

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
SEPTEMBER 11TH, 2025**

The regular monthly meeting was held for the Zoning Board of Appeals, Town of Yorktown, at the Yorktown Town Hall, 363 Underhill Avenue, Yorktown Heights, New York, September 11th, 2025. The meeting began at 6:30 p.m.

The following members of the board were present:

John Meisterich, Chairman
Anthony Altimari
Robert Fahey
William Gregory
Anthony Tripodi

Also present is Katie Krahulik, Special Counsel, and Nisreen Khoury, Legal Assistant, and Steve Fraietta, Assistant Building Inspector.

The meeting was aired on Channel 20 Cablevision and Channel 33 Verizon Fios.

It was announced that the next public hearing would be held October 23rd, 2025, site visits are scheduled for October 18th, 2025. Mailings are to be sent from September 29th to October 8th, 2025.

NEW BUSINESS

NUNEZ #30/25 This is an application for a special use permit for a renewal of an accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.

**Property Address:
3240 Hollywood St
Section 26.05, Block 1, Lot 35**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item will be handled administratively.

MARKOLAJ #31/25 This is an application to legalize a front porch that requires a variance for a front-yard setback of 24.3 ft where 40 ft is required as per section 300-21 and Appendix A of the Town Zoning Code.

**Property Address:
2752 Windmill Dr
Section 27.10, Block 3 Lot 39**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 23rd, 2025, Site Visit on October 18th, 2025, and referred to the Building Department.

BERTINO #32/25 This is an application to construct an addition in the rear of an existing home that requires a variance for a rear yard setback of 25 ft where 30 ft is required as per section 300-21 and Appendix A of the Town Zoning Code. A previous variance was granted on the property- see #102.91.

**Property Address:
3226 Mohegan Ave
Section 15.20, Block 2 Lot 36**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 23rd, 2025, Site Visit on October 18th, 2025, and referred to the Building Department.

CANO #33/25 This is an application for a special use permit for a legalization of an accessory apartment that requires a special use permit as per

11709 Summit St Section 48.07, Block 2, Lot 4 300-38 of the Town Zoning Code.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 23rd, 2025, Site Visit on October 18th, 2025, and referred to the Building Department.

CARFAGNO #34/25 This is an application for a special use permit for an accessory apartment for change of owner that requires a special use permit as per 300-38 of the Town Zoning Code.
Property Address:
1579 Summit St
Section 48.11, Block 3, Lot 39

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item will be handled administratively.

SANCHEZ #35/25 This is an application to construct a two-story addition that requires a variance for a front-yard (west) setback on a corner lot of 29 ft where 40 ft and a rear yard setback of 35 ft where 40 ft is required as per section 300-21 and Appendix A of the Town Zoning Code. A previous variance was granted for this property- see #37/12 and #35/01.
Property Address:
2980 Curry St
Section 27.06, Block 2 Lot 42

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 23rd, 2025, Site Visit on October 18th, 2025, and referred to the Building Department.

NASSIF #36/25 This is an application to construct a detached garage that requires a variance for a side-yard setback of 5 ft where 30 ft is required as per section 300-21 and Appendix A of the Town Zoning Code.
Property Address:
809 Locke Lane
Section 59.09, Block 1 Lot 14

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 23rd, 2025, Site Visit on October 18th, 2025, and referred to the Building Department.

CONTINUED PUBLIC HEARINGS

POGGIOREALE #35/24 This is an application for a NEW children's day care center that requires a special use permit as per 300-53 of the Town Zoning Code.
Property Address:
2829 Crompond Rd
Section 26.20, Block 2, Lot 3

Chairman Meisterich said based on you being here and what was represented to us that you have a resolution or approval from the Planning Board. Basically I guess what I would say is first of all I assume we have plans here, the one that are approved. I am not going to read the Planning Board resolution, it is already a public record, but there is an 8-page plan. I believe it covers all the bases, as far as the traffic study, the parking, the storm water mitigation.

Mr. Fahey said what do they have to say about the traffic, the left hand turn. I know it was quite controversial I am curious as to what the Planning Board had to say about that.

Mrs. Poggioreale said the state turned it over Local and they decided to do no left turn in, no left turn out.

Mr. Fahey asked how are they going to enforce that?

Mrs. Poggioreale said they want us to put signs up.

Mr. Poggioreale said there is also an open document that we are going to sign to say either way we are fine with, if it goes in the other direction, if it gets switched over again, we are not opposed to either or.

Mr. Fahey said out of curiosity, how many people are going to do drop-offs in the morning, what is the expected occupancy of the school.

Mrs. Poggioreale said the highest number of enrollment is 60 children total, but I did submit, I do not know if you guys got a copy of the drop off, it is very scattered, it is not like I have 20 families dropping off at any given time. I open at 6:30am and that is early, there is only like two children in. So it is scattered from 6:30 in the morning to even 9:30 in the morning. They get dropped off at any time in between.

