

MINUTES

**Town of Wappinger
Zoning Board of Appeals
August 14, 2018
Time: 7:00PM**

**Town Hall
20 Middlebush Road
Wappinger Falls, NY**

Summarized Minutes

Members:

Mr. Prager	Chairman	Present
Mr. Casella	Co-Chair	Present
Tom DellaCorte	Member	Present
Mr. Bob Haas	Member	Present
Mr. Galotti	Member	Present

Others Present:

Mr. Horan	Town Attorney
Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

SUMMARY

Public Hearing:

Anthony & Angela Ferreira	Adjourned to September 11, 2018
Joseph McGarry	Variance granted
James & Patricia Chappas	Variance granted

Discussion:

Toll Brothers Town Homes	Public Hearing on September 11, 2018
Jeffrey & Tara Davis	Public Hearing on September 11, 2018 Site Visits August 18 & 25, 2018
Roger Clark	Public Hearing on September 11, 2018 Site Visits on August 18 & 25, 2018
Garth & Kathleen Bosman	Variance granted

Mr. Galotti: **Motion to accept the Minutes from July 24, 2018.**
Mr. Haas: Second the Motion.
Vote: All present voted Aye.

Public Hearing:

Appeal No. 18-7649 (Area Variance)

Anthony & Angela Ferreira: Seeking an area variance Section 240-37 of District Regulations in an R20 Zoning District.

-Where **40 feet** to the rear yard property is required, the applicant can only provide **20 feet** for the installation of an above ground 30' round pool, thus requesting a variance of **20 feet**.

The property is located at **26 Carroll Drive** and is identified as **Tax Grid No. 6257-02-905503** in the Town of Wappinger.

Mr. Prager: Bea, are all of the mailings in order?

Mrs. Ogunti: Yes, they are.

Mr. Galotti: **Motion to open the Public Hearing.**
Mr. Haas: Second the Motion.
Vote: All present voted Aye.

Mr. Prager: Come on up. Please state your name for the record.

Mr. Ferreira: Anthony Ferreira.

Mr. Prager: Unfortunately I was not able to attend the last meeting and I understand we had a discussion. For the record and for anybody in the audience that might be interested just explain what you need and why you need it.

Mr. Ferreira: We have a 24 feet round pool and the distance from the pool to the property line does not meet the requirements. The requirement is 40 feet and I only have 20 feet so I'm requesting a variance of an additional 20 feet.

Mr. Prager: We did have a site inspection a couple of weeks ago and I believe we had a question about the site.

Mr. Galotti: Yes, we were talking about the survey because we didn't have an updated survey so you cannot estimate the distance.

Mr. Ferreira: We measured it and it was about 21 feet.

Mr. Prager: Are you sure that's your property line?

Mr. Ferreira: That's my best guess. We were trying to get the survey done prior to this meeting but the surveyor was too busy.

Mr. Prager: Do you think you'll have it done in a couple of weeks?

Mr. Ferreira: I'm almost positive I can have it done within two weeks.

Mr. Prager: We might need that for the record and it's in your favor also.

Mr. Ferreira: I agree this way I don't have a problem later on.

Mr. Prager: Anybody else has any questions?

Mr. Casella: Bob and I will not be here for the August 28th meeting. We did let Bea know already.

Mr. Prager: We will adjourn the public hearing. As soon as you get that survey get it to Mrs. Roberti.

Mrs. Roberti: We have to adjourn it to another date and I recommend September 11th.

Mr. Prager: Is September 11th okay with you?

Mr. Ferreira: September 11th will be fine for the public hearing.

Mr. Casella: Motion to adjourn the Public Hearing to September 11, 2018.

Mr. DellaCorte: Second the Motion.

Vote: All present voted Aye.

Mr. Horan: Is the pool there already?

Mr. Ferreira: Yes.

Mr. Horan: Under the circumstances I think maybe you can make it a condition.

Mrs. Roberti: The reason I recommend it waits under September 11th because you are only going to have three people here.

Appeal No. 18-7650 (Area Variance)

Joseph McGarry: Seeking an area variance Section 240-37 of District Regulations in an R20 Zoning District.

