

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
FEBRUARY 27TH, 2020**

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, February 27th, 2020. The meeting began at 6:30 p.m.

The following members of the board were present:

Robert Fahey
Gordon Fine
John Meisterich
Howard Orneck

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

It was announced that the next public hearing would be held March 19th, 2020, site visits are scheduled for March 7th, 2020. Mailings are to be sent from February 24th to March 4th, 2020.

NEW BUSINESS

FILOGOMO #5/20 This is an application for an accessory apartment. The previous one expired back in 1997.
Property Address:
2394 Loring Pl.
Section 37.05, Block 1, Lot 15

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, this item was scheduled for a Site Visit on March 7th, 2020, and a Public Hearing on March 19th, 2020, and referred to the Building Inspector.

ADORNO #45/19 This is an application to allow an existing shed with a rear yard setback of 6.5' where a minimum of 10' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.
Property Address:
146 Cordial Rd.
Section 17.14, Block 3, Lot 46

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, this item was scheduled for a Site Visit on March 7th, 2020, and a Public Hearing on March 19th, 2020, and referred to the Building Inspector.

ZUCKERMAN #6/20 This is an application to allow an existing addition with a side yard setback of 20' where a minimum of 30' is required and a combined side yard setback of 76' where a minimum of 80' is required as per section 300=21 and Appendix A of the Town Zoning Code. This property is located in a R1-80 zone.
Property Address:
1287 Baldwin Rd.
Section 47.16, Block 3, Lot 7

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, this item was scheduled for a Site Visit on March 7th, 2020, and a Public Hearing on March 19th, 2020, and referred to the Building Inspector.

WRIGHT #7/20 This is an application to replace an existing porch with the same setback of 27' where a minimum of 40' is required as per 300-13(G) and Appendix A of the Town Zoning code. This property is
Property Address:
3330 Peter Ln.

Section 16.16 Block 2, Lot 40 located in a R1-20 zone.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, this item was scheduled for a Site Visit on March 7th, 2020, and a Public Hearing on March 19th, 2020, and referred to the Building Inspector.

DiBARTOLO #8/20 This is an application for a proposed accessory building with a side yard setback of 5' where a minimum of 30' is required, a combined side yard setback of 59.6' where a minimum of 80' is required and a height of 20'7 1/8" where a maximum of 15' is permitted as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-60 zone.
Property Address:
1056 Underhill Ave.
Section 47.16, Block 1, Lot 24

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, this item was scheduled for a Site Visit on March 7th, 2020, and a Public Hearing on March 19th, 2020, and referred to the Building Inspector.

Yorktown Jaz LLC #9/20 This is an application to relocate an existing sign with a new setback of 0' where a a minimum of 5' is required as per Appendix D(4) of the Town Zoning Code. This property is located in a C-3 zone.
Property Address:
3220 Crompond Rd.
Section 26.18, Block 1, Lot 18

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, this item was scheduled for a Site Visit on March 7th, 2020, and a Public Hearing on March 19th, 2020, and referred to the Building Inspector, Planning Board and ABACA.

CONTINUED PUBLIC HEARINGS

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.

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
Mailings and sign certification in order.
Memo from the Assistant Building Inspector dated, February 27th, 2020 states: The basement sink has been filed for and a stove in another part of owner's basement has been removed. I have inspected the property on February 10, 2020 and have no objections in granting the special permit for the accessory apartment.
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

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.

CARSON, SCOTT #48/19 This is an application for ground solar panels with a side yard setback of 36'9" where a minimum of 75' is required as per section 300-13(G) and Appendix A of the Town Zoning Code. This property is located in a R1-80 zone.
Property Address:
1295 Windslow Dr.
Section 47.18, Block 1, Lot 53
Requested adjournment.

HEILIGMANN #53/19 Interpretation of Code.
Property Address: 3293
Stoney St.
Section 3.28, Block 23, Lot 1

Nick Schunk of United Real Estate appeared on applicant's behalf.
Chairman Fine said when we were here last month the issue was based upon well-settled law, that the variance runs with the land. The question was when did that start and how does it affect the application. Our counsel Mr. Rodriguez checked this out and sent us copy of the Court of Appeals case, directly on point on this matter. Dexter vs. Town Board of Gates from 1975, so it predates this variance. This particular case in the Court of Appeals actually dealt with what was commercial property, but also a case where the variance that was granted was specific to a specific owner and not the land, and the court came back and said you can't do that, variances runs with land. That being said, I think it's pretty much a forgone conclusion and believes the interpretation is that the variance that was received runs with the land. The question that remains after that is now what do you have because the variance was to have a music studio, obviously it's a very limited variance but it's a finished structure. Would think the logical conclusion of it would be, because we're not addressing setbacks or any of that, that was all discussed when you got the original certificate of occupancy back in 1980 when the place was first set up. So we're really talking about the usage of the property.

