

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS  
MARCH 22<sup>ND</sup>, 2018**

The regular monthly meeting was held at the Zoning Board of Appeals, Town of Yorktown, at the Yorktown Town Hall, 363 Underhill Avenue, Yorktown Heights, New York on Thursday, March 22<sup>nd</sup>, 2018. The meeting began at 6:30 p.m.

The following members of the board were present:

Gregg Bucci  
Robert Fahey  
Gordon Fine  
John Meisterich

Also present is Special Counsel, Kristen Wilson. The meeting was aired on Channel 20 Cablevision and Channel 33 Verizon Fios.

It was announced that the next public hearing would be held on April 26<sup>th</sup>, 2018, site visits are scheduled for April 21<sup>st</sup>, 2018. Mailings are to be sent from April 2<sup>nd</sup> to April 11<sup>th</sup>, 2018.

**NEW BUSINESS**

**DAVIS #13/18** This is an application for a renewal of a special use permit for an accessory apartment.  
**Property Address:**  
**90 Timberlane Ct.**  
**Section 17.06, Block 2, Lot 16**

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, this item will be handled administratively and referred to the Building Inspector.

**KIEDERER #14/18** This is an application for a proposed garage with a footprint of 720 s.f., that when added with the existing barn, will have a combined footprint greater than 80% of the main dwelling. As per section 300-14(D) of the Town Zoning Code. This property is located in a R1-20 zone.  
**Property Address:**  
**362 Granite Springs Rd.**  
**Section 27.14, Block 3, Lot 4**

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, this item was scheduled for a Site Visit on April 21<sup>st</sup>, 2018, a Public Hearing on April 26<sup>th</sup>, 2018, and referred to the Building Inspector.

**CONTINUED PUBLIC HEARINGS**

**PROVE #2/18** This application is to allow a building lot with an area of 10,000 s.f. where a minimum of 20,000 s.f. is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is in a R1-10 zone.  
**Property Address:**  
**Allen Ave.**  
**Section 37.18, Block 2, Lot 31**

Joseph Riina, Project Engineer and Phil Sanders appearing on Applicant's behalf. Mr. Riina said since the last meeting, in order to address some of the public comments made, there have been additions to the plans. Specifically, there would be landscape screening across the back of the property. In addition to that there was a discussion on car movement and cars being able to get in and out of the driveway. A turning diagram for passenger cars to back up into the turn out point of the driveway and make its way up the proposed driveway. Also there are more detailed

cross sections information on the storm water system that is proposed.

To reiterate, they designed that to retain the entire 100-year storm event where normally you would only size that for the difference between the 100-year storm event of the existing condition and the proposed condition, and they have size it completely for the proposed condition.

Chairman Fine asked if they met with the Engineer's office.

Mr. Riina said they did not. They were not able to get together on that. That's a step they have to go through anyway, so building permits would be contingent on that. Still have to meet that criteria.

Chairman Fine asked Mr. Sanders the party that purchased the property in November, how long did the prior party own the property for.

Mr. Sanders said from the 1980's, there was 6 owners going back to the 1950's

Chairman Fine asked if the same parties own the contiguous lot.

Mr. Sanders said he's not sure.

Chairman Fine said the concern is whether or not the lots merged prior to the sale taking place in November.

Mr. Sanders said as Al Capellini pointed out in his correspondence, those lots have always stood on their own, they were never merged.

Chairman Fine said in the file there's a tax map that has a little indication on it which is an Assessor's indication for combined lots.

Mr. Sanders said they've always been 2 separate tax maps.

Chairman Fine responded they could be different tax maps but could have also been merged for building purposes.

The Board and Mr. Sanders discussed the merger laws.

Chairman Fine said what he wants to find out is whether lots 31 and 30 were both owned by the same owner at that time.

Chairman Fine requested the Assessor's card and the history of both lots 30 and 31, and some history on the merger law from Special Counsel Kristen Wilson.

Chairman Fine asked if anyone in the audience have a comment.

Richard Michelutti came up to the podium. He said he wanted to know what they did with the water that was discussed.

Mr. Riina showed the plans with the storm water system and spoke about what's proposed.

Mr. Fahey asked what kind of plantings will be put in.

Mr. Riina said they were expecting some kind of pine trees, something that's going to be green all year round, and once it fills in it will be a dense buffer.

Michael Epting came up to the podium. He said he thinks the discussion that was just had was critical for the comfort of the neighbors in understanding the treatment of surface because the lot is steeply sloped and the people currently have issues with runoffs and downstream, so the neighborhood would feel much better knowing that the Town Engineer has to review it.