-Where **35 feet** to the front yard property is required, the applicant can only provide **25' 4" feet** for the installation of a 6' x 9' porch, thus requesting a variance of **9' 6" feet**.

The property is located at **15 Pattie Place** and is identified as **Tax Grid No. 6158-04-866043** in the Town of Wappinger.

Mr. Prager: Good evening. Bea, are all of the mailings in order?

Mrs. Ogunti: Yes, they are.

Mr. Casella: **Motion to open the Public Hearing.**

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: Please state your name for the record.

Ms. Neimin: Lisa Neimin with My Way Home Improvements.

Mr. Prager: Again, since I was not here at the last meeting and of course for the public please tell us what you need and why you need it.

Ms. Neimin: We are requesting a variance for a 6' x 9' porch and the requirement is 35 feet and we can only provide 25' 4" and hopefully get a 9' 6' feet variance.

Mr. Prager: I want to add that we did do the site inspection. Anybody on the board has any questions?

Mr. Haas: We had a question about the shed.

Mr. Prager: I asked Mrs. Roberti and the shed has an amnesty. Is there anyone in the audience who would like to speak for or against this variance?

Mr. Casella: **Motion to close the Public Hearing.**

Mr. Haas: Second the Motion.

Vote: All present voted Aye.

Mr. Casella: Motion to grant the variance. Whether it can be achieved by any other feasible means, it really can't. It is not an undesirable change to the character of the neighborhood and the environment. It is somewhat substantial but is a significant improvement to the environment. There is no physical or adverse impact to the environment.

Mr. Galotti: Second the Motion.

Roll Call Vote: Mr. Casella YES
Mr. Galotti YES
Mr. DellaCorte YES
Mr. Haas YES
Mr. Prager: YES

Appeal No. 18-7651 (Area Variance)

James & Patricia Chappas: Seeking an area variance Section 240-37 of District Regulations in an R20 Zoning District.

-Where **20 feet** to the side yard (left) property is required, the applicant can only provide **19 feet** for the construction of a 12' x 16' dining room, thus requesting a variance of **1 foot**.

-Where **20 feet** to the side yard (right) property is required, the applicant can only provide **15 feet** for the construction of an 18' x 36' bedroom, thus requesting a variance of **5 feet**.

The property is located at **47 Carroll Drive** and is identified as **Tax Grid No. 6257-04-817449** in the Town of Wappinger.

Mr. Prager: Bea, are all of the mailings in order?

Mrs. Ogunti: Yes, they are.

Mr. Prager: Good evening Mr. Cappelli.

Mr. Cappelli: Good evening everyone. Just to reiterate for the public. This is an existing raised ranch and we are looking to add 6 feet to the right side of the house. The garage is on the right side. One section of the garage has a second story and the other section has a roof over it. We are looking to go on top of the roof section an additional feet to the right for a couple of bedrooms. In the back left corner we are asking for the 1 foot variance in the left back corner with a new room and dining room.

Mr. Prager: We did have a site inspect and we did look at this property. Is there anybody in the audience who would like to speak for or against this variance?

Mr. Casella: Motion to close the Public Hearing.

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Mr. Galotti: Motion to grant the applicant the variance. The benefit cannot be achieved by any other feasible means. It's not an undesirable change to the neighborhood in fact it is actually going to improve the property. I don't believe the request is substantial and has no adverse physical or environmental effect to the neighborhood.

Mr. Casella: Second the Motion.

Roll Call Vote:

Mr. Casella	YES
Mr. Galotti	YES
Mr. DellaCorte	YES
Mr. Haas	YES
Mr. Prager:	YES

Mr. Prager: These are the discussions now and for anyone who has not been here we ask you to tell us what you need and why you need. We will set a time for a site inspection and set a public hearing.

Discussion:

Appeal No. 18-7653 (Area Variance)

Jeffrey & Tara Davis: Seeking an area variance Section 240-37 of District Regulations in an R40/80 Zoning District.

-Where **50 feet** to the rear yard property is required, the applicant can only provide **26 feet**, thus requesting a variance of **24 feet** for the installation of an in-ground pool.