Chairman Fine asked Mr. Schunk if it's finished and heated right now.
Mr. Schunk said correct.

Chairman Fine asked Mr. Landi what the certificate of occupancy was issued as.
Mr. Landi said he believes it's for a music studio.

Chairman Fine said but it's actually just finished space, so if we said that the variance runs with the property, then the natural usage of it at this point would be.

Mr. Landi said a music studio, because the use variance specifically spells that out. But this Board can do what they want.

Chairman Fine said logically speaking, if the use variance was specific to this owner, that would fall by the verbiage of this case also, he would assume.

Special Counsel John Loveless said he read this approval as specific in a number of ways. The use, the way the structure was built out and improved, and specific to the owner. Think you could remove the restriction that relates solely to the owner without removing all of the other restrictions that are imposed.

Chairman Fine said but then you are restricting the owner to use it as a music studio as opposed to just sitting in there.

Mr. Loveless said yes, because that was what was presented, so the only part of that approval that is suspect is the fact that it runs with the owner rather than the land.

Chairman Fine said if we interpret the decision to say that that aspect where it's specific to that owner is at nullity then it would just be incumbent upon the current owner to go back to the Building

Department and say I want CO for x, y or z for this building.

Mr. Loveless said correct.

Mr. Landi said which then, in his opinion, they'll have to come back to this Board for a use variance of that building to make it whatever they want it to be.

Mr. Meisterich said typically accessory uses be admissible now that they have this use variance calling it a music studio.

Mr. Loveless said he would say no. Would say that this entire approval isn't vacated by the fact that it was originally design to run with the owner and not the land. Think you can cross off the condition number 1 and the remaining approval stands as written and as approved, and if you seek to amend that, they are welcome to do that.

If you read through the approval, there's condition about what the use was that allow him to improve the structure in a specific manor for a specific use, and use in a specific way. Don't think that just applying the Court of Appeals case alone in striking condition number 1 of the approval, the variance shall run with the applicant ownership, think everything else remains in effect.

Chairman Fine said so you couldn't just say it just falls back to finished heated structure.

Mr. Landi said because it never was a finished heated structure, it was erected for that use.

Chairman Fine said but that's what it is now.

Mr. Loveless said that what it should remain.

Mr. Meisterich said recreation is already approved allowed accessory use in a residential zone, so this is why this case is a little bit complicated because they shouldn't be forbidden from typical accessory use in this structure, in his opinion, just because they have a variance for a music studio.

Mr. Loveless said he would say that's a discretionary approval that you can certainly issue, but there's no such ruling in effect today. There wasn't a broad accessory use approved for only that owner, and it dies with owner. It was a specific use for a specific person, that specific person is going to be stricken but the use remains.

The Board discussed the matter further.

Mr. Fahey asked if the building as it exist now have a CO. Is everything up to stuff as far as the building is concern or was there concerns originally that have changed.

Mr. Landi said he believe that there was no CO and that's facilitated them coming to us to get a CO to sell the house.

Mr. Fahey asked if the building has been inspected.

Mr. Landi said under his administration, no.

Nick Schunk said he understand this building and the primary structure was built prior to zoning so it would be a predate letter that would be needed not a CO.

Chairman Fine said not necessarily, because if it was improved pursuant to the decision in 1980 when there were CO there would be a CO.

Mr. Landi said it would had to have been built prior to 1932.

Mr. Schunk said his other question was regarding about what has been discussed so far. If the structure were to be used conforming to the current zoning code, say as a recreation space, heard a conversation about perhaps needing to apply, but if it's permitted use already, would there be a necessity for application.

Mr. Meisterich said that's what we're asking, this variance now says it must be a music studio which is very strange.

Mr. Schunk said if it's a permitted use you could go from one permitted use to another permitted use without any sort of variance. To go from a variance use to a permitted use seems like you wouldn't need a variance for that or any sort of special approval for that.

Mr. Landi said it was oddly approved for renovation because of the music studio.

Mr. Schunk said it was built originally with plumbing, the plumbing was there before the renovation.

Chairman Fine said the application right on the decision says, application for variance as follows: to use rear out building as a converted sound proof recording studio. That's what the application was for. Not saying you'll have a hard time getting the CO for somebody else, that's why we're

questioning them, is it actually needed or not.

Mr. Schunk said he wasn't questioning necessarily the CO, just the change of use. If you can go from one permitted use to another, why won't you be able to go from a variance use to a permitted use?

