

MINUTES

**Town of Wappinger
Zoning Board of Appeals
July 10, 2012**

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

Summarized Minutes

Members:

Mr. Prager	Chairman
Mr. Della Corte	Member
Mr. Casella	Member
Mr. Johnston	Member
Mr. Galotti	Member

Others Present:

Mrs. Roberti	Zoning Administrator – Absent
Mrs. Rose	Secretary
Mr. Horan	Attorney

SUMMARY

Gene Lois -Public Hearing- Granted

Janice Sabbagh -Discussion – Public Hearing July 31, 2012

Mr. Prager: I would like to call the Town of Wappinger Zoning Board of Appeals to order. Roll call please

Mrs. Rose: Howard Prager-----Here
Tom Dellacorte-----Here
Al Casella-----Here
Bob Johnston-----Here
Peter Galotti-----Here
Barbara Roberti----Absent
Jim Horan-----Here

Mr. Prager: The first item on tonight's agenda is a public hearing on:

Appeal No 12-7465

Gene Lois-Is seeking a use variance of Section 240.37 and 240-107(B) (2) of District Zoning Regulations in a HB Zoning District.

-Where the applicant is seeking a **Use Variance to allow a pre-existing singly family house to be used for a residence** in an HB zone. This property has been used as an office since 2002 when it was granted site plan approval.

The property is located at **1176 Route 9** and is identified as **Tax Grid No. 6157-02-604765**

Mr. Prager: Sue are all the mailings in order?

Mrs. Rose: Yes sir.

Mr. Prager: Can I have a motion to open the public hearing.

Mr. Casella: I make a motion to open the public hearing.

Mr. Johnston: I second that motion.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Mr. Lois come on up and state what you need and why you need it for the record.

Mr. Lois: My name is Gene Lois and my family owns a small residence along Route 9 and we had our corporate office there for the better part of 9 years and then we built a building on Old Route 9 about 3 years ago. We put up the building on Route 9 up for sale or lease with Tom Cerbone and after that with Mr. Lease. Neither one succeeded, we never even got an offer. We talked about tearing it down to reduce the taxes but I thought I give it a shot to rent it as a residence.

Mr. Prager: Have you tried to get offers for the land without the building.

Mr. Lois: Yes.

Mr. Prager: We did do a site inspection on it. There is a trailer in the back of it. What was that for?

- Mr. Lois: It was primarily for records. We do have approval for that.
- Mr. Prager: If this does get approved, I would like to see that go.
- Mr. Lois: Ok
- Mr. Prager: Does anyone else have any questions?
- Mr. Della Corte: I notice in the appeal that you said no interior or exterior work needs to be done. I think that covers what you're talking about Howie.
- Mr. Johnston: Did you take the pictures?
- Mr. Lois: Yes.
- Mr. Johnston: Except for the trailer.
- Mr. Lois: I didn't think it was germane.
- Mr. Casella: If this is granted are you going to change it back to commercial?
- Mr. Lois: My understanding is we are not changing the zoning; we are just getting a variance to allow it to be a residence.
- Mr. Casella: You are changing the use variance. Before it was commercial and you want to change it to residential, are you going to keep coming back if you then want to change it to commercial again?
- Mr. Horan: Just for the boards knowledge, by granting a use variance to allow for a residential use for this property it will not foreclose the commercial use for this property.
- Mr. Casella: How long is this designated?
- Mr. Horan: My recommendation is that you don't.
- Mr. Casella: But we could.
- Mr. Horan: Theoretically, you could. That's not what is requested.
- Mr. Dell Corte: When Al says that, you're not saying changing the zoning from neighborhood business.
- Mr. Prager: Correct. They are only asking to use the house as a residence.

