

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
OCTOBER 24TH, 2019**

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, October 24th, 2019. The meeting began at 6:30 p.m.

The following members of the board were present:

Gregg Bucci
Robert Fahey
Gordon Fine
William Gregory
John Meisterich

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

It was announced that the next public hearing would be held December 19th, 2019, site visits are scheduled for December 14th, 2019. Mailings are to be sent from November 25th to December 4th, 2019.

NEW BUSINESS

PERSICHETTI #42/19 This is an application for a renewal of a special use permit for an accessory apartment.

Property Address:
1344 Edcris Rd.

Section 36.10, Block 2, Lot 34

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item will be handled administratively, a Public Hearing on December 19th, 2019, and referred to the Building Inspector.

MARIE D'ASCOLI TRUST #43/19 This is an application for a renewal of a special use permit for an accessory apartment.

Property Address:
1590 Westview Dr.

Section 48.09, Block 1, Lot 17

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item will be handled administratively, a Public Hearing on December 19th, 2019, and referred to the Building Inspector.

LUMI #44/19 This is an application for a renewal of a special use permit for an accessory apartment.

Property Address:
2226 Crompond Rd.

Section 37.09, Block 1, Lot 66

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item will be handled administratively, a Public Hearing on December 19th, 2019, and referred to the Building Inspector.

ADORNO #45/19 This is an application to allow an accessory structure with a side yard setback of 5.5' where a minimum of 15' is required, a height
Property Address: 146

**Cordial Rd.
Section 17.14, Block 3, Lot 46**

of 17'10" where a maximum of 15' is required and a combined footprint of all accessory structures of 86% of the main dwelling where a maximum of 80% is allowed as per 300-21, 300-14 and appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on December 14th, and a Public Hearing on December 19th, 2019, and referred to the Building Inspector.

CONTINUED PUBLIC HEARINGS

**DINEEN, KATHLEEN #49/16
Property Address:
2090 Crompond Rd.
Section 37.14, Block 2, Lot 8**

This is an application for a variance to allow a 3,109 square foot addition to the existing 3,730 square foot preschool. The building is proposed to be a total square footage 6,749 square feet where a maximum allowed is 7,404 square feet per 300-21 and Appendix A of the Town Zoning Code. This property is located in an R1-10 zoning district.

Joseph Riina of Site Design appeared before the Board with the applicant.

After discussion about the figures for the square footage of the new proposed addition, Chairman Fine asked if the variance to exceed the allowable building coverage of 28%, where 25% is allowed. Mr. Riina said yes, in addition to that they need to amend the special use permit which was just granted, because they're amending the site plan. There was site plan approval from the Planning Board and it was sent to this Board to amend the special use permit as well as grant the variance.

Chairman Fine said the variance is a variance to exceed the allowable building coverage of 28% where 25% is permitted, and amend the special use permit based upon the amended site plan to increase the number of students from 66 to 123.

Chairman Fine said there was no memo from the Planning Board.

Mr. Riina said they adopted a resolution in August. The size of the building has gone down since the start of the amended site plan process 3 years ago, was asking for an additional 16,300 sq.ft. of building at that time which included a 2nd floor. With the current proposal it's only 1 story addition to extend to the existing 1 story.

Mr. Gregory asked if the Planning Board signed the new site plan.

Mr. Riina said they won't sign the site plan until the variance is issued and the amendment to the special use permit.

The Board and Mr. Riina discussed about the traffic study, fire safety plan, the impact of the new townhouses as well as the potential Roma site.

Mr. Riina showed the layout of the new site.

Kathleen Dineen, applicant and owner of Pied Piper Preschool came up and spoke about the project from the process of starting 3 years ago to the new plans that were approved by the Planning Board. She spoke about the layout of site with the new changes and the programs at the school.

Chairman Fine said they've been in this planning process for quite some time, they've gone back and forth on various designs.

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, Gregory, and Meisterich, the application for a variance was granted to allow a 3109 sq.ft. addition to the existing 3730 sq.ft. preschool, and a variance to exceed the allowable building coverage of 28% inclusive of 1556 sq.ft coverage but not the enclosed play area where 25% is permitted, and to amend the special use permit based upon the increase in size to increase the number of students allowed from 66 to 123. Subject to Planning Board approval and their recommendations, and that the addition be built in substantial conformity to the plans submitted.