Mr. Landi said there might be setback issues. There might be a number of issues that they would not have been permitted to renovate that building to be occupied. We did not look at any of those aspects.

Chairman Fine said it's possible that way back when they did the sound proofing because it was so close to the property line. We don't know, just guessing at this point.

Mr. Fahey asked at this point you took that sound proofing into consideration, took off the aspect of being a music studio, and put it into today's, want to use it for general purposes, would they have to apply for a use variance.

Mr. Landi said they might have to apply for a use variance to renovate in today's standard because it's so close to the property line. So there's so many other aspects that we're not even looking at or thinking about now because we were only asked to look at the aspect of does it run with the property or does it run with the owner. It's so close to the property line and the size of the building, everybody keep saying it's a permitted use as a recreation. It may not be because it's so close to the property line.

The Board and Mr. Schunk discussed the matter further.

Bill Schunk, also of United Real Estate said he would suggest they could move forward, they could sell the property and if a buyer want it to be something other than a music studio and make an application.

Mr. Landi said no one have been stopping them from selling their property, you have a CO for a music studio.

Chairman Fine said what you're saying is correct, that the variance remains, runs with the land as a music studio. You could sell it that way, keep it that way, whatever you want to do. If whoever owns the property want to change the use of that music studio, they're free to file an application to do that, the variance is there.

Bill Schunk asked what would prevent them from their application being granted.

Chairman Fine said depends on what they're asking for. If you're just asking for a finished accessory space as long as it's not a dwelling. Can't tell you what the Board would decide, but that's kind of what you have now.

Mr. Schunk said he guess what he's suggesting, after all this and of course we've been here several times and we have a buyer who's patiently waiting to close on this property, and we now know that it runs with the land, don't see any logical reason at all why this Board couldn't right here and now call this an accessory building and whatever you can do in an accessory building you can do in this building.

Chairman Fine said because we're only interpreting whether the variance runs with the land. We're not interpreting the use variance part of it.

Mr. Landi said it was not properly notices to do that.

Mr. Loveless said the way this Board determines things is there's a denial and then you're appealing that denial to this Board. That change has not been denied, so this Board isn't considering it yet.

When you go to the Building Department and say I want this to be a normal accessory use, open to all accessory uses available under the code, want the CO to be amended to that and they say no, this is specific and then this Board can have it. This Board doesn't have the jurisdiction until there's a denial of that application. We have an interpretation of the existing approval which was a very specific approval for a specific purpose and we deemed that to be inappropriate. So if that is stricken it can be transferred properly, but that's where it ends, it does not vacate the whole thing and make it now a legal accessory structure open to any use under the code. That decision has never been made by this Board.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine,

Meisterich, and Orneck, based on everything heard, the interpretation be that the variance for the recording studio runs with the land and not with the prior owner, so that the variance extends to any subsequent owner of the property.

NEW PUBLIC HEARING

NEWMAN #01/20 This is an application for a renewal of a special use permit for an accessory apartment.
Property Address:
388 London Rd.
Section 17.17-3-27

Mailings and sign certification in order.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Meisterich, and Orneck, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years. Subject to the Building Department inspection and comments.

DELELLO #02/20 This is an application for a proposed addition with a front yard setback of 27.04' where 30' is required and a combined side yard setback of 21.51' where a minimum of 24' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-10 zone.
Property Address:
2906 Hickory St.
Section 27.09-3-3

Mailings and sign certification in order.

David Tetro, Architect, representing the applicant.

This application is for a 1 story addition to the existing 1 story building.

Memo from the Assistant Building Inspector dated, February 21, 2020 states:

I have inspected the property on February 19, 202 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 Fahey, Fine, Meisterich, and Orneck, the application for a variance was granted for a proposed addition with a front yard setback of 27.04' where 30' is required and a combined side yard setback of 21.51' where a minimum of 24' 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 that the addition be built in substantial conformity to the plans submitted.

GLYNN #03/20 This is an application for a proposed 2nd floor addition with a rear yard setback of 21.08' where a minimum of 30' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-10 zone.
Property Address:
2032 Breton Ct.
Section 37.18-2-44

Not open.

SORVINO #04/20 This is an application to allow an existing front porch with a front yard setback of 45.58' 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.
Property Address:
415 Spring Dr.
Section 48.18-2-41

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, February 21, 2020 states: I have inspected the property on February 19, 2020 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 Fahey, Fine, Meisterich, and Orneck, the application for a variance was granted to allow an existing front porch with a front yard setback of 45.58' 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 be built in substantial conformity to the plans submitted.

Recording Secretary, Glenda Daly

Meeting adjourned at 8:18pm

Happy Zoning!