

MINUTES

**Town of Wappinger
Zoning Board of Appeals
November 26, 2013**

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

Summarized Minutes

Members:

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

Others Present:

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

SUMMARY

Prestige Mini	Granted
Ray Alexander & Melandie Williamson	Variance Granted
James Geraghty	No Show
Aaron Kellner & Krystal Campbell	Public Hearing January 14th

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

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

Mr. Prager: Can I have a motion to accept the minutes from October 8, 2013, October 22, 2013 and November 12, 2013?

Mr. Casella: I make a motion to accept the minutes from October 8, 2013, October 22, 2013 and November 12, 2013.

Mr. Galotti: Second.

Mr. Prager: All in favor?

Board: Aye.

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

Appeal No. 13-7511

Ray Alexander & Melandie Williamson-Is seeking an area variance of Section 240-37 of Zoning Regulations in a R40/80 Zoning District.

-Where in **no case shall accessory structures be permitted in the front yard**, the applicant has an **existing I/G 15' X 24' pool** in their front yard.

-Where in **no case shall accessory structures be permitted in the front yard**, the applicant has a **hot tub in** their front yard.

-Where in **no case shall accessory structures be permitted in the front yard**, the applicant has a **pavilion for wood storage** in their front yard.

The property is located at **68 Diddell Road** and is identified by **Tax Grid No. 6359-03-383254** in the Town of Wappinger.

Mr. Prager: Are all the mailings in order?

Ms. Gale: Yes.

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

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

Mr. Johnston: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Alexander: My name is Ray Alexander & Melandie Alexander. The way the house is facing I didn't realize that it was the front of my house. I didn't know I needed a permit for the wood boiler and I didn't know it was the front of my house. So I am asking for a variance for that.

Mr. Prager: When was the house built?

Mr. Alexander: About 1974 or 1975.

Mr. Prager: We did have a site inspection. I see how this came about. If the road was in front of your house, you would be ok. The house is turned towards Diddell Road and that is the issue. Nobody can see the house because it is way up and you have a long driveway. Does anyone have any other questions?

Mr. Galotti: I went up this morning I hope I didn't disturb anyone.

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: Can I have a motion to grant or deny the variance?

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

Mr. Johnston: Second.

Mr. Prager: Roll call vote.

Mrs. Gale: Al Casella Yes

Peter Galotti	Yes
Bob Johnston	Yes
Howard Prager	Yes

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

Appeal No. 13-7509

James Geraghty-Is seeking an area variance of Section 240-37 of Zoning Regulations in an R-15 Zoning District.

-Where **12 feet** to the side yard property line is required, the applicant can only provide **9 feet**, thus requesting a **3 foot** variance for an existing **12' X 20'** deck (with no stairs).

- The property is located at **14 Ardmore Drive** and is identified by Tax Grid No. **6257-03-268482** in the Town of Wappinger.

Mrs. Roberti: He is not here.

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

Appeal No. 13-7504

Aaron Kellner & Krystal Campbell - Is seeking an area variance of Section 240-20(A) of the Town of Wappinger Zoning Regulation and 280-a of Town Law in an R-20 Zoning District.

-The applicant (Kellner) proposes to access his lot over an easement which has been created over the 1.48 acre Campbell lot, two other lots on Easter Road would also gain access over the Campbell property with the granting of this variance. The properties are located at **76 & 80 Easter Road (Kellner) 54 & 62 Easter Road & 14 Circle Drive (Campbell)** and are identified by **Tax Grid Nos. 6056-01-294696/326668 (Kellner) & 6056-01-259729/276713/259750 (Campbell)** in the Town of Wappinger.

Mr. Prager: This is a discussion that was started last month.

Mr. Adams: Mr. Chairman, we adjourned this discussion to further explore one issue and that is the additional connection between Circle Drive and Easter Road. I want to submit as part of the record filed map numbered 5780. There are 2 thing, this is a subdivision map that was approved by your Planning Board (Pointing to the map) here you have a connection between Circle Drive and the lots in question. If you look at the bottom of the map, there is a reference to Circle Drive continuing down to Easter Road. It our belief that

this map collaborates. I gave the board at the last meeting the deed for Leggiero. That deed includes a right away going from Circle going down to Easter. I have spoken to Mr. Horan about this and trying to explore the history of this. I don't think we have come up with a satisfactory reason. We have documentation stating our belief.