The property is located at **35 Red Hawk Hollow Road** and is identified as **Tax Grid No. 6359-02-813563** in the Town of Wappinger.

Mr. Prager: Good evening.

Mr. Cappelli: We submitted the site plan along with a narrative. We have a 1 acre site and a very unusual site. The septic system that was designed several years ago by Chazen Companies calls for a super fill septic tank.

Mr. DellaCorte: Could you repeat that.

Mr. Cappelli: The septic was designed for a super fill tank. It was determined that the sub surface was in such poor condition that the only way they could make it a buildable lot is to input 6 feet of fill. This was part of a subdivision and was approved as a subdivision with a minimal septic system on this lot and many other lots. After several of the houses were built it came to the attention of the Health Department that what was on their

approved drawing wasn't what they were digging. So they halted construction on the lots and they asked for them to be re-engineered. This lot and several others were victim to having to be re-designed.

Mr. Cappelli continues his overview of the project.

Mr. Prager: What's the part that says garage?

Mr. Horan: That's the floor level.

Mr. Cappelli: That's the elevation and that's the shape of the house. We have a building permit and the house is in the process of being built. The only location for this pool is behind the house tucked into the hill with some retaining walls.

Mr. Casella: Could the pool be moved closer to the house?

Mr. Cappelli: I have 16 feet, could I move it closer to the house but you just don't want to walk right out the door and jump into the pool.

Mr. Galotti: Is there a minimum setback from the house?

Mr. Prager: No, there is no minimum.

Mr. Cappelli: I want to have somewhat of a backyard because I have no backyard. I can't do anything on top of my super fill and I'm corral by my hill and retaining wall and my footprint and my swimming pool.

Mr. Casella: The retaining wall is on the right hand side.

Mr. Prager: The retaining wall goes all the way around.

Mr. Cappelli: To minimize the height of the retaining wall in the back I have a double decker.

Mr. Horan: Al, what's behind the pool?

Mr. Cappelli: There's a driveway that goes to another house.

Mr. Horan: That's up higher.

Mr. Cappelli: Yes.

- Mr. Prager: So we will schedule the site inspections for September 18th & 25th.
- Mr. Casella: I assume you have it staked out?
- Mr. Cappelli: It's going to be tough between the footings but I'll see between now and Saturday if I can somehow stake it because now it's a construction site.
- Mr. Casella: You must have some marking in the back.
- Mr. Cappelli: Yes, because I have a survey.
- Mr. Casella: My point is if you have a survey you should be able to stake it.
- Mr. Galotti: Just identify the property line.
- Mr. Cappelli: I can probably identify the property line but again it's a construction site.
- Mr. Prager: That's good just to give us an idea.
- Mr. Cappelli: Not a problem. So what time you want to be there?
- Mr. Casella: About 9:00 a.m.
- Mr. Horan: I have one question regarding the retaining wall. So it's Barbara's interpretation that no variance is needed for the location of the retaining walls?
- Mr. Prager: Yes.
- Mrs. Roberti: Which public hearing date are you going for since we will only have three people here for August 28th.
- Mr. Cappelli: I can wait until September 11th since I'm not in a rush.
- Mrs. Ogunti: I'll have to change the paperwork.
- Mr. Prager: The public hearing will be set for September 11th and site visits will be for September 18th and 25th.
- Mr. Haas:** **Motion to set the Public Hearing for September 11, 2018.**
Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Appeal No. 18-7654 (Area Variance)

Roger Clark: Seeking an area variance Section 240-37 and 240-30(B) of District Regulations in an R20 Zoning District.

-Where **20 feet** to the side yard property is required, the applicant can only provide **18' 6"**, thus requesting a variance of **1' 4"** for an 896 square feet garage.

-Where **35 feet** to the front yard property is required, the applicant can only provide **10 feet**, thus requesting a variance of **25 feet** for an 896 square feet garage.

-Where **no more than two accessory buildings shall be permitted in any 1-Family Residence District. No such accessory building shall have a footprint greater than 600 square feet nor a height in excess of 20 feet.** The applicant is proposing a **32' x 28' (896 sf.)** garage, thus requesting a variance of **296 square feet**.

