

MINUTES

**Town of Wappinger
Zoning Board of Appeals
July 23, 2013**

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

Summarized Minutes

Members:

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| Mr. Prager | Chairman |
| Mr. Della Corte | Member - Absent |
| Mr. Casella | Member |
| Mr. Johnston | Member |
| Mr. Galotti | Member |

Others Present:

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| Mrs. Barbara Roberti | Zoning Administrator |
| Ms. Sue Rose | Secretary |

SUMMARY

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| Frank Porter | Public Hearing - Granted |
| Rui & Josefa Fernandes | Public Hearing-Granted |
| Florence Lutterschmidt | Public Hearing-Granted |
| Jennifer Younge | Public Hearing-Adjourned until Sept. 10 th |
| Catherine Kalinski | Discussion-Public Hearing August 13 th |
| Michael Smith | Discussion- Public Hearing August 13 th & Site Visit |

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

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

Mr. Prager: First item on tonight's agenda is a Public Hearing on:

Appeal No. 13-7495

Frank Porter-Is seeking an area variance of Section 240-37 of Zoning Regulations in an R-40 Zoning District.

-Where a **50 foot rear yard setback** is required for the installation of a 15 x 20 A/G pool with no deck, the applicant can only provide **27 feet to the rear property line**, thus requesting a **23 foot variance**.

The property is located at **398 Maloney Rd** and is identified by Tax Grid No. **6259-02-951801**.

Mr. Prager: Are all the mailings in?

Ms. 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: Second.

Mr. Prager: All in favor?

Board: Aye.

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

Mr. Porter: My name is Frank Porter. We only have a front yard and our house sits back approximately 80 feet off the road. We have a small back yard which is the only place to put a pool.

Mr. Prager: It is an above ground pool?

Mr. Porter: Yes.

Mr. Prager: We did do a site visit. You are up a hill and you really don't have much room in the back.

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

Ms. Gunther: My name is Liz Gunther. I live at 1 Maloney Drive and I am his neighbor. I am behind him and he doesn't have much of a back yard. He does have side yards and a front yard. They are a nice family and they have good kids. I have no objection of them putting in a pool. I just don't want it under my bedroom window. The way it is situated it will be under my window. I just found out that the town does not allow pools in the front and side yards.

Mr. Prager: I know one side has the septic system and that rules that out. The other side goes up hill. If I owned this property, I would have the pool put there. It is a hard piece of property. Is there any way you can get it closer to your house.

Mr. Porter: They said they can only install it 10 feet away but they will do it 6 feet away and we are putting it as far right as possible.

Mr. Johnston: What size pool is it?

Mr. Porter: 15 X 20.

Mr. Johnston: Did you already purchase it?

Mr. Porter: A deposit.

Ms. Gunther: Can I say something? These people are decent people. Do you promise not to have parties there at 12 at night? That is all I care about.

Mrs. Porter: My kids are in bed at 8:00 at night.

Ms. Gunther: That is all I want to know. These are good people and the kids are good. I have never had problems with his kids. I don't want to deny them a pool.

Mr. Johnston: You do know that the variance goes with the property.

Ms. Gunther: Yes.

Mr. Casella: Will you have a tanker come in and fill your pool.

Mr. Porter: Yes.

Mr. Prager: Is there anyone else 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. Galotti: 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. Galotti: Second.

Mr. Prager: All in favor?

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| Ms. Rose: | Al Casella | Yes |
| | Peter Galotti | Yes |
| | Bob Johnston | Yes |
| | Howard Johnston | Yes |

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

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: Sue, are all the mailings in order?

Ms. Rose: Yes sir.

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

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

Mr. Galotti: Second.

Mr. Prager: All in favor?

Board: Aye.

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

Mr. Fernandes: My name is Rui Fernandes and I live at 24 Losee Road.

Mr. Prager: We did go out for a site inspection. Please explain why you need this variance.

Mr. Fernandes: In the back there really isn't any room for it. In the front is the septic system and pump station. We thought putting it there would be the best spot.

Mr. Prager: Did you have a building permit for this?

Mr. Fernandes: Yes.

Mrs. Roberti: They did get a building permit for the shed but the plot plan shows it on the side of the house. When it was delivered it was put in the front of the house and the building inspector picked up on it.

Mr. Prager: We did do a site visit. It is a very unique property. If I didn't know where it was, I would still be driving around looking for it. You are right; there is no room on the upper side. Does anyone have any questions?

