

**MINUTES**

**Town of Wappinger  
Zoning Board of Appeals  
March 11, 2014**

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

**Summarized Minutes**

**Members:**

Mr. Prager	Chairman
Mr. Rexhouse	Member
Mr. Casella	Member
Mr. Johnston	Member
Mr. Galotti	Member

**Others Present:**

Mrs. Barbara Roberti	Zoning Administrator
Ms. Sue Rose	Secretary
Mr. Jim Horan	Attorney

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**SUMMARY**

Antonella & Gennaro Mauro                      Variance granted

Michael Goodwin                                      Adjourned until March 25<sup>th</sup>

Aaron Kellner & Krystal Campbell              Variance denied

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  
Brian Rexhouse- --Here  
Al Casella-----Here  
Bob Johnston-----Here  
Peter Galotti-----Here

Mr. Prager: Do I have a motion to accept the minutes from November 2, 2013 and February 25, 2014?

Mr. Casella: I make a motion to accept the minutes.

Mr. Johnston: Second.

Mr. Prager: All in favor?

Board: Aye.

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

**Appeal No. 14-7516**

**Antonella & Gennaro Mauro** Is seeking an area variance of 240-37 of the Town of Wappinger Zoning Regulation in an R-40 Zoning District.

-Where a **30 foot rear yard setback** is required for the installation of a 24' above ground pool with no deck, the applicant can only provide **20 feet** to the rear property line, thus requesting at **10 ft.** variance.

The property is located at **10 Kendell Drive** and is identified by **Tax Grid No. 6257-03-372438** in the Town of Wappinger.

Mr. Prager: Are all the mailings in order?

Ms. Rose: Yes sir.

Mr. Prager: Do 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 explain why you need this variance.

Mr. Mauro: My name is Gennaro Mauro. The property isn't that deep and we are looking for a 10 foot variance for a 24 foot round above ground pool.

Mr. Prager: We did have a site visit. Does anyone on the board have any question? Is there anyone in the audience have any question?

Ms. Ciccarello: My name is Marilyn Ciccarello and I live at 14 Kendell Drive. I would like to know if there is anyway a different size pool could be installed because I think they are going into the conservation area. I don't have a problem with the pool; my concern is the conservation area.

Mrs. Roberti: (Pointing to the map) it appears the conservation area is beyond the area they are looking to put the pool in.

Mr. Prager: The conservation area is beyond the pool area according to the map.

Ms. Ciccarello: That is my only concern. Thank you.

Mr. Prager: Is there anyone else in the audience with any questions? Hearing none, can I have a motion to close the Public Hearing?

Mr. Galotti: 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 make a motion to grant this variance.

Mr. Casella: Second.

Mr. Prager: Roll call vote.

Ms. Rose: Al Casella Aye  
Peter Galotti Aye  
Brain Rexhouse Aye

Bob Johnston           Aye  
Howard Prager           Aye

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

**Appeal 14-7515**

**Michael Goodwin**-Is seeking an area variance of 280 A of NYS Town Law and 240-20A of the Town of Wappinger Zoning Code in and R 20/40 Zoning District.

-Where **any construction of any structure unless the street or highway giving access to said use or structure has been suitably improved to Town road standards** for the construction of a modular home, consisting of 3 bedrooms, 1 family room, 1 dining room, 1 bath, central air, and a garage.

-The property is located at **35 Dugan Lane** and is identified by **Tax Grid No. 6256-02-970944** in the Town of Wappinger.

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

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

Mr. Johnston:             Second.

Mr. Prager:                All in favor?

Board:                     Aye.

Mr. Prager:                Please come up and state your name.

Mr. Goodwin:             Michael Goodwin and Joshua Indorf.

Mr. Horan:                Since the last meeting, we did do some research. We did receive a title search from Mr. Indorf's attorney. In looking at the title and some of the town's records it indicates the Dugan Lane was a farm lane created in 1812. It ran all the way to All Angels Hill Road, the length of it was about a mile. In 1962, several owners of the property, at the All Angels end of Dugan Lane, made a petition that the Town Board take over Dugan Lane as a town road. In 1965, the Planning Board sent a letter to the Town Board recommending to accept as a town road. As far as Locust Drive, looking at the maps we don't know if it intersects with Dugan Lane. There was also a discussion in 1965 about requiring a quick claim deed from the property owner. And that is it; there is no subsequent discussion from the Town Board accepting Dugan Lane. The town Highway Superintendent does maintain Dugan Lane up to the black top. It is not a road by dedication but because the town has maintained it for more than ten years and it was used as a public road, it is called a highway by usual. (Pointing to the map) the property here,