The property is location at **1 Sky Top Drive** and is identified as **Tax Grid No. 6056-01-259875** in the Town of Wappinger.

Mr. Prager: Good evening. Please come up and tell us a little about what you need and why you need it.

Mr. Clark: Hello, my name is Roger Clark and I own a residence at 1 Sky Top Drive. I would like to demolish the existing garage and install a square garage. There are two additions in the back that have been built over time. The road front footprint of the garage is exactly the same and aligns with the existing garage. It might seem too close to the road but it's right on top of the existing footing.

Mr. Prager: On here it says one story framed and also one half footprint.

Mr. Clark: Actually it's over the existing building is about 680 square feet and 29'x16' with a 22'x11' addition in the back.

Mr. Prager: Mrs. Roberti looks like you have a point you want to make.

Mrs. Roberti: We are not really sure when the first part of the structure went up by our records it might have been in the 1980s or predated zoning. So we really don't know and it doesn't show up on the survey from the 1980s but they've added different things to it over the years. He's now taking it down and starting with a new structure. When he brought in the initial package the measurements were to the road. So when we measured off what he doesn't actual own up to the front it was close to 20 feet that leaves him only 10 feet of his own property that the garage would be starting at.

Mr. Haas: Isn't it in the front yard as well?

- Mrs. Roberti: Yes.
- Mr. Clark: My legal address is 1 Sky Top Drive and the front of the house looks at River Road. This was an existing structure and I believe it was originally built as a single car garage and in 1984 became a 3-car garage.
- Mr. Prager: Who did these additions? Was it before you bought it?
- Mr. Clark: I have no idea.
- Mr. Prager: We don't have any record of any permit?
- Mrs. Roberti: There were some back in the day so I can't speak to how this occur. Bob just brought up a good point there would be a fourth variance for the front yard so we have to add that.
- Mr. Prager: We definitely have to look at this one.
- Mr. DellaCorte: The appeal said if no more than two accessory buildings shall be permitted. We really only going to have one.
- Mrs. Roberti: It's the way the code prints and I think he also has a shed on it.
- Mr. Prager: Is the shed okay?
- Mrs. Roberti: It's printed out no more than two buildings but no greater than 600 square feet and can't be higher than 20 feet. How high is this going to be?
- Mr. Clark: About 16 feet tall.
- Mrs. Roberti: It didn't look like it was taller than that.
- Mr. Prager: Can you guys make August 18th at 9:00am?
- Mr. Clark: If I have to be there I'll be there.
- Mr. Prager: So we are going to set the site inspections for August 18th and 25th and the Public Hearing will be on September 11th.

Appeal No. 18-7645 (Area Variance)

Garth & Kathleen Bosman: To vote on an area variance Section 240-21 F (1) of District Regulations in an R40 Zoning District.

-Where fences in required yards shall not exceed **6 feet** in height, the applicant is seeking fencing **9 feet** in height, thus requesting a variance of **3 feet**.

The property is located at **86 Ketchamtown Road** and is identified as **Tax Grid No. 6157-03-150311** in the Town of Wappinger.

Mr. Prager: We have a decision prepared by our attorney which I will now read.

Mr. Prager reads the decision.

Mr. Prager: We now need a vote.

Mr. McDermitt: Before you vote can I speak?

Mr. Prager: Okay.

Mr. McDermitt: There's a serious flaw in the decision for the fact that there has been no reference in the decision that Mr. Lopane put up the fencing along the property this board had suggested that he do. He did put the fencing as requested. There's a need for the fence because it prevents the ATVs from getting on the property. There's no mention of that in the decision.

Mr. Horan: I think it would be appropriate to add that.

Mr. Prager: We did go over and saw that the fence and gate were in.

Mr. McDermitt: I appreciate you taking time to read the decision.

Mr. Prager: We have not voted yet.

Mr. McDermitt: I realize that but if you listen to the comments made by the residents including the applicant is that we need the fence because of the ATVs. If Mr. Lopane put up the fence to prevent ATVs, the very basis for the application is discounted. You never had my worth in as a factual statement and the analysis makes the decision flaw.