Mr. Fahey said they are going to make these turn, say it backs up coming into your parking lot and there is traffic out on Route 202, how are they addressing that?

Mrs. Poggioreale said there was a whole highway study done.

Mr. Poggioreale said we have 19 parking spaces and if you look at the side plan, it shows where they can come in, drop off and leave.

Mrs. Poggioreale said they have to park and walk their children in.

Mr. Poggioreale said you are not going to have 18 people come in simultaneously, maybe five or six at the same time.

Mrs. Poggioreale said at the hearing a lot of parents submitted letters stating the very rarely encounter other families when they are there.

Chairman Meisterich said so basically as it stands it is right turn into your parking lot.

Mrs. Poggioreale said right now it is right and right, we agreed to that.

Mr. Fahey asked did you do a traffic study?

Mrs. Poggioreale said the traffic study was turned in, the Town referred us to the engineering company.

Mr. Gregory said it was a traffic study group that was hired by the town but paid by the applicant.

Mrs. Poggioreale said 90% of my families traveling 202 regardless, we just cut their travel time on 202 by half, because I am located on 202 in the Parkside Shopping Center right now, so they were traveling up 202, now they are just cutting their travel time on 202.

Chairman Meisterich said I am reading the resolution, It basically says that the DOT may prohibit left turns and I guess they have had trouble getting the DOT to formally respond.

Mrs. Poggioreale said the DOT surrendered that to local authorities, it is up to the Planning Department at this point to make a decision.

Chairman Meisterich said they would support whatever the Planning Department decides. Again, this resolution takes into consideration the reports from the Conservation Board. Environmental Consultants. the Fire Inspector, the Planning Department itself, the Town Engineer, the Traffic Consultant, the Westchester County Planning Board, the New York City DEP, the New York State DEC, and the New York State DOT. Many bases were covered through the various agencies and boards In coming up with an agreement to this plan. So, I for one do not feel the need to rehash all of it unless we have questions about it.

Mr. Gregory said there are stuff that we basically have to address.

Steve Fraietta said this still has to be reviewed, I think there are issues. There might be variances that are going to be required, this came to you to see the feasibility of getting the special permit, and it kind of looked positive at this point, so I think we have to look at this so we can determine what variances might be required for the building.

Chairman Meisterich said I think that is definitely needed because I remember that you sent a memo back early on in the process.

Mr. Fraietta said I just got word of this like 2 days ago, and I did not have the time to review the process, so I need some time.

Mr. Gregory said one of the things that is obvious is we have not had the ability to look at it, and this was pass on Monday by the Planning Board and quite frankly I do not think that any of us have seen the approved plans or the resolution. One of the things I am inclined to do is not only do we have to take a look at the variances that are required, because that is something we kind of knew about early on, but also take a look at the plan that was approved by resolution by the Planning Board to see if they cover all of the thing that we as a Board need to look at. So with that in mind, I think from

my perspective we are going to have to unfortunately adjourn this until we get an opportunity both for us but also for the Building Department to take a look and make sure that we have a clean application going forward.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this matter was adjourned.

PANBAR REALTY #39/24 This is an application to combine two (2) lots to create one (1) single lot that will require a variance for a total amount lot area of 10,000 sq. ft where 20,000 sq. ft is required as per section 300-21 and Appendix A of the Town Zoning Code.
Property Address:
3301 & 3307 Lookout St.
Section 16.17, Block 4, Lots 20 & 22

Anthony Tripodi recused.

Louis Panny appeared before the Board.

Chairman Meisterich said this is adjourned from prior months. My last recollection is storm water and at least a rendering of a building.

Mr. Panny said we have it here.

Chairman Meisterich said that has been provided in some way. We do not have any new memos. I think we are really at the point where some of the concern areas from the public were storm water runoffs, and at least from the public and the Board character of the neighborhood. So the things we had asked for were to address those concerns.

The plans of the proposed house was reviewed.

Chairman Meisterich said one of the concerns that the Board had really on this was how high the house is relative to the other houses.

Mr. Panny said it is not going to be higher than the house on either side of it. It is 1½ story ranch style house. The house next to it is 2 story actually.

Mr. Fahey said at some point did somebody not say 37ft. from grade.

Chairman Meisterich said 37ft. is allowed, 35ft. is allowed and that is really where I was getting concern, is 35ft. but the grade is measured the average from front to back. This house has an uphill so it is really like average 35ft. from the middle for that property.

Mr. Panny said it is not 35ft. though, it would not be 35ft to the middle. The house plan is not showing the grading, it is just showing the house.

Chairman Meisterich said so are you going to I guess excavate out into the hill.

Mr. Panny said we are going to cut into it. So the upper floor would come out on grade.

Chairman Meisterich said if I am looking at the front of the house, I am on the street, the hill goes up, is it going to look like 2 story from the front.