Chairman Fine said it has to happen one way or another.

Mr. Bucci said to the extent we could get an answer on that, that would be great, but if we can't it's still going to be subject to the Engineer being satisfied.

Mr. Riina said if it helps, the Town Code as well as the State Code as far as storm water is concern is zero impact. So you cannot increase the amount of runoffs from this property onto the neighbors property. That's a mandate.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, this item was adjourned.

**CELESTRIAL HOLDINGS**

**#8/17**

**Property Address:**

**822-824 Pines Bridge Rd.**

This is an application for a special use permit for the keeping of fowl as per 300-81.3 of the Town Zoning Code. This property is located in a R1-80 zone.

**Section 70.17, Block 1, Lot 5**

Requested Adjournment by Applicant to next month.

**DINEEN, KATHLEEN #48/16** This is an application to modify an existing special use permit for a day care facility per 300-53 of the Tow of Yorktown Zoning Code. This property is located in an R1-10 zoning district.  
**Property Address:**  
**2090 Crompond Rd.**  
**Section 37.14, Block 2, Lot 8**

Applicant before the Planning Board.  
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, this item is adjourned.

**DINEEN, KATHLEEN #49/16** This is an application for a variance to allow an addition to a daycare facility to have a building coverage of 10057.5 sq. ft. where 7404 sq. ft. is the maximum allowed per 300-21 and Appendix A of the Town of Yorktown Zoning Code. This property is located in an R1-10 zoning district.  
**Property Address:**  
**2090 Crompond Rd.**  
**Section 37.14, Block 2, Lot 8**

Applicant before the Planning Board.  
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, this item is adjourned.

**NEW PUBLIC HEARING**

**PITURRO & SACCAVINO #5/18** This is an application for a renewal for a special use permit for an accessory apartment.  
**Property Address:**  
**2959 Sherman Court Section**  
**25.12, Block 1, Lot 4**

Mailings and sign certification in order.  
Memo from the Assistant Building Inspector dated, March 20, 2018 states:  
I inspected the above captioned premises on March 20<sup>th</sup>, 2018 and found conditions basically the same as at the time of the previous granting. We have no objection to the granting of this application for renewal as long as the applicant is made aware that they have to come to the Building Department and be issued a new Certificate of Occupancy for the accessory apartment.  
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

**HALLOCK #6/18** This is an application for a new portico with a front yard setback of 50.1' and an addition with a front yard setback of 53' where both require a minimum o of 75' as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-80 zone.  
**Property Address:**  
**2465 Trelawn Street Section**  
**27.19, Block 1, Lot 3**

Mailings and sign certification in order.  
Mr. Hallock said the bedroom is pretty small, so moving it to where the front is, moving the door to about 5-6 feet to the right, putting a roof over it.  
Memo from the Assistant Building Inspector dated Marcy 6<sup>th</sup>, 2018 states:  
On March 6<sup>th</sup>, 2018 I visited the site and found no existing zoning issues.  
The Applicant is requesting an area variance to allow a portico that will have a front yard setback of 50.1' whereas 75' are required and a bedroom addition with a front yard setback of 53' whereas 75'

are required per 300-21 and Appendix A of the Town of Yorktown Zoning Code.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for a variance was granted for a new portico with a front yard setback of 50.1' and an addition with a front yard setback of 53' where both require a minimum of 75' as per 300-21 and Appendix A of the Town Zoning Code, with the stipulation that it pertains only to the requested variance and not the remainder of the property line, and the addition be built in substantial conformity to the plans submitted.

**RHOADES #7/18**  
**Property Address: 2772**  
**Windmill Dr. Section 27.10,**  
**Block 3, Lot 36**

This is an application to allow a pool deck with a side yard setback of 8' 10.5" where a minimum of 10' is required. The applicant also seeks a variance for a rear yard shed with side yard setbacks of 8' 5.5" and 4'2" where a minimum of 10' is required. These setbacks are required as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Mailings in order.

The application is to legalize the existing pool deck and shed.

Memo from the Assistant Building Inspector dated, March 6, 2018 states:

On 3/6/18 I visited the site and found a zoning non-compliant shed which will be removed.

The Applicant is requesting an area variance to allow a pool deck with a north rear yard setback of 8'-10.5" whereas 10' are required per 300-21 and Appendix A of the Town of Yorktown Zoning Code.

Mrs. Rhoades said they were going to remove it but they (Building Department) recommend if they replace it they would have the variance.

