

MINUTES

**Town of Wappinger
Zoning Board of Appeals
April 22, 2014**

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

Summarized Minutes

Members:

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

Others Present:

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

SUMMARY

Durants Tents & Events	Variance Granted
Michael Goodwin	Adjourned until May 13th
Michelle Heinemann	Adjourned until May 13 th
Charles & Janet Dell'Amore	Site Visit & Public Hearing May 13th
Joseph & Jeannine Conforti	Site Visit & Public Hearing May 13th

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-----Absent
Bob Johnston-----Here
Peter Galotti-----Here

Mr. Prager: Do I have a motion to accept the minutes from April 8, 2014?

Mr. Galotti: 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:

Public Hearing:

Durants Tents & Events-Is seeking the following (3) variances of Section 240-18(f), and 240-37 of Zoning Regulations in an HB Zoning District. The property is located at **1155 Route 9** and is identified by **Tax Grid No. 6157-04-632086/627103** in the Town of Wappinger.

1. Where a **2 acres** are required in an HB zoning district, the applicant is proposing to combine Lot 632086 (1.50 acres) and Lot 627103 (0.31 acres) to create 1 lot (1.81 acres) for a pre-existing non-conforming undersized lot, the applicant can only provide **1.81 acres**, thus requesting a **0.19 acre** variance.
2. Where a **75 foot** front yard setback is required to a state or county highway, the applicant can only provide **37.7 feet**, to Osborne Hill Road, thus requesting a **37.3 foot** front yard setback sized lot.
3. Where a **75 foot** front yard setback is required to a state or county highway, the applicant can only provide **62.6** feet, thus requesting a **12 feet 4 inch** variance.

Mr. Povall: My name is Bill Povall and I represent the applicant.

- Ms. Rose: All the mailings are in order.
- Mr. Prager: Do 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. Povall: We are requesting three variances for the Durants Tents and Events site. The location is at the corner of Osborne Hill Road and Route 9. There are two existing parcels which we are proposing to combine. We also want to add a storage addition to the building. We are before the Planning Board with a site application.
- Mr. Prager: The front yard setback, which is basically the building that is there already.
- Mr. Povall: Correct.
- Mr. Prager: Route 9 is still far away from these properties. Does anyone on the board have any questions? We did do a site visit.
- Mr. Galotti: Are you putting a display area in the front?
- Mr. Povall: Yes.
- Mr. Prager: Is there anyone in the audience that would like to speak on this application?
- 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. Galotti: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- Mr. Prager: Do I have a motion to grant or deny this variance?**
- Mr. Galotti: I make a motion to grant all three variances.**

Mr. Johnston: **Second.**

Mr. Prager: **Roll call vote.**

Ms. Rose:	Peter Galotti	Aye
	Brian 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. Johnston: **I make a motion to open the Adjourned Public Hearing.**

Mr. Galotti: **Second.**

Mr. Prager: **All in favor?**

Board: **Aye.**

Mr. Horan: When we adjourned this, we had asked the Highway Superintendent for some input. The Highway Superintendent asked for a cul de sac wherever the town maintenance would end. The concern is that in the Town Highway Regulations, I believe the radius was 85 feet. I looked at the Cornell Local Roads Standards which deals with low volume roads. They have a couple of different configurations. The Cornell Local Road Standards also address a hammer head or a T shaped road; which might be more suitable for this situation. In doing research for this property, there was a variance issued to a prior owner named Peck. This gives permission for a single family home to be built on this lot. It did not address road construction. Where this application is now, is to satisfy the Highway Superintendent's wish concerning the road. As far as building the house, that has already been granted.

- Mr. Prager: Would he do it without the cul de sac?
- Mr. Horan: No. There was a letter from the New Hackensack Fire District, dated February 11th, that is also recommending a cul de sac.
- Mr. Goodwin: I called the Highway Superintendent and he was very short with me. I also asked him to meet my excavator and myself out there but all he said was he wants a cul de sac. The cul de sac is for everyone on the street.
- Mr. Prager: How does he plow now?
- Mr. Indorf: He probably uses it as a hammer head now.
- Mr. Horan: He plows the road and backs up into one of the driveways.
- Mr. Goodwin: We would take from the end of Dugan Lane and put in a 15 foot driveway. We would have it in the deed that we would maintain from the end of Dugan Lane to the house. There would be enough room on either side of the driveway to put snow.
- Mr. Prager: We have to work with the Superintendent. If you could get a copy of the Cornell Standards, for the board and Graham it may be helpful.
- Mr. Indorf: Why can't we have Mr. Foster here; this keeps going round and round.
- Mr. Horan: We will ask him to be at the next meeting. I don't think the applicant's proposal is unreasonable.
- Mr. Prager: I did request escrow and I understand only half was paid. We will need the whole escrow paid before we can make a decision.
- Mr. Prager: Is there anyone in the audience that would like to speak on this application?
- Mr. Chan: My name is Catherine Chan and I reside at 13 Shady Brook Lane. I understand that Graham Foster would not allow anything less than an 85 foot turn around. The proposal to plow snow onto the property on Dugan Lane; that is our property. We did have a survey done.
- Mr. Indorf: It will be in front of our property and her property.
- Mrs. Roberti: The board, Mr. Horan, Ms. Chan, Mr. Indorf and Mr. Goodwin review the survey of Ms. Chan's property.
- Ms. Chan: Is this where they are proposing to push the snow?

- Mr. Horan: No. It will be back here.
- Mr. Prager: The snow will be going somewhere in here. (Pointing to the Map)
- Ms. Chan: I have additional concerns. If the driveway is put in, it is going to affect other inhabitation in the area besides us. The Blanding Turtle and the Indiana Bats are endangered species and reside on their property. There is also plant life that inhabits the wet lands that are on his property. The paper road Dugan Lane slopes down to this wetland. The proposed paved driveway, an extension of Dugan Lane would cause a significant amount of storm water drainage towards this wet land. According to DEC, if there is a significant amount quantity or quality entering the water land, testing must be done.
- Mr. Galotti: Aren't these concerns that the Planning Board addresses when they issue a building permit?
- Mr. Horan: This is a Type II action under SEQURA, having to do with a single family residence. There are no wet lands shown on the map.
- Mr. Goodwin: This lot was approved by the Board of Health to be able to be built on.
- Ms. Chan: A representative from the local DEC office recommends that an environmental study be done.
- Mr. Prager: Who is she?
- Ms. Chan: Her name is Lisa Masse and can be contacted at 845.256.2257. I would like for the record, the map that was filed by Mr. Goodwin with the Dutchess County Health Department is inaccurate. It states that there is no well within two hundred feet of the property line. Our well is two hundred feet off the property line.
- Mrs. Roberti: The Health Department is their own agency and they do their own ruling. They did give their approval until 2015. They must have seen there was enough separation before they gave their approval.
- Ms. Chan: The Board of Health did not have our survey at that time and now we have a survey, we will submit it to them.
- Mr. Horan: I believe there was a prior Board of Health approval after the granting of the variance.

- Ms. Chan: The topography of 35 Dugan Lane will be a challenge to build on that lot. Storm Water management is a major concern because this may cause damage to other homes including our own. Our well is downhill.
- Mr. Galotti: Do you know how deep your well is?
- Ms. Chan: There is no record of that.
- Mrs. Roberti: In 1986 they did receive a variance to build a house.
- Mr. Horan: They have permission to build the house, now the configuration of the road is the issue.
- Mrs. Roberti: For the record, Ms. Chan mentioned that Richard Barger submitted on July 16, 1993 to the Health Department and on the original approval from the Health Department it was approved on August 16, 1993 after reviewing his report. This is his sewer design for Mark Swebble, who was looking to put this home in.
- Ms. Chan: I would also like on the record that there could have been a clerical error to over look this and the well.
- Mr. Prager: Is there anyone in the audience for or against this variance?
- Ms. Chan: When was the house permit was granted?
- Mrs. Roberti: There was no house permit. Mr. Peck was granted a variance to build this house on June 12, 198. They just didn't do anything with it.
- Mr. Prager: Do I have a motion to adjourn this until May 13th?**
- Mr. Galotti: I make a motion to adjourn this until May 13th.**
- Mr. Johnston: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- Mr. Prager: The next item on the agenda is a Public Hearing on:

Michelle Heinemann- Is seeking an area variance of Section 240-37 of the Town of Wappinger Zoning Regulation in an R80 Zoning District.

-Where a **75 foot** front yard property line is required on a state or county road, the applicant's structure encroaches into DOT ROW and a fence that exceeds the town code of 6 feet.