Mr. Panny said from the front, is would look like 1½ story.

Mr. Fahey asked how wide is it in the front, how wide is the house?

Mr. Panny said it is a 50ft. house.

Mr. Fahey said your 50ft. is going to be exposed to the street or are you going to turn it.

Mr. Panny said the 50ft. is going to be exposed to the street.

Mr. Fahey said you are talking about storm water management, I see a notation about a rain garden, what is that.

Mr. Panny said the rain garden is just basically like a pond with plantings in it so the water come in and it gets absorbed by the plantings.

Mr. Fahey said when that is done, out of curiosity, how do you figure how much water is coming from the property.

Mr. Panny said the Engineers do that. They figured it out, they calculated where the water is going and that is where the rain garden is sized, the calculated all the water that is coming off the roof and the driveway, and any runoff will be contained in that garden, and I know he expanded it a little bit too, so it is more than what we needed.

Mr. Gregory said and basically the final design that Joe has done is going to have to be approved

by the Engineering Department.

Mr. Panny said yes.

Mr. Fahey asked what is the roof heights from the street, what are we looking at, 18ft.

Mr. Panny said remember that the lot goes uphill. The house will be sitting in the hill.

Mr. Fahey said the final design, it is not going to look like some mac mansion.

Mr. Panny said the 2 houses across the street looks just like it

Mr. Fahey said across the street is one thing, you got a string of houses on that side of the street that are all uniform height, basically the same size.

Mr. Panny said we should not be higher than them within a couple of feet.

Chairman Meisterich said in front of me and on the screen is a 9-page storm water mitigation plan. I guess my question is for the Board, do we have this reviewed right now by Engineering.

Mr. Gregory said I think part of the building permitting process to have a storm water prevention plan approved by our Town Engineer. So they will not be issuing a building permit until such time as that is approved. We can make this variance subject to that, but that is part of the process anyhow.

Chairman Meisterich asked if there was any comments from the audience.

Henry Obligado came to the podium.

Mr. Obligado said we are very concern about the water runoff coming from a new house. We are way down on Hollywood Street, and we are already getting lots of runoffs coming down and they are going to cut trees, make it more easier for water to come down, so we are really concern about that. We are wondering, we have an environmental engineer from the New York State Environmental Department of Conservation, and we are wondering if we can have that person see the storm water management plan.

Chairman Meisterich said they normally will review large development project for us on the request of Town. As we said a few minutes ago, we have a plan here. I am not an environmental engineer or civil engineer to even necessarily be able to evaluate the plan myself, but my associate was saying that if it came to where this is allowed to go forward, the applicant would have to get approval from the Town Engineer, that this storm water plan mitigates all the generated water on this site. So we do have a Town Engineer that is really their job to approve permits for this excavation development and storm water. I will tell you it is here, it is 8 pages, it is a thorough plan, it is a professional plan. It is not just something that somebody threw together.

Mr. Fahey asked do you have someone line up to do this independent study or are you asking for that.

Mr. Obligado said I have someone in mind, my son works for the New York State Department of Conservation and he is a Geologist.

Chairman Meisterich said that is something we have not encountered before, what you are requesting.

Mr. Gregory said our Town Engineer is pretty good at what he does.

Chairman Meisterich said this plan is in the public record, you could give this to your contact and I am sure our Engineer will welcome their commentaries and input even Engineer to Engineer through email.

Mr. Gregory said you can get a copy, you get it from the Building Department. It is a public record, you can bring it to them. You can be given the name and phone number where you can contact our Town Engineer, once he has the plan. And if he has any comments he wants to give our Town Engineer as a result of his review, I am sure that Dan will take that into consideration.

The Board discussed the application and applied the statutory factors.

Upon motion by Gregory, seconded by Meisterich and unanimously voted in favor by Altimari, Fahey, Gregory, and Meisterich, the application for a variance was granted to combine two (2) lots to create one (1) single lot with a total lot area of 10,000 sq. ft where 20,000 sq. ft is required, with the following stipulations: 1. It pertains only to the requested variance; 2. Subject to the approval of the storm water prevent plan by the Town Engineer; 3. Subject to subsequent issuance of a building permit based on substantial compliance to the plan filed during the public hearing; 4. The height of the house not to exceed the houses on either side.

REYES #19/25 This is an application for a special use permit for a renewal of an accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.

Property Address:
2974 Sherman Court
Section 25.12, Block 1, Lot 9

Mailings and sign certification in order.

Memo from the Assistant Building Inspector, dated September 8, 2025 states:

I inspected this property on September 8, 2025 and found no violations. I have no objections to granting a renewal for a special permit.

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

NEW PUBLIC HEARING

RAGUSO #16/25 This is an application to construct an addition that requires a variance for a combined two-yard setback of 28.10 ft where 40 ft is required and an above ground pool with a side yard variance of 8.3 ft where 10 ft is required as per section 300-21 and Appendix A of the Town Zoning Code.