Mr. Galotti: How long has the shed been there?

Mr. Fernandes: About 10 years.

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

Mr. Fernandes: About 12 years.

Mr. Casella: Do you plan on putting in electric? I noticed there was an electrical cord.

Mr. Fernandes: No.

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?

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

Mr. Casella: Second.

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| Ms. Rose: | Al Casella | Yes |
| | Peter Galotti | Yes |
| | Bob Johnston | Yes |
| | Howard Prager | Yes |

Mr. Prager: Next on the agenda is another Public Hearing 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: Are all the mailings in order?

Ms. 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. Galotti: Second

Mr. Prager: All in favor.

Board: Aye.

Mr. Prager: Please come up on give us your name.

Ms. Dutcher: My name is Jill Dutcher and I represent the Lutterschmidt's.

Mr. Prager: We have a small problem. We were out to the property and nothing was marked out and we didn't have a survey but we have one now. (Board reviews survey)

Mr. Prager: The site plan shows 8 feet from the chain link fence. You are asking for a variance for 4 feet.

Ms. Dutcher: Sal Morello, your building inspector, went out and measured and said we needed 4 feet. Which is confusing to all of us because if no one could find the side line, how did he come up with a 4 foot variance?

Mr. Prager: I agree with you.

Ms. Dutcher: It now appears that we need a 12 foot variance.

Mr. Prager: It is going to be a 12 foot variance instead of 4 feet. We saw shrubs there, who owns the shrubs?

Ms. Dutcher: The next door neighbor does not know where their property line is. They don't even have a survey. Mr. Oswald was hired by us yesterday and he went out and did the survey.

Mr. Johnston: Is the pool in compliance?

Mrs. Roberti: Not by today's standards but it does have a C/O. It was put in in the '80's and back in the '80's most accessory structures needed 10 feet. The garage was built back in the '80's and was not legalized and now has to be legalized by our standards now and that is why a 20 foot setback is needed.

- Mr. Galotti: Has the garage been there as long as the house?
- Ms. Dutcher: Since 1978. The current owner, which is deceased, purchased the house in 1985 and the garage was there.
- Mr. Johnston: The current owner bought the house and the garage was there?
- Ms. Dutcher: Yes, it did not come up in the title search back then.
- Ms. Roberti: The pool was put in back in the '80's and the garage was not there in the early '80's because it was not on the plot plan. It was put in before the Lutterschmidt's bought the house. The prior owners in the early '80's put it in and never obtained a building permit. When they did c/o search back then, they didn't have the staff and they did not go out to the property. It wasn't picked up and these people bought it and now 30 years later we go out when we do c/o searches and that is how the garage was picked up.
- Mr. Prager: Is there anyone in the audience for or against this variance?
- Mr. Prager: Let the record show no one in the audience 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. Galotti: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- Mr. Prager: Can I have a motion to grant or deny this variance?
- Mr. Johnston: I make a motion to grant this variance.**
- Mr. Galotti: Second.**
- Ms. Rose:**
- | | |
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| Al Casella | No |
| Bob Johnston | Yes |
| Peter Galotti | Yes |
| Howard Prager | Yes |

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

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 side property line, thus requesting a **25 foot variance.**

-Where the **code states...in no case shall Accessory Structures be permitted in the front yard** the applicant requests a variance for an existing 12 x 20 shed in her front yard.

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: Are all the mailings in order?

Ms. Rose: Yes sir.

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

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

Mr. Casella: Second.

Mr. Prager: All in favor?

Board: Aye.

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

Ms. Younge: My name is Jennifer Younge. I have a car port that has been put in place for 5 years. My neighbors support my desire to leave it in place. It does not affect the property value according to my real estate agent. I use the shed in the winter time to store wood and my snow plow and year round I use it to trap the neighborhood feral cats. I have a successful program doing that. I really want the shed to stay where it is.

Mr. Johnston: How much property do you have?

Ms. Younge: I have 2 1/4 acres but I only maintain a 1/3 of it. If I move the car port to the back yard, I don't think the cats will go there. It will be

no use to me because I couldn't put my snow plow there because I cannot access the driveway. It is the best place for it.

Mr. Johnston: The cats don't go in the back yard?

Ms. Younge: No because they live across the street. Feral cats tend not to stray to far away from their home.

Mr. Johnston: How long have you been doing this?

Ms. Younge: 5 years. The neighbors and I have seen a reduction in the feral cat population.

Mr. Casella: Is there really no other place to put it. Are there other car ports in your neighborhood?