- Mr. Johnston: It could be used as commercial if the use variance is granted?
- Mr. Horan: It could be used for whatever it is currently allowed to be zoned for because of the allowed use in that zone a residential use is not allowed unless it is a prior legally existing non-conforming use. If this has been continuing used as a house it could continue to be used as a house but because it was used for commercial purposes then the residential use that went with the house was extinguished.
- Mr. Casella: If we change and grant a use variance, it can be used as residential or go back to commercial.
- Mr. Horan: That's correct. My recommendation would be if the applicant should find a buyer for that house and the house is torn down or modified for a commercial use then the use variance for residential would be extinct. The hardship here is the applicant has tried to use this property for which it zoned. He has marketed; tried to lease it even tried to sell it with no takers. The standard in order to grant a use variance is the applicant has to show that he has attempted to use the property in conformance with what it is legally zoned for that property and he has been unable to do so. The second part is that he is not able to get a reasonable rate of return on the property and at this point in time he has no income being generated and only has expenses.
- Mr. Casella: Do we know what the original use was? Was it commercial or residential?
- Mr. Horan: I assume residential because of the time it was built.
- Mr. Casella: So it went from residential to commercial and now back to residential. Just the building.
- Mr. Horan: The request is that a residential use can be used on this property. The applicant has expressed he is still looking for a buyer. His chances of selling that property would be greater if there was water and sewer on that stretch of Route 9.
- Mr. Lois: I could sell it the next day.
- Mr. Horan: I don't think the applicant would want to take the commercial zone off the table.

- Mr. Della Corte: Is there a market for residential use right now?
- Mr. Lois: It seems like we could rent it for \$1200.
- Mr. Casella: What would happen to his tax bill if it's changed to residential?
- Mr. Horan: It would be the same.
- Mr. Galotti: If the board grants the variance, can there be stipulations in it? Can there be a time limit on it and the trailer removed?
- Mr. Horan: With respect to the time limit, one of the concerns would be if the applicant has a residential tenant if there was a commercial tenant it would be different.
- Mr. Lois: It would be year to year with a 5 year limit.
- Mr. Prager: The trailer will have to be removed before it is rented.
- Mr. Horan: A reasonable condition would be if the property is used for commercial use that the use variance should cease in the advent he sells the property.
- Mr. Prager: Anyone else? Anyone in the audience?
- Mr. Prager: Let the record show that there is no one in the audience for or against this variance.
- Mr. Prager: Can I have a motion to close the public hearing.
- Mr. Casella: I make a motion to close the public hearing.
- Mr. Johnston: I second the motion.
- Mr. Prager: All in favor.
- Board: Aye
- Mr. Prager: Can I have a motion to grant or deny this variance.
- Mr. Della Corte: I make a motion to grant this variance. We are going to allow the use for the zoning because the client cannot realize**

a reasonable return shown by financial evidence. The hardship is unique and is not substantial portion of the neighborhood. The variance will not alter the character of the neighborhood and the hardship has not been self created. The condition would be prior to renting this to a tenant that you remove the trailer. The second condition would be in the event that property returns to commercial the residential use variance turns back.

Mr. Galotti: I second.

Mr. Prager: Roll call vote.

Mrs. Rose: Tom Della Corte: Yes
Bob Johnston: No
Al Casella: No
Peter Galotti: Yes
Howard Prager: Yes

Mr. Prager: The variance has been granted and it will be filed in 5 days.

Mr. Prager: The second item on our agenda is a discussion on:

Appeal No. 12-7467

Janice Sabbagh-Is seeking an area variance of Section 240-37 of District Zoning Regulations in an R-20 Zoning District.

_-Where a rear yard setback of 40 feet is required, the applicant can only provide 7 feet for the installation of a 18 x 33 above ground pool, thus requesting a 33 ft. rear yard variance.

The property is located at **12 Daisy Lane** and is identified as **Tax Grid No. 6158-02-912877**

Mr. Prager: Please state your name and what you need for the record.

Ms. Sabbagh: My name is Janice Sabbagh. I bought my current residence at 12 Daisy Lane in the year 2000 and there was a pool on site. I took the pool down anticipating I could put up another pool which was up for 26 years. When I came for the application, I was told there was no variance. Can I tell you what my research has shown?

Mr. Prager: Please do.

