

Draft **MINUTES**

**Town of Wappinger
Zoning Board of Appeals
November 22, 2011**

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

Summarized Minutes

Members:

Mr. Prager,	Chairman
Mr. Dellacorte,	Member
Mr. Kuzmich,	Member

Absent :

Mr. Casella,	Member
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Others Present:

Mr. James Horan,	Attorney
Mrs. Roberti,	Zoning Administrator
Mrs. Dao,	Secretary

SUMMARY

Michael and Martha Drago:

- Discussion. PH on 12-13-11.

228 Myers Corners Road, LLC:

- Public Hearing opened & closed with written comments accepted until December 9, 2011. Decision on December 13, 2011.

Discussion:

Appeal No. 11-7449

Michael and Martha Drago: Seeking a variance of Section 240-37 of District Zoning Regulations for an R-20 Zoning District.

-Where **a front yard setback of 75 feet is required**, the applicant is **proposing a front yard setback of 55.23 feet**, to allow for the construction of a front porch, **thus requesting a variance of 19.77 feet**.

The property is located at **237 All Angels Hill Road** and is identified as **Tax Grid No. 6257-02-851938** in the Town of Wappinger.

Mr. Prager: Please explain why you are here.

Mr. Drago: We are proposing a small portico over the entrance to protect from the weather and add esthetics to our home.

Mr. Prager: I see you've submitted a sample picture of a proposed portico.

Mr. Drago: This is not a sit on porch. It's just a portico about 4 1/2' X 6'

Mr. Prager: A site plan was received. Is it by the brick walkway?

Mr. Drago: Yes.

Mr. Dellacorte: The roof will go out as far as the stairwell?

Mr. Drago: Just covering the landing to the top step.

Mr. Prager: We will have a site inspection on Saturday December 10, 2011 at 10:00am. The public hearing will be on December 13, 2011.

Mr. Drago: Thank you.

Public Hearing:

Appeal No. 11-7438 – At the request of **228 Myers Corners Road, LLC** – Who is seeking an Interpretation of Section 240-16: Nonconforming uses and structures, Town of Wappinger Zoning Code as to the use of the 6.27 acres of property, 3.5 acres are in the NB Zone, and 2.77 acres are in the R-40 Zone. The property is located **228 Myers Corners Road** and is identified as **Tax Grid No. 6258-02-702520** in the Town of Wappinger.

Mr. Prager: Are all the mailings in order?

Mrs. Dao: Yes they are.

Mr. Kuzmicz: **Motion to open the public hearing.**

Mr. Dellacorte: Second the motion.

Vote: All present voted aye.

Mr. Prager: Tonight we will be swearing people in as they come up to speak. If you're an attorney you won't have to be sworn in. Let us begin.

Mr. O'Rourke: My name is Richard O'Rourke. I am an attorney with the law firm of Keane & Bean PC. We have offices in White Plains and Fishkill, New York. I'm here on behalf of the applicant. I do affirm my statements under penalty of prudence. I have personal knowledge because over 10 years ago I was very much involved with respect to the resolution of the zoning issues back then and the special permit and site plan that was made. The ZBA has already heard what I am going to say in a work session however for purposes of the public hearing, I have to repeat some things.

Mr. Prager: Definitely for the audience.

Mr. O'Rourke: I think what is important is that the application addresses the issue on the continuation of a pre-existing non-conforming use. As the zoning board is well aware if in fact there are uses that pre-date zoning or uses that at one time lawfully permitted and there after a zoning ordinance is adopted which makes those uses non-conforming providing they lawfully existed at a point in time earlier then they may continue provided that there in a continuous continuity of those uses. This property has been used for commercial well before the adoption of zoning. What I have and request to be made as part of the record, are affidavits with respect to the use of the property. They include four affidavits from William Parsons, Arthur Lieberman, Grace Elder and Michael Schnorr.

(Mr. O'Rourke read from the following affidavits: William Parsons, Arthur Lieberman, Grace Elder and Michael Schnorr. These affidavits are attached to these minutes.)

Mr. O'Rourke: All of that addresses the issues and uses that occurred from 1947 to 2001.

Mr. Prager: That was all represented to the former Zoning Administrator from Keane & Bean.

Mr. O'Rourke: That takes us up to 2001. An application was filled at that time which turned into litigation. There was a good faith attempt on the part of the town and the property owner to see if we could resolve this knowing what the use of the property pre-dating zoning and the condition of the property. I wrote a letter addressed to the Zoning Administrator dated March 23, 2001. It's in the record and stamped received by the Town of Wappinger.