Dugan Lane would be a private road. The property to the west, does not gain access from Dugan Lane. It gains access from Shady Brook or Martin Blvd; which is a private road. There doesn't seem a need to continue Dugan Lane. It looks like in 1945 the properties were carved out and used other accesses. It appears in 1984, there was a variance that was issued before this lot for a single family home. The one thing that it does not say is how Dugan Lane is to be improved. The implication is that Dugan Lane had to be extended to that property. The minutes are not clear and allows for discussion. It allows a house to be constructed but is unclear how Dugan Lane is to be constructed on the property. Based on the prior variance, the applicant has the right to construct the house. As the code is written, it appears that Dugan Lane would have to be constructed to the town highway standards. The portion of Dugan Lane to the east is not improved to the current town highway standards. This board has the authority to grant a waiver to allow the construction of something less than the highway specifications. At the last meeting I discussed if the town has title to Dugan Lane because if the town does own Dugan Lane then the law would require the applicant to improve the road to town highway standards. Since it is a private road and we don't have ownership, which gives this board a lot more flexibility. In talking to the Highway Superintendent, he would like to see a turnaround at the end of the town maintenance, where ever it would be. The tax map shows a 50 foot right away for Dugan Lane. I have not seen any right away width in the deed. I sent an e-mail to Mr. Indorf's attorney asking if he could get us information on the width. The other option is to extend the black top to Mr. Goodwin's lot and put the turn around on the lot and have the driveway connect to that.

Mr. Galotti: Maybe we could make some type of hammer head there.

Mr. Horan: From the town's point of view, it makes sense to put a turnaround at the end of the existing maintenance. It may be easier to extend the pavement and make the turn around on your property.

Mr. Indorf: We can't be paying for a turnaround for everyone on the road.

Mr. Prager: Can we have Graham Foster way in on this?

Mrs. Roberti: The Fire Prevention Bureau reviewed the plans and their answer was –a driveway can be paved and a pull off midway and a turnaround near the house site with a minimum driveway width of 14 feet.

Mr. Prager: We are going to wait to hear from Mr. Foster. We will adjourn this until the next meeting.

Mr. Prager: Can I have a motion to adjourn this until March 25<sup>th</sup>.

- Mr. Galotti: I make a motion to adjourn this until March 25<sup>th</sup>.
- Mr. Rexhouse: Second.
- Mr. Prager: All in favor?
- Board: Aye.
- Mr. Prager: Can I have a motion to have an escrow account started in the sum of \$2,000?
- Mr. Galotti: I make a motion to have an escrow account started.
- Mr. Casella: Second
- 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: Can I have a motion to open the Adjourned Public Hearing?
- Mr. Johnston: I make a motion to open the Adjourned Public Hearing.
- Mr. Galotti: Second.
- Mr. Prager: All in favor?
- Board: Aye.
- Mr. Prager: I believe you have some information for us Mr. Adams.
- Mr. Adams: I would like to submit some estimates that Mr. Kellner has obtained from a local contracting company.
- Mr. Kellner: We have been talking about the replacement of the culvert and or bridge on Easter Road. There is a long history with this. *Mr. Kellner gives board hand outs.* Over the years, in attempting to make repairs, we have come up

with a lot of problems. They have made it a risky proposition. (Showing pictures to the board) this is some of the water we have seen coming under the bridge during the Irene Storm. The town wanted to see a hydrological study; the study shows there is a lot of water that flows through here. We past on his plan because it was very complex and expensive. His plan was to put in a 16 foot by 7 foot culvert that would replace the bridge. In addition to that, it would need the removal of 1 foot of bedrock under the bridge because if it is not removed there would be too much water to hold up. The plan came to approximately \$100,000. The town engineer recommends a small culvert. If I put a culvert in there, who is responsible for that? I am. If this happens again, this little culvert will get washed out. This is not a good thing for me. It is risky and is not nearly as good of a solution as using a bypass road. That estimate is four or five years old so I know it would be higher now. This is why we want to go with the bypass road and not the bridge.

Ms. Campbell: I am Krystal Campbell. My husband and I would be against replacing that bridge. If someone gets water in their basement, it would be our fault. People on that road don't want to help but would be out there with their hands out if they know they could get money from us. Aaron's estimate is just for the bridge. It does not include what needs to be done below that. We are talking about a lot of money; the road needs drainage. We will pave across our property and we will build it to whatever the specifications are. This would be a safer alternative.

Mr. Kellner: In the future we are looking at the development of the Chelsea Farms Development. With the development of more homes, there will be additional runoff. If you remember, we have been having problems since the Chelsea Ridge Apartments.