3717 CROMPOND ROAD LLC #10/19 Application for a Special Use permit to allow the use of an approved parking lot (site plan) to be used for parking of vehicles and/or in the alternative for a variance to allow for the accessory use of the subject property for purposes of parking without an active main use.
Property Address: 3717 Crompond Rd. c/o Law Office of Grace & Grace
Section 35.08, Block 1, Lot 13
Michael Grace who's representing the applicant appeared before the Board. Mailings did not go out. Not open.

MENDOZA #17/19 This is an application for a renewal of a special use permit for an accessory apartment.
Property Address: 1824 Hanover St.
Section 37.19, Block 3, Lot 32
Photos of condition of the property was submitted to the file last meeting by the neighbors. Site visit was done by the Board members.
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

YORKTOWN ENERGY STORAGE 1 LLC #30/19 This is an application for a special use permit for a Public Utility Substation as per 300-57 of the Town Zoning Code.
Property Address: 3901 Gomer Ct.
Section 6.17, Block 1, Lot 24
Jordan Fry of Snyder and Snyder appeared on applicant's behalf.
This matter was adjourned so the Board can receive comments from the Town Board, Conservation Board and Fire Marshall.
Memo from the Bureau of Fire Prevention dated October 22, 2019 states: On Monday, October 21, 2019 the Bureau of Fire Prevention met to discuss the proposed energy storage system located at 3901 Gomer Street, Jefferson Valley, NY. After reviewing the plans and documents provided, the bureau has the following request:
- The fencing should be transparent. In the event of an emergency the fire department needs to be able to visualized what is going on at the sight. Having a shadow box fence would obstruct visibility and possibly put firefighters at risk.
As long as the applicant meets our request and follows proper procedures with the Town we have no issues with the application for a special use permit.

Chairman Fine said there are issues that need to be addressed.
He asked Mr. Fry if they're applying for this under the Public Utility Substation Section of the code.
Mr. Fry responded yes.
Chairman Fine asked how is this a public utility?
Mr. Fry said it's a public utility because it backs up Con Edison system.
Chairman Fine said Public Utility is defined as a business whether it's privately or publicly owned, that supplies energy to the public. So, if you're supplying back to Con Edison it's really not going to the public.
Mr. Fry said they're supplying it on Con Edison behalf.
Chairman Fine said you're supplying back to Con Edison.
Mr. Fry said they're supplementing the grid.
Chairman Fine asked, are you distributing it directly to any electric consumers, or are you a provider

to Con Edison.

Mr. Fry said they provided it to Con Edison and are part of their public utility system. First of all, the Building Inspector made a determination.

Chairman Fine said we don't necessarily have to agree with him.

Mr. Fry said the 60 days have passed. It's the applicant's position that they're providing it to the public, they're providing a utility service. They meet the sections of the code.

Chairman Fine said you don't meet the sections of our code regarding this type of application, because our code does not have this type of application in it. We don't have what is required for this type of application.

Mr. Fry said the Building Inspector did interpret that and it's the applicant's position that they do meet that section and this is a public utility.

Chairman Fine said how does the plans you came up with comply with 300-57, because 300-57 does not specifically address what you came up with.

Mr. Fry said it does. They're over 10,000 sq.ft., it's completely fenced, comply with all the setbacks, it's not a residential zone, there's parking, provide energy to the public through Con Edison.

Chairman Fine Section D of 300-57 says the provisions of this section apply to public utility transmitting or relay stations or towers.

Mr. Fry said it's their position they're transmitting to the public.

Chairman Fine said the other question is you're applying for this under the special use permit law, what's on the site now.

Tyler Kiss of Yorktown Energy Storage responded, he said what's on the site now is an auto body shop.

Chairman Fine said if you add this to that property, wouldn't you in fact have 2 main uses on the property. The special use permit law does not permit a accessory permit use on the property unless that accessory use is incidental to the usage of the main use.

Mr. Fry said he respectfully disagrees. He said, you grant special permits all the time when there's additional use.

Chairman Fine said the additional use has to be incidental to the main use.

Mr. Bucci said you're not related to the auto body shop, your use isn't related to that use.

Mr. Fry said he'll have to look at that again, will argue that this town in the past grant special use permits on the same property.