Property Address:
2366 Granville Ct.
Section 36.07, Block 1 Lot 18

Mailings and sign certification in order.

David Tetro, Architect, appeared before the Board with the Applicants.

Mr. Tetro said originally we were starting with an addition on the left side of the house, which would require a side yard variance because it is going to be 19 square feet to the property line, which combined is beneath the minimum allowed, however, when we got a new site plan, we found out the above ground pool was installed too close to the property line, and that side yard setback for the pool is 8.3 feet. So we are seeking a variance for the addition, but I guess we are legalizing the distance to the property line for the pool which is closer than the addition. So I am not sure how to go forward with this from here.

Mr. Fahey said the pool has a life to it right, you should have 30 years for a pool, give or take, 35 year if you are lucky. So at the end of the day, when the pool cease to be functioning, why would we have to vary the property line.

Chairman Meisterich said the pool is there right now.

Mr. Fahey said but it is there basically temporary, it is not a permanent structure.

Chairman Meisterich said well it is an accessory structure.

Mr. Fahey said but the variance goes with the property, so you could put another pool there if you want it. You could correct that issue at the end of its useful life and go back to where it is supposed to be.

Mr. Gregory said we are dealing presently with an existing violation, which we are going to theoretically address during our deliberation and at the end of the day we can say for example, any further construction of a pool on the premises can or must be compliance with the zoning ordinance.

Memo from the Assistant Building Inspector, dated September 8, 2025 states:

I inspected this property on September 8, 2025 and found no violations. I have no objections to granting relief. A building permit and a Certificate of Occupancy will be required.

The Board discussed the application and applied the statutory factors.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, the application for a variance was granted to construct an addition that requires a variance for a combined two-yard setback of 28.10 ft where 40 ft is required, and to legalize an existing above ground pool with a side yard variance of 8.3 ft where 10 ft., with the stipulation it pertains only to the requested variances and not the remainder of the property line, and the addition be built in substantial conformity to the plans submitted.

BARTOLINI #25/25 This is an application for an appeal of a stop work order and notice of violation issued by the Building Dept.
Property Address:
2145 Hunterbrook rd
Section 36.13, Block 1 Lot 2

No open. The Board request a letter be sent to the applicant informing him that the hearing is being opened at the October 23, 2025 meeting and requesting a site visit on October 18, 2028.

CHANG #26/25 This is an application for a special use permit for a renewal of an accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.
Property Address:
1480 Inspiration Rd
Section 16.17, Block 4, Lot 15

Mailings and sign certification in order.

Memo from the Assistant Building Inspector, dated September 8, 2025 states:

I inspected this property on September 2, 2025 and found no violations. I have no objections to granting a renewal for a special permit.

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

DINEEN-CAREY #27/25 This is an application for a renewal of a special use permit to allow a children's day care center that requires a special use permit as per 300-53 of the Town Zoning Code.
Property Address:
2090 Crompond Rd
Section 37.14, Block 2, Lot 8

Mailings and sign certification in order.

Max Dineen-Carey and Kathleen Dineen-Carey appeared before the Board.

Memo from the Assistant Building Inspector, dated September 8, 2025 states:

The Fire Inspector inspected the property on August 26, 2025 and found no violations on the property. The Building Department has no objections for the renewal of special permit for a daycare center

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

DINEEN-CAREY #28/25 This is an application to allow a sign in front of a building in a residential area for a day care center as per 300-21 and Appendix C of the Town Zoning Code.
Property Address:
2090 Crompond Rd
Section 37.14, Block 2, Lot 8

Mailings and sign certification in order.

Max Dineen-Carey and Kathleen Dineen-Carey appeared before the Board.

Chairman Meisterich said for anyone who is familiar with the site, it is on Crompond Road, it is a daycare center that has been there for many years, and what we are here to talk about right now is adding a sign.

Memo from the Assistant Building Inspector, dated September 8, 2025 states:

This is an application to allow an 18 square foot wall sign on the front side of the building where 4 square feet is allowed, as per section 300-21 and appendix C of the Town Zoning Code. I have no objections to granting relief.

Memo from ABACA, dated August 13, 2025 states:

The Advisory Board on Architecture and Community Appearance reviewed the above referenced subject at their meeting held on Tuesday, August 12, 2025. According to the Zoning Board of Appeals referral memo dated 8/5/2025, the applicant will require a variance to allow a 38. 1SF sign where 4SF is permitted as per Appendix C of the Town Zoning Code. James Polinsky of Signs Ink was present. The proposal is for a 38.1SF pin letter sign to be mounted on the building front with the words of " The Pied Piper Campus" with a leprechaun logo in the center as shown in the attached rendering. The ABACA has no objections to the variance request and sign application based on the renderings submitted and attached.