- Ms Sabbagh: My understanding is that the pool was there and when a prior owner wanted to put a septic in the fire inspector was inspecting the septic, found a pool. Gave them fines and approved the pool but never made them get a variance. I find it surprising that I'm even here having to get a variance.
- Mr. Prager: Not really, it never had a variance
- Ms. Sabbagh: I think you have a survey from 1986 which shows the pool.
- Mr. Johnston: When you bought the house in 2000, I'm assuming you closed on the house. Was there a certificate of occupancy for the pool when you closed?
- Ms. Sabbagh: I don't think so. I don't remember that.
- Mr. Horan: What happens is that a search is done by the building department from the title insurance company. Did you have a mortgage when you bought the house?
- Ms. Sabbagh: Yes
- Mr. Horan: You had title insurance?
- Ms. Sabbagh: Yes.
- Mr. Horan: What typically happens is a C/O search is done by the town and a no violation letter is issued by the town. What they look for are violations of record, what is interesting is that there are violation.
- Ms. Sabbabeh: I feel like things have fallen through the cracks and I'm now in a hardship position to have to get a variance for something that should have been done years ago. My understanding is that the variance follows the property.
- Mr. Prager: So back in '96 there was a certificate of compliance for the original pool by Mr. Lieberman.
- Ms. Sabbagh: So tell me what that means. Why would he have done that in 1996?
- Mr. Prager: I have no clue. Back in '94, there was a swimming pool violation.
- Mr. Horan: When was the c/c?

- Mr. Prager: I don't know it's really faded but it looks like the violation is about no gate and failure to obtain a permit. It looks like she got a \$249 fine.
- Mr. Della Corte: Howard did they say Percell did not comply with the building permit?
- Mr. Prager: It seems she complied with the gate and electric but did not get a building permit.
- Mr. Horan: There would have been a building permit issued if there was a certificate of compliance. What it looks like here is the original pool was put up without a permit. Then based on the inspection they went back in and issued violations for not having steps. I guess no one checked the setbacks because there is no issue on that violation for having a pool with in a side yard which should have been a violation which would have been noted at that time. To cure the violation a building permit was probably issued. They did an electrical inspection, a check of the steps and a self closing gate and then some point in time a certificate of compliance was issued which would have closed out that permit. The problem is a building permit should not have been issued without a variance.
- Mr. Johnston: Is a certificate of compliance the same as a certificate of occupancy?
- Mr. Horan: Correct. A certificate of compliance is issued basically for structures that are not inhabited.
- Mr. Prager: Right on here, on the certificate of compliance should have had a variance.
- Mr. Della Corte: What kind of variance? Rear or side?
- Mr. Prager: A rear.
- Ms. Sabbagh: There is a side requirement but I'm not asking for that.
- Mr. Johnston: Where is your septic?
- Ms. Sabbagh: I'll show you. (Ms. Sabbagh shows the board the map where the septic is and show pictures)
- Mr. Casella: How big was the original pool?
- Ms. Sabbagh: 24 round.

- Mr. Casella: Now you want to put in an 18 x 33.
- Ms. Sabbagh: Yes.
- Mr. Della Corte: Is the new pool up yet?
- Ms. Sabbagh: No it's in the garage.
- Mr. Galotti: Will the new pool have a deck or a patio?
- Ms. Sabbagh: No just the pool.
- Mr. Prager: What we will do is have a site inspection. You don't need to be there but if you could take some paint and spray the outline where you are going to put the pool. The public hearing will be set for the 24th of July.
- Mr. Prager: I will not be here on the 24th.
- Mr. Casella: I will not be here either.
- Mr. Prager: Since there might not be a quorum we will move the public hearing to July 31st.
- Mrs. Rose: Swenson and Shaft 6 is on for the 24th, I'll move them.
- Mr. Prager: How are we on Shaft 6?
- Mr. Horan: I have to write a finding statement for them. The planning board statement will be more detailed than ours.
- Mr. Prager: Can I have a motion to go into executive session?
- Mr. Johnston: I make a motion to go into executive session.
- Mr. Casella: I second the motion.
- Mr. Prager: All in favor?
- Board: Aye.

Susan Rose, Secretary
Zoning Board of Appeals

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