

MINUTES

**Town of Wappinger
Zoning Board of Appeals
October 14, 2014**

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

Summarized Minutes

Members:

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

Others Present:

Mrs. Barbara Roberti	Zoning Administrator
Ms. Sue Rose	Secretary
Jim Horan	Attorney to the Town
Richard Graham	Conflict Attorney

SUMMARY

Brian Luhrs	Variance Granted
Michelle Heinemann	Variance Granted w/ Conditions
LMD Holdings-La Fonda	Public Hearing November 12th

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-----Absent
Peter Galotti-----Here

Mr. Prager: Then next item on the agenda is the acceptance of the minutes from September 9, 2014 and September 23, 2014.

Mr. Prager: I do have a comment. I know we do a roll call and the absentees are noted but I think it should also be noted on the front page also.

Ms. Rose: No problem, I'll make the addition.

Mr. Casella: I'll make a motion to accept the minutes with the changes.

Mr. Rexhouse: Second.

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

Appeal No. 14-7519

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

Mr. Galotti: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Horan: I did receive an e-mail from the attorney, Neil Alexander, that he would be

fifteen minutes late. I don't see him here so if we can move this to a second call. You can close the Public Hearing.

Mr. Prager: Do I have a motion to close the Public Hearing?
Mr. Casella: **I make a motion to close the Adjourned Public Hearing.**

Mr. Galotti: **Second.**

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

Board: **Aye.**

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

Appeal 14-7539

Brian Luhrs-Is seeking an area variance of Section 240-37 of the Town of Wappinger Regulation in an R 20/40 Zoning District.

-Where **45 feet** to the rear property line is required, the applicant can only provide **35 feet**; thus requesting a **10 foot variance** for the construction of a **20 X 26** master bedroom. It will include a bathroom and the installation of central air conditioning.

The property is located at **6 Park Hill Drive** and is identified as Tax Grid No. **6356-01-166971** in the Town of Wappinger.

Mr. Prager: Are all the mailings in order?

Ms. Rose: Yes.

Mr. Prager: **Do 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 and tell us your name and why you need the variance but first I know there were some discrepancies with the measurements. Instead of 35 feet to the rear property line you only have 29 feet, which leaves you requesting 16 feet.

Mr. Luhrs: My name is Brian Luhrs and my family is growing and I need to enlarge my home. I want to consolidate two small bedrooms into one and add a master bedroom on for myself and my wife.

Mr. Prager: There is a porch in the back with stairs.

Mrs. Roberti: I'll have to see if it has a C/O.

Mr. Luhrs: It had an original C/O and has a C/O when it was replaced. I have copies with me.

Mr. Prager: Is there anyone in the audience that would like to speak for or against this variance?

Ms. Dotterer: My name is Connie Dotterer and I live at 327 Rt 82. I am your neighbor to the back. My concern is having debris thrown onto my property. I have had other neighbors dumping some of their things on my property.

Mr. Luhrs: The addition will be on my side of the house and the only thing coming out is my garden. I will be reusing the dirt for the front of my house.

Ms. Rose: For the record, the corrected measurements were posted in the legal notice in the Southern Dutchess News.

Mr. Prager: Thank you, is there anyone else that would like to speak concerning this variance? Hearing none, do 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: Do I have a motion to grant or deny this variance?

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

Mr. Casella: Second, as long as all the changes are made with the corrected measurements.

Ms. Rose: The minutes will reflect the new measurements; 29 feet that the applicant can provide and now he needs a 16 foot variance.

Mr. Prager: Roll call vote.

Ms. Rose:	Al Casella	Aye
	Peter Galotti	Aye
	Brian Rexhouse	Aye
	Howard Prager	Aye

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

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

Mr. Galotti: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: We only have four board members here tonight; it is up to you if you want to adjourn until there is a full board. We had asked for engineering plan and a permit for the entry pillars and we still have not gotten them. There is also a \$250.00 legalization fee that we have not received.

Mr. Alexander: Some of the work is in the D O T right away. I will get you a copy of their permit.

Mrs. Roberti: The town still requires a permit.

Mr. Prager: If you want us to vote on this tonight, it is up to you.

Mr. Alexander: It was a matter of local concern by the county so we only need three votes not a super majority.

Mr. Prager: I would like the engineering plans and the legalization fee taken care of so maybe we should wait until the next meeting.

Mr. Alexander: We have had a lot of dialog and have done a lot of bridging. I can't fix everything. There is ambiguity in the code. I was hoping to wrap it up tonight.

Mr. Prager: 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: Do you want us to vote on this tonight?

Mr. Casella: You know you need three votes and if we say no you are done.

Mr. Galotti: A couple of meetings ago there was a sketch submitted of trees being planted in front of the fence. Are the trees still on the table?

Mr. Alexander: They have always been on the table.

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

Mr. Casella: I make a motion to go into Executive Session for legal advice.

Mr. Rexhouse: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Can I have a motion to come out of Executive Session?

Mr. Rexhouse: I make a motion to come out of Executive Session.

Mr. Galotti: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Casella: As an additional condition of this resolution they are to have 6 to 8 feet high pine trees planted in front of each panel by November 30st.

Mr. Galotti: I make a motion to amend the original resolution to include the 6 to 8 foot high pine trees to be planted in front of each panel by November 30th.

Mr. Casella: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Reads Resolution

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

Appeal No.	14-7519
Application Date:	
Applicant	Michelle Heinemann
Premises Located at:	1111 Route 376
Tax Grid Nos.:	6358-01-205670 & 6358-01- 219740
Zoning District(s):	R-80
Record Owners of Properties:	Michelle M. Aaserod
Variance of Code Sections:	Zoning Code § 240-21(B)(4)

Description of the Premises & Proposed Variance

Applicant Michelle Heinemann owns two lots located on State Highway 376. According to the tax map, the two lots have approximately 1,840 feet of frontage along the State Highway. The Applicant erected a wrought iron fence along approximately 105 feet of its front property line that exceeds six feet in height. At its highest point the fence is eleven (11) feet above the adjoining grade and varies in height above grade along its length. The grade of the property along the length of the fence is not level. The driveway entrance is flanked by two masonry pillars that are approximately 11 feet high.

The property slopes up from Route 376 to the interior of the property and there is a hill behind the property. The opposite side of Route 376 is vacant land. Vehicles travelling along Route 376 can see the fence that is the subject of the variance.

The applicant seeks a variance from the strict provisions of Town of Wappinger Zoning Code § 240-21(B)(4) which provides:

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 therefor.

Fences that are less than six (6) feet in height in the Town of Wappinger do not require a building permit. The Applicant initially sought to appear before the Planning Board to request approval for the fence, but the Zoning Administrator instead directed that the Applicant file for a variance as it was her determination that the sentence dealing with Planning Board review applied to site plan applications and not the erection of a fence on a single family residential lot. After a stop work order was issued, the Applicant completed the installation of the fence at a height of six feet above the adjoining grade. Approximately 105 feet of the fence is the subject of this variance.

The proposed variance is a Type II Action under SEQRA.

Public Hearing

A public hearing on the application was held on April 22, 2014 and continued on May 13, 2014. Neil Alexander, Esq. spoke in support of the variance on behalf of the Applicant. There was no comment from the public. Decision on the application has been adjourned to October 14, 2014 on consent of the Applicant and the Zoning Board of Appeals.

Review pursuant to General Municipal Law § 239-m

The application has been referred to Dutchess County Planning for review and comment as the property is on a New York State Highway. The Dutchess County Planning has determined that this matter is of local concern.

Review of Area Variance

Standard

In making its determination whether it is appropriate to grant an area variance, the Zoning Board of Appeals shall follow the standards created under § 240-107(B)(2)(b)(2) and § 267-b(3) of New York Town Law which are:

(2) Area variances.

[a] In making its determination on an application for an area variance, the Board of Appeals shall 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. In making such determination, the Board shall also consider:

- [i] 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.
 - [ii] Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
 - [iii] Whether the requested area variance is substantial in relation to the requirement.
 - [iv] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - [v] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board but shall not necessarily preclude the granting of the area variance.
- [b] The Board, in the granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate to afford relief and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. To this end, the Board may permit a lesser variance than that applied for.

Decision

The Zoning Board of Appeals determines that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the general neighborhood or community by such grant. The detriment to the health, safety and welfare of the general neighborhood is not great but there is a tangible benefit to the Applicant in allowing the fence height. The applicant would not have to incur the cost of removing the previously installed fence and reinstalling conforming fence.

The Zoning Board of Appeals further determines that no undesirable change will be produced in the character of the general neighborhood which has been found to be the area of Route 376 in the area of the site. The Applicant may install a six foot high fence as of right and the additional height will not result in an undesirable change in the neighborhood. With Planning Board approval, a fence of up to 12 feet high may be constructed.

The Zoning Board of Appeals further determines that there will be no detriment to nearby properties by the granting of such area variance because the properties in the closest proximity to the fence on the opposite side of Route 376 are vacant.

The Zoning Board of Appeals further determines that the benefit sought by the applicant cannot be achieved by some other feasible method, other than the instant area variance. The applicant could comply with the code by cutting the fence to the allowed height but this would yield a fence that was not visually appealing to the public which would negatively impact the viewshed of surrounding properties. Under the code, the Applicant could also cut into the fence

to create a 3/4 open construction above six feet in height, which may also yield a visually unappealing but conforming fence. The alternatives are not feasible as they result in an undesirable result for the neighborhood.

The Zoning Board of Appeals further determines that the variances are substantial but they should still be granted because a 12 foot high fence is permitted with Planning Board review under certain circumstances and as noted, the fence of a 3/4 open construction is allowed above six feet.

The Zoning Board of Appeals further determines the proposed area variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district.