The property is located at **1111 Route 376** and is identified by **Tax Grid No. 6358-01-205670** in the Town of Wappinger.

Mr. Prager: **Can 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.**

Ms. Rose: All the mailings are in order.

Mr. Alexander: My name is Neil Alexander and I represent the applicant. This is what it is and my client did mention to me last week that she would like to continue the fencing.

Mr. Prager: We would like to address the variance first.

Mr. Alexander: There are a series of structures out there and what came to the attention of the Zoning Administrator is the solid privacy fence. Two parcels were combined to make about 25 acres. The part of the fencing that is here for a variance is the solid privacy fence. (Pointing to the map) this fencing is approximately 29.7 feet long and 11 feet high. In an R-80 zone you need to stay 6 feet or less for a wall or a fence. The run is about 105 feet. The applicant is looking to do another 250 feet south on the property. The 11 foot sections are on the Route 376 side.

Mr. Prager: Why the different type of fence?

Mr. Alexander: The client has their own different kind of aesthetic and I think they are looking for their own privacy.

Mr. Galotti: Was a building permit required for that fence?

Mrs. Roberti: You don't need a permit to put up a fence in the Town of Wappinger but it cannot be taller than 6 foot. They did need a permit when they put in an electrical fence and I believe they have an open permit now. The brick walls up front, any brick walls over 4 foot need an engineer's drawings.

Mr. Johnston: How old is the fence?

- Mrs. Roberti: The wrought iron open fencing has been there a few years.
- Mr. Alexander: We did get a DOT permit number for the site lines and safety.
- Mr. Prager: Is there anyone in the audience that would like to speak for or against this variance?
- 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. Galotti: 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 deny this variance.**
- Mr. Galotti: Second.**
- Mr. Alexander: Before you call the motion, do we have to do a 239 review?
- Mrs. Roberti: I don't think so.
- Mr. Alexander: Let's talk about the factors. *Discussion continues...*
- Mrs. Roberti: There isn't a setback issue with the fence; it is the height of the fence. In our code 240-21 it is stated:

Yard for every building. No part of a yard or other open space provided about any building or on any lot for the purpose of complying with the provisions of this chapter shall be included as any part of the yard or open space for any other building or any other lot.

B.
Obstructions in yards. No buildings or structures or any projection from buildings or structures shall be permitted in a required yard, except as follows:

[Amended 7-5-2006 by L.L. No. 5-2006; 8-8-2011 by L.L. No. 19-2011]

(1)

Paved open terraces shall not be considered in the determination of yard size and lot coverage requirements.

(2)

No porches or balconies may project into any required yard area.

(3)

Architectural features such as windowsills, door frames, chimneys, eaves or cantilevered roofs may project up to three feet into any required yard.

(4)

The yard requirements of this chapter shall not be deemed to prohibit any accessory retaining wall, nor to prohibit any fence or wall, provided that walls or fences in required yard areas shall not exceed six feet in height above adjoining grade, unless that part above such height is not less than 3/4 open construction. Notwithstanding the sentence above, the Planning Board may allow a fence of any kind to a height not exceeding 12 feet above adjoining grade, where the Board deems such fence necessary and appropriate for safety and/or security purposes, where the fence has been designed by a licensed professional engineer, and where a building permit will be issued therefore.

(5)

The yard requirements of this chapter shall not be deemed to prohibit the installation of handicap ramps in required yards for residential development.

C.
Yard requirements on corner lots. On a corner lot, there shall be provided a side yard on a side street equal in depth of the required front yard. A rear yard shall be provided on each corner lot and the property owner shall elect which yard is the rear yard.

D.
Exception for existing alignment of buildings. If, on one side of the street within 150 feet of any lot, there is pronounced uniformity of alignments of the depths of front yards greater or less than the required minimum depths specified in the Schedule of Dimensional Regulations for Residential Districts,¹³ a front yard shall be required in connection with any new building which shall conform as nearly as practicable with those existing on adjacent lots.

[1]:
Editor's Note: Said schedule is included at the end of this chapter.

E.
Swimming pools. A swimming pool, including accessory equipment, shall be considered a structure and shall have the same set back requirements from lot lines as required for accessory buildings in the subject zoning district. A swimming pool, including accessory equipment, must be surrounded by a fence or constructed in accordance with the New York State Uniform Code. Associated electrical facilities for pool filters, and electrical outlets must comply with the New York State Uniform Code.