The Board discussed the application and applied the statutory factors.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, the application for a variance was granted to to allow an 18 square foot wall sign on the front side of the building where 4 square feet is allowed, with the stipulation it pertains only to the requested variance and not the remainder of the property line, and the sign conforms to the rendering and plans submitted.

PERVIZI #29/25 This is an application for a building permit to construct a Tier 2 Battery Storage System that requires a Use Variance. Tier 2 Battery Storage systems are a non-permitted use as per 300-81.5 of the Town Zoning Code.

Property Address:
3666 Old Yorktown Rd
Section 16.11, Block 1, Lot 60

Mailings and sign certification in order.

Robert Gaudioso, attorney with Snyder and Snyder appeared before the Board, along with Andy Welch, Director of Development for Rick Energy; Tom Saunder, Senior Project Manager; and Alexa Merinos, Project Manager for Environmental Affairs.

Mr. Gordiaso said this is a application for a use variance for public utility battery energy storage facility. This is a project that we started back in late September 2024 by meeting with Planning Board, filing an application with the Planning Board, having site visits with the Planning Board, and ultimately during that time frame the town was in moratorium although it already had an existing battery energy storage facility ordinance at that time. In fact that ordinance has regulated similar facilities within the Town including the one on Gomer Court. Back in May 2025 the Town changed the code to make Tier 2 Battery Energy Storage facilities no longer a special permitted use and therefore we are seeking a use variance under the applicable state law regarding public utilities. What I would like to do is go through what we submitted. I would like to start with the site plan, walk you through a little bit about where the facility is located on the property and then I would like to detail some of the materials which I think is voluminous, but I want to go through them at least at a high level and let you know what we submitted, and answers to some of the questions you may be asking.

Chairman Meisterich said definitely we need the background, but this is ultimately a use variance, not an approval of plan or anything like that. Our Board purview is to determine whether the use is permitted or not permitted, we are not going to take over being lead agency on something like this. A lot of our hearing should have to do with the legal aspects of a use variance and a public necessity use variance, but we definitely need the background like what is it, where is it, what it would look like, all that stuff.

Mr. Gaudioso said I agree, so basically if the use variance is granted, we would still be back in front of the Planning Board for site plan approval, completely acknowledge, understood and agreed. Let me jump out of line a little bit then on what I was originally going to say maybe just to highlight why I think the site plan in important. We believe this is a public utility entitled to public utility use variance standard and the seminal cases from the highest court in New York State Court of Appeals ConEd v. Hoffman. I would read a quote because I think it is instructive, what the Court of Appeals said "To be granted such a use variance, the utility should be required to show that denial of the variance would cause unnecessary hardship, but not in the sense required of other applicants. Instead, the utility

must show that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible to modify the plant than to use alternative sources of power such as may be provided by other facilities. However, where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced”.

So we think we have a good site and we think that based on the public necessity need, which I will talk about in a moment, we are entitled to the use variance standard. So let me just take a high level overview of the property.

Mr. Gaudioso said the proposed facility is 5 megawatts, and that is consistent with the facility that is over on Gomer Court. It is not a large scale facility, in fact it is a very small scale facility.

The map of the property was shown to show the layout.

Mr. Gaudioso said the compound itself on the approximately 4 acre property is approximately 8,000 square feet, and we have six groups of what we call the Tesla megapack, two equipment cabinets, in three different sections. Surrounding the facility is a fence for security purposes, and then we have substantial landscaping buffer around the facility. Under the prior code, all landscaping had to be 20 feet away from the facility, we meet that requirement we have proposed 53 shades of evergreen trees around the facility to screen it. The access drive is fully accessible for emergency services, and the facility is ultimately interconnected into the Con Edison grid. We meet all of the setbacks and in discussion with the Planning Board previously relocated the facility out of any wetland buffer or flood plane.

Chairman Meisterich about where the location of the house is on the property.

Mr. Gaudioso showed on the map where the house is located.

Mr. Gaudioso said that is the existing residence, we have a lease agreement with the property owner to install this facility on the property.

Chairman Meisterich said I read this is like a mixed zone property.

Mr. Gaudioso said correct, so actually the bottom portion of the property is a residential zone and the top portion is the C-2, and we showed the line, the line is on the plan.

Chairman Meisterich said so the actual building is in a residential zone.

Mr. Gaudioso said no, it is the opposite, the existing residence is in the C-2 and the back portion of the property is in the residential zone. The zone line actually split the facility, but we meet all the setbacks on either zone. And because it is a use variance, there is no issue with respect to the zone related to use.

Mr. Gaudioso discussed the documents that was submitted to the Board.

Mr. Gaudioso went on to say we submitted what is the data sheet or the specification details for the exact equipment we are using. We are using the state of the art equipment, we are not using outdated equipment, we are proposing the Tesla Megapack 2XL equipment, you have the data sheet to see what it looks like, it is self-contained cabinets, it is the state of the art batter energy storage system, it is the system that was originally approved in New York City for use in the facilities down in that area.