Chairman Fine read the accessory use code. He asked Mr. Fry how is this use incidental to an auto body shop.

Mr. Fry said they'll have to address that question.

Mr. Bucci asked if they're regulated like a public utility in the same manner a public utility is.

Mr. Fry said they're regulated with respect to building codes and of that nature similar to a public utility.

Mr. Bucci said is it regulated in a sense that any regulatory requirements apply to the provision of the electricity energy like a public utility would be, are you subjected to those same regulatory regime that Con Ed or NYSEG.

Mr. Fry said it's all different, it's not all the same.

Chairman Fine said we're still waiting on the memo from the Conservation Board. The applicant was willing to proceed without it, don't think we're willing to proceed without it because this does border on wetlands, and there's the 2 issues that need to be addressed.

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

PANBAR	#33/19	This is an application for a proposed single-family dwelling on a
Property Address:		lot with no frontage on a improved town road where a minimum of
1285 Aspen Rd.		100' is required as per 300-21 and Appendix A of the Town
Section 5.17, Block 1, Lot 11		Zoning Code. This property is located in a R1-20 zone.

Louis Panny appeared before the Board.

Chairman Fine said at the last meeting, we had asked for something from the Town Board and copies of the prior zoning variance.

Memo from the Town Supervisor dated, October 3, 2019 states: On May 28 2019 John Barile of Panbar Realty came before the Board to discuss his stormwater pollution prevention plan and tree removal application for the purpose of constructing a single family house. Council Woman Roker explained that there was a question as to whether this property needed a variance. After review with the Town Attorney it was decided that a variance was required. Supervisor Gilbert said there's zero frontage on that road, frontage only on a paper road. Accordingly, the applicant has to come before your Board for it's consideration as to whether a variance should be granted due to lack of frontage on this site.

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, Gregory, and Meisterich, the application for a variance was granted for a proposed single-family home dwelling on a lot with no frontage on a improved town road where a minimum of 100' is required as per 300-21 and Appendix A of the Town Zoning Code.

NEW PUBLIC HEARING

SARLO #29/19 This applicant is requesting a special use permit for having a contractor's yard and parking commercial vehicles.
Property Address:
675 Saw Mill River Rd.
Section 59.14, Block 1, Lot
20, 21, 22
Not open. Requested adjournment.

BISSACCIA #34/19 This is an application for a special use permit for an accessory apartment. The old one has expired.
Property Address:
2501 Dunning Dr.
Section 27.18, Block 1, Lot 19
Mailings and sign certification in order.
Memo from the Assistant Building Inspector dated, October 18, 2019 states: The subject premises were inspected on October 16, 2019, and no changes have been made to the apartment. The use will continue to be in substantial compliance with the applicable building and zoning regulations.
The applicant should be advised that a new Certificate of Occupancy must be issued for continued use of the accessory dwelling.
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a special use permit for an accessory apartment was granted for a period of three (3) years.

BOGA #35/19 This is an application for a renewal of a special use permit for an accessory apartment.
Property Address:
3747 Briar Hill St.
Section 15.08, Block 2, Lot 3
Not open. Requested adjournment.

BUCELLO #36/19 This is an application for a renewal of a special use permit for an accessory apartment.
Property Address:

608 Granite Springs Rd.
Section 27.13, Block 2, Lot 11
Not open. Requested adjournment.

BISAGNA #37/19 This is an application for a renewal of a special use permit for an accessory apartment.
Property Address:
586 Madison Ct.
Section 37.9, Block 1, Lot 2

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, October 18, 2019 states: The subject premises were inspected on October 11, 2019, and no changes have been made to the apartment since the previous approval.

The use will continue to be in substantial compliance with the applicable building and zoning regulations.

The applicant should be advised that a new Certificate of Occupancy must be issued for continued use of the accessory dwelling.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

GONZALES #38/19 This is an application for a special use permit for an accessory apartment. The old one has expired.
Property Address:
84 Loder Rd.

Section 27.15, Block 1, Lot 3

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, October 18, 2019 states:

The subject premises were inspected on October 16, 2019 and observed a few issues that need addressing. They need a door on the boiler room with fresh air coming from the outside, a rated door on garage opening to apartment, smoke and co detectors, a door to separate 2 dwellings and verify required flue pipe clearances on boiler.