The Zoning Board of Appeals further determines that the alleged difficulty is self-created because the Applicant did not check to determine the allowed fence height before construction was commenced, but this fact should not prevent the issuance of the variance.

The Zoning Board of Appeals notes for the record that Town of Wappinger Zoning Code § 240-21(B)(4) is not drafted clearly and is very difficult for Town Officials to understand and apply much less the public. The Zoning Administrator informs the Zoning Board of Appeals that new zoning provisions with respect to allowable fence height are being drafted. The Zoning Board of Appeals recommends that the Town Board adopt new fence height provisions as soon as possible after careful consideration since most properties in the Town have fences. As new fence height provisions will supersede those under review here, the Zoning Board of Appeals finds that this decision shall have no precedential value in a future application.

NOW THEREFORE, the Zoning Board of Appeals hereby determines that the requested area variances are hereby **GRANTED** subject to the following conditions:

- a) All fees and escrows associated with this application must be paid.
- b) All taxes and other fees due and payable to the Town of Wappinger must be paid.
- c) The Applicant shall obtain a building permit for the installation of the fence.
- d) The building permit application shall include a certification from a licensed professional engineer that the entry pillars and their supports are structurally sound.
- e) The variance shall run for as long as the fence stands. Any replacement fence should conform to the then applicable zoning code.

The foregoing is the decision of the ZBA.

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

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

Mr. Rexhouse: **Second.**

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

Ms. Rose:	Al Casella	Aye
	Peter Galotti	Aye
	Brian Rexhouse	Aye
	Howard Prager	Nay

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

Appeal 14-7540

LMD Property Holdings-La Fonda- Is seeking an area variance of Section 240-37, Schedule of Dimensional Regulations in Non-Residential Districts, Attachment 4 of the Town of Wappinger Regulations in an HB Zoning District.

-Where the code allows 2.5 stories and/or 35' height, the applicant is seeking a variance to allow a third story in three residential apartment units. This site contains a mix of residential and commercial uses.

The property is located at **Old Route 9 and Old Hopewell Road** and is identified as **Tax Grid No. 6157-02-542585** in the Town of Wappinger.

Mr. Cantor: My name is Richard Cantor and I am representing the applicant. We are here tonight to explain what we are proposing to do at this location. LMD is proposing to develop a mixed use development in a HB (Highway Business) district. It will have 49 dwelling units and a small amount of commercial space. The Town Code does limit the height of the dwelling units. This has been discussed with the Planning Board but no formal application has been submitted until we clear up the issue of 2 ½ or 3 stories. Barbara Roberti's determination was that these are 3 story dwellings.

Mr. Myers: My name is Mike Myers and I am one of the members of LMD. (Pointing to the map) this is the intended lay out of the development we are proposing. We would like to do commercial up front and residential in the back.

Mr. Prager: What is the ½ story; is that suppose to be an attic?

Mr. Horan: According to the NYS Building Code; there is no such thing as a ½ story.

Mrs. Roberti: Our code is a little unclear.

Mr. Prager: Do you have any pictures of the actual buildings that you are going to build?

Mr. Myers: We haven't gotten that far yet because we haven't even submitted yet.

Mr. Prager: Sue, I would like an answer from the Fire Prevention Bureau and from the Hughsonville Fire Department.

- Mr. Myers: These buildings will have sprinklers.
- Mr. Cantor: This should go to County Planning.
- Mr. Prager: Yes.
- Mr. Cantor: I would ask that this be classified as unlisted.
Mr. Prager: Will this have to go through a full SEQRA review?
- Mr. Horan: This is not in front of the Planning Board at this time. This is considered an uncoordinated review. When it goes in front of the Planning Board they will do a full screening.
- Mr. Prager: Do you have copies the site plan?
- Mr. Myers: I will get them for you.
- Mr. Prager: Do I have a motion to make this an unlisted action and subject to an uncoordinated review?**
- Mr. Galotti: I make a motion to make this an unlisted action and subject to an uncoordinated review.**
- Mr. Rexhouse: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- Mr. Cantor: Can we set a Public Hearing?**
- Mr. Prager: Yes, not the next date because I want to have time for the County and the Fire Prevention Bureau to get back to us.**
- Ms. Rose: November 12th which is a Wednesday.**
- Mr. Prager: Do I have a motion to go into Executive Session.**
- Mr. Casella: I make a motion to go into Executive Session.**
- Mr. Galotti: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- Mr. Prager: Do I have a motion to come out of Executive Session.**
- Mr. Galotti: I make a motion to come out of Executive Session.**
- Mr. Prager: All in favor?**
- Board: Aye.**

Mr. Prager: **Do I have a motion to adjourn this meeting?**

Mr. Rexhouse: **I make a motion to adjourn this meeting.**

Mr. Galotti: **Second.**

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

Board: **Aye.**

Adjourned: 8:35PM

Respectfully Submitted,

Sue Rose, Secretary
Zoning Board of Appeals