Mr. Fahey said on that topic, what is the shelf life for these units.

Mr. Gaudioso said 25 years.

Mr. Gaudioso said we submitted and this may be the most important document, a hazard mitigation analysis, again by the third party company ESRG, and that goes through all of the relevant criteria on the state level, it details the fact at the time this was written that the state was looking to update its code, the state has updated its code it will be effective January 1 its my understanding, and we have committed we will meet the new code. So we meet the current code, and we meet the new code that is coming into effect January 1 and in fact in most instances we exceed all of those codes. We also submitted a fire code compliance report from ESRG, we included an emergency response by ESRG, we will work with your local fire department to make sure they are properly trained, staff and otherwise with respect to this facility. We submitted a decommissioning plan from our Engineers showing that once the facility is no longer needed, that would be properly decommissioned. We submitted the full environmental assessment form, we submitted an ecological and habitat

assessment confirming that no impacts on threatened or endangered species. We confirmed the wetlands, the delineated the wetlands, we confirm them with the Town Wetlands Inspector so other than the access drive, the gravel that we are putting on the access drive, the whole facility is outside of any wetland and even outside of any wetland buffer.

Mr. Fahey said is the proposal you are presenting, the number of units that you are now proposing, is the site limited to those, can you add more units as you go down the road, or is it limited to the units you are putting in.

Mr. Gaudioso said so typically it is 5 megawatts per lot which is what we have here. It is a great question, you have other projects maybe on the news including coming out of Carmel which were over 100 megawatts, completely different type of facility. This is a small 5 megawatts facility on one lot, it is a distributed facility to be on the local power grid, that is what its intention is. Completely different than what you have seen in other communities, but exactly the same as you see here in Yorktown over on Gomer Court.

And finally we also prepared a sound exposure report confirming that with the sound exposure would be from the facility which is minimal, there are fans for ventilation in the facility.

We did put together a lot of information, we want you to have the time to review it. We received some comments from the Planning Board, which we think we have already addressed in the materials but we will readdress them regarding the proximity to the Taconic. Just in some instances substance we do not believe there will be any impact to the Taconic.

Chairman Meisterich said I think as far as this hearing, obviously like you are saying there is a lot of information for us to process. I think some of the most important information is the public utility standard. First of all you have to prove that this is a public utility or at least are needed public facility, you have to argue that it meets that public utility use variance standard or a public necessity I think it might be called, so we have to get to that at some point. Once we start maybe getting closer to understanding that it gets more into the nuts and bolts of the operation. I am just afraid to be evaluating project before I understand the legal standards that are here.

Memo from the Assistant Building Inspector, dated September 8, 2025 states:

This is an application for a building permit to construct a " tier 2" battery storage system (BESS) that requires a " use" variance. Tier 2 battery storage systems are a non-permitted use as per section 300-81. 5G of the Town Zoning Code.

In review the building department does not recommend the granting of a use variance for this application as listed below:

1. The main access way to the BESS goes through a flood zone. Should an event happen that requires Fire Department to respond to this location, and if this should occur during a time of flooding, it could limit the Fire Department's ability to address the event.
2. The BESS location is within proximity of the Taconic State Parkway. Again, should a fire event occur this could hinder traffic or close the parkway completely.
3. Since the Town Board has elected to remove Tier 2 battery storage system from the Town Code, by granting this use variance could start a precedent for other applicant's seeking Tier 2 permits in the future.

Memo from the Planning Board, dated September 9, 2025 states:

At its meeting of August 11, 2025, the Planning Board discussed the subject use variance request to allow a Tier 2 Battery Energy Storage System at 3666 Old Yorktown Road. The Planning Board believes that Battery Energy Storage Systems are an essential part of our energy infrastructure and that they will be critical in supplementing the energy grid as demand continues to grow. The applicant has argued that proving a hardship is not required for a variance as long as the use provides public necessity. With that said, the Planning Board reviews these systems with the utmost caution, as they can be a hindrance, or even dangerous, to the public if not correctly installed, monitored, or decommissioned. While the Board has no issue with the proposed battery itself, it strongly believes that the location of the battery creates a risk to the public that outweighs its public

benefit. In the rare occurrence of a battery malfunction, smoke emissions from a fire event can potentially travel over the Taconic State Parkway, which could lead to closure of the entire Parkway and Route 132. Such an event could have a significant negative impact on the area for a significant length of time. For these reasons, the Board does **not** support the subject variance.

Memo from the Town Clerk states:

This is a resolution adopted by the Town Board of the Town of Yorktown at its regular meeting held on September 9, 2025.