(Mr. O'Rourke read from part of the letter. Letter attached to the minutes.)

Mr. Horan: For the record, what is the date in the site plan?

Mr. O'Rourke: Civil Tech Engineering 1376 Route 376 Wappingers Falls, NY. Dated March 24, 1999 and revised on August 31, 2000. This is the plan that I based my letter of March 23, 1999 on.

(Discussion took place at the dais viewing map.)

Mr. O'Rourke: There was litigation and discussion as to what can do with this site. An agreement was made to remove all the objectionable things.

Mr. Prager: I have a paper from the Town of Wappinger, Supervisor Smith and Town board members. An amended site plan and S.U.P. dated May 6, 1999. Can you explain that to me?

Mr. O'Rourke: There was a continuing ongoing discussion. This plan was last revised August 31, 2000. This map designates the storage area. That map is part of the record.

Mr. Horan: For the record this plan is titled Asbuilt Piqwon Site Plan dated March 24, 1999.

Mr. O'Rourke: There are revisions dated August 31, 2000. I would like to get a copy of the minutes.

Mrs. Roberti: Sure, I'll send them to you.

Mr. O'Rourke: There is a letter dated July 19, 2001, addressed to the Town Board from Al Roberts.

(Mr. O'Rourke read the complete letter of Al Roberts. Letter attached to the minutes.)

Mr. O'Rourke: There is a letter dated August 1, 2001, addressed to Richard O'Rourke from Tania Lukianoff, the Zoning Administrator at that time.

(Mr. O'Rourke read the complete letter of Tania Lukianoff. Letter attached to the minutes.)

Mr. O'Rourke: What occurred during this period of time was a resolution of the issues related to the pre-existing non-conforming uses on this property. The property owner gave up some of those uses and at the same time the town recognized that some of the other uses may be continued and there after it went to the Zoning Administrator who said that's fine. This is consistent with everything. That is the conclusion of the issues that occurred at that time. There was "peace". An affidavit from Frank Adamo was handed to you. In that affidavit the present owner was the lender to Mr. Elder and Mr. Cappolino. They needed more

money and Mr. Borek, a member of the LLC who now owns the property lent them money. They still couldn't sustain the business. The property was taken over. The business of Piqwon and Gals went south. The IRS took over the equipment and conducted an auction and it was liquidated. The whole time the property remained having a lot of materials stored on it. The other uses and occupancies continued and no cessation of use.

(Mr. O'Rourke read parts of Mr. Adamo's affidavit. Affidavit is attached to these minutes.)

Mr. Prager: At the site that is what we saw.

Mr. O'Rourke: Our position is in 2000-2001 a determination was made by the ZA that said in writing that this conforms with the code. We have established that these uses are pre-existing non-conforming uses. It should be lawfully continued.

Mr. Horan: Attached to the original application is an affidavit of Thomas Borek. It is consistent with what Mr. O'Rourke said.

Mr. O'Rourke: I'd like to have a copy of that.

Mrs. Roberti: I'll make you a copy of the whole application as it was presented to us.

Mr. Walsh: For the record my name is Don Walsh for compliance for the real estate company. This was the May 2011 second application.

Mrs. Roberti: This was attached to the application for the interpretation.

Mr. Walsh: Richard Olsen was the attorney. Mrs. Roberti, the Town Clerk and I looked for information of the prior application. Nobody could find anything. I went to Mr. O'Rourke's office to find the file. We know there had been a finding. We hired Mr. O'Rourke because he knew what had happened in the past years when not a lot of us did.

Mr. O'Rourke: My letter is stamped by the town. The condition of the premises is cleaned up. The material storage area changed from commercial into residential. Right now it stops at the zone line. Employee parking was on residential zone not there anymore. Material storage and use of all buildings are continued non-conforming pre-existing uses. There was a prior determination from the ZA that was never appealed that it conforms to the code.

Mr. Prager: Talk about the area variance of 2006 (Mr. Walsh please explain.)