After these corrections are made the use will continue to be in substantial compliance with applicable building and zoning regulations. Once they are completed, I have no objections in granting this application.

The applicant should be advised that a new Certificate of Occupancy must be issued for continued use of the accessory dwelling.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a special use permit for an accessory apartment was granted for a period of three (3) years, with the stipulation that the applicant must comply with the Building Department memo dated October 18, 2019.

IVEZIC #39/19 This is an application to allow a garage with a side yard setback of 10.92' where a minimum of 15' is required and a combined side yard setback of 39.32' where a minimum of 40' is required as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.
Property Address:
25 Granite Springs Rd.
Section 27.11, Block 2, Lot 13

Mailings and sign certification in order.

David Tetro, Architect, representing the applicant.

Looking to add a 1 story garage to the east side of the house.

Memo from the Assistant Building Inspector dated, October 18, 2019 cited no objections. The applicant will need a mechanical 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, Gregory, and Meisterich, the application for a variance was granted to allow a garage with a side yard setback of 10.92' where a minimum of 15' is required and a combined side yard setback of 39.32' where a minimum of 40' is 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 and the garage be built in substantial conformity to the plans submitted.

YORKTOWN JAZ #2 LLC
#40/19
Property Address:
Crompond Rd.
Section 26.19, Block 1, Lot 18
Incorrect mailings.

This is an application for a proposed building pad, with a front yard setback of 50' where a minimum of 75' is required as per Appendix B of the Town Zoning Code. This property is located in a C3 zone.

NIEVES
#41/19
Property Address:
420 Fairview Ave.
Section 17.13, Block 2, Lot 76

This is an application for an attached garage with a side yard setback of 9.8', where a minimum of 15' is required as per 300-21 and Appendix A of the Town Zoning Code. The property is in a R1-20 zone.

Mailings and sign certification in order.

David Tetro, Architect, representing the applicant. Adding a 2-car attached garage to the left side of the house.

Memo from the Assistant Building Inspector dated, October 18, 2019 cited no objections. The applicant will need a mechanical 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, Gregory, and Meisterich, the application for a variance was granted for an attached garage with a side yard setback of 9.8', where a minimum of 15' is 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 and the garage be built in substantial conformity to the plans submitted.

CLOSED AND RESERVED

SPIRELLI 3545 LLC #16/19
Property Address: 3545
Buckhorn St.
Two-lot subdivision
Section 16.10, Block 4, Lot 10

Application for a definitive interpretation by the Zoning Board as whether the condition by the Planning Board, within the previous decision, which states that no further subdivision is allowed is binding and should have any bearing on the application before them.

William Gregory recused.

Chairman Fine said he's been thinking about the application and that the applicant is arguing that the original prohibition was because there were no sewers when the original application was made and there are sewers now. There is no evidence that the lack of sewers was necessarily dispositive of the Zoning Board decision back when that provision was put in the decision. The applicant purchased this property with that decision being of record.

The Chairman further stated that he did not see a reason why the board should overturn or substitute our thinking, our interpretation over the Board's thinking back when this decision was first made. Why our opinion should supersede their opinion.

Mr. Meisterich said they had all the facts, they had a huge amount of testimony and record to consider all of this, and we don't have that plus, if it was about the sewers, they probably could have written that into the decision. They could have address that at the time if that was really the reason, and they didn't do that. The sewers really don't have any bearing to him on this.

Mr. Fahey said that seems to be their only argument and if we take that aspect out of the equation then there's nothing to consider.

Mr. Meisterich said the person never appealed the decision at that time.

Chairman Fine said no.

Mr. Fahey said if he understand it correctly, was it the fact that she had a 3 family house and she plead hardship.

Chairman Fine said they added an extra dwelling unit. Now this owner is not the same person, this owner bought this relatively recently with this decision being of record at the time or he should have.

Mr. Bucci said part of the problem is we don't have record of what happened previously, they got testimony and evidence, and got submissions and they made deliberations based on what they got and at this point we will be overruling them or changing the determination without the benefit of knowing what went into their decision, that's problematic.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, and Meisterich, the application for the Board to reconsider the prior ruling of the Zoning Board and remove the stipulation that no further subdivision be permitted on the property was denied.

Recording Secretary, Glenda Daly

Meeting adjourned at 7:58pm

Happy Zoning!