Whereas at its meeting of August 12, 2025 the Town Board discussed the subject use variance to request to all a Tier 2 Batter Energy Storage System at 3666 Old Yorktown Road. The Town Board has been monitoring the evolution of this land use beginning with its adoption of legislation requiring special permits to allow use on September 15, 2020. Over the years the Board had gained knowledge regarding such use and their technological evolution through various written and media sources, public input, expert testimony and regional and national events involving these systems. The Board recently determined that these systems given the current available knowledge are potential health hazards and not desirable to allow as a land use and therefore adopted the legislation that removed this as an allowable land use from the Town Zoning Code. Further and specific to this proposal, the location and position of the system near the Taconic State Parkway, New York State Route 132, and Route 6 could exacerbate the potential health hazards, and in the case of an emergency event could cause significant disruptions to the traveling public as well. Therefore, the Board does not support the subject variance.

Letter from Maureen Barry, dated August 26, 2025 states:

I am writing to voice my opposition to this variance request. My reasons for this are; this is a residential area. This location is by two streams, a trailway, the Taconic Parkway, and a children daycare is on this site. If there is a fire the danger element is high. I am not against battery installation but this location is not safe for reasonable choice.

Chairman Meisterich said I am sure there is members from the public here and I am going to ask for input from them, but I do not think we have given you quite enough time to kind of get into the legal aspects and I want to make sure you can do that before we start hearing.

Mr. Gaudioso said we will respond in writing to all of the comments. As a preliminary response, as far as the access drive being in a flood zone, extremely remote possibility of a very low probability of a fire and then flood at the same time is just astronomically, statistically insignificant.

Mr. Fahey said in the impact of a flood on the system not a fire.

Mr. Gaudioso said it would not because the facility is out of the flood zone, it has been raised and it would not be impacted by flood. It is on a concrete foundation.

Mr. Fahey said and how high is the foundation.

Mr. Gaudioso said I would have to that number for you, but we could always raise it higher.

Mr. Fahey said when Sandy came through, that area was under water.

Mr. Gaudioso said I can tell you this that the site of Gomer Court was right next to the lake and it was looked at the same type of issue and it was put on concrete foundation same way.

Mr. Tripodi asked what about access to the structure from the street.

Mr. Gaudioso said that is the point, we have our access drive that would be gravel. If someone needed to access it even if the water was up they would still be able to access it, but more importantly the facility does not necessarily get accessed, it is a unman facility. Even in the time of a very rare occurrence of a fire event, the facility would just be basically monitored and allow to run its course.

Mr. Fahey asked can that be taken off line remotely.

Mr. Gaudioso said yes it would be taken off line. It is remotely monitored 24/7.

Mr. Fahey asked is there a back up for that, say you cannot do it remotely, you could shut it down manually.

Mr. Sauder said basically there is a automated breaker that would be controlled by the utility, it is one that would be controlled by our operating staff and physically there would be a manual switch on premises, any one of those openings disconnects the power.

Mr. Fahey asked if there was a over heating it would automatically shut down, like a sprinkler system type of thing?

Mr. Sauder said the battery has a sophisticated battery monitoring system so if a cell, down to an individual cell level is over heating it can stop the charging or any activity to the whole pack and is well to that specific cell.

Mr. Fahey said and that redundancy, is that also being monitored.

Mr. Sauder said that is automated and monitored.

Chairman Meisterich said it charges through the grid and dispenses to the grid I guess.

Mr. Sauder said yes, it charges off peak when there is excess power available and discharges during peek periods.

Mr. Tripodi asked with regards to the comment let it run it course, as understand it, on the rare occurrence it does break out in flames it is really nothing you can do except let it burn out is that what you mean.

Mr. Sauder said one it does not necessarily involve any flames, two-it is a chemical reaction that happens, and yes, for the amount of time it take for it to expend all of the available fuel if you will, all the chemical to finish the reaction will run its course..

Mr. Tripodi said what happens to those chemicals.

Mr. Sauder said it will stay within, it will melt the box but it will stay within the box it will run off.

Mr. Fahey asked what is being discharged into the atmosphere, is it polyvinyl chloride. What is the hazard material that is being put into the air.

Mr. Sauder said I do not have those exact information, we can certainly submit that. It may have been in the hazard mitigation analysis, but we will note that in some of the instances that have happened, they put in the monitoring equipment and found no detectable levels of any toxins in the air.

