

MINUTES

**Town of Wappinger
Zoning Board of Appeals
April 09, 2019
Time: 7:00PM**

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

Summarized Minutes

Members:

Mr. Casella	Co-Chair	Present
Mr. DellaCorte	Member	Present
Mr. Galotti	Member	Present

Others Present:

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

SUMMARY

Public Hearing:

Theodore Mourges & Melissa Anzovino	Variance Granted
-------------------------------------	------------------

Discussion:

Louis & Debra Camacho	Public Hearing on April 23, 2019
-----------------------	----------------------------------

479 All Angels Hill Road Apartment House	Site visit on April 20, 2019 Resubmit
--	--

Mr. Galotti: **Motion to accept the Minutes from March 26, 2019.**
Mr. DellaCorte: Second the Motion.
Vote: All present voted Aye.

Public Hearing:

Appeal No. 19-7671 (Variance)

Theodore Mourges & Melissa Anzovino: Seeking an area variance Section 240-37 of the District Regulations in an R20 Zoning District.

-Where **40 feet** is required to the side property line, the applicant can provide **21 feet** for the installation of an above ground pool, thus requesting a variance of **19 feet**.

The property is located at **27 Dennis Road** and is identified as **Tax Grid No. 6258-01-112632** in the Town of Wappinger.

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

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

Mrs. Ogunti: Yes, they are.

Mr. Casella: Come up and explain to the audience what you would like.

Mr. Mourges: Again, thank you for hearing the variance. Where the pool is going I need 40 feet to the side property line and I can provide 21 feet. The typography of my back yard is such that the pool is not going to fit and as far as drainage goes behind the house is all woods. I'm bordered by a person who owns about 5 acres that surrounds me and the adjoining property owns 30 acres. I am not encroaching on anybody and it's the only real spot in my backyard that I can put it. The board came out and saw what I plan to do.

Mr. Casella: Are there any questions from any of the board members? We all had the opportunity to meet Ted at his house and he showed us the property in the back and the uniqueness of the layout of the land there. Looks like the best spot for the pool.

Is there anyone in the audience who would like to speak for or against the variance? Now, can I have a motion to close the public hearing?

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

There were also some discussions about possibly attaching the garage to the house and the setbacks will change because it will be part of the house. We explored those possibilities and came up with the decision to reduce the size of the garage to 26' x 26' pushing it back 67 feet from the property line.

- Mr. Casella: I really appreciate the fact that you took our advice reducing to 6.96 feet. We certainly appreciate that you did that. It took your variance down significantly and you are now under the 20 feet height requirement. Therefore, you don't need that variance.
- Mr. DellaCorte: I didn't see the height at all. How did you get that?
- Mr. Casella: Barbara, actually give that to me.
- Mr. DellaCorte: Is the garage 16 feet high now?
- Mr. Interrante: We might increase that by a foot but as long as we keep it under 20 feet you are okay, right?
- Mr. DellaCorte: Is that the width?
- Mr. Casella: He cannot exceed the 20 feet height.
- Mrs. Roberti: With all of the changes, there is a fourth variance from the front yard to the garage.
- Mr. Interrante: I had that in the package.
- Mrs. Roberti: So that was missed and by bringing it to their attention Bea can adjust your public hearing notice and you can move forward. It is not a hardship because we caught it tonight.
- Mr. Galotti: What was that again, Barbara?
- Mrs. Roberti: They need a front yard setback for the porch and for the garage they need it for the size, the side yard and the front yard. The front yard variance is in there but we missed it when we were changing all of the numbers.
- Mr. Horan: That's because it's a County road.
- Mr. Casella: Is there a way to amend it or can he amend it the next time he's here?
- Mrs. Roberti: He amended in his application but we missed it on the agenda. As long as we noticed it here Bea will add

that to the public hearing notices before they are sent to the newspaper and before Mrs. Camacho mails it out.

Mr. Casella: I don't want to see him penalized for our error.

Mrs. Roberti: No, there's no problem. It's a clerical error we can correct overnight.

Mr. Casella: So we will set the public hearing for April 23, 2019.