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

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

Mr. Rexhouse: Second.

Mr. Prager: All in favor?

Board: Aye.

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. Galotti: Second.  
Mr. Prager: All in favor?  
Board: Aye.  
Mr. Prager: I have a decision which reads as follows:

**TOWN OF WAPPINGER  
ZONING BOARD OF APPEALS  
APPLICATION FOR VARIANCE  
FINDINGS & DECISION**

<b>Appeal No.</b>	<b>13-7504</b>
<b>Application Date:</b>	<b>August 29, 2013</b>
<b>Applicant</b>	<b>Aaron Kellner &amp; Krystal Campell</b>
<b>Premises Located at:</b>	<b>Lots on Easter Road</b>
<b>Tax Grid No.:</b>	<b>6056-01-294696 (76 Easter Road) 6056-01-326668 (80 Easter Road) 6056-01-259729 (54 Easter Road) 6056-01-276713 (62 Easter Road) and 6056-01-259750 (14 Circle Drive)</b>
<b>Zoning District(s):</b>	<b>R-20 and R-40/80</b>
<b>Record Owners of Properties:</b>	<b>Aaron Kellner and Peter and Krystal Campell</b>
<b>Variance of Code Sections:</b>	<b>NY Town Law § 280a &amp; Zoning Code § 240-20</b>

**Description of the Premises & Proposed Variance**

Applicant Aaron Kellner owns two lots designated as tax parcels 6056-01-294696 (76 Easter Road) and 6056-01-326668 (80 Easter Road). Applicants Peter and Krystal Campbell own two lots located on Easter Road: 6056-01-259729 (54 Easter Road) and 6056-01-276713

(62 Easter Road). Peter & Krystal Campbell also own a 1.48 acre lot designated as tax parcel 6056-01-259750 having an address of 14 Circle Drive.

Lot 294696 (76 Easter Road) is improved with a structure. A single family house was constructed on Lot 326668 (80 Easter Road) in 1954, according to a letter from Kellner to the Town. Prior to 1960, the Town of Wappinger did not require building permits for the construction of structures. The house on Lot 326668 owned by Kellner was destroyed by fire on June 29, 2004. The Town Fire Inspector and Code Enforcement Officer declared the fire damaged building unsafe and it was removed.

In August of 2006, Kellner met with officials of the building department to discuss rebuilding the house at 80 Easter Road. At that time Mr. Kellner was told that the bridge on Easter Road was unsafe and needed to be repaired. He was also informed that in addition to repairing the bridge, Easter Road had to be improved in certain areas to insure access for emergency vehicles and no building permit would be issued unless and until the improvements to Easter Road were made.

In 2011, Kellner approached the Town of Wappinger with a proposal to gain access to 80 Easter Road by a right of way over the property of Campbell at 14 Circle Drive (Lot 259750). Under this proposal, the bridge on Easter Road would not be repaired. The Town advised Kellner that a variance pursuant to Town Law §280-a and Town of Wappinger Zoning Code § 240-20 was required in order to obtain a building permit since access to 80 Easter Road was no longer from a street shown on a filed map but rather by a driveway out to Circle Drive.

On January 29, 2013, Aaron Kellner applied for a building permit for a structure on Lot 326668 (80 Easter Drive). By letter dated February 20, 2013, Engineer to the Town, Robert Gray, P.E. rejected the building permit. Aaron Kellner appeals the denial of that letter.

The letter from the Engineer to the Town provided two separate paths to obtain a building permit. The first path was to obtain authorization under NY Town Law 280-a and Town of Wappinger Code § 240-20 to allow access by means of a driveway over the Campbell Property. The Engineer to the Town noted that “the entire driveway from Circle Drive to the Kellner property will be paved since a significant portion of the access is greater than 6% grade.” Under this path a new driveway would be created that would be required to comply with existing Town Code provisions for driveways.

The second path outlined by the Engineer to the Town was to replace the existing stream crossing on Easter Road. The Engineer to the Town noted that on Easter Road the “existing bridge is in a state of disrepair and should be restored or replaced with an adequately sized culvert. The culvert could be installed at the same size as the existing culvert downstream at River Road. Prior to approval of this installation, any NYSDEC approvals would be required or proof that the stream is not in a classification that requires NYSDEC permitting.”

The Applicants Aaron Kellner and Peter and Krystal Campbell seek a variance from the strict provisions of NY Town Law 280-a and Town of Wappinger Code § 240-20. The variances are required because the Applicants seek to gain access to the lots on Easter Road over a

driveway to Circle Drive that is not a public highway and is not shown on a map filed in the Office of the County Clerk.

