

MINUTES

**Town of Wappinger
Zoning Board of Appeals
July 9, 2013**

**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-Absent

Others Present:

Mrs. Barbara Roberti	Zoning Administrator
Mrs. Michelle Gale	Acting Secretary
Mr. Jim Horan	Attorney

SUMMARY

Bank of America	Granted
Lorraine McGimpsey	Granted
Elvia Duque	Granted
John & Helen Wiejaczka	Granted
Frank Porter	Mailings not done-rescheduled. To July 23rd
Tim Serino, GW Corp	Granted
Joseph Boyce	Granted
Rui & Josefa Fernandes	Public Hearing July 23 rd
Florence Lutterschmidt	Public Hearing July 23 rd - Site Visit
Jennifer Young	Public Hearing July 23 rd – Site Visit

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

Mrs. Gale: Howard Prager-----Here
Tom Della Corte- --Here
Al Casella-----Here
Bob Johnston-----Here
Peter Galotti-----Absent

The first item on the agenda is the approval of the minutes from May 14, 2013, May 28, 2013, June 11, 2013, and June 25, 2013.

Mr. Johnston: I make a motion to except the minutes.

Mr. Della Corte: Second.

Mr. Prager: All in favor?

Board: Aye

Mr. Prager: Next on the agenda is a Public Hearing for:

Appeal No. 13-7488

Bank of America – Is seeking an area variance of Section 240-29 F (2) (a) of Zoning Regulations in an HB Zoning District.

-Where a **freestanding sign must be 25 ft. from the property line.** the **applicant is proposing 10 ft. from the property line, thus requesting a variance of 15 ft.**

The property is located at **1469 Route 9** and is identified as **Tax Grid No. 6157-02-609919** in the Town of Wappinger.

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

Mrs. Gale: Yes.

Mr. Prager: Can I have a motion to open the Public Hearing?

Mr. Johnston: I make a motion to open the Public Hearing.

Mr. Della Corte: Second

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Please state your name for the record and again explain what you would like.

Ms. Forrest: My name is Nancy Forrest and I represent Glode Signs. I am working with Bank of America for their monument sign. They are seeking a variance because they have a large state line. The rest of the sign meets the requirements of the town.

Mr. Prager: Will the sign be in the same location where the monument is now?

Ms. Forrest: Yes.

Mr. Prager: We did get a referral from Dutchess County Department of Planning and Development and they have nothing against it. Their only comment was it is a matter of local concern.

Mr. Prager: The last time I asked you about the illumination.

Ms. Forrest: It is internally illuminated.

Mr. Prager: What are the hours of illumination?

Ms. Forrest: At the request of the town, it will be shut off at certain times and that will be passed on to the town.

Mr. Johnston: The trees are somewhat blocking it. Will you be cutting them?

Ms. Forrest: They haven't said anything to me about that. If there are restrictions, I will pass them along.

Mr. Prager: Is there anyone in the audience for or against this appeal?

Mr. Prager: Hearing none, do I have a motion to close the public hearing?

Mr. Johnston: I make a motion to close the Public Hearing.

Mr. Della Corte: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Do I have a motion to grant or deny this variance?

Mr. Johnston: I make a motion to grant this variance.

Mr. Casella: Second.

Mr. Prager: Roll call vote.

Mrs. Gale:	Mr. Della Corte	Aye
	Mr. Johnston	Aye
	Mr. Casella	Aye
	Mr. Prager	Aye

Ms. Forrest: Do you want the turn off time of the sign?

Mr. Prager: The Planning Board will take care of that.

Mr. Prager: Next on the agenda is a Public Hearing for:

Appeal No. 13-7493

Lorraine McGimpsey-Is seeking an area variance of Section 240-37 of Zoning Regulation in an R-15 Zoning District.

-Where a **30 foot rear yard setback** is required for the installation of a 24' above ground pool, the applicant can only provide **17 feet** to the rear property line, thus requesting at **13 ft. variance**.

