

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, OCTOBER 20, 2016 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	Member
Others Present:	Ira Emanuel	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk

Member Gigante made a motion to approve the minutes of September 1, 2016, seconded by Member Barbera. Upon vote, the motion carried unanimously.

1. 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, owner of Stonehedge Farms.

Chairman Gittens established that the posting, publication and mailing legal requirements were met, and then read the Public Hearing notice. Chairman Gittens asked whether there was supporting documentation aside from the application. There was none, although Mr. Emanuel noted that there was a letter submitted by the Rockland County Sewer District that will have no impact on proceedings before this board.

Mr. Emanuel noted that the original date of the proposed subdivision plan is actually January 17, 2008, with a last-revision date of July 15, 2008. The October 6, 2016 date indicates the date on which this particular copy was received by the Village. Mr. Emanuel then provided background as to the reasons for this hearing for the benefit of the Board, the applicant and the public, explaining that The Village Board adopted a Land Use Moratorium to allow the Village to review its Comprehensive Plan without the pressure of applications. This is a standard method of operation for municipalities. Mr. Emanuel stated that certain applications were exempted from the moratorium: Type II actions under SEQRA, any applications that received a negative declaration from SEQRA and are mature enough that it would be unfair to stop the application in its tracks, any application to alter existing lot lines, and specifically three pending applications that were already before the boards at the time the moratorium was enacted.

All other applications are subject to the moratorium, which is set to expire January 1, 2017. The possibility of an extension of the moratorium does exist, Mr. Emanuel said, and anyone not exempt has the opportunity to ask for a waiver of the moratorium as set forth in section 4 of the Moratorium Law:

The Zoning Board of Appeals shall hear and determine any application for an interpretation and/or variance from the controls hereby enacted because of unreasonable hardship, pendency of an application prior to enactment of this law being a factor to be considered, which may be encountered by a property owner as a result of the effect of this local law.

The standard is “unreasonable hardship,” which is for the Board to determine. Mr. Emanuel advised they may take into account, when determining unreasonable hardship, that there is an application pending that is affected by the moratorium.

Chairman Gittens then swore in the applicant Mr. Amona.

Mr. Amona said he last came before the Planning Board in January 2008 for approval of the subdivision site plan of 11 lots. However, he said, by the end of 2008 a moratorium was enacted and he was forced to halt all development, which wasn’t necessarily a bad thing since there was a severe downturn in the housing market. Now that the market has recovered, he said, he wants to resume the project.

Chairman Gittens asked how much of the construction was completed. None, Mr. Amona responded, explaining that the project went before the Planning Board eight times, making it as far as a sketch approval. He would like to resume the project and pursue the necessary variances for the average density in that ER80 Zone, he said. Chairman Gittens asked what the perceived hardship is. Mr. Amona said that the horse farm is no longer active and the taxes are crippling. He was not aware of the moratorium at the time he closed the horse farm three months prior.

Member Wanderman asked why he was asking for a variance for a moratorium that will expire, under present regulations, fifty days from now. Mr. Amona pointed out that the last moratorium was extended and that every month counts in the present economy, particularly with regards to a possible zone change brought about through the Comprehensive Plan review process.

Mr. Emanuel clarified that Mr. Amona is speculating that the Comprehensive Plan Committee will not take any action to affect the zoning of his property. As the attorney for the Committee, Mr. Emanuel said that he has not heard anything indicating that they are targeting or ignoring any areas in particular and that it’s just too early to know what, if any, changes will be made.

Member Goldstein noted that eight years have passed since the sketch was approved and that nothing was done at all on the property. Mr. Amona said that he was busy developing the Fant Farm Subdivision and the horse farm was in operation during all that time. Member Goldstein asked if he asked the tenant running the horse farm to leave, to which Mr. Amona responded yes, adding that the tenant had been paying all the expenses until their departure. The burden of paying the expenses is now upon his shoulders, he said.

Member Gigante asked if Mr. Amona thought it was premature to let the horse farm go without knowing for certain if he could continue with the Subdivision. Mr. Amona said that he

dismissed the horse farm without knowing there was a moratorium. Member Gigante asked if he had final approval, to which he answered no, only sketch approval.