## **Findings of Facts**

### **Easter Road**

Easter Road is shown on a subdivision map entitled "Property Subdivision of Dominick J. Gavin, Old Chelsea Road, Town of Wappinger, Dutchess County" dated July 30, 1948 filed in the office of the Dutchess County Clerk as map number 2259 on May 1, 1950. Filed Map 2259 shows 6 lots. FM 2259 and Easter Road is referred to in a deed from Dominick J. Gavin and Frances Davis Gavin to Hudson-Shannon Corporation dated April 29, 1950 which transferred Lots 1-4 on FM 2259 to Hudson-Shannon Corporation. The April 29, 1950 deed reserved to the Gavins a right of way over the 50 foot wide private road (known as Easter Road).

On July 31, 1951, a second subdivision map entitled "Property of Hudson-Shannon Corp. and D.J. Gavin & Others, Old Chelsea Road, Town of Wappinger, Dutchess County" dated July 2, 1951 was filed in the office of the Dutchess County Clerk on July 31, 1951 as Filed Map 2332. FM 2332 showed 9 lots. Lots 1-4 retained the same configuration as shown on FM 2259 and are shown to be owned by Hudson-Shannon Corp.

Lot 8 on FM 2332 shows its owner to be W. Wilson and is now Lot 294696 (76 Easter Road) and is also owned by Kellner. William Wilson received title to the premises from Dominick J. Gavin and Frances Davis Gavin in 1950. The conveyance into Wilson included a right of way in common with others along the northerly line of lands of Gavin and Hudson-Shannon Corporation from the Old Chelsea Road. The deed from Gavin to Wilson reserved to the grantors (Gavin) a right of way over a strip of land 50 feet wide along the northeasterly line of the lands conveyed and the power to dedicate said land as a public highway and to grant easements for public utilities. Thus a 50 foot right of way over Lots 1-8 out to Old Chelsea Road was created. Aaron Kellner received title to Lot 294696 (76 Easter Road) by deed from Bertha Kellner dated August 20, 1986 which was recorded in the office of the Dutchess County Clerk at Liber of Deeds 1720 page 752.

Lot 9 on FM 2332 shows its owner to be P. Kellner and is now Lot 326668 (80 Easter Road) and is presently owned by Kellner. Aaron Keller is the owner of Lot 326668 (80 Easter Road) by virtue of a deed from Bertha Kellner dated August 20, 1986 which was recorded in the office of the Dutchess County Clerk at Liber of Deeds 1720 page 754. The deed for Lot 9 includes the grant of "a right of way in common with others along the Northeasterly line of lands of Gavin and Hudson-Shannon Corporation to and from the Old Chelsea Road aforesaid."

The Applicant argued that there was no reservation of a right of way for lots 7, 8 and 9 in the deeds from Hudson-Shannon Corporation, however the reservation of the right of way was made by Gavin prior to the transfer into Hudson-Shannon Corporation. Subsequent deeds from Gavin transferred the right of way to Wilson and thence to the current owner Kellner.

The deed from Gavin to Wilson provides a legal right of way for all lots on Easter Road, including lots 7, 8 and 9, over a 50 foot right of way out to Old Chelsea Road (now River Road). This deed also gives the successors to Gavin the right to dedicate Easter Road as a public road.

The attorney to the ZBA caused a search of the Town Clerk’s records to be made and there is no offer to dedicate Easter Road to the Town as a public road.

**Current Owners on Easter Road**

The following is a list of the owners of the lots on Easter Road:

<b>Properties on Easter Road</b>					
	Record Owner	Tax Parcel ID	Address	Lot Area	FM 2332 Reference
1	Stache/Enrico	6056-01-169808	6 Easter Road	3.4 acres	Lot 1
2	Toth	6056-01-197783	20 Easter Road	1.04 acres	Lot 2& p/o 3
3	Burns	6056-01-216765	30 Easter Road	1 acre	Lot 4 & p/o 3
4	Hernandez	6056-01-230755	36 Easter Road	0.50 acre	Lot 5
5	Leggiero	6056-01-239747	40 Easter Road	0.56 acre	p/o Lot 6 + Circle Drive
6	Subrize	6056-01-248739	Easter Road	0.49 acre	p/o Lot 6
7	Campbell	6056-01-259729	54 Easter Road	0.7 acre	p/o Lot 6
8	Campbell	6056-01-276713	62 Easter Road	1 acre	Lot 7
9	Kellner	6056-01-294696	76 Easter Road	1 acre	Lot 8
10	Kellner	6056-01-326668	80 Easter Road	3.5 acres	Lot 9

Lot 169808 has approximately 300 feet of frontage on River Road. Lot 239747 has 35 feet of frontage on Circle Drive. All of the other lots derive their legal access from Easter Road.