The property is located at **20 Ardmore Drive** and is identified by **Tax Grid No. 6257-01-251511** in the Town of Wappinger.

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

Mrs. Gale: Yes.

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: Second.

Mr. Prager: Please state your name for the record and tell us why you are requesting the variance.

Ms. McGimpsey: My name is Lorraine McGimpsey. There was a pool there when I bought the house in 1976. The new pool will be going in the same exact place.

Mr. Prager: We did have a site inspection and we did see where the pool was.

There doesn't seem to be a change. Does anyone have any questions?

Mr. Prager: Is there anyone in the audience that has any questions?

Mr. Prager: Let the record show there is no one in the audience for or against this.

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: Second.

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.

Mr. Johnston: Second.

Mr. Prager: Roll call vote.

Mrs. Gale:	Tom Della Corte	Aye
	Bob Johnston	Aye
	Al Casella	Aye
	Howard Prager	Aye

Mr. Prager: Next on the agenda is a Public Hearing for:

Appeal No. 13-7491

Elvia Duque-Is seeking an area variance of Section 240-53(B)4 of Zoning Regulations in an R-20 Zoning District.

-Where **application to increase the size of an existing accessory apartment to 1200 sf (46%) by the conversion of the basement garage into a family room** has been requested, the zoning code of the Town of Wappinger states an accessory apartment shall be subordinate in area to the principal dwelling. **The accessory apartment shall not exceed 35% of the gross floor area of said principal dwelling, and in no event shall exceed 1,000 square feet** of gross floor area. **The applicant is therefore requesting a variance of 290 sf (11%).**

The property is located at **89 Scott Drive** and is identified by Tax Grid No. **6257-04-738388** in the Town of Wappinger.

Mr. Prager: Are all the mailings in order?

Mrs. Gale: Yes.

Mr. Prager: Can I have a motion to open the Public Hearing?

Mr. Johnston: I make a motion to open the Public Hearing.

Mr. Casella: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Please tell us your name for the record and why you need this.

Ms. Duque: My name is Elvia Duque. In the winter the bedroom upstairs get cold and when it rains the water goes into the garage. I would like to change my garage into a family room to prevent this.

Mr. Prager: You would insulate this and build it to the code of the Building Department.

Ms. Duque: Yes.

Mr. Prager: Does anyone have any questions?

Mr. Prager: Is there anyone in the audience for or against this?

Mr. Prager: Let the record show there is no one in the audience for or against this variance.

Mr. Prager: We did have a site inspection.

Mr. Prager: Can I have a motion to close the Public Hearing?

Mr. Johnston: I make a motion to close the Public Hearing.

Mr. Casella: Second.

Mr. Prager: Can I have a motion to grant or deny this variance?

Mr. Johnston: I make a motion to grant this variance.

Mr. Della Corte: Second.

Mr. Prager: Roll call vote.

Mrs. Gale:	Mr. Della Corte	Aye
	Mr. Johnston	Aye
	Mr. Casella	Aye
	Mr. Prager	Aye

Mr. Prager: Next on the agenda is a Public Hearing for Mr. Frank Porter. I understand the mailings were not sent out. This will be on the next agenda.

Mr. Prager: Next on the agenda is a Public Hearing for:

Appeal No. 13-7494

John & Helen Wiejaczka-Is seeking an area variance of Section 240-37 of Zoning Regulation in an R-20 Zoning District.

-Where a **40 foot rear yard setback** is required for an existing 12 x 25 canvas shed, the applicant can only provide **20 feet** to the rear property line, thus requesting a **20 foot variance.**

The property is located at **19 Pine Hill Road** and is identified by Tax Grid No. **6158-04-690346.**

Mr. Prager: Please state your name and why you need this variance for the record.

Mr. Wiejaczka: My name is John Wiejaczka and I need this variance for my canvas shed so I can store my boat in it.