Ms. Younge: Yes but not many. Most of the neighbors don't have garages. We have a lot of boats with tarps over them.

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

Mr. Prager: Hearing none, 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. Galotti: I'm at a little of a loss because I wasn't able to do a site visit. My only reservation is that it is a large piece of property and there couldn't be another spot for it; it is 2 ¼ acres.

Ms. Younge: I don't maintain a lot of the property. If I have to move it to be in compliance, I may as well take it down.

Mr. Galotti: I think it is very noble what you are doing with the cats but that is not why we are here.

Mr. Johnston: Mr. Chairman, since we do not have a full panel can we give her a

choice of postponing the vote?

Mr. Prager: Would you like to wait until we have a full panel?

Mr. Galotti: I am going to abstain because I wasn't there and I will get out there this week.

Ms. Younge: If all of my neighbor's say it is fine, what is your concern?

Mr. Casella: There are certain criteria's that need to be filled.

Ms. Younge: I'll postpone the vote.

Mr. Prager: The next item on the agenda is a discussion on:

Appeal No. 13-7501

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

-Where the maximum size of an accessory apartment shall be subordinate in area to the principal dwelling and shall not exceed **35%** of the gross floor area of said principal dwelling and in no event exceed 1,000 square feet of gross floor area, the applicant can provide **40%**, thus requesting a **5%** variance.

The property is located at **8 Midge Drive** and is identified by Tax Grid No. **6156-01-445721** in the Town of Wappinger.

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

Ms. Kalinski: My name is Cathy Kalinski I live at 8 Midge Drive. I bought the house in 1986 with the apartment. I recently put in a furnace and when the inspector came to inspect the furnace he said I have an illegal apartment. I told him I bought the house like this and family lives here. We were told it was a legal Mother/Daughter but not a legal two family house. My sister lives down stairs and I live up stairs.

Mr. Prager: We have seen situations like this before.

Ms. Kalinski: We have had inspectors out before and they classified it as a summer kitchen.

Mr. Johnston: Is there a separation between the top and bottom floor?

Ms. Kalinski: There is a door but it's never locked. It's two separate kitchens but we eat together every night.

Mrs. Roberti: There are a lot of homes like this. They have put in summer kitchens or illegal apartments and were never caught. It is unfortunate that people buy them. The brokers tell them it is fine and it's a Mother/Daughter and then situations like this come up. We have an accessory apartment law for these conditions, for example two sisters, mother/father, or son/daughter. Ms. Kalinski is trying to legalize it. The importance of this is if they decided to sell it, it is now legal. The new homeowner will have to come in and register it as an accessory apartment because the paper work is filed with the deed.

Mr. Prager: Does anyone have any question? Do we need to go out and see it?

Board: No.

Mr. Prager: We will waive the site inspection. We will have our Public Hearing for the next meeting.

Mr. Prager: Next on the agenda is:

Appeal No. 13-7502

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

-Where a **50 foot front yard** setback is required for the installation of a 20 x 34 A/G pool with deck, the applicant can only provide **26 feet** thus requesting a **24 foot variance**.

-Where a **40 foot right side yard** setback is required for the installation of a 20 x 34 A/G pool with deck, the applicant can only provide **22 feet** thus requesting an **18 foot** variance.

The property is located at **47 Marlorville Road** and is identified by Tax Grid No. **6157-01-008835** in the Town of Wappinger.

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

Mr. Smith: My name is Michael Smith.

Mr. Prager: Does this pool exist?

Mr. Smith: No, it's not in yet.

Mr. Prager: I noticed you have a barn.

- Mr. Smith: No, it was taken down.
- Mr. Johnston: Is there a reason why you are not putting it behind the house?
- Mr. Smith: There are too many trees back there. It would be too shady. It is perfect where we want to put it. Any further up, it would be on top of the septic.
- Mr. Prager: What if you turn it 90 degrees?
- Mrs. Roberti: I just want to point out that he has a very small piece of property. It is less than a ¼ of an acre and it's an R 40 district. In any direction he would need 2 variances.
- Mr. Prager: We will have a site inspection and please mark out where the pool is going to be and also your property lines.
- Mr. Johnston: How long has the house been there?
- Mr. Smith: From 1900.
- Mr. Prager: New starting time will be 7:00PM starting August 27th.
- Mr. Galotti: I make a motion to change the starting time to 7:00PM starting August 27th.**
- Mr. Casella: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- Mr. Galotti: 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