

**MINUTES**

**Town of Wappinger  
Zoning Board of Appeals  
October 28, 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
Jim Horan	Attorney to the Town
Richard Graham	Conflict Attorney

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**SUMMARY**

Edward Baecher

Public Hearing and Site Visit

Smart Subdivision

Adjourned until November 25th

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: The next item on tonight's agenda is the acceptance of the minutes from October 14, 2014.

**Mr. Galotti: I make a motion to accept the minutes.**

**Mr. Johnston: Second.**

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

**Board: Aye.**

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

**Discussion:**

**Appeal No. 14-7541**

**Edward Baecher-** Is seeking an area variance of Section 240-37 of the Town of Wappinger Regulation in an R 40 Zoning District.

-Where **25 feet** to the left side yard is required, the applicant can only provide **15 feet**; thus requesting a **10 foot** variance for a replacement deck.

-Where **25 feet** to the left side yard is required, the applicant can only provide **17.6 feet**; thus requesting a **7.4 foot** variance for the legalization of the house.

The property is located at **19 Larissa Lane** and is identified as Tax Grid No. **6358-01-310512** in the Town of Wappinger.

Mr. Baecher: My name is Edward Baecher. The house was originally built with these specks and I guess it was rezoned. I replaced the footings on the deck and they wanted me to get a variance. I got a building permit for the deck and it was denied and that is why I am here tonight.

Mr. Prager: When was the house built?

Mr. Baecher: I believe in 1970 or maybe the late '60's. I'm not sure.

- Mr. Prager: Are you expending the deck?
- Mr. Baecher: No, it's the same foot print. The deck that was on the house was falling down and it was unsafe.
- Mr. Johnston: Is the pool still there?
- Mr. Baecher: No, it's gone.
- Mr. Prager: Are there any sheds on the property?
- Mr. Baecher: Not any more.
- Mrs. Roberti: This is not due to a zone change. When the house was built, the building department at the time used a survey with a proposed house on it. Now that the deck was taken down, it's now time to legalize the house and the deck.
- Mr. Prager: We will have a site inspection this Saturday and a Public Hearing for our next meeting. Please mark out your property lines.
- Mr. Prager: The next item on the agenda is an Adjourned Public Hearing:

**Adjourned Public Hearing:**

**Appeal 14-7527 (Interpretation)**

**Smart Subdivision-**Is seeking an Interpretation of the Determination from the Zoning Administrator in regards to a 2 lot subdivision as it pertains to an existing non-conforming 3 family house. Where a legal non-conforming 3 family exists on 2.059 acres, the applicant is seeking to subdivide the parcel into 2 lots with the legal non-conforming 3 family house to remain. The determination of the Zoning Administrator is that the applicant should remove one unit before subdividing the 2.059 acres into two approximately one acre parcels. The property is 2.059 acres and is located at **191 River Road North** and is identified as **Tax Grid No. 6056-01-241913** in an R-40 Zoning District in the Town of Wappinger. (Hudson Land Design) (Cantor)

**Appeal No. 14-7526 (variance)**

**Smart Subdivision-**To discuss a proposed 2-lot subdivision where the existing non-conforming legal 3 family home will remain on lot 1 and a second lot will be created in the rear of the parcel. Each lot will be served by private wells and subsurface sewage disposal systems and the existing driveway will continue to be used as a shared driveway for both lots. An individual paper driveway is shown on the plan as an alternate means of ingress/egress for Lot 2. The property is 2.059 acres and is located at **191 River Road North** and is identified as **Tax Grid No. 6056-01-241913** in an R-40 Zoning District in the Town of Wappinger. (Hudson Land Design) (Cantor)

Mr. Prager: Do 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. Cantor:           This gentleman is Dan Koehler from Hudson Land Design and Wendy Smart is in the audience. We did supply you with information concerning this application some time ago. I would like to start with Dan describing the subdivision.

Mr. Koehler:         We are proposing a two lot subdivision on this lot. (Pointing to the Map) the dark line is the proposed property line. The property is on River Road North. The proposal is to leave the existing house as is and a new single family lot on the property to the rear; which will be lot #2. The lots will have their own septic systems and we are showing individual wells but there will be water available to them with the new water line. The lots do conform to the R40 zoning district.

