

Town of Wappinger
Zoning Board of Appeals
February 10, 2015

Town Hall
20 Middlebush Road
Wappinger Falls, NY

REVISED DRAFT MINUTES
SUMMARIZED

Members Present:

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

Member Absent:

Mr. Casella	Member
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Others Present:

Mr. R. Graham	Attorney
Mrs. B. Roberti	Zoning Administrator
Mrs. M. Gale	Covering Secretary

SUMMARY

Mr. V. Meliti Variance – Public Hearing Set 2-24-15 & Site Insp. 2-14-15

Stewarts Shop Variance – Public Hearing Set 2-24-15 & Site Insp. 2-14-15 Wendy Smart Closed Adj. Public Hearing – Next Meeting – 3-10-15

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

Mr. Prager – Present
Mr. Casella – Absent
Mr. Rexhouse – Arrived Later – Present
Mr. Galotti – Present
Mr. Johnston – Present

MINUTES TO BE APPROVED:

January 13, 2015
January 27, 2015

Motion to approve: Motion: Mr. Johnston, Second: Mr. Galotti – All in favor - Aye

Appeal No. 15-7543

Virgil Meliti, Jr.-Seeking an area Variance of Section 240-37 & 240-30(B)of District Regulations in an R-40 Zoning District.

-Where **25 feet** to the left side yard is required, the applicant can only provide **18 feet**; thus requesting a **7 foot** variance for an addition to his existing garage.

-Where the **code states...in no case shall Accessory Structures have a footprint greater than 600 square feet nor a height in excess of 20 feet.** The applicant is proposing an **addition to his garage for a total of 1152 square feet**, thus requesting a **variance of 552 square feet.**

The property is located **179 Dorothy Lane** and is identified as **Tax Grid No. 6257-04-609026** in the Town of Wappinger.

Discussion:

Mr. Prager – Mr. Meliti, come up and explain to us what you need and why you need it.

Mr. Meliti – I have a collection of vehicles, I've been a car collector most of my life. My 2 car garage handles the two special cars, the other three that I own are kept outside, I have two driveways. I recently developed a heart condition, had surgery and was told shoveling and clearing snow is a thing of the past. I have quite a few hobbies, home is small and there is no room in the basement for the hobbies so I like to include a workshop in the addition to the garage if it is approved, for my tools and I have pictures of 360 degrees of property. As far as variance, on side my garage was built before the

codes were in effect, it's not going to be any closer where the existing garage is already within that 18' footprint. Aside from that the siding is deteriorating, so I would replace siding, possibly add a cupola, would be attractive in the neighborhood. Garage is going front to back not side to side. The garage is not attached to house, I could attach to my home. I would like to have the cars, my boat, a few trailers in garage. Would be pleasing in neighborhood, I'm not asking for an increase of 1100' I'm asking for 552 sq. ft. Aside from going straight up in my garage and putting lifts in the garage, I don't think that's going to be practical for me, for the financial point, and just dropping cars and lifting cars, would be expensive and nothing that I am inclined to do.

Mr. Prager: I notice on drawing, extended the existing garage 17' is the property at an angle? Do you know where your property line is?

Mr. Meliti: There are stakes on the property.

Mr. Prager: I want that marked out when we come out.

Mr. Meliti: All my stakes are on the property.

Mr. Prager: How are you getting into that garage, are you going to take down a wall? Are you going to have another driveway coming into that?

Mr. Meliti: I have two driveways now

Mr. Galotti: How many cars do you have now?

Mr. Meliti: I have 5. I have motorcycle, 2 trailers, a boat, a snow thrower, a generator

Mr. Galotti: The cars are staying in garage, is boat staying outside

Mr. Meliti: The cars are going to be in the garage in the snow, when weather is good, I leave a car outside.

Mr. Prager: How long have you lived there?

Mr. Meliti: I've been there for 34 years, 1980-81

Mr. Prager: Did you build the garage that's there now?

Mr. Meliti: No – it was there

Mr. Johnston: Do you know the size of that garage?

Mr. Meliti: 24' x 24' this addition will be 24' back

Mr. Prager: Does anyone else have any questions? We're going to have to look at it. Is everyone available for this weekend, around 9:00 AM

Mr. Prager: Do you have some paperwork, Michelle?