Mr. Gaudioso said and the point regarding the Taconic, those statements about impact to the Taconic are just without basis. We have submitted a report showing how everything is contained and even if you compared it to other uses, there is nothing exotic about this in comparison to other uses. So, you have a Lowes right next to the Taconic and Route 202 which is if you think about what is inside of a Lowes and the volume of what is inside of a Lowes and the location of Lowes which was approved by the Town right next to the Taconic and Route 202, quite frankly this is a much safer installation. The Gomer Court facility is on Gomer Court but it is actually right on Route 6, and that was approved by the Town, so I know there was a comment there. The fact that it is adjacent to the Taconic, there is no regulation that prohibits that. There is no regulation in a highly regulated industry that require some type of setback from the Taconic or any other type of highway, so it is speculation to say that there would be to some cloud of smoke, it is not supported by the experience, read the report. To say that somehow the Taconic would get shut down, again it is in the report, that would not likely happen. And then to say somehow if the Taconic was shut down it would cause some type of significant impact, again that is not the situation, you have Route 202. The Taconic gets shut down because of accidents or ice storms or snow storms all the time and people find their way around it. So I think a lot of those comments on their face and without looking at all the documents, from just a statement might sound okay, but I do not think there is any evidence, certainly not substantial evidence in the record to support those statements. We will put that further in writing and address those issues so that we have something in the record. As far as the public utility standard, we feel very strongly from a legal standpoint on that. My letter has all the citations and the case law. One of them is the general proposition that the generation and distribution of electricity has long been held to be a public utility, and that is a citation to a law review article from 1962. There are facilities that generate electricity, and facilities that distributes it, and the Con Edison grid by law by large part distributes it. So it is not a matter of whether generates electricity, in this case we think it does when it puts back into the grid but it is part of the distribution grid. It is the

way to stabilize the grid, the way to make sure it is stable particularly with the influx of renewable energy because these types of energy sources have to be stores for periods of time when they are not being generated. When there is not enough capacity which happens sometimes you could have a brown out or what utilities do is the fire up extremely dirty from an environmental standpoint Pico plants that is extremely bad for the environment, it is also expensive for the utility to do.

The matter was discussed further.

Chairman Meisterich said every variance that we have we are weighing the public, the private. We have those factors in any variance, it is very germane to go through the legal thing which normally not something that we have to do, so I am just reminding you of that, I know it is in your memo.

Mr. Gaudioso said that is why we go through great lengths for the memo, we put it in writing, or counsel can look at it, you can look at it, and that is why we submitted so many documents. We did know these questions would come up, but we would bring in the experts to talk to you so you can ask the questions, you could hear from them, they are emergency responders, they are experts in the field.

Chairman Meisterich asked are the experts for the project, are they involved in some way.

Mr. Gaudioso said both, so they are experts, their company does this. They get call to incidents, they sit on the Governor task force. They have a tremendous amount of experience. We also retain them for this project to do specific reports for this project, at this location, with this equipment.

Mr. Tripodi said you mentioned that the state laws are going to be changed effective January 1, did you include those changes to that law in the materials.

Mr. Gaudioso said we have a letter in the materials with a layout of what those changes are, and the time we wrote the letter they were the proposed changes, they have now been enacted. We will update that and say these have been enacted, they will be in place and we will meet or exceed each and every single one of them. A lot of the changes go to the items that you folks instinctually raised, the monitoring, the design, and things like that, a lot of those changes were designed for those types of issues. So it is in there and we will make sure we have someone to speak to you about that.

Chairman Meisterich asked if there was any comments from the audience.

Jay Kopsein, resident, said the attorney presentation was very good but he is representing his applicant, he is not representing the Town of Yorktown, and therefore he has got a bias opinion. Yes the Town does have two battery storage facilities but that is old law, we are looking at new law. What happened in the past is not relevant for now. What has he not mentioned, if the unthinkable happens and we have a problem, he has not mentioned air quality, he has not mentioned the contamination in the runoff from when the fire department responds uses water or foam and that winds up in the wetlands. He has not mentioned the need for decontamination of Fire Department equipment, of Police Department equipment, of people, of structure in the area, of the Taconic, and how long that would be closed before it could be decontaminated. If we had to close the Taconic, Route 132 and Route 6, traffic would be a nightmare. I remind the Board prevailing winds from the West which would blow all of the air quality over the Taconic. You have to the memo from the Town Board and the Planning Board. We have not heard from the applicant on risk insurance and what the underwriters say, and how they are going to insure the project to protect the Town and its citizens. Hurricane Sandy was mentioned, we forgot about hurricane Floyd which was worse than Sandy.

The applicant said that they can manually or automatically disconnect from the system, that does not drain the energy from the system, that leaves all of those batteries fully charged to be flooded out. They do not go to ground and discharge, so you got all of that stored up energy that he spoke about that is not going anywhere but being retained. He spoke about his energy experts, and yes I know some of them, and the applicant paid for their report. I did not hear Counselor say Zoning Board hire your own experts and we will pick up the cost for it, and therefore getting an independent view of it. The attorney represents his clients very, very well, and again his opinion is bias and I would hope the Board turns down his request for a use variance.

Mr. Gaudioso said we will respond to it all in writing.

The matter was discussed further.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey,

Gregory, Meisterich, and Tripodi, the matter was adjourned.

Meeting adjourned at 8:40pm
Happy Zoning!