**Lot 6056-01-239747 (40 Easter Road)**

During the proceedings it was noted that access to Easter Road was obtained across Lot 239747 with an address of 40 Easter Road. The property is now owned by Noreen Leggiero by virtue of a deed from James F. Bosch, III dated December 22, 2005 and recorded in the office of the Dutchess County Clerk on December 22, 2005 at Document No. 02-2005-11493. The current configuration of Lot 6056-01-239747 was created on July 30, 1995 when former lot 6056-01-243764 which was 0.18 acres in size having an address of 12 Circle Drive was merged into prior Lot 6056-01-239747 which was 0.38 acres and Lot 243764 was deleted. The two former lots met at a single point, they did not share a boundary line.

According to the records of the Town Assessor, Lot 6056-01-243764 (12 Circle Drive) was created by a deed from Arthur Joseph Gadapee and Marjorie Elizabeth Gadapee to Albert Martinet and Carmen Q. Martinet dated February 18, 1961 which was recorded in Deed Book 1051, Page 104 in the office of the Dutchess County Clerk. The 12 Circle Drive lot was trapezoidal in shape having dimensions of: 67 feet along Easter Road, 154 feet perpendicular to Easter Road out to Circle Drive, 35 feet along Circle Drive and thence 157.4 feet at an angle

back to Easter Road. The Martinets were owners of a lot on Easter Road at the time they acquired the 12 Circle Drive parcel.

Lot 239747 is burdened by a right of way to use the driveway that is recorded in a deed from Rudolph and Hilda Schneider to Carmen Q. Martinet dated January 30, 1980 recorded at Liber 1529 Page 148. The Schneiders were predecessors in title for 14 Circle Drive (Lot 259750) which is now owned by Campbell.

A deed from Carmen Q. Martinet to Lucy Martinet dated July 15, 1977 and recorded at Liber of deeds 1466 at page 118 grants the owner of Lot 230755 (36 Easter Road) the "right to cross over the parcel of land on the northerly side of Easter Road acquired by said Albert and Carmen Q. Martinet by deed recorded in Book 1051 Deeds, page 104 for access to Circle Drive."

No other deeds have been presented granting the rights of others to cross Lot 6056-01-239747 (40 Easter Road). The parcel of land recorded in Book 1051 Deeds, page 104 for access to Circle Drive was never offered as a public or private road. A deed into the current owner of Lot 239747, Noreen Leggiero, from James F. Bosch III recorded at Document No. 02-2005-11493 notes that it is subject to an easement of others but there is no record of other easements than the two noted at Liber of deeds 1466m Page 118 and Liber 1529 Page 148.

The applicants have contended that they are entitled to a building permit by virtue of the fact that there is a right of way over Lot 239747 but that is not the case. As this is not a road, only the owner of the Lot 239747 can use the access to obtain a building permit. Even the owner of Lot 230755 (36 Easter Road) may not obtain a building permit as there is no frontage on a Town Road; the deeded right of way is not sufficient. Even if the Applicants could establish that they have a prescriptive right to cross over Lot 239747, such access does not establish the right to a building permit under Town Law § 280-a or Town Code § 240-20 as they no longer have suitably improved access over a road on a plat as Easter Road is not suitably improved.

### **Public Hearing**

A public hearing on the application was held on January 28, 2014 and continued on February 11, 2014, February 25, 2014 and March 11, 2014. Aaron Kellner, Alex Kellner, Peter Campbell, Krystal Campbell, and their attorney Jon Adams, Esq. spoke in support of the variance.

Town of Wappinger Superintendent of Highways Graham Foster testified that he believed the variance should be denied and that the bridge on Easter Road should be replaced by a culvert as outlined by the Engineer to the Town. Superintendent Foster noted that the Campbell Lot on Circle Drive only has 20 feet of frontage on Circle Drive while the Town Code requires 50 foot.

Clara Toth, the owner of 20 Easter Road spoke at the public hearing. She testified that she is 9 years old. She stated that the para-transit bus provided by Dutchess County "Dial a Ride" which would take her to doctors' appointments and shopping will not pick her up at her home because Easter Road is in such poor condition. She is force to pay for taxicab service

which is costly for her. Ms. Toth testified that she would be willing to contribute to the maintenance of Easter Road and had done so in the past.