Mr. Emanuel said that a sketch approval is just an approval of the general concept of the layout and that that was a reason why the Planning Board spent another seven meetings after sketch approval without having granted a Negative Declaration or Preliminary Approval.

Chairman Gittens asked how many meetings more are needed for a final approval. Mr. Amona responded by saying that approximately six more meetings would be necessary. Mr. Gittens noted that, if the moratorium is being lifted in January 2017, there would still be plenty of time. Mr. Amona agreed, but cautioned that that scenario would work only if everything went as smoothly as possible and that a final approval could easily take more than six meetings, which would throw his whole schedule off. Chairman Gittens maintained that he feels this request is premature because he still has so much work to do.

Mr. Amona said he was willing to accept the relief of the moratorium conditional upon his withdrawal of all existing plans and starting over, depending on any possible zone changes. Mr. Emanuel said that, while he appreciates the sentiment, Mr. Amona does not have much choice in the matter. The Planning Board would have to apply the laws as they stand at that time.

Member Wanderman asked if there was anything in the moratorium law that would prevent the application from being made and appearing at least before the CDRC. Mr. Emanuel explained that Mr. Amona can go before the CDRC, but that the Planning Board and Zoning Board of Appeals will be prevented from considering the application under the moratorium law. Member Wanderman then posited that the month and a half delay won't make a difference should they apply now. Mr. Emanuel said that, given the CDRC is the gatekeeper to the Planning Board, Mr. Wanderman is correct.

Chairman Gittens noted that Mr. Amona cited a hardship regarding property taxes and expenses due to the closing of the horse barn, but went on to say that he feels the actual hardship has to do with any possible zone change, particularly since only a preliminary sketch has been done. Further, he said, this appearance is premature since there is still much engineering work to be done.

Mr. Emanuel clarified that he recalls, as the Planning Board attorney, there were significant drawings and studies submitted to the Planning Board during 2008. There were significant concerns with respect to drainage and concerns over the siding of the houses, he added, but there was in fact a lot of engineering work that had gone into this subdivision.

Chairman Gittens asked for details on how far the application advanced with the Planning Board. Mr. Emanuel said after eight meetings, the Board and the Engineer were working to come up with something appropriate. Between 2008 and now, regulations have changed, he explained, particularly those regarding storm water management. While the basic studies will still be of value, some of the solutions will have to be reworked. Chairman Gittens asked if this will be the case if the zoning is changed, to which Mr. Emanuel responded yes, adding, it has been eight years, after all.

Chairman Gittens reiterated that the applicant's main hardship is not the expense but the regulations regarding possible zoning changes. Whether or not there are zone changes, you will still have to revise your site plan, he advised Mr. Amona. Mr. Amona said he had his engineer

work on the site plan, reworked the drainage, obtained the application and Planning Board dates, but found that this latest moratorium had begun a month prior. If the moratorium will affect the area of the subdivision, he said, he will change the plan to reflect the changes.

Mr. Emanuel asked Mr. Amona when he purchased the property, noting that the application currently before the Board indicates Stonehedge Farms to be the owner, whereas in 2008 Mr. Scott Minetto was the owner of the property. Mr. Amona responded that he purchased the property two months prior, explaining that he had a contract with Mr. Minetto since 2005 and was making [property tax] payments. Mr. Emanuel noted that the purchase took place before the onset of the current moratorium. Mr. Amona then said he was not sure that it was two months ago. Mr. Emanuel asked if he purchased the parcel before or after he dismissed the tenant. Mr. Amona said it was around the same time he dismissed the horse farm, in May or June. Until May of this year, Mr. Emanuel said, Mr. Minetto was responsible for the expenses and taxes on the property, and that Mr. Amona didn't become responsible until he purchased the property in May or June of this year. Mr. Amona countered that he had been paying taxes for four years now. Mr. Emanuel said that arrangement was pursuant to the contract Mr. Amona entered into voluntarily with Mr. Minetto.

Chairman Gittens asked Mr. Amona why he dismissed the horse farm even though he knew that he would not be able to break ground immediately afterwards. Mr. Amona said that he needed to purchase the property before doing more site plan work and that Mr. Minetto no longer wanted to manage the tenant who ran the horse farm. Having no knowledge of overseeing such a business, he dismissed them, adding that he would not have dismissed them if Mr. Minetto agreed to keep them and would have preferred to keep a tenant who could help offset expenses.