(Mr. Prager sworn in Mr. Don Walsh, compliance and planning for Mr. Borek)

Mr. Walsh: My name is Mr. Don Walsh I am the compliance and planning person for Mr. Borek's realty company. I have 22 years in municipal government service, and 12 years service with him. In 2005 I was asked to look at the site for a potential tenant in building 2 for a motorcycle shop. The planning board reviewed the application site plan. There was never a site plan and no demarcation as to where the lot splits zone. January 2006 the PB referred us to the ZBA. The reason is a motorcycle shop was treated as an auto sales facility which meant they had to have at least 3 acres of property. That would mean the shop would have to take over the entire front of the property. We needed a variance. We still had people in the front building which means there wouldn't be 3 acres available for the motorcycle shop. In 2001 the town amended the law to consider this to be retail operations. The new code book of 2006 had shown the code from 2001. The code said we don't have to be at the ZBA. I amended the petition for the ZBA. Building #1 was slightly over the property line. The storage shed behind Building #1 was too close to the property line. The existing car detailer in the front needed to be restricted to the amount of acreage they actually use. (.51 acres) Then we needed an interpretation saying the ZA was wrong in saying we needed 3 acres because you have already changed the law. Finally the attorney Mr. Caviglia didn't have the time to research it after 2 meetings. Mr. Stolman researched it and found the new code was right with the code that was past 5 years ago. The vote was granted for the variance to allow the motorcycle shop. The next month the shop went bust. We had to continue to have the variances voted on to make sure building #1 could stand. The shed wasn't opposed by Mr. Parsons. The third thing was locating the size of the land that a car dealer can be on. That vote was on November 14, 2006. The ZBA voted unanimously for all three variances.

Mr. Prager: The applicant amended the application concerning building #2. I am reviewing the resolution.

Mr. Walsh: I discussed the recent history with Mrs. Roberti.

Mr. Prager: I need a time line of 2001 to 2006 who owned the property and what uses were there.

Mr. O'Rourke: Piqwon Inc. was the record owner. Gals was another organization.

(Mr. Prager sworn in Mr. Thomas Borek, owner of property)

Mr. Borek: My name is Thomas R. Borek. Piqwon was the deed holder of the property. The tenants were also common ownership was a company called Gals. Piqwon was the name of the corporation that owned the property. It was owned by Elders and Fichare. Their wives were called MBE Corporation and had a company called Gals construction

which did work for IBM. They were heavy contractors. The Elders and Fichare people has a company called B&D Construction which also did general contracting. At that time on the premises was an attorney, mortgage broker, insurance broker. Upstairs was the construction company offices.

Mr. Prager: What year? I know Piqwon purchased the property from Parsons on June 5, 1998.

Mr. Broek: Piqwon became the owner in 1999. In 2004 I purchased the property but continued the business. Pete Elders died. There were conflicting claims on the collateral of Gals Construction. I had a lien on the equipment I already owned the property and the IRS claimed they had a right to the equipment. We made an agreement to split the proceeds from the public auction. Then it was liquidated. Frank Adamo has been working with me for about 34 years. We used some of the property for storage as we still do today. We cleaned it up and spent a lot of money. In 2007 - 2008 the tenants started to go out of business.

Mr. Prager: Which tenants were they?

Mr. Borek: The attorney and the mortgage broker.

Mrs. Roberti: What year was that?

Mr. Borek: 2009. The auto business stayed in building #1. Building #2 we had no tenant for awhile. The motorcycle business was paying us rent for 3 years while we were in front of the ZBA.

Mr. Prager: That was 2006. When did he leave?

Mr. Walsh: September 2006 they when belly up.

Mr. Borek: Then we were using the building for storage, some trucks and stuff.

Mr. Prager: What happened with building #3?

Mr. Borek: Building #3 is the large warehouse that was occupied by us and CSI. We were there since the time we owned the property. They've been in building #3 and the front building for 2 years.

Mr. Prager: Do they lease it from you? Do you have the lease?

Mr. O'Rourke: We have a copy of the lease. The lease says it begins as of May 19, 2010 a one year lease and continues on a month to month basis.

Mrs. Roberti: There is no change of occupancy and are there illegally.

- Mr. O'Rourke: You are correct.
- Mr. Walsh: Mr. Borek was contacted by CSI. He filed a change of occupancy with Mrs. Roberti. This is what led me on a hunt to see what was allowed.
- Mr. Borek: I went to the town and Mrs. Lukianoff refused to meet with me.
- Mr. Prager: Once the motorcycle shop left, you were the only one using building #3.
- Mr. Borek: Numerous heavy construction vehicles.
- Mrs. Roberti: You were sent by the PB and to come to the ZBA. But you never went back to the PB.
- Mr. Walsh: We lost our motorcycle shop tenant. We need to go back to the PB for the parking layout.
- Mr. O'Rourke: There was no way a change of occupancy issue with storage.
- Mr. Prager: Has the material storage ever ceased?
- Mr. O'Rourke: Never, there has always been material stored and acknowledged by Mr. Al Roberts.
- (Mr. O'Rourke read parts of Mr. Borek's affidavit. Affidavit is attached to these minutes.)
- Mr. O'Rourke: Over a period time the site deteriorated. There was never a cessation with use.
- Mr. Horan: Mr. Borek, you mentioned that there was a question regarding priority of the leans of the equipment that was owned by Gals. Is there a written agreement from the IRS? Can you provide that to the ZBA?
- Mr. Borek: The Mr. Robinowitz the attorney who handled the file died.
- Mr. Horan: The IRS occupied the property that an ongoing business was not conducted.
- Mr. O'Rourke: What you're saying is if we have ownership interest in the land and ownership with the materials they were still stored continuous related to their business. It is a continuous use.
- Mr. Borek: The IRS and I had a 50/50 split.

Mr. Horan: Any paper work would be helpful. Does Development Strategies Company, LLC (DSC) have any written leases with 228 Myers Corners, LLC?

Mr. Borek: No, 100% is my company.

Mr. Horan: DSC trucks owned by DSC or other company.

Mr. Borek: Golden Age Mortgage Corp. other company owned trucks.

(Mr. Borek showed pictures of heavy trucks)

Mr. Borek: All the trucks are sold.

Mr. Prager: Pictures are in the record.

Mr. Horan: When did the trucks first come on to the property?

Mr. Borek: 2003-2004.

Mr. Horan: When did 228 Myers Corners LLC take title to the property?

Mr. Prager: February 4, 2004.

Mr. Horan: Was the berm ever installed?

Mr. Dellacorte: It looked like it when we were out there.

Mr. Kuzmicz: Mr. Walsh, looking at the plan November 3, 2011. You said during your testimony the parking was given up. That is not an issue now, correct?

Mr. Walsh: Yes.

(Discussion took place at the dais)

Mr. Prager: Does anybody want to come up and ask questions?

Mr. Villani: My name is John Villani; I reside at 7 Sherwood Heights.

(Mr. Prager sworn in Mr. John Villani, resident)

Mr. Villani: I have a lot of issues when he brings in affidavits from dead people. We can't dispute anything they say. I can tell you what I know from April 1967 and on. The only time when there was construction equipment when Mr. Parsons owned it was a few days a year he brought in to take the cars out to the junkyard. When Gals came in then there was construction equipment. Arthur Lieberman didn't use

the back property. All the cars were stored on the residential zone. Nowhere did I hear that the pollution of leaking oil for 40 years was getting cleaned up. I understand that 228 Myers Corporation doesn't want to abide by the Neighbor Business code. They want to put a used car lot on a half acre where 3 acres are required. The businesses for the last 15 years have been so noisy. Whoever is there now runs a 4 wheeler all night. All summer long all we hear in metal noises. I'm not happy having NB zoning changed to construction. The R-40 zone is land locked. What's to stop them from exchanging we get it rezoned? There is no protection to the neighbors.

Mr. Dellacorte: Where are you in the map?

Mr. Villani: We over look the rear.

Mr. Kuzmicz: The noise you talk about is from where?

Mr. Villani: The Gals construction.

Mr. Kuzmicz: What time was the noise?

Mr. Villani: This summer about 7:00-7:30 in the morning till it started to get dark. Various times of the day I hear a metal noise.

Mr. Kuzmicz: No decision will be made for the R-40 zone. It will remain vacant as of now. I am concerned about the noise.

Mr. Prager: Have you lived there for awhile?

Mr. Villani: Since 1967.

Mrs. Roberti: You said there are 4 wheelers riding around. Is it from the business?

Mr. Villani: Not sure who they are. It's in the NB zone behind the fence.

Mr. O'Rourke: Over 80 dumpsters were removed from that site most recently. There is no proposal for the storage of construction equipment. That's all been removed.

Mr. Kuzmicz: Is the noise continuing or has it stopped?

Mr. Villani: We don't hear it much now, we are inside.

(Mr. Prager sworn in Mrs. Olga Dalsheim, resident)

Mrs. Dalsheim: My name is Olga Dalsheim, I reside at 5 Sherwood Heights. I live the closest that horrible area. There is noise around 4:30-5:00pm at night.

Mr. Kuzmicz: Can you describe the noise?

Mrs. Dalsheim: It's a motorcycle noise. It last about a half hour. They will have to put a lot of trees so we don't see or hear all that noise. It is terrible.

Mr. Kuzmicz: How many years have you been hearing the noise?

Mrs. Dalsheim: A couple of years. I don't think the noise is from a cleanup. Thank you for giving me the time to speak.