Mr. Interrante: Thank you.

Appeal No. 19-7673 (Variance)

479 All Angels Hill Road Apartment House: Seeking an area variance Sections 240-56 (B) and 240-56 (C) (D) of the District Regulations in an HM Zoning District.

-Where there shall be no increase in the number of permitted dwelling units resulting from additions made after 1962, the applicant is seeking a variance of building additions constructed after 1962.

-Where a minimum lot of **40,000 sf.** is required, the applicant can provide **22,098 sf.**, thus requesting a variance of **17,902 sf.**

-Where there shall be no more than one dwelling unit for each **20,000 sf.** of lot area, the applicant can only provide **22,098 sf.**, thus requesting a variance of **57,902 sf.**

The property is located at **479 All Angels Hill Road** and is identified as **Tax Grid No. 6357-03-210027** in the Town of Wappinger.

Present: Andrew Milliken – Architect
Abbey Josiah – Real Estate Agent

Mr. Casella: Hello gentlemen. Who do we have tonight representing the property?

Mr. Josiah: I am Abbey Josiah representing the owner, Asad Batarseh.

Mr. Milliken: I'm Andrew Milliken the architect and I'm working on the project.

Mr. Josiah: So why don't you tell us a little bit about the project and why you want it.

Mr. Milliken: Currently there's a building with 4,500 sf. that has one apartment on the second floor. The ground floor is permitted to be a ceramic studio which it has been since the 1980s. The current owner is hoping to get more utility out of the building by converting the ceramic studio into apartments.

Mr. DellaCorte: So you are Abbey and the owner is Batarseh, and you are?

- Mr. Josiah: I'm the real estate agent.
- Mr. Milliken: I'm the architect.
- Mr. Casella: Have you received the Health Department approval? This is going to require Health Department approval. We want to make sure you have that because we don't want to waste your time and money here.
- Mr. Milliken: We have a site engineer who has been working on the project and he has designed a new septic system for the backyard with expansion. He talked to the Health Department and they apparently won't formally review the project until there's some assurance from the Town that we can move forward.
- Mr. Casella: We need them to approve.
- Mr. Horan: If this board would grant the variance it would have to go to the Planning Board anyway. Our code for site plan requires to show any structures, wells or septic within 200 feet of the lot. That's primarily there for the Health Department to look at. In looking at the drawings there are some concerns with the separation from the well and septic on this lot. There doesn't seem to be a lot of information on the adjacent lots.
- Mr. Milliken: That's what the site engineer is looking at.
- Mr. Horan: To the extent the site plan gets revised to have that and you submit that to us we will have the Town Engineer look at it and we will also reach out to the County Health Department. That's really the step where we should go here.
- Mr. Milliken: We are aware of all of that.
- Mr. Casella: Currently the well is within 200 feet. Is that one of the issues?
- Mr. Horan: Separation between existing well and septic is different than new well and septic. There are a lot of specifics with that and in some cases you might have to show the property on the opposite side of the street. That's the discussion the site engineer should have with the Health Department.
- Mr. Casella: What you need to do is get the site plan right and expand it so you can see the adjacent properties and where the well and septic are. That's the first step.
- Mr. Horan: That's the biggest concern the Town Engineer had because it is a fairly limited site. If it has to be moved and put under the parking lot there's a different design requirement. It's a very small lot and the well and septic is based on bedroom count.

They may be able to get a septic on the site if they reduced the bedroom count.