### **Review of Town Law 280-a Variance**

Pursuant to NY Town Law § 280-a(3) a variance to permit a structure on a lot that does not abut a public highway that is suitably improved is to be reviewed by the ZBA in accordance with the standards for an area variance. In determining whether to grant an area variance, a zoning board must consider “the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant” (Town Law § 267-b [3][b]). The zoning board should also consider:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(3) whether the requested area variance is substantial;

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Pursuant to NY Town Law § 280-a(3), the ZBA “may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout.”

In addition to the variance under Town Law §280-a the applicant requires a variance from Town of Wappinger Zoning Code provision § 240-20(A) which requires 50 feet of frontage on a road improved to Town highway specifications. The two variances should be reviewed under the same standard.

The ZBA determines that the evidence presented result in the following determinations regarding the above noted factors:

### **Easter Road Not Suitably Improved**

The Zoning Board of Appeals has visited Easter Road and reviewed the documents submitted regarding its condition. The Zoning Board of Appeals determines that the Engineer to the Town is correct when he states that the bridge on Easter Road is in disrepair and is in need of replacement. In addition to the dilapidated bridge, portions of Easter Road to the east of the Subrize property, Lot 248739 are also not suitably improved.

The fact that the bridge is not suitable is corroborated by the testimony of Clara Toth who lives at 20 Easter Drive who stated at the public hearing that she fears traveling on the road and that Dutchess County paratransit will not pick her up at her house, she has to take a cab. There is also an email sent by the Chelsea Fire District stating that the grade of the road is steep and it has question as to the load carrying capacity of the existing bridge. The Applicants note in their application that the bridge was damaged following the approval of the Chelsea Ridge Apartments.

The Applicants have submitted that a building permit must be issued because Easter Road is “grandfathered” and that there was a structure previously on the lot which burned down. Town Law 280-a requires that the street or road must be suitably improved at the time of the issuance of the building permit. There is no grandfathering of a substandard road because there are structures on it.

### **Standard for Easter Road Improvement under Town Code 240-20**

Town of Wappinger Code §240-20 provides:

No building permit shall be issued for the establishment of any use or construction of any structure **unless the street or highway giving access to said use or structure has been suitably improved to Town road standards** or a bond posted therefor, in accordance with the provisions of § 280-a, Subdivisions 1 and 2, of the Town Law.

It should be noted that Easter Road is a private road and is obviously not improved to Town road standards. See Town Code Chapter 214, Article V. The Engineer to the Town has determined under the circumstances, improving Easter Road to the lesser driveway standards where improvement is needed is satisfactory for emergency vehicle access. In light of the history of drainage and erosion issues along Easter Road, suitable drainage must be provided.

The Applicants have not requested any variance with respect to improving Easter Road.

### **Change in Character of the Neighborhood**

Granting of the variance would mean that the lower portion of Easter Road will essentially be abandoned since the bridge would not be repaired. Such abandonment would result in a change in the neighborhood. Abandonment of the bridge on Easter Road would most affect 20 and 30 Easter Road which are the lots closest to the bridge.

The Applicant has argued that traffic to and from Easter Road currently traverses Lot 6056-01-239747 (Leggiero) out to Circle Drive and that no additional traffic is being added to Circle Drive. At present, all five lots to the east of Leggiero are vacant: the four lots owned by Campbell and Kellner and the lot owned by Subrize. Issuing building permits to construct or alter residences on these lots would necessarily increase traffic onto Circle Drive.

If the variance is granted and the bridge is closed, all access to the structures on Easter Road will be rerouted to two driveways on Circle Drive; one on the Leggiero property and the

other on the Campbell property. These two driveways are quite close to each other and enter Circle Drive on a curve. These two driveways exist presently, but neither has a driveway permit issued by the Town as the driveways were created prior to 1970. The Leggiero lot has 35 feet of frontage on Circle Drive and the Campbell lot has only 20 feet of frontage on Circle Drive. The Town Highway Superintendent testified that he was opposed to creating additional traffic over the existing Campbell Driveway which cannot comply with the common driveway specifications.

Granting the variance will produce an undesirable change in the neighborhood.

### **Can Benefit Sought Be Obtained By Other Feasible Means**

The Applicants have taken the position that it is not feasible for them to replace the bridge on Easter Road that crosses an unnamed stream just east of River Road. The Applicants provided a document entitled "The Story of the Easter Road Bridge Replacement Effort" dated February 11, 2014 by Aaron Kellner. At page 3 of the document under the heading "Hydrology & Culvert" there is a discussion of construction estimates that range from \$29,000 to \$95,000.

By letter dated February 11, 2014, Engineer to the Town Robert Gray, P.E. provided his estimate that the cost of replacing the unsafe bridge with two 54" diameter High Density Polyethylene culverts at 20 feet in length would be \$35,000. This estimate falls within the range obtained by the Applicant.

Based on the estimate of the Engineer to the Town, the cost of repair the bridge is feasible in light of the fact that the cost of improving the private road may be apportioned among the lots that benefit from the bridge, that is nine lots on Easter Road excluding 6 Easter Road which does not obtain access over the bridge. A cost of \$35,000 divided proportionally among nine lots would be \$3,888.89 per lot. At the public hearing, Clara Toth the owner of 20 Easter Road stated that she would contribute to the repair of the bridge. Kellner and Campbell own four of the nine lots benefitted by the bridge.

Replacing the bridge with two culverts as suggested by the Town Engineer is a feasible method which can be pursued without the need for a variance. The Applicants own four ninths of the lots to the east of the bridge. These four lot owners may seek contribution from the remaining lot owners on Easter Road. At common law, property owners along a private road are required to share ratably in the costs of maintaining the road/and or bridge and would be liable to any person injured for failing to maintain the road and/or bridge. By repairing the bridge, the liability against the property owners along Easter road is reduced.

The applicant has another means to achieve the benefit without the need for a variance.

### **Substantial Nature of the Variance**

The Applicants are essentially requesting that Easter Road be abandoned and a new private road be created. This variance is substantial in nature.

The variance proposes that a fifty foot wide private road right of way be replaced with a twelve foot wide driveway. The Applicants propose to use the existing driveway on Campbell Lot 259750 to access three lots on Easter Road. The Applicant proposed to meet common driveway standards by making an 18 foot wide driveway but that does not seem to be possible. The driveway entrance onto Circle Drive shown on the Grading Plan for Easter Road and Access Easement prepared by Paggi, Marin & Del Bene, LLP dated 5/1/2013 is 12 feet in width and takes up the entire 20 foot road frontage of the Campbell parcel because it is not perpendicular to the road frontage.

To comply with the requirements for common driveways in the Town of Wappinger Zoning Code, the Applicant proposes to restrict the number of building permits that can be issued off the common driveway to three lots, even though there are five lots on the easterly portion of Easter Road. It is unlikely that this restriction can be equitably enforced without requiring the merger of existing lots.

Eliminating a 50 foot private road in favor of a 12 foot driveway is a substantial variance.

The Applicants are asking the Zoning Board of Appeals to grant a variance that does not affect just one lot. The variance is substantial because the Applicant is in essence asking the Zoning Board of Appeals to create an open development area within the Town of Wappinger, rather than asking for a variance for a single lot. The authority to grant an open development area lies with the Town Board pursuant to Town Law § 280-a(4) and not the Zoning Board of Appeals. Granting a variance for more than one lot is a substantial variance.

### **Adverse effect on the physical or environmental conditions in the neighborhood**

As noted above, granting of the variance is tantamount to abandonment of the bridge on Easter Road which have an adverse effect on at least two of the lots on Easter Road nearest the bridge. The time for emergency vehicles to respond to these properties would be increased because they would have to travel up Lake Drive to Circle Drive, then along Circle Drive to the Campbell driveway and then back down Easter Road, rather than just across the bridge on Easter Road. It is further submitted that it would be easy for emergency response vehicles that were unfamiliar with the street layout to navigate the circuitous route.

Furthermore, granting the variance would alter the relationship among the Easter Road lot owners for the maintenance of Easter Road. Granting the variance would cause hardship to the residents at 20 and 30 Easter Road as those two lot owners would now bear the cost of repairing the bridge as there is no incentive for the other lot owners to do so.

### **Hardship Self-Created**

Since an earlier structure owned by Kellner was destroyed by fire, the hardship on that lot was not self-created. With respect to the two lots owned by the Campbells on Easter Road, that difficulty was self-created as they purchased the lots knowing of the substandard condition of Easter Road.

## **Decision**

Applying the standards of Town Law §267-b(3)(b), an area variance cannot be granted because the requested variance will alter the essential character of the neighborhood, the variance can be achieved by other feasible means, the variance is substantial, there will be an adverse effect on the physical conditions in the neighborhood and the alleged hardship has been partially self created.

### VOTE

Application for Variance **DENIED**.

Denial of the permit by the Engineer to the Town dated February 20, 2013 is sustained.

The foregoing is the decision of the ZBA.