Mr. Horan: Jon has presented to me a number of deeds. We have gone through the records of the town and the assessor to determine how some of these parcels were created. (Pointing to the map) with respect to the Leggiero parcel, here this is shown as a road on this map. Right now on the tax map that is being shown as Leggiero. I don't know who owns this piece here.

Mr. Prager: Please state your name.

Mr. Kellner: My name is Aaron Kellner. (Pointing to the map) this is Circle Drive here and this is the road in question.

Mr. Prager: (Pointing to the map) do you know who owns this?

Mr. Kellner: (Pointing to the map) I believe was part of this whole chunk here.

Mr. Prager: Who owns that?

Mr. Kellner: Look at the deeds. I believe this was all one parcel at one time and then it was sold to Hernandez.

Mr. Prager: Ok, that doesn't matter.

Mr. Kellner: Back in the '60, Martinet plowed the road through.

Mr. Horan: In going through the assessor's record, we had notations on the property cards but we did not have the deeds themselves. (Pointing to the map) the deed for this piece was from, as Mr. Kellner said, was Carmen Martinet and Albert Martinet. We had originally thought this was a road that went at a tax sale and it appears that was not the case. The question becomes what kind of rights, if any, would the people on Easter Road have to cross that. That is one of the issues in dispute.

Mr. Adams: I think the doctrine speaks for its self. The doctrine does not limit or qualify who could use it. We suggested to the board that we are not looking to take advantage of that and further add activity on

the Leggerio lot. There is a pattern here that people on Easter Road use the access to Circle Drive to get to River Road. We are following the same pattern. What is interesting from a historical stand point, you recall the sub division map I gave you, that was owned by Gavin. (Pointing to the map) Gavin actually owned all that land. In 1941 Gavin, sold all the land on this side to Scolfield. Scolfield developed all this property back in the '40's and they didn't file maps back then. It is reasonable to think that the common ownership of Scolfield and the owner across the road that there was an intent to have some kind of interior connection.

Mr. Horan: I have found a map from 1949, which shows this was in Scolfield's name. (Pointing to the map) it is not a sub division map; it is just a map of lands conveyed. It is not known if Scolfield is the grantor or grantee. It is just a map of that property which is ultimately this sub division. Scolfield conveyed the property to Kessler at some later date. (Pointing to the map) we are intending to create a water district here, with this in mind the right away on Circle Drive, I cannot find a map that lays that out. There are photos that show Circle Drive did exist before 1955 and portions of it may have existed as far back as 1936. What I see as an issue is the 911 addressing for the parcels on Easter Road. They are not getting emergency access from Easter Road. Private driveways have to have their own street names. I don't know how that will be treated. The application is to service four lots.

Mr. Adams: I would ask the board to set a Public Hearing. There is some urgency in this matter because my client has a limited window to collect his insurance.

Mr. Horan: Reviews aerial photo of Easter Road, Circle Drive, and Lake Drive.

Mr. Kellner: When the Chelsea Ridge Apartments went in, all their water from their streets came down and washed out that bridge. (Pointing to the map)

Mr. Horan: Is there a clearing in the back portion of the Campbell lot?
(Reviewing pictures)

Mrs. Campbell: I'm Krystal Campbell and we have owned the property since 1991. (Mrs. Campbell reviews pictures and map with Mr. Horan)
I do know that Leggerio, Hernandez and Sabrize use this right away.