Mr. Cantor:         Right now there is one residence on the property. When we first submitted the application, we assumed everyone acknowledged that the property is a nonconforming three family house. We have submitted a number of affidavits from owners of the property starting in 1953 to the current year. We have shown it has been a three family use continuously. We also have supplied letters from prior tenants. In reviewing some old assessment records, Wendy has found multiple errors. She then approached the then Assessor, Mr. Logan, who said he was familiar with the house and changed the listing. We are asking for relief in one of two ways. We are asking for an interpretation; which would disagree with Barbara's determination. If you think Barbara's determination is correct, then we would ask for an area variance.

Mr. Prager:         The problem we have is that it is a nonconforming three family residence. I would like Christian Harkins, who is the Town Assessor, to come up because we have some questions.

Mr. Harkins:         My name is Chris Harkins and I am the Town Assessor for the Town of Wappinger and the Town of Fishkill.

Mr. Prager:         We have some different pieces of information from the assessor's office. One is the property data card.

Mr. Harkins:         This is the property card from 1963.

Mr. Graham:         For the record, this is marked Exhibit A.

- Mr. Prager: This card is for 191 River Road North.
- Mr. Harkins: Yes, it is the oldest card we have on record for this property.
- Mr. Prager: What kind of information is on that card?
- Mr. Harkins: It contains information about the property. The size of the house; how many bedrooms and bathroom the house has. It would show the sketch of the property and fireplaces if there are any. This card shows sheds, a pool and a chicken coop.
- Mr. Prager: How do they get that information?
- Mr. Harkins: There is an inspection of the property.
- Mr. Prager: Does it show if it is a one, two, or three family?
- Mr. Harkins: Under type it says two family; bathroom count it says two.
- Mr. Prager: In 1986 there is a property description report.
- Mr. Harkins: This is known as a data mailer. They did the reevaluation in 1987 and these cards went out to all the property owners.
- Mr. Prager: What happens then?
- Mr. Harkins: The property owner would review it to make sure it is correct. If they are any errors, they can correct it.
- Mr. Prager: What is the date on that?
- Mr. Harkins: It says the data was collected July 1, 1986. This is a copy of what was sent to the owner.
- Mr. Prager: What does the information state on the card?
- Mr. Harkins: It states it is two acres, it states it is a 220, which means it is a two family.
- Mr. Prager: It states it is a two family.
- Mr. Harkins: Yes. It also states two kitchens and two bathrooms.
- Mr. Prager: What is the classification on that document?
- Mr. Harkins: 220 is a state code for a two family dwelling.

- Mr. Prager: Let's look at exhibit 3.
- Mr. Harkins: This is a mass appraisal modular sheet. The date on this is November 10, 1986.
- Mr. Prager: Does this pertain to 191 River Road North?
- Mr. Harkins: Yes. The first page has general information. It states it is a 220 and it describes the square footage of the first floor and second floor. The second page is how they come up with the value.
- Mr. Prager: How many kitchens and baths does it state?
- Mr. Harkins: It is saying two kitchens and two bathrooms. The normal course is to send the data card to the property owner and then do the reevaluation when the card comes back. I wasn't here in 1986 and 1987 but I do know how to read the data cards.
- Mr. Prager: What is AUPD notice of correction?
- Mr. Harkins: This is from December 17, 1990. We had to send information up to the county.
- Mr. Graham: This is exhibit 4.
- Mr. Cantor: What was the correction?
- Mr. Harkins: The assessment was reduced.
- Mr. Prager: What is the classification?
- Mr. Harkins: It states a 220 which is a two family dwelling.
- Mr. Prager: Let's look at exhibit 5.
- Mr. Harkins: This is a state document. This needs to be filled out every time we file a deed. It has basic information on it; the address, the seller's name and the buyer's name. It is then sent to the county because they are the keepers of the deeds.
- Mr. Prager: What is the date on that?
- Mr. Harkins: October 7, 1995, that was the date of transfer or sale. The buyer was Wendy Lynn Smart and the seller was Ms. Stotz. There is a certification on this form stating that the information that was given was correct.