Chairman Fine asked if they're just looking to legalize what's there.

They responded yes.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for a variance was granted to allow a pool deck with a side yard setback of 8' 10.5" where a minimum of 10' is required. The applicant also seeks a variance for a rear yard shed with side yard setbacks of 8' 5.5" and 4'2" where a minimum of 10' is required. These setbacks are required as per 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line. Prior to the Certificate of Occupancy being given, the Applicant must submit the photo and sign certification to the Building Department.

**BARTOLEMEI #9/18**  
**Property Address:**  
**1630 Croton Lake Rd. Section**  
**58.9, Block 1, Lot 19**

This application for a special use permit for an accessory dwelling is located in a R1-80 zone and seeks multiple variances: • The building that houses the accessory dwelling will have a rear yard setback of 50.7' where a minimum of 75' is required as per 300-38(B)(1) and Appendix A of the Town Zoning Code. • The Accessory dwelling will be located in a single story building whereas it must be located on a 2nd story as per 300-38(B)(1) of the Town Zoning Code. • The accessory dwelling will displace the original use (pool house) which is not permitted as per 300-38(B)(1) of the Town Zoning Code. • The accessory dwelling will have a floor area of 1290 s.f. which exceeds the maximum of 800 s/f/ as per 300-38(B)(5) of the Town Zoning Code.

Mailings and sign certification in order.

Project Engineer, Joseph Riina appeared on Albert Capellini behalf, who is representing the Applicants.

Mr. Riina said the Applicants are applying for a special use permit and variances to convert and enlarge a 1 story detached pool house located on the 1 family property. They're proposing to convert it to create an accessory dwelling for Danielle's mother and father to reside in.

The lot was created as part of a 3-lot subdivision, the property is access from common driveway off of 129. Currently on the property is an existing 1 family residence, pool and the existing pool house which is 462 s.f.. The lot area is 188,000 s.f. plus, which exceeds the current zoning requirement for the R1-80 zone of 80,000 s.f. by more than double.

The pool house is 462 s.f. currently and it's going to be constructed. The increase in square footage of the pool house will be 1290 s.f. and it will create a 2-bedroom apartment. The apartment will also have a kitchen, living and dining area, there is an existing bathroom.

Mr. Riina showed the Board a photo of the layout of the property.

Chairman Fine asked why they need the extra square footage larger than 800.

Mr. Riina said the 800 does not really suffice to make enough for a comfortable apartment. It's intended the area will be part of the pool facility for use. There's an existing bathroom that the Bartolemei's parents understand that it's going to be inter use with the pool also, it's not going to be exclusively for their use.

The R1-80 zone allows for accessory apartment to be located in a detached structure, the pool house is such a structure, however it only has 1 floor where the code requires an accessory apartment to be on the 2<sup>nd</sup> floor, but there is no intention to put on a 2<sup>nd</sup> floor here considering there will be seniors living there.

Mr. Riina showed the Board the floor plan layout.

Mr. Fahey asked if the property is septic or sewer.

Mr. Riina said they're all on septic, they already have a septic permit for an individual septic system for the cottage (pool house).

Mr. Riina when through the 5 factors as per the submission from Mr. Capellini.

Mr. Riina said the original premise that the application was made for a special use permit, and variances would come after the special use permit. The Building Department has determined that it should be the other way around, the variances should be issued first then the special use permit. So when the project was advertised, it was advertised as special use permit with variances required, don't know if that makes a difference. The notice did list the special use permit and variances, so everything was noted in the publication.

Chairman Fine said it was fine.

Memo from the Assistant Building Inspector dated, March 21, 2018 states:

The Applicant is requesting a variance to allow an accessory apartment in a detached structure with 1290 square feet where 800 square feet is allowed as per Section 300-38(B)(5) and will displace the building original use (pool house) which is not allowed as per Section 300-38(B)(1) and will be located in a one story building whereas it should be located on the second floor per Section 300-38(B)(1) and rear yard setback of 50.7 feet where 75 feet is required as per Section 300-38(B)(1) and Appendix A of the Town of Yorktown Zoning Code.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for a special use permit was granted for a period of three (3) years for an accessory dwelling located at 1630 Croton Lake Road, as well as the variances to have a rear yard setback of 50.7ft. where a minimum of 75ft. is required, that the accessory dwelling be located in a single story building where as it must be located in a 2<sup>nd</sup> story, and this displace the original use which is the pool house, and that it have a floor area of 1290 s.f. which exceeds the maximum of

800 s.f., and that the dwelling be built in substantial conformity to plans submitted and this pertains only to the requested variances and not the remainder of the property line.