## **Evidence Presented**

- 1) Application of Kellner & Campbell dated August 29, 2013;
- 2) Variance Application Supplement revised 11/26/2013
- 3) Grading Plan for Easter Road and Access Easement prepared by Paggi, Marin & Del Bene, LLP dated 5/1/2013
- 4) "The Story of the Easter Road Bridge Replacement Effort" dated February 11, 2014 by Aaron Kellner.
- 5) Letter of Jon Holden Adams re Prescriptive Rights dated March 11, 2014
- 6) Subdivision map entitled "Property Subdivision of Dominick J. Gavin, Old Chelsea Road, Town of Wappinger, Dutchess County" dated July 30, 1948 filed in the office of the Dutchess County Clerk as map number 2259 on May 1, 1950.
- 7) Subdivision map entitled "Property of Hudson-Shannon Corp. and D.J. Gavin & Others, Old Chelsea Road, Town of Wappinger, Dutchess County" dated July 2, 1951 filed in the office of the Dutchess County Clerk on July 31, 1951 as Filed Map 2332.
- 8) Deed from Dominick J. Gavin and Frances Davis Gavin to Hudson-Shannon Corporation dated April 29, 1950.
- 9) Deed from Dominick J. Gavin and Frances Davis Gavin to William Wilson dated 1950.
- 10) Deed from Bertha Kellner to Aaron Kellner dated August 20, 1986 which was recorded in the office of the Dutchess County Clerk at Liber of Deeds 1720 page 754.
- 11) Deed from Arthur Joseph Gadapee and Marjorie Elizabeth Gadapee to Albert Martinet and Carmen Q. Martinet dated February 18, 1961 which was recorded in Deed Book 1051, Page 104 in the office of the Dutchess County Clerk.
- 12) Deed from Rudolph and Hilda Schneider to Carmen Q. Martinet dated January 30, 1980 recorded at Liber 1529 Page 148.
- 13) Deed from James F. Bosch, III to Noreen Leggeiro dated December 22, 2005 and recorded in the office of the Dutchess County Clerk on December 22, 2005 at Document No. 02-2005-11493.
- 14) Deed from Carmen Q. Martinet to Lucy Martinet dated July 15, 1977 and recorded at Liber of deeds 1466 at page 118.

- 15) Letter from Town of Wappinger Assessor Thomas E. Logan to Dutchess County Real Property Services dated July 29, 1995 re combining lots.
- 16) Memo from Town of Wappinger Assessor to Thomas E. Logan dated July 30, 1995 re combining lots.
- 17) Timeline prepared by Barbara Roberti.

Mr. Galotti: I make a motion to deny the variance.

Mr. Johnston: Second.

Mr. Prager: Roll call vote.

Ms. Rose: Al Casella

Mr. Casella: Is the yes the denial?

Mr. Horan: The motion on the floor is to deny the variance. A firmament vote would deny the variance.

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

Mrs. Kellner: How do you propose that we rebuild our house? What is your recommendation?

Mr. Prager: You are going to have to fix the bridge and fix the road so it is passable.

Mrs. Kellner: It is unfortunate that you did not recognize our legal access to Easter Road by Leggiero. For the record, we did not propose to relinquish the legal entity of our private road. This has put undue hardship on us. We did not request the abandonment of Easter Road at any point. We have sustained a financial hardship as a result of this. We have people on the road that are at risk. At the last meeting the consensus from the engineer said millings and oil are acceptable on that hill. The only other person that disagreed was Mr. Foster. He wants to impose highway stipulations on us. Which technically, you cannot because it is a private road. We have made a good faith effort to correct this problem. We are willing to post signs on the bridge as to pass on your own risk, alternate access through Circle Drive. We are willing to put a sign at the end of River Road suggesting using alternate roads via Circle Drive. You say it is going to cause hardship from the people down the street because they have to drive around. Everyone drives around that way anyway. We don't have EMS access. The liability is equally shared. People bought that property

knowing it was a private road. We are putting the town on notice that we the residents do not feel that this issue has not been address adequately. The town needs to step up to the plate and what we are asking is that a committee be formed with the EMS, with planning people, with someone that knows how to change maps. What we are asking is; if could get Leggerio's right away. We have sustained a very large financial loss. With you not recognizing that we have easement by prescription, and we have deeded rights. You have refused to recognize that everybody uses Leggerio's easement. The fact that you will not issue a permit is despicable. We will argue this legally.

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

Mr. Johnston: I make a motion to adjourn.

Mr. Rexhouse: Second.

Mr. Prager: All in favor?

Board: Aye.

Respectfully Submitted,

Susan Rose, Secretary  
Zoning Board of Appeals

Meeting ended 9:45PM