- Mr. Prager: Who certified it; Ms. Smart or Ms. Stotz?
- Mr. Harkins: I believe both did. If there was a difference between this and my records, it would call for a review. There is a section to check to what pertains to this property. There is only one box and it states it is either a two or three family and under property class it says 220.
- Mr. Graham: Does the form show if the buyer had an attorney for this transaction?
- Mr. Harkins: Yes, it says Albert Roberts.
- Mr. Prager: Mrs. Roberti, when did the town adopt the zoning ordinance?
- Mrs. Roberti: January 29, 1963. Looking back at maps it was a R20.
- Mr. Prager: Was a two family dwelling allowed back then? How about a three family?
- Mrs. Roberti: Only a one family dwelling was allowed at that time.
- Mr. Prager: In your opinion, was this a nonconforming use as of 1963.
- Mrs. Roberti: Yes.
- Mr. Prager: Is it currently a R40.
- Mrs. Roberti: Yes.
- Mr. Prager: Are two family dwellings or three family dwellings allowed in a R40 zone.
- Mrs. Roberti: No.
- Mr. Prager: The assessor's records show as of February 12, 2002 the property was classified as a three family dwelling. If this was converted to a three family from a two family, in your opinion is this an expansion of a nonconforming use.
- Mrs. Roberti: Yes.
- Mr. Prager: Does the town ordinance permit expansions of a nonconforming use?
- Mrs. Roberti: Under the code, if they have 20,000 square feet they can go to the Planning Board for a Special Use Permit for each unit.
- Mr. Prager: Do you know if that was done?

- Mrs. Roberti: To my knowledge it was not done.
- Mr. Prager: Can you describe the houses on that road?
- Mrs. Roberti: (Pointing to the map) these are single family homes except for this one that is a legal two family.
- Mr. Prager: Are there any three family homes?
- Mrs. Roberti: Not to my knowledge.
- Mr. Cantor: Barbara, do you have any documentation in the building or zoning files showing the property was converted from two to three family.
- Mrs. Roberti: Not to my knowledge; it was deemed a multi family by Tatiana Lukianoff a few years ago due to a letter she received.
- Mr. Cantor: Are there any records or building permits showing the conversion?
- Mrs. Roberti: Should be. I don't think there is anything in the building department.
- Mr. Cantor: In exhibit 5 it was stated that the council for Wendy Smart was Al Roberts. Before you, you have an affidavit from Al Roberts saying this was a three family residence. I would like to adjourn this and get copies of the materials you have here tonight. You have affidavits from previous owners and tenants from the past to current date. These state that it was a three family dwelling pre zoning. If you take these affidavits and weigh them against the assessor's records, which are faulty, I think this will fall on the side of the affidavits not the faulty assessor's records. I would ask to adjourn this and ask for copies of the marked documents so I can review them.
- Mr. Prager: I am looking at the affidavit from Mrs. Smart and she says there are eight discrepancies. Mr. Harkins, how can these discrepancies happen? Didn't you say Mrs. Smart had to sign a form?
- Mr. Cantor: He said she didn't have to sign the form.
- Mr. Prager: But she did.
- Mr. Harkins: She signed the 5217 form stating to the best of her knowledge. On that form is the information concerning the acreage, the assessment, the property class. It has nothing to do with the data on the property. It doesn't have information concerning the number of bedrooms and kitchens.



- Mr. Prager: I see that Mr. Roberts states that his recollection from the 1970's is that this was a residential dwelling with three separate apartments.
- Mr. Johnston: If the house is assessed as a two family compared to a three family, do the taxes change?
- Mr. Harkins: The three family has a more market value then a two family but I don't know what they did back then.
- Mr. Cantor: I am requesting that this be adjourned until November 25<sup>th</sup>.
- Mr. Galotti: I make a motion to adjourn the Public Hearing until November 25<sup>th</sup>.**
- Mr. Johnston: Second.**
- Mr. Prager: All in favor?**
- Board: Aye.**
- 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. Galotti: Second.**
- Mr. Prager: Can I have a motion to come out of Executive Session?**
- Mr. Galotti: I make a motion to come out of Executive Session.**
- Mr. Johnston: Second.**
- Board: Aye.**
- Mr. Prager: Do I have a motion to adjourn this meeting?**
- Mr. Galotti: I make a motion to adjourn this meeting.**
- Mr. Johnston: Second.** Respectfully Submitted,
- Mr. Prager: All in favor?**
- Board: Aye.**
- Adjourned: 8:40PM Sue Rose, Secretary  
Zoning Board of Appeals