Mr. Prager: Do I have a motion to open the Public Hearing?

Mr. Johnston: I make a motion to open the Public Hearing.

Mr. Casella: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Wiejaczka: I need the shed where it is because I need to back my boat into it.

It is the only practical place to put it. I would not be able to back my boat in if it was somewhere else on my property. I cannot put it on the other side because my septic is there.

Mr. Prager: We did have a site visit. It looks like you have a lot of woods in the back.

Mr. Prager: Does anyone have any questions?

Mr. Johnston: How long have you had the shed there?

Mr. Wiejaczka: Three years.

Mr. Johnston: Is it made out of fabric?

Mr. Wiejaczka: Yes and steel tubing.

Mr. Johnston: What happens if it rips?

Mr. Wiejaczka: I'll fix it. I already had a branch come through it and I patched it.

Mr. Prager: If you have to replace it, you will have to put it in the same spot.

Mr. Prager: Is there anyone in the audience for or against this variance?

Mr. Prager: Let the record show no one is for or against this variance.

Mr. Prager: Can I have a motion to close the Public Hearing?

Mr. Johnston: I make a motion to close the Public Hearing.

Mr. Casella: Second.

Mr. Prager: All in favor?

Board: Aye

Mr. Prager: Can I have a motion to grant or deny this variance?

Mr. Casella: I make a motion to grant this variance.

Mr. Johnston: Second.

Mr. Prager: Roll call vote.

Mrs. Gale:	Tom Della Corte	Yes
	Bob Johnston	Yes
	Al Casella	Yes
	Howard Prager	Yes

Mr. Prager: Next on our agenda is a Public Hearing for:

Appeal No. 13-7496

Tim Serino, GW Corp-Is seeking an area variance of Section 240-37of Zoning Regulations in a HB Zoning District.

-Where **no adult use** shall be permitted in any building which is located within **400 feet** of any residential zoning district, the applicant can provide 240 feet, thus requesting a variance of 160 feet to a residential neighbor.

The property is located at **1 Stage Door Road** and is identified by **Tax Grid No. 6156-02-777824.**

Mr. Prager: Michelle are all the mailings in?

Mrs. Gale: Yes.

Mr. Prager: Can I have a motion to open the Public Hearing?

Mr. Johnston: I make a motion to open the Public Hearing.

Mr. Casella: Second.

Mr. Prager: Please state your name and why you need this variance.

Mr. Serino: My name is Tim Serino and this is my wife Doreen Serino.

Mr. Prager: Please explain what you want. We did have a site visit to the new building and the building you are presently in.

Mr. Serino: We are looking for a variance for approximately 160 square feet. We want to move our retail location that is a few miles up the road to this new location at 1 Stage Door Road.

Mr. Prager: Let's talk about what your business does.

Mr. Serino: 1180 Route 9 is all retail.

Mr. Johnston: Are you planning to use the whole building for retail?

Mr. Serino: As I proposed, we will be using approximately 4,000 square feet for retail. There are no plans to use the rest of the building except for storage at this time.

Mr. Della Corte: What are the future plans for the rest of the building?

Mr. Serino: It is too early to say. We plan on cleaning up the building and then we will probably be back to the town so we can move our offices and warehouse there. We are looking to do this in phases.

Mr. Horan: I had the opportunity to review 240-75 which had some issues in the litigation, notwithstanding those issues, 240-75 B my reading of the sections says-to help achieve the above stated goals and to promote the objectives of the town's comprehensive plan the granting of a site plan approval by the Planning Board shall be subject to the following requirements in addition to the requirements of site plan approval in 9 N. The first question is, do they need a site plan?

Mrs. Roberti: It is retail to retail at this point.

Mr. Horan: So they won't need a site plan?

Mrs. Roberti: They had one the first time.

Mr. Horan: One thing that I am not comfortable with, to the extent it is simply a change of occupancy for an existing retail space. I don't know if this necessarily applies. To the extent that we don't have to get into the adult use issue or anything like that. The board makes a determination that it doesn't apply in this situation. You don't have to address those issues. In the application for the area variance the applicant basically phrased it as an appeal for an interpretation as to whether or not their use constitutes an adult use. Based on the use under our code section the definition is –this use includes adult book store, adult video store, cabaret or hotel/motel, adult theater, a message establishment and any other use which is distinguished to be characterized by sexual activities or sexual anatomical areas that exclude a minor by reason of age. It is not an adult hotel, an adult theater, and it is not an adult cabaret. It may be argued it is not an adult book store or video store depending on the inventory. If the board determines it is not, that it is presently constituted as an adult bookstore, or adult video store they do not need a variance because they are not an adult use. It would be considered a retail store similar to Victoria Secret.

- Mr. Serino: We said that when we first came here. We didn't feel like we needed a variance.
- Mrs. Serino: Since we were denied and we want to move forward with our business, we decided to follow protocol.
- Mrs. Roberti: I think an interpretation for the use as it stands now.
- Mr. Prager: Yes but are we going to give it a variance.
- Mr. Horan: If you issue a determination now as an adult use, it does not need a variance. Then they would only need a change of occupancy.
- Mr. Casella: Who makes the determination?
- Mrs. Roberti: I denied it as an adult use. If you want to interpret that I was wrong that it is not an adult use, which would be your interpretation.
- Mr. Della Corte: I was not here at the last meeting, can you explain what your business is.
- Mr. Serino: We are a retail and wholesale company that sells tangible products to the consumer. We have no on site consumption. All you have to do is put in a stipulation that there will be no on site consumption. We have no intension of doing that and we will sign in a second.
- Mr. Prager: Can I have a motion to go into executive session?
- Mr. Casella: I make a motion to go into executive session.**
- Mr. Johnston: Second.**
- Mr. Prager: All in favor?
- Board: Aye.**
- Mr. Prager: Can I have a motion to come out of executive session.
- Mr. Johnston: I make a motion to come out of executive session.**
- Mr. Casella: Second.**

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Is there anyone in the audience for or against this variance?

Mr. Prager: Hearing none, can I have a motion to close the Public Hearing.

Mr. Casella: I make a motion to close the Public Hearing.

Mr. Johnston: Second.

Mr. Prager: All in favor.

Board: Aye.

Mr. Prager: Can I have a motion to grant or deny this variance or interpretation.

Mr. Casella: I believe this is not an adult use and I believe a variance is not needed.

Mr. Della Corte: Second

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Next on the agenda is a Public Hearing on:

Appeal No. 13-7497

Joseph Boyce-Is seeking an area variance of Section 240-37 of Zoning Regulations in a R20/40 Zoning District

-Where a **50 foot front yard** setback is required for the construction of a **32 x 45 attached garage (with electric)**, the applicant can only provide **32.05 feet**, thus requesting a **17.95** foot variance.

-Where a **50 foot rear yard** setback is required for the construction of a **32 x 45 attached garage (with electric)**, the applicant can only provide **37.39 feet**, thus requesting a **12.61** foot variance.

The property is located at **10 Card Rd** and is identified by **Tax Grid No. 6157-04-520274.**

Mr. Prager: Michelle are the mailings in order?

- Mrs. Gale: Yes.
- 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: Second.
- Mr. Prager: All in favor?
- Board: Aye.
- Mr. Prager: Please state your name for the record and state why you want this variance.
- Mr. Boyce: Joe Boyce and I want to construct a three car attached garage.
- Mr. Prager: I noticed you have a car port on the right side of your house. Will you be taking this down?
- Mr. Boyce: Yes.
- Mr. Casella: Where is the well and septic?
- Mr. Boyce: Mr. Boyce points to the map and shows the board where they are.
- Mr. Horan: How old is the house?
- Mr. Boyce: I think it was built in 1949.
- Mr. Prager: Does anyone have any questions?
- Mr. Prager: Is there anyone in the audience with any questions?
- Mr. Prager: Let the record show there is no one in the audience for or against this variance.
- Mr. Prager: Can I have a motion to grant or deny this variance.
- Mr. Johnston: I make a motion to grant this variance.**
- Mr. Casella: Second.**

Mr. Prager: Roll call vote.

Mrs. Gale:	Tom Della Corte	Yes
	Bob Johnston	Yes
	Al Casella	Yes
	Howard Prager	Yes

Mr. Prager: Next on the agenda is a discussion on:

Appeal No. 13-7498

Rui & Josefa Fernandes- Is seeking an area variance of Section 240-37 of Zoning Regulations in a R 40 Zoning District.

-Where an approved shed was placed **in front of house** not according to approved building permit. The Zoning Code of the Town of Wappinger states "Accessory Structures must comply with all minimum yard setback requirements for buildings, but in **no case shall they be permitted in the front yard**".

The property is located at **24 Losee Road** and is identified by **Tax Grid No. 6157-02-913638**.

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

Mr. Fernandes: My name is Rui Rdernandes and this is my wife Josefa. There is a pumping station and a control unit where the inspector told me where I may have to move it to, it slopes up and I cannot put it there either. To put it where the property levels off, it's too close to my neighbors. Where it is now my neighbors in the back cannot see it, I have no neighbors on the side.

Mr. Prager: How big is the shed?

Mr. Fernandes: I think 16 x 12.

Mr. Johnston: How long has it been there?

Mr. Fernandes: 10 years.

Mrs. Roberti: The shed is 12 x 14.

Mr. Prager: Did you purchase it or did you build it?

Mr. Fernandes: I built it.

Mr. Prager: How long have you own the property?

Mr. Fernandes: 12 years.

Mrs. Roberti: Reviews map with board.

Mr. Prager: I will have a site visit for this Saturday the 13th and the Public Hearing will be on July 23rd.

Mr. Prager: The discussion will be on:

Appeal No. 13-7499

Florence Lutterschmidt-Is seeking an area variance of Section 240-37 of Zoning Regulation in an R-20 Zoning District.

-Where a **20 foot side yard setback** is required for an existing 24 x 16 garage, the applicant can only provide **16 feet** to the rear property line, thus requesting a **4 foot variance**.

The property is located at **8 Rich Drive** and is identified by Tax Grid No. **6257-02-849861 in the Town of Wappinger.**

Mr. Prager: Please come up and state your name for the record and why you need this variance.

Ms. Dutcher: My name is Jill Dutcher and I am the real estate agent, representing the family.

Mr. Prager: Please give me a little background on what happened here.

Ms. Dutcher: In 1978 the previous owner of the home built a garage. The Spinola's bought the property in 1985 and lived there until they both died. The house is on the market and is now sold. In the title search it came up that 20 feet is needed to the property line and we only have 16 feet but it has been there since 1978.

Mr. Prager: We will have a sight visit this Saturday and the Public Hearing will be on the 23rd.

Mr. Johnston: Where is the detached garage?

Mrs. Roberti: Reviews map with the board.

Mr. Prager: Do you have a survey?

Ms. Dutcher: No, one of the daughters may have one but she is in Alaska.

- Mr. Prager: You have two weeks until the next meeting; try to get one by then.
- Mrs. Roberti: How far is the garage from the house?
- Ms. Dutcher: It is more than 6 feet because you walk between the house and the garage to get to the pool.
- Mrs. Roberti: Let me go to the assessor's office and see what I can find. We didn't require a final as built on properties back then.
- Mr. Casella: How about the neighbors, they may have a survey of their property.
- Mr. Prager: Let's see what we can find and we will have a site visit this Saturday.
- Mr. Horan: The other option is to grant an overly generous variance subject to providing a survey after the fact.
- Mr. Casella: Will that prevent them from closing on the house.
- Mr. Horan: No. What you would do is grant the variance with the condition not to exceed certain footage; further condition on a survey being provided within 6 months or so.
- Ms. Dutcher: We are hoping this closes by the end of July.
- Mr. Prager: Next on the agenda is:

Appeal No. 13-7500

Jennifer Younge-Is seeking an area variance of Section 240-37 of Zoning Regulation in an R-40/80 Zoning District.

-Where a **40 foot side yard setback** is required for an existing 20 x 12 car port shed, the applicant can only provide **15 feet** to the rear property line, thus requesting a **25 foot variance.**

The property is located at **20 Sky Top Drive** and is identified by Tax Grid No. **6056-01-296750 in the Town of Wappinger.**

- Mr. Prager: Please come up and state your name and why you need this variance.

Ms. Younge: My name is Jennifer Younge and I have a car port up for about 5 years.

Mr. Prager: Did you build it.

Ms. Younge: No, it is very similar to what the other gentleman had.

Mr. Prager: Is it temporary?

Ms. Younge: Yes.

Mr. Horan: Is it canvas?

Ms. Younge: Yes.

Ms. Younge: When I got the letter that we needed a permit I thought we would take it down but after thinking about it, it is very important to keep it where it is. I run the neighborhood neuter and release for the cats in my neighbor. I have been, for the last 6 year, monitoring the cats in the neighborhood. I get them vaccinated, neutered and then release them.

Mr. Casella: Do you absorb the expenses yourself?

Ms. Younge: Yes. The shed is where I trap the cats. The majorities of the cats live across the street and breed there. I cannot trap on their property. That is why it is so important to have the shed where it is.

Mr. Prager: Is it in the front of the house?

Ms. Younge: It is to the front and the side.

Mr. Prager: We will have a site visit this Saturday and the Public Hearing will be on the 23rd.

Mrs. Roberti: How many cats do you have? You cannot have a cat sanctuary.

Ms. Younge: I'm just trapping and getting them neutered. They all live across the street. I let them go after they are neutered.

Mrs. Roberti: So you don't have a cat sanctuary?

Ms. Younge: No. They all breed and live across the street.

- Mr. Johnston: How long after the cats are trapped are they brought to the vet to be neutered.
- Ms. Younger: Two to Three days. They are transferred into a large cage in my basement where they stay and then I go to the Animal Rights Alliance where they get vaccinated, spayed or neutered, and get treated for any ailments. They come back and have to stay for 3 nights. I return them to the shed. I might not see them for months.
- Mr. Prager: Is the shed used for anything else?
- Ms. Younger: We do store some wood in there for the winter and some other things but the bigger issue is the contribution to the neighborhood.
- Mr. Prager: We will be out there this Saturday and have the Public Hearing on the 23rd.
- Mr. Casella: You have no cats of your own?
- Ms. Younger: I have 3 of my own cats. The neighbor in general has a big problem.
- Mr. Casella: The neighbors that signed the petition, are those that have had cats on their property.
- Ms. Younger: Yes.
- Mrs. Roberti: Are they feeding these cats?
- Ms. Younger: Yes. I did speak to the neighbor and was told that she and her son like to see the kittens in the spring. I was then forbidden to enter her property.
- Mr. Casella: Isn't it expensive to have this done to the cats?
- Ms. Younger: It's about \$50 or \$60 a cat. I have a good job and I can afford it. I did not start this problem but I can be part of the solution.
- Mrs. Roberti: I will have to amend this to include the front.
- Ms. Younger: Ok.

Mrs. Roberti: I will amend it in the morning, can someone pick it up?

Ms Younge: Yes.

Mr. Casella: I make a motion to adjourn.

Mr. Johnston: Second.

Mr. Prager: All in favor?

Board: Aye.

Respectfully Submitted,

Susan Rose, Secretary
Zoning Board of Appeals