Mr. Emanuel asked Mr. Amona if Mr. Minetto would have continued the contract if he did not exercise his right to purchase the property in May of 2016. Mr. Amona responded he didn't know, positing that perhaps Mr. Minetto could have litigated, noting, however, that Mr. Minetto has always been civil throughout their business dealings. Emanuel asked if it is fair to say that Mr. Amona closed the horse farm in order to protect the contract and maintain future ownership of the property. Mr. Amona said that was fair.

Chairman Gittens opened the public hearing.

Helmut Schmidt, 217 Spook Rock Road, said that he saw the public hearing notice posted on the property and came to the meeting to see what was being developed there. Mr. Emanuel explained that the Zoning Board will decide whether or not to allow Mr. Amona's corporation to move forward with the application, stating further that Mr. Amona had an application before the Planning Board in 2008 for an 11-lot subdivision on the former horse farm property, creating 10 new single-family homes on half-acre lots, and that he would like to continue that application.

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

Mr. Emanuel explained to the Board that the question at hand is whether or not the applicant has demonstrated undue hardship, taking into consideration the fact that Mr. Amona had an application that was pending at one time, as well as any other factors heard this evening including the length of time between his appearance before the Planning Board and this Board tonight, his economic situation, the date by which he obtained ownership of the property, and the lack of a tenant or income with respect to the property. It is a straight "yes" or "no" vote. If the

application is denied, he added, it should be without prejudice against any future renewal of the application should the moratorium be extended.

Member Wanderman wanted to clarify that there is nothing preventing Mr. Amona from submitting his application to the Planning Board. The Moratorium only prevents the Planning Board from acting on the application. Mr. Emanuel said that technically it is correct: The application could be submitted to the Planning Board, taken up by the CDRC and reviewed even while the moratorium is pending, but it cannot forward the application to the Planning Board under the application.

Chairman Gittens, addressing Mr. Amona directly, said that he does not see a real hardship, again noting that there is still work to be done before obtaining a final approval, and reminded him that he would have to revise his plans should there be a zone change. Mr. Amona said that all the drainage planning has been done, and added that if he submits an application and attends the November CDRC, it must stop and cannot advance until January. If there are zoning changes, if the lot lines need to be changed, for example, it doesn't make a difference, as long as forward progress can be made. The hardship, he explained, is that he is suffering financially.

Mr. Emanuel reminded the applicant that part of the theory of the moratorium is to protect the Planning Board from spending its time considering something that might change. The Board and the Village, he said, have limited time and resources as well.

Member Goldstein made a motion to deny a request for a waiver from the moratorium upon condition that the Board rule without prejudice on a renewal of the application in the event that the moratorium is extended, seconded by Member Wanamaker. Upon vote the motion carried unanimously.

Mr. Amona asked if the conditional denial would allow him to go to the Planning Board should the moratorium be extended. Mr. Emanuel said it does not, only that he can apply to the ZBA for a waiver of the moratorium again.

IN RE: APPLICATION OF STONEHEDGE HEIGHTS CORP., 220 SPOOK ROCK ROAD,
MONTEBELLO, NY CALENDAR CASE NO. 1167

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Montebello Community Center, Montebello, New York, on October 20, 2016, for a variance to waive the land use moratorium as set forth in Section 2 of Local Law No. 1 of 2016.

The property, which is the subject of this application, consists of 11 lots from 16.68 +/- acres, and 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).

The Board, upon motion duly made by Member Goldstein, and seconded by Member Wanderman, resolved:

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 now seeks a waiver from the provisions of the Moratorium Law in order to continue processing the proposed subdivision; and

WHEREAS, on October 20, 2016, 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 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 lay 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 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 extended by the Village Board.

MEMBERS PRESENT:	<u>YEA or NAY</u>
Rodney Gittens, Chairman	<u>YEA</u>
Jack Barbera	<u>YEA</u>
Janet Gigante	<u>YEA</u>
Scott Goldstein	<u>YEA</u>
Carl Wanderman	<u>YEA</u>

MEMBERS ABSENT: none

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.