan nor refer with specificity to the sections of the recommended plan upon which it was relying).
2. No evidence or testimony was presented that contradicted or overcame the findings of fact made by this Board on October 20, 2016.

3. Stonehedge alleges that it continues to suffer financial hardship because it cannot proceed with, or continue, the Planning Board review of its proposed subdivision.
4. In response to a question, Stonehedge stated that it was different from other potential developers in that it had begun an application for Planning Board review.
5. Said application, as determined in this Board's October 20, 2016, findings, had been held in abeyance by Stonehedge or its predecessor since 2008 without any activity until just before the adoption of the Moratorium Law.
6. While the Comprehensive Plan Commission has recommended a draft Comprehensive Plan to the Village Board, that Board has not yet acted upon it, and may require changes to the draft Plan, which changes may affect this sensitive property.
7. The moratorium, as extended, is now set to expire on December 31, 2017, a relatively short time from now, especially considering the fact that Stonehedge and its predecessors failed to pursue the application until just before the Moratorium Law was enacted.

and be it further

RESOLVED, that, based on the facts set forth above, this Board hereby denies the application for variance and exemption from the moratorium made by Stonehedge Heights, Inc., without prejudice to renewal if the moratorium is again extended by the Village Board.

MEMBERS PRESENT:	<u>YEA or NAY</u>
Rodney Gittens	NAY
Jack Barbera	NAY
Samuel Diaz	YEA
Janet Gigante	YEA
Carl Wanderman	YEA

The Chairman declared the resolution approved and the application denied.

Member Wanderman made a motion to adjourn the meeting, seconded by Member Goldstein. Upon vote, the motion carried unanimously. The meeting adjourned at 8:45 p.m.