[Amended 6-11-2007 by L.L. No. 6-2007]

§ 240-22 Exceptions to building height regulations.

[Amended 4-27-1998 by L.L. No. 4-1998]

A.
Projecting features above roof level for accessory structures. The maximum building height limitations of the Zoning Law shall not apply to church spires and belfries in any case, nor to flagpoles, domes, silos, chimneys, ventilators, skylights, water tanks or television antennas or to similar incidental and accessory features and such necessary mechanical appurtenances not used for human occupancy, provided that:

(1)
The projecting feature shall not extend more than 20 feet above the roof.

(2)
The total area covered by such features shall not exceed 10% of the area upon the roof upon which they are located.

(3)
Parapets and cornices, used for ornamentation and without windows, shall not extend more than five feet above the roof.

B.
Exceptions for certain principal structures and uses. The building height limitations of this chapter shall not apply to transmission towers and cable, radio, television or personal wireless services facilities when such principal structures and uses are otherwise permitted by § 240-81 of this chapter.

Mr. Horan: Mr. Chairman, may I suggest we table this so that Mr. Alexander can respond in writing.

Mr. Alexander: I still don't know why it is substantial. I'm reading the code you cannot be higher than 6 feet in a yard. If you are not in a yard, you can go as high as the district allows. We are trying to have some safety in the yard from the main roads that are on their boundaries.

Mr. Galotti: Shouldn't research have been done first concerning the height of the fence?

Mr. Alexander: Zoning Boards by New York State standards are there to give relief to the codes.

Mr. Horan: I disagree with Mr. Alexander's understanding of the code, with respect to the definition of a yard.

Mr. Alexander: I understand about the other 250 feet and I will relay the message; but if we could legalize what is there now. A denial means take it down and you are talking about a very large expense.

Mr. Prager: They say they want privacy but on the other side that is open fencing?

Mr. Alexander: I think it is privacy from the main road.

Mr. Horan: If you decide to grant the variance, it could be for the life of the fence. I suggest we adjourn this until the next meeting.

Mr. Johnston: I make a motion to table this until the next meeting.

Mr. Rexhouse: Second.

Mr. Prager: All in favor?

Board: Aye.

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

Appeal No. 14-7521

Charles & Janet Dell'Amore-Is seeking an area variance of Section 240-37 of the Town of Wappinger Regulation in an R20 Zoning District.

-Where **20 feet** to the side yard is required, the applicant can only provide **17 feet 6 3/8 inches**, thus requesting a **2 foot 5 5/8 inch** variance for the construction of an **8 X 24** addition.

The property is located at **15 Doyle Drive** and is identified by **Tax Grid No. 6257-02-822546** in the Town of Wappinger.

Mrs. Dell'Amore: My name is Janet Dell'Amore and I live at 15 Doyle Drive. We want to remodel our kitchen. It is a galley kitchen and it is very small. The back of the house will be the dining area so we can look out into our back yard. Mrs. Dell'Amore shows the board pictures of the house.

Mr. Prager: We will have a site inspection and can you mark out where the addition will be and mark the property line on that side of the house.

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

Appeal No. 14-7522

Joseph & Jeannine Conforti-Is seeking an area variance of Section 240-37 of the Town of Wappinger Regulation in an R20/40 Zoning District.

Where **50 feet** to the rear yard is required, the applicant can only provide **22 feet**, thus requesting a **28 foot** variance for the construction of a **10 x 30** deck to an above ground pool.

The property is located at **17 Pine Ridge Drive** and is identified by **Tax Grid No. 6257-04-971161** in the Town of Wappinger.

Mr. Conforti: My name is Joseph Conforti & Jeannine Conforti. I would like to add a deck around the pool. Our land is very narrow. We got a variance two years ago for the deck on our house and didn't have a problem. The deck on the pool will be much smaller.

Mr. Prager: We will do a site visit and if you can mark out where the deck will be and your property line.

Mr. Prager: Can I have a motion to go into executive session for legal advice?

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

Mr. Prager: Second.

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: Can I have a motion to adjourn this meeting?

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

Mr. Galotti: Second.

Mr. Prager: All in favor?

Board: Aye.

Meeting Adjourned 9:20PM

Respectfully Submitted,

Sue Rose, Secretary
Zoning Board of Appeals