- Mr. Josiah: That was actually the first step that we took. The Health Department has a rough draft of the application and have reviewed it but could not formally give us the go ahead. They basically gave us their blessing to do so. The requirement to handle the number of bedrooms we require is being designed.
- Mr. Horan: As far as designing a system and sizing it the question is going to be placement on the lot based on separation on other factors.
- Mr. Josiah: I understand.
- Mr. Milliken: Naturally we have to justify all of that. We are confident that we do have the distances. There's a flag lot so there's separation on that side. We have some confidence that we are able to make this happen.
- Mr. Horan: If you would broaden the site plan to capture that environment. Is there any new building area being added or is it just the renovation of the existing building?
- Mr. Milliken: We are not expanding the building in any way.
- Mr. Galotti: So it's the same footprint.
- Mr. Horan: Are the bones good?
- Mr. Milliken: Yes, structurally it's fine.
- Mr. Horan: We just had an incident where we granted a use variance and the buildings that were there weren't too good.
- Mr. Milliken: Barbara, you accompanied Abbey to see it.
- Mrs. Roberti: Susan and I were out there and on a quick inspection. I think you are going to need to sprinkler it.
- Mr. Josiah: Yes, we are aware of that.
- Mrs. Roberti: Susan Dao, the Building Inspector and I literally walked through it. She didn't investigate it in the capacity of a building inspector to see its bones. You can ask her when you receive this variance as you go to the Planning Board to continue you could ask her to do a site visit with your professionals. So that it is a meaningful day so you can start working on plans with the intent that this may get approved.

- Mr. Milliken: Yes, we wanted to make sure the building worked the way we wanted it to work so we are ahead of the game.
- Mr. Casella: So the first order of business is for them to get a new site plan.
- Mrs. Roberti: So you submitted a site plan application. Does that show the surrounding properties?
- Mr. Milliken: It will this next go around.
- Mrs. Roberti: So the one you just submitted doesn't show that?
- Mr. Milliken: You are asking for the design of the system?
- Mrs. Roberti: The first time you bring in how ever many copies, Bea is going to process it and a copy is going to go to the Health Department, Dutchess County Planning and to whatever State road. That's going to be their introduction that the Town has accepted your application and based on that they will start reviewing it for you. As Jim pointed out for us to send a comprehensive plan so they can see the other properties as well.
- Mr. Horan: We can also refer it to Dutchess County Planning on the variance application before you submit the site plan application to the Planning Board. You may not want to go through the process with the Planning Board until you find out how this board is going to act on the variance.
- Mr. Milliken: Our site engineer isn't here obviously but did informally talk to someone at the Board of Health and got a reasonable assurance that this is going to work.
- Mr. Casella: How do we want to handle this?
- Mr. Horan: If they've submitted a Planning Board application that's going to the Health Department as long as that has the 200 feet that they need we will wait for the comments on that. This board can defer action on that until we hear from the Health Department.
- Mr. Galotti: A revised site plan was already submitted to the Planning Board?
- Mrs. Roberti: Yes.
- Mr. Casella: Do you think you can be back in two weeks? How long is it going to take?
- Mr. Milliken: Yes, two weeks will be better.

Mrs. Roberti: Would you prefer us not to send this out because once Bea sends this out to the consultants, they are going to do a review. If this is not complete enough you should wait because you are paying them one review. Rather than do this review and have a lot of incomplete. We will wait on sending it out until you resubmit.

Mr. Josiah: Okay.

Mrs. Roberti: At that point Mrs. Ogunti mails it out to the Health Department. They won't get in touch with us anymore and it's up to you to notify them. It will take more than a week to get an answer.

Mr. Josiah: From who?

Mrs. Roberti: The Health Department.

Mr. Casella: So you want to try for the first meeting in May?

Mrs. Roberti: We will put them on the next available agenda once they submit.

Mr. Casella: Again, work with Barbara and Bea to figure out the best time to be back here.

Mr. Horan: The best way to do it is to do the revised site plan, submit it to Bea and Barbara and we will refer that to the County on the variance application. Not on the Planning Board application.

Mrs. Roberti: Then it won't get to the Health Department.

Mr. Horan: We can send it to them on the variance application then we will wait for their comments with respect to that.

Mr. Milliken: So there's no conditional approval for the variance?

Mr. Casella: No.

Mr. DellaCorte: I think this variance you are asking for is astoundingly very large. You are requesting a variance of 57,000 square feet?

Mr. Milliken: I understand and we are just working with the lot as it currently exists. It has been there and used as a ceramic studio. The owner is asking to use the property in a more effective way.

Mr. DellaCorte: I understand but in your variance application Part E: How did your need for an area variance come about? Is your difficulty self-created? Please explain. Your response: The need for an area variance has arisen from the desire to supply the

Town of Wappinger with additional affordable housing options, which is higher in demand than a ceramic studio. I understand that but when you are putting in three more apartments. What I'm saying is that it is very large.