**SERAFIN #10/18** This is an application for a proposed front yard addition (porch), with a front yard setback of 48.67' where a minimum of 50' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-40 zone.

Mailings and sign certification in order.

Applicants Stan and Gina Serafin appeared before the Board.

Proposing to build a front porch, the house does not run exactly parallel with Spring Drive, it's a bit slant in relations to Spring Drive and so one corner of the porch would be setback 48.67' where 50' is required.

Memo from the Assistant Building Inspector dated, March 19, 2018 states:

The Applicant is requesting an area variance to construct an addition with a front yard setback of 48.67 feet where 50 feet is required in an R1-40 zone. Be advised that I have inspected the above referenced premises on March 16, 2018.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for a variance was granted for a proposed front yard addition (addition) with a front yard setback of 48.67' where a minimum of 50' is required as per Section 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line and the addition be build in substantial conformity with plans submitted.

**GOC #11/18** This is an application to convert a single family dwelling to a 2 family dwelling with one apartment having a usable floor area of 524 s.f. where a minimum of 650 s.f. is required. The lot area is 5227 s.f. where a minimum of 20,000 s.f. is required with 900 s.f. of open space where a minimum of 2,000 s.f. is required. These are per section 300-68(A), 300-68(B) and 300 (D)(1) of the Town Zoning code. This property is located in a R1-10 zone.

Mailings and sign certification in order.

Architect, Thomas McDermot appeared with the Applicant Brian Goc.

Mr. McDermot said they're before the Board to convert a single family house to a two family house. Chairman Fine asked what zone.

Mr. McDermot said it C2 zone, originally the application was R1-10, that area has been rezoned a few times but this property has been residential for over 100 years, don't know why it was never appended.

Chairman Fine said it's technically in a C2 zone.

Mr. McDermot submitted the assessor's card and copy of the Section they're seeking relief from. Chairman Fine asked if they're going on the fact that it was built prior to 1930 and it can be converted.

Mr. McDermot said correct, the key language is that is said any dwelling. So whether it's in an R1-10 or C2 don't think it really applies.

Chairman Fine said so what you're basically going under the premise of is under Section 300-68 you're able to convert the dwelling to multiple dwelling based upon the fact it was built prior to 1930.

Mr. McDermot said yes. Originally the existing building including all 3 floors is 1728 s.f.. Requesting relief in nature of a variance of 126 s.f. for the 2<sup>nd</sup> floor apartment, 2 bedrooms apartments. Were able to provide 524 s.f. where 650 s.f. is required. Also require a variance for open space. The original application was for a variance of 1100 s.f. because they were able to provide 900 s.f., but after speaking with the client and revising the layout, they were able to add some green space.

Mr. McDermot showed the Board the layout on the plans.  
Mr. Fahey said the biggest concern was the side of the lot and the blind curve.  
Mr. McDermot showed where the driveway will be, and said any cars parked there, they can pull in, back up and turn around so that their front is facing outward, last thing you want is anybody backing out onto East Main Street.  
Mr. McDermot said as said before, were able to add some more open space, let's be a little conservative and let's say 1800 s.f.  
Chairman Fine asked which part of the application he's looking to amend.  
Mr. McDermot said he request for a variance of 1100 s.f. where 2000 s.f. is required, were able to provide 900 s.f., lets double that to 1800 s.f., that gives them a cushion of 163 s.f.

Memo from the Assistant Building Inspector dated, March 21, 2018 states:  
I have inspected the property on March 9, 2018 and have no objections in granting relief. The Applicant will need a building permit for this work.

The Board discussed the application and applied the statutory factors.  
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for a variance was granted to convert a single family dwelling to a 2 family dwelling with one apartment having a usable floor area of 524 s.f. where a minimum of 650 s.f. is required. The lot area is 52.7 s.f. where a minimum of 20,000 s.f. is required with 1800 s.f. of open space where a minimum of 2,000 s.f. is required. These are per section 300-68(A), 300-68(B) and 300 (D)(1) of the Town Zoning code, with the stipulation that it pertains only to the requested variance and not the remainder of the property line and be built in substantial conformity to the plans submitted.

**A & E FUNERAL SERVICES**  
**#12/18**  
**Property Address:**  
**2118 Saw Mill River Rd.**  
**Section 37.10, Block 1, Lot 1**

The proposed apartment will be located in a separate dwelling whereas two families in an R-2 zone are required to be located in a single dwelling per 300-21(c)(2)(a)(2) of the Town of Yorktown Zoning Code.