Mr. Haas: Is this a public hearing?

Mr. McDermitt: I'm representing Mr. Lopane.

- Mr. Horan: Again, I believe the fence was erected after the public hearing took place.
- Mr. Pager: Was it?
- Mr. McDermitt: It's a fact and you know so to ignore it is doing great disservice for Mr. Lopane. To not reference and include as part of the analysis is a serious problem.
- Mr. Prager: We understand your frustration. Do you have anything else to say?
- Mr. McDermitt: Please allow me to make one other point before granting the variance. Personally, I don't think the board is prepared to do it. If you do grant it, I request a specific condition that it be a neighbor friendly fence. That's what I've been asking for. Thank you.
- Mr. Prager: Thank you.
- Mr. DeFazio: Mr. Chairman it's up to you whether you want me to respond. I think the decision has been made and there's a vote up and you've had the public hearing. I can go over this all day and hours and hours of litigation. I don't really want to because the public hearing is over and you've made your decision.
- Mr. McDermitt: I don't want to either.
- Mr. DeFazio: The public hearing is over.
- Mr. Horan: It's now up to the board as to what they want to do. There have been changes that have been made with respect to the property since the public hearing. If the board wishes to reopen the public hearing, I believe that would probably require the consent of the applicant. There are some factual issues regarding the fence that was put on the property. The fact that the fence was put in does not necessarily eliminate all of the issues. The location of the fence, the effectiveness of the fence and just the fact that the fence is there is not necessarily germane.
- Mr. McDermitt: You are not referring to the fence per say.
- Mr. Horan: I mean the gate.

- Mr. Casella: Since the fence has been put up, I notice there's no trespassing sign. If you see any activity at all I would suggest once that fence is up people will stop going on the property.
- Mr. Bosman: What we do know is that the county put up a gate and it was knocked down twice.
- Mrs. Bosman: Furthermore, where the wooden fence is there's a big puddle and when it rains there aren't as many ATVs. If you look at the map it's all wetlands. They still go in and there are loads of places where they go in.
- Mr. Prager: I let everybody talk now that's it.
- Mr. McDermitt: Mr. Lopane is also a taxpayer. He may not live there but he's also a taxpayer.
- Mr. Horan: In some respect the issue is related to the physical characteristics of the property. It's not necessarily based on the individual owners of the various pieces because the ownership of the property can change. The determination would be based on the typography of the property. The fact that there is a powerline nearby the record indicates it's an issue. The determination that the board makes is in essence what effects does the granting of the variance have upon the character of the neighborhood? For the record the gate on the adjacent property was put in.
- Mr. DellaCorte: Do we need to add that verbiage to our decision?
- Mr. Horan: You can certainly amend the decision to note that's there.
- Mr. DellaCorte: Prior to voting?
- Mr. Horan: Yes.
- Mr. McDermitt: It needs to be a neighbor friendly fence if they grant the application.
- Mr. Casella: Motion to amend the decision to include the installation of the gate.
- Mr. Horan: With respect to the type of fence the plan shows a fence which is constructed out of red cedar, planks on two sides. It's not a stockade fence with a good side and a bad side.

Mrs. Roberti: Jim, could you give us the verbiage you want so it can go into the record.

Mr. Horan: If I may suggest that subsequent to the close of the public hearing and prior to the date of this decision. The abutting property owner Mr. Lopane erected a gate on his property and installed no trespassing signs.

Mr. Casella: Motion to amend the decision to reflect that subsequent to the close of the public hearing and prior to the date of this decision the abutting property owner, Mr. Lopane erected a gate on his property and installed no trespassing signs.

Mr. Haas: Second the Motion.
Vote: All present voted Aye.

Mr. McDermitt: With respect to the fence, I have the back side of the fence.

Mr. Horan: It's not a typical.

Mr. McDermitt: It's still the bad side of the fence.

Mr. Prager: Now I will entertain to either grant or deny this variance.

Mr. Galotti: Motion to grant the variance based on the narrative that Chairman Prager read.

Mr. Haas: Second the Motion.