Mr. Milliken: There must have been a reason why these regulations were written the way they are.

Mr. Horan: This particular section is zoned HM which doesn't really contemplate this particular use. What it contemplates is a typical ground floor commercial space with apartments above or behind. That's what is contemplated in this zone. This particular use was created probably in the 1960s.

Mrs. Roberti: To go a step further, besides mixed use it goes to residential neighborhoods. You could be in a very dense residential section that has a larger and older home that was built in the 1930s or 1940s that somebody wants to convert. To protect the neighborhood they put these things in place. This was a very small cottage back before 1962 so these additions came in the last few decades. It was just a ceramic studio and an apartment but I think that's been out for quite some time. In the back is a very large area but it was built for storage. It never contemplated habitable space when that rear addition was built. The code was written to protect residential sections from having old large tutors or colonials made into multi-family. They put criteria in to protect family neighborhoods.

Mr. Horan: This section actually predates the hamlet mixed use zone. The Hamlet Mixed use zone is rather a recent creation and has been in the code at least since the 1970s. The other issue is because it's a hamlet mixed use except they retain a commercial use on the property. What is a permitted in this zone is commercial use with apartments. That's the mixed use aspect in that zone.

Mr. Casella: It is permissible but the variance is large.

Mr. Horan: The reason why they go this route is in that zoning district it does not permit strictly multi-family.

Mr. Casella: Are you planning on adding some type of commercial?

Mr. Milliken: We explored that option.

Mr. Horan: The code permits but that's not what's on the table. The other way you could look at this is they are requesting a use variance for a permitted multi-family use. This is an area variance so it's review on a lesser standard than a use variance.

Discussion continues.

Mr. Casella:

Is there anything else you guys want to discuss?

Mr. Horan:

I don't have anything else.

Mr. Casella:

I just want to make sure they know everything they need to do before they walk out tonight and they don't have to come back 100 times.

Mrs. Roberti:

When you resubmit showing the surrounding properties, it gets submitted to Dutchess County Planning and the Health Department. If for whatever reason you don't get approval or you have to change your application to a lesser number or whatever you can get approval for. It is better to do this now before we submit to the Planning Board with all of those fees and escrows.

Mr. Milliken:

That's why we wanted to talk to you first.

Mrs. Roberti:

We will hold on to that and we won't submit.

Mr. Horan:

That is an option on the table and you can talk to Barbara about this. If you retain a small commercial component you can get some of your apartments. That's not necessarily obvious to our code. The intent of the zoning district is to reuse the existing buildings to create a mixture of uses.

Mr. Casella:

If they do that don't they lose some of the apartments?

Mrs. Roberti:

The ceramic studio was redone with offices and it's quite charming in there. What Jim is saying if you would use that for real estate office or something and just have three apartments that would be the mixed use? You are still held to the Health Department standard. That actually might not work because of the parking.

Mr. Milliken:

We can investigate options.

Mrs. Roberti:

There are other options. The front area that you would use for commercial, the existing apartment is up stairs?

Mr. Milliken:

Yes.

Mrs. Roberti:

You have two in the rear, the garage part and above where the storage is.

Mr. Josiah:

The garage part and above would be one and the remaining area adjacent where the office is another one.