Mr. Walsh: I've heard noise at night. ATV's in a residential zone, not from the business.

Mr. Kuzmicz: I heard that kids were breaking in and causing problems.

(Discussion took place with the map and Mrs. Dalsheim.)

(Mr. Prager sworn in Mr. John Simonetty, resident)

Mr. Simonetty: My name is John Simonetty and I live at 236 Myers Corners Road. I hear all the history and am interested in 2006 of the agreement for retail business; the used car lot could stay as long as they wanted to. The mechanic garage would be used to repair cars. There was never a discussion going back into the outside storage as we have today. There might have been storage in some of the buildings. There was no activity in that yard, and I live right next to it. From the time the motorcycle guy left until CSI moved in there. There might have been storage that these guys kept there but there was no businesses run there. The auto dealer moved out in 2008. There was no one in the front till CSI. The noise is real and part of CSI. At night when they bring their trucks in they go up around my property around in a circle and around the buildings. The moving of the spools makes noise. There are a number of trucks going in and out to Myers Corners Road. It's not safe. There has not been any construction, storage or business since Gals left. It was pretty quiet since Gals left up until CSI moved in.

Mr. Dellacorte: The noise you mentioned, Is it a motorcycle?

Mr. Simonetty: Yes definitely a dirt bike that they ride around the property after they bring the trucks back at the end of the day and weekends. I haven't heard it recently.

Mr. Dellacorte: You've seen it on that property?

Mr. Simonetty: Yes, behind where they store the cables.

Mr. Kuzmicz: Was the motorcycle noise the most prominent noise?

Mr. Borek: Saturday at 12:00pm I locked up the gate for no access.

(Discussion with Mr. Horan showing Mr. Simonetty map)

Mr. Horan: Does the map accurately depict what is out there now?

Mr. Simonetty: Yes.

(Discussion with Mr. Walsh and Mr. Simonetty)

Mr. Horan: Was the IRS auction in the front fenced area?

Mr. Simonetty: Yes, it was spread out for the sale.

Mr. Horan: Do you recognize any of the photographs that Mr. Borek showed us?

Mr. Simonetty: I don't remember.

Mr. Prager: A lot of spools and recyclable items were in building 3 when we were there.

Mr. Horan: IRS equipment did it include scaffolding?

Mr. Simonetty: I don't know.

(Tape has reached its maximum and stopped.)

Mr. Villari: The construction company had backup warning noise constantly. We would complain to the ZA at the time and was told there was no noise.

(Mr. Prager sworn in Mr. Robert Buyakowski, resident)

Mr. Buyakowski: I see through the years the deterioration in the commercial spaces. Seeing the property cleaned up is a positive thing to the retail business. There is an empty bank and 4 empty locations. There is not too much activity. Families pay taxes and commercial use would help.

Mr. O'Rourke: You know what happened up to 2000.

(Mr. O'Rourke read from Al Roberts's letter again. Letter attached to the minutes.)

Mr. O'Rourke reiterated the timeline for the record the entire case that was presented to the Zoning Board of Appeals.

Mr. O'Rourke: I request that you close the public hearing but remain open for 20 days for comments.

- Mr. Kuzmicz: Please check what is causing the noise.
- Mr. Borek: I will speak with the tenants.
- Mr. Prager: Thank you. You will be on the next agenda of December 13, 2011.
- Mr. Dellacorte: **Motion to close the public hearing and leave open for written comments for 20 days.**
- Mr. Kuzmicz: Second the motion.
- Vote: All present voted aye.
- Mr. Kuzmicz: I amend the motion to close the public hearing and leave open for written comments on or before December 9, 2011.**
- Mr. Dellacorte: Second the motion.
- Vote: All present voted aye.
- Mr. Horan: Anyone can give written comments.
- Mrs. Roberti: Can we send all comments to Mr. O'Rourke from the residents?
- Mr. Prager: Yes, send any comments received to Mr. O'Rourke.
- Mr. Kuzmicz: Motion to go into executive secession for legal advice.**
- Mr. Dellacorte: Second the motion.
- Vote: All present voted aye.
- Mr. Kuzmicz: Motion to come out of executive secession.**
- Mr. Dellacorte: Second the motion.
- Vote: All present voted aye.
- Mr. Kuzmicz: **Motion to adjourn.**
- Mr. Dellacorte: Second the motion.

Meeting ended at 11:00 PM

Respectfully Submitted,

Susan Dao, Secretary
Zoning Board of Appeals