Roll Call Vote: Mr. Casella: YES, and I would like to see if we can put a condition on it before we vote Yes or No. I want to ensure that the fence is appealing to both the Mr. Bosman and Mr. Lopane. There was a suggestion to have staggered fencing so both sides are appealing.

Mr. Galotti: YES

Mr. DellaCorte: NO

Mr. Haas: YES

Mr. Prager: NO

Mr. Horan: It's a 3 to 2 vote so it is granted.

Appeal No. 18-7652 (Area Variance)

Toll Brothers Town Homes: Seeking an area variance Section 240-37 of District Regulations in an R-MF5 Zoning District.

-Where **75 feet** to a county road is required, the applicant can only provide **55 feet** for the construction of town homes, thus requesting a variance of **20 feet**.

The property is located at **41 Stratford Lane** and is identified as **Tax Grid No. 6257-02-842904** in the Town of Wappinger.

Mr. Prager: Good evening.

Mr. Galotti: Hello, I'm Peter Galotti, project manager for Toll Brothers at the community known as Regency of Wappinger. We are seeking a 20 feet variance off All Angels Hills Road. Just to give you a little background, the original site plan for the job was based on basic or standard size houses. So you get an idea, this is the entire site. The townhouses are the lighter colored ones and the single families are here and we are only talking about 7 townhomes right here that borders All Angels Hills Road. There is currently a 75 feet setback line off All Angels Hills Road to the rear yard to those townhouses. We are seeking a 20 feet variance to allow a 55 feet setback. The standard house boxes were approved to fit within the setback guidelines. When these buyers ultimately buy these homes they put a deck or maybe a family room because the setback line is currently tight to those townhomes. There is no relief at all to add something to the backyard. Most folks that buy these townhomes put a deck on the back of the homes run into the 75 feet setback.

Mr. Galotti continues his overview of the project.

Mr. Haas: I drove back there the other day and there was a big berm and you cannot see the houses from All Angels.

Mr. Galotti: That would be me.

Mr. Haas: You guys have been in this business a very long time, right?

Mr. Galotti: We sure have.

Mr. Haas: How come you don't know that people add things to the standard box townhouses and there's nothing sticking out at the back?

Mr. Galotti: Not being part of the original approval process I can't really answer that question.

- Mr. Haas: What a way to ease your way out.
- Mr. Galotti: I'm a politician. It is a very good legitimate question and I wish I had a very good legitimate answer. What Bob is referring to here is a big berm that blockades the site vision.
- Mr. Haas: Are you going to take that away?
- Mr. Galotti: No, the berm is staying.
- Mr. Horan: Is the berm on the lot?
- Mrs. Roberti: The berm is on the County property, right?
- Mr. Galotti: Yes, I would guess.
- Mrs. Roberti: It's after the setback closer to the road.
- Mr. Prager: Is that 50 feet setback on the other side is okay?
- Mr. Galotti: The side and the front are fine. It's just the rear.
- Mr. Casella: Are you going to stake it out?
- Mr. Galotti: Yes, I'm going to have our guys stake out the existing 75 feet setback line and 55 feet setback line.
- Mr. Prager: We will set the site inspection for August 18th and 25th and the public hearing for September 11th.
- Mrs. Roberti: This is just a friendly suggestion since two of the gentlemen are not going to be here on August 28th and you've set everything for September 11th. Do you want to cancel August 28th?
- Mrs. Ogunti: Since all of the public hearings have been set for September 11th and nothing is currently schedule for August 28th we probably should cancel.
- Mrs. Roberti: It doesn't make sense to just come in for one item.
- Mr. Prager: I will entertain a motion to cancel the August 28th meeting.
- Mr. Casella: Motion to cancel the August 28, 2018 ZBA meeting and reconvene on September 11, 2018.**
- Mr. Haas: Second the Motion.

Vote: All present voted Aye.

Mr. Casella:
Mr. DellaCorte:
Vote:

Motion to adjourn.
Second the Motion.
All present voted Aye.

Respectfully Submitted,

Adjourned: 8:10 pm

Bea Ogunti
Secretary
Zoning Board of Appeals