- Mrs. Roberti: That's another option now you have to look at parking because it will increase. Health Department is going to rule here on everything.
- Mr. Milliken: Do you mean to say there's another option to the zoning code were the variance could be change of use and it wouldn't go under this 240-56 code?
- Mr. Horan: Correct, but you now have to meet different standards regarding return on investments and everything else. This is an area variance and you take it out now you are looking at different standards as a use variance.
- Mrs. Roberti: It is harder to get.
- Mr. Horan: Again, you have to have a discussion with Barbara. For those purposes there may be variances. It's an existing building and you are not increasing any of the dimensional nonconformities on the site. It is a permitted use in the zone and I don't think you would necessarily need lot coverage. The only issue probably would be parking and the use is permitted in the zone. I believe there's something in the code that gives you the ratio of commercial to residential but I don't have it in front of me. That doesn't require a use variance because it's a permitted use in the zone and that gives you at least some flexibility. That would reduce the septic requirement for the Health Department if you have a commercial use with low water use on the site.
- Mr. Milliken: We did notice that when we looked at retaining the office.
- Mr. Horan: That's an option on the table that would take away a lot of these requirements.
- Mr. Milliken: That's what we are trying to do to have it make sense and not push it.
- Mrs. Roberti: Again, before you change track should you decide you will need septic for three apartments and a small amount for the commercial. Again, it's the Health Department ruling one way or the other. If you can get through there and say they give you only three apartments and you want to change it to the mixed use, see if you can get the parking. Then you have to go to the Planning Board but with two spots in the front you will be too close to the road. You have to make sure that works then you trigger other things for the commercial use. You have to weigh that but the Health Department has to be defined for you first.
- Mr. Horan: If you work out a mixed use that doesn't require a variance, you can withdraw the application and proceed before the Planning Board.

- Mr. Casella: So you have options.
- Mr. Milliken: That's why we wanted to talk to you.
- Mr. DellaCorte: So what happens now? What do we do?
- Mr. Horan: They are going to do a site plan but the easiest thing right now would be to proceed at least based on this. We do the site plan as we discussed showing the adjacent properties. We will send it over to the Health Department and Dutchess County Planning because it's on a County road. Between the Health Department and the Town Engineer come up with a use that works. I think that makes more sense.
- Mr. Casella: So if the Health Department doesn't work they go with the use variance?
- Mr. Horan: If the Health Department doesn't work the use variance probably won't work either. You probably have to go down to a two family.
- Mr. Milliken: We knew earlier on that would be the driving factor for this whole project.
- Mr. Josiah: We did explore all of these options and to answer your question, yes the variance is a lot but that was the only alternative we had. This was the most viable option for the owner having three apartments and whatever business that might go in there. You already have the gas station, you have the car wash across the street and you have the auto body shop then to add another business. We know that we have to put a sprinkler system and expand so a lot was put into that. So overall in totality we felt this would be the best for the building and the area. We hope that would be taken into consideration. I understand that the variance is large but that was the thinking.
- Mr. Horan: They have to play the ball where it lies.
- Mr. DellaCorte: As the Zoning Board of Appeals we look at variances and grant them on different aspects of what you are asking. One of them is size.
- Mr. Milliken: Okay, that makes sense.
- Mr. Horan: If he went for a straight use variance I don't think he would need any area variances.
- Mrs. Roberti: Probably not because everything is existing.

Mr. Horan: If he went to a use variance for a multi-family since it's an existing building he probably wouldn't need any area variances but they have to show reasonable rate of return for the uses that are permitted in this zone.

Mr. DellaCorte: So the next meeting for this is?

Mrs. Roberti: We are not going to put them on an agenda and I will tell you that we very rarely get comments from the Health Department. From the time you submit to Bea within a week it would have gone out to the Health Department so the second week you can start contacting them to work directly with them. They are not going to send us anything until you are down the road in the process.

Mr. Josiah: With respect to this board, what is preventing us from moving forward? I know we talked about options but I would like for you guys to come and see the building for what we are asking in contrast to weigh in.

Mr. Horan: A site visit makes sense.

Mr. Casella: Let's schedule a site visit for Saturday, April 20th at 9:00am.

Mrs. Roberti: You might feel you are not getting far but I think for the owner not putting all the fees in the Planning Board and staying here and seeing what you can go forward with makes a lot more sense.

Mr. Josiah: Absolutely and I agree that's why I'm requesting that you come and see the building.

Mr. Casella: We typically do site visits.

Mr. Milliken: It makes sense to see the property.

Mr. Josiah: Thank you.

Mr. Galotti: **Motion to adjourn.**
Mr. DellaCorte: Second the Motion.
Vote: All present voted Aye.

Respectfully Submitted,

Adjourned: 7:48 pm

Bea Ogunti
Secretary
Zoning Board of Appeals