Mailings and sign certification in order.

Eric DiBartolo of A & E Services appeared before the Board with Joseph Riina.

Mr. DiBartolo said there's been a barn on the property for many years, would like to covert it over to a 2-bedroom apartment.

There was a person he spoke to that lives behind that had questions in reference to being close and for quietness, so on the original plans had put 2 windows in the back on the 2<sup>nd</sup> floor in the bedrooms and after speaking to him, he told him he'll take them away and put bigger sliders on the side and there will be no windows to the back.

The barn has been there since roughly 1930 from what he can find.

Joseph Riina said what was submitted was preliminary floor plans, altogether the total square footage will be 1400 s.f. for the two levels. 1 apartment, first level is the living space, kitchen, dining and ½ bath on that floor. The 2<sup>nd</sup> floor will be family room, 2 bedrooms and 1 full bath.

Memo from the Assistant Building Inspector dated, March 12, 2018 states:

The Applicant is requesting a use variance to convert a barn into a single family dwelling where a separate two family dwelling already exists as per Section 300-21(C)(2)(a)(2) and Appendix A of the Town of Yorktown Zoning Code in an R-2 zone.

Chairman Fine asked if anyone have any comments.

John Sarogini, neighbor said his concern is the affect on his property with these changes, his property is directly behind the barn. Concern now there will be a residence 9ft. away from his property line, don't know what affect that's going to have, don't know if there's any plan to change the packing lot to pave some unpaved area.

Mr. Fahey asked him how far is his house, not the property line, is from the back of this property. Mr. Sarogini said he does not have an exact figure, but he has 1/3 acre, the back of his property abuts this property the house is on the street on the other side. He wanted to know if there will be additional lighting because there'll be a tenant in there, his bedrooms are in the back of his house facing the property. There's issue with drainage, if that would be affected.

Chairman Fine said there's a structure there already so drainage will be the same.

Mr. Sarogini said he'll like to confirm that.

The other concern is for the future, if this variance is granted, does that open the door for future changes to the property.

Chairman Fine said you can't prevent an applicant for applying for something in the future, whether we grant it or not is another story. Can't say that granting this will open the door for anything else.

Chairman Fine asked Mr. DiBartolo and Mr. Riina, the Building Department memos states you're actually requesting a use variance. Is it a use variance or an area variance?

Mr. Riina said the Building Department determine that it's a use variance. That's how they filled out the application.

Mr. Meisterich asked if the other house is a 2 family.

Mr. DiBartolo said 1 family.

Chairman Fine said the memo says a separate 2 family dwelling already exists.

Mr. DiBartolo responded again that it's a 1 family.

The Board discussed the contents of the memo.

Special Counsel Kristen Wilson said it seems like they're saying the use of the barn is going to change into a residential use and they're not in the same building, so she thinks it would be a use variance.

Chairman Fine said it sounds to him like the code is saying that it's 2 family zoning, the 2 family are supposed to be in the same building. He's asking for a variance to put the other dwelling in a separate building, don't think that's necessarily a use variance. We've done the same with accessory apartments that are supposed to be in the main dwelling, we allowed them in separate dwellings, separate structures.

Ms. Wilson asked for an area variance application.

Chairman Fine said yes.

Chairman Fine told Mr. Riina and Mr. DiBartolo they're kind of stuck, it's a totally different application if it's a use variance versus an area variance, different standards to look at.

Mr. Riina said that the Applicant will want to do appropriate for what he's proposing.

Chairman Fine said have to figure out what it is.

The Board discussed the matter further about whether it's a use variance or area variance.

Mr. Riina proceeded with his presentation and showed the Board the layout of the property.

He said there is a 6ft. high stockade fence in line with the back of the building, it's 5ft. off the property line. There's gravel parking area that's not going to change. Not changing the footprint of anything on the site.

Chairman Fine asked if setback variance is necessary.

Mr. Riina said does not know, that's a Building Inspector question.

Chairman Fine said they're grappling with couple of different problems. Don't have a problem discussing it as an area variance but need to know whether or not. If you're not changing the structured, if it violates the setbacks, may need another variance for that.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, this item was adjourned so the Building Inspector can take a look at the application and so the Applicant to find out about the setback requirements and verify if it's an area variance.

Recording Secretary, Glenda Daly

Meeting adjourned at 8:19pm

Happy Zoning!