- Mrs. Roberti: Now.
- Mr. Horan: I don't see a problem setting a Public Hearing.
- Mrs. Roberti: The available dates are January 14th and 28th.
- Mr. Prager: Since there is no one available to do the paper work for the Public Hearing, we will set it for January 14th.
- Mrs. Kellner: Our objective is to get a building permit. We have been trying for 9 years. If this building permit is contingent on getting a Public Hearing, there is absolutely no way we can get a foundation in and get the second installment of the insurance money. We have spent \$30,000 to date. Our position has always been that Leggerio easement has always been in place and the initial issue is that we do not have legal or EMS access to our property so therefore we were not allowed a building permit. We have been grandfathered, Easter Road has been grandfathered and the fire trucks, in 2004, came over Leggerio's property. If we are going to get our building permit, which is now going on ten years, you have to understand what we have gone through these ten years. We lived in that house with the intension of fixing it up and renting it. We have lost rental income. We have incurred attorney bills. My entire marriage has revolved around that house burning down. We have been struggling and you don't even know the amount of stress that we have been under. If we have to wait until January, to be honest with you, all of our endeavors have been futile. We need to get the foundation in the ground. Then we have to get a contractor. If we could get the foundation in before the frost, then we could get it framed. By postponing this is basically cutting our throats, financially and mentally. That Leggerio right away, we have had legal access and we have had EMS access. If you have a cell phone and you go on GPS, I would like to see if it comes up? I believe this was an oversight by the town; the Leggerio right away access was not properly handled. It should have been put on the map so all these EMS guys know where they have to go.
- Mr. Horan: What is being brought up now should be brought up in a Public Hearing. I understand your situation but the problem we are running into now is the paper work cannot get done. You did come in late in the year.
- Mrs. Kellner: It is not late in the year, it is ten years late.

- Mr. Prager: If we can't get the paperwork done, we can't get it done.
- Mrs. Kellner: What we are asking for is a building permit.
- Mr. Horan: This deals with section 280-A of the town law. Under this law, the town is not allowed to issue a building permit for property that is not on a public road or a private road shown on a filed map that needs to be suitably improved. The access over the Leggerio lot is not a public road. It is not on a filed map and the issue with Easter Road and this has been on the table before, Easter Road was improved for its length. The town would be in the position to issue a building permit because that was the access to Easter Road; to switch access is uncommon and I have never seen it before in a situation like this. The other issue is the certain improvements need to be made on Easter Road from this house down through the driveway on the Campbell property. One of the standards the board has to look at is there an alternative available. The alternative here is to repair the culvert on Easter Road. One of the things that need to be put into evidence is what the costs are.
- Mrs. Campbell: My husband and I asked the excavator that we have used in the past to give us a quote. To demolish and build a bridge of \$95,000 and that is not including other improvements. It is all rock and he would have to bring in special equipment. We don't have \$95,000.
- Mr. Prager: That is something that should come out at the Public Hearing.
- Mrs. Kellner: I would like to comment on the improvements to Easter Road. As far as we understand we have made the improvements that have been requested of us by the building department. Which is grading the road where the hill is on the road? The fact that you are claiming that according to the law; Leggerio's right away is not on that map but it is on the tax map. In terms of improvements on Easter Road, with Leggerio's right away up toward the east end of the road, we have satisfied all the demand from the building department. What you said is not accurate. You realize that by that road not being on the county map, but it is on the tax map, it has been used for umpteen year and has been grandfathered. Because of the town's oversight to put it on the county map, we are being jeopardized for it. All the other people that live on Easter Road, from top to bottom, for the last 80 years has had the liberty to legally buy and sell their property and enjoy the pleasure of their home but we who has suffered a terrible tragedy are being held to

account for the fact that our house burnt down and we are losing the ability to rebuild it. Everyone on that road can buy and sell their homes but we cannot rebuild. It doesn't make sense at all. I would be hard pressed to see you bring this to a court of law. Leggerio's is a legal right of way and it is grandfathered. You are denying us the right to rebuild but everyone else can enjoy their homes. Why because the town failed to have it accurately documented.

Mr. Prager: We understand that.

Mrs. Kellner: No, I really don't think you do.

Mr. Prager: We do but it shouldn't be brought up now.

Mr. Johnston: I make a motion to go into executive session for legal advice.

Mr. Casella: Second.

Mr. Casella: I make a motion to come out of executive session.

Mr. Galotti: Second.

Mr. Prager: Can I have a motion to adjourn the meeting?

Mr. Casella: I make a motion to adjourn this meeting.

Mr. Johnston: Second.

Mr. Prager: All in favor?

Board: Aye.

Respectfully Submitted,

Susan Rose, Secretary
Zoning Board of Appeals