Mrs. Gale: Yes, you have your legal notices in the envelope with instructions

Mrs. Roberti: You have to mail out the public hearing notices this week

Mr. Prager: I would like to make the public hearing for February 24, 2015.

Appeal No. 15-7544

Stewart's Shops Corp. #325: Seeking an area Variance of Section 240-52(A) & 240-52(E) of District Regulations in an CC Zoning District. The applicant is currently before the Planning Board for an amended site plan and Special Use Permit to add a gasoline filling station to the existing Stewart Shop.

-Where **1000 feet is required** from a residential district, the applicant can provide **200 feet**, thus **requesting a variance of 800 feet** to allow issuance of a Special Use Permit for a proposed gasoline filling station.

-Where **2,500 feet is required** between gasoline filling stations, the applicant can provide **1,425 feet**, thus **requesting a variance of 1,075 feet** to allow issuance of a Special Use Permit for a proposed gasoline filling station. The property is located at **2048-2054 Route 9D** and is identified as **Tax Grid No. 6056-02-776904 & 6056-02-783920** in the Town of Wappinger.

Mr. Prager: State your name

Chuck Marshall: Real Estate agent for Stewards

Mr. Prager: Tell us a little about what you want to do?

Mr. Marshall: The existing store on 9D is struggling, the rest of our stores have gas. We have the neighboring property on contract; with the neighboring property we can do a gas addition and the gas addition kicks us into these two area variances. The gas will be on the north side of the property, there will be 4 pumps, we'll have to curb cuts, which will diminish the curb cuts from 3 to 2. What I didn't provide to you was the measurement from the northern, the measurements that we used were from the northern point of that property line to the competitor, and our existing line to the neighbor to the south, those are my interpretation of the most restrictions. The image on the left would be residential and the image on the right would be commercial.

Mr. Galotti: On the properties, do you have a contract to purchase?

Mr. Marshall: The pad that's there now – we have a contract to purchase.

Mr. Prager: How many pumps?

Mr. Marshall: Four – included in your package should be a photometric plan, landscaping, this store is definitely at the bottom – we're done a number of these stores that struggle because they don't have gas. People want the convenience of one stop shopping.

Mr. Prager: The square here with the canopy and four pumps under it. Is that where the pad is now? (Inviting Mr. Marshall up to the front looking at the plan and explaining the location of the plan site)

Mrs. Roberti: Howard, there's a foundation there that never got started...

Mr. Johnston: The residential is the one that's on State Rd.

Mr. Marshall: We measured it to 21 Stonykill, to the back.

Mr. Prager – Invited Mr. Marshall to come up again to look at the residential to Stonykill.

Mr. Marshall: That's why we went backwards, because that's the measurement that's most restrictive.

(Discussion continued on location of site)

Mrs. Roberti: That's all commercial

Mr. Marshall: That's all delineated wetlands, that's the maximum of what we can disturb.

Mr. Prager to Board – Do you have any other questions? (No) I think we have to take look at it, mark about where this pad will go – how soon do you need this? Mark it out.

Mrs. Roberti: Is the pad closer from 9D than the foundation?

Mr. Marshall: Front corner of the foundation would be the back corner of the gas canopy. I'll mark the four corners of the gas canopy, and the 2 curb cuts.

Mr. Prager: We'll make the public hearing for the next meeting, February 24, 2015.

Mrs. Gale : Public hearing notices and mailings to go out this week.

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)

Motion to Re-Open Adjourned Public Hearing – Motion – Mr. Galotti,
Second, Mr. Johnston
All in Favor – Aye

Mr. Prager: I'm sure you had time to look over all the information we talked about, assessment....Is there anything further you'd like to talk about?

Mr. Cantor: Yes, the first thing I like to talk about is the issue of three family vs. two family, that issue is not properly before you – you begin with a 2009 Zoning Administrator determination. Where the former Zoning Administrator, that this is a legal 3 family non-conforming use, we follow that by Barbara Roberti's letter where she accepts the prior determination by the former Zoning Administrator and goes on to offer her opinion on why a sub-division is not allowed for this 3 family non-conforming issue. The issue of two family vs. three family has been brought up only by the Zoning Board, the legal word is sua sponte, you brought it up on your own, nobody brought it up before you, your jurisdiction, your authority to act is appellate, you can act on an appeal, an appeal by the person who's aggrieved, or appealed by some branch of the Wappinger government, there is no such appeal before you and you do not have the authority or jurisdiction to consider this issue. I have a written opinion, which I will provide to you and your council, supporting the position – you are constrained to follow the un-appealed determination of the Zoning Administrator in 2009 that

was accepted in 2014 by your current Zoning Administrator. That's the first point – the second point is – even if this issue were validly before you, the proof provided by and on behalf of Wendy Smart is overwhelming in support of the assertion that this is a legal three family non-conforming use going back to 1962, we have multiple affidavits from Wendy, from prior owners and letters from prior tenants. On the other side of the issue, if it were properly before you – you have assessment records with the absence of who prepared those records, whether anybody who prepared those records were ever inside the house to see what was actually in there, and those records which Wendy will go over with you, are full of mistakes, mistakes about the attic, the swimming pool and multiple other mistakes that takes away any credibility from those records. The two points are the issue of two family or three family is not valid is not before you – it's not within your jurisdiction and secondly, even if it is in your jurisdiction, the proof tilts overwhelming in support of the applicant – that this is a legal non-conforming use of a three family since 1962. (Document dated 2-10-15 – submitted by Mr. R. Cantor)

Mrs. Smart: Described with specific details – each of the following exhibits

- Exhibit 1 – Real Property Card, dated 1963
- Exhibit 2 & 3 – 1986 Property Description Report & Mass Appraisal
- Exhibit 4 – AUPD Notice of Correction, dated 1990
- Exhibit 5 – Real Property Transfer Report, dated Oct. 1995
- Exhibit 6 – AUPD dated 2/2002 & Notice of Change of Assessment
(date unclear)
Tax Assessor, Christopher Harkins Commentary
Part 2 – Additional files provided by the Town of Wappinger
with inconsistencies
- Exhibit 7 – Building File dated 1971, 1975, other?
- Exhibit 8 – Building File dated 09/93
- Exhibit 9 – Residential Farm and Vacant Land Property Card, dated 06/95
- Exhibit 10 – Computer Screen Shot, dated 2003
- Exhibit 11 – Computer Screen Shot, dated 2004
- Exhibit 12 – Computer Screen Shot, dated 2007
- Exhibit 13 – Determination by Barbara Roberti, dated 02/26/2014
Part 3 – Chronology of town documents/officials recognizing
191 River Road as a 3 Family Dwelling
- Exhibit 14 – (List documents from town officials – recognizing
191 River Rd. as a 3 family dwelling)

(The above is added as an attachment to these minutes).

Mr. Prager: Do you have a list being there are three apartments there, do you have a list of the three each year that owned? You don't have any record of rents or anything like that?

Mrs. Smart: No didn't own until 1995. No I don't, I'm going to refer to this multiple time because it is contrary to what is in your files, and this is proof from living people that you could call up and ask. The records show inaccuracies in the number of bedrooms, kitchens, bathrooms and fireplaces, and again this collection of tenant letters totally refutes that. The record also shows the house has a full basement and in fact, the house is built on a crawl space. (Mrs. Smart continued to describe the swimming pool inaccuracies)
That was #2 & 3.

Mrs. Smart: Number 4 is a Notice of Correction, which has something to do with the change in taxes and on here it says change in classification it says 220, which is simply not the case. Number 5 – this is a Real Property Transfer Report, it says 220 which is not. It also says 2 or 3 family and that box is in fact checked. (Refers to Mr. A. Roberts as family attorney, included letter from Mr. Roberts)

Mr. Prager: Nothing on #5?

Mrs. Smart: That was #5 – I combined #2 & 3 – This is an increase in my taxes, the tax letter...the increase was never sent to me, it says Owner – the address is 191 River Rd., property location 191 River Rd. I do not live there – I've never lived there, the Town knows where to send all my tax bills. I never received this, which is another error with this property. I got my tax bill only to find this significant increase the tax rolls have been set already. I was told I could sue the Town or have it reversed, or pay the tax and investigate. I chose to pay the tax. There was a town board meeting; I met with all the town officials.

Mr. Prager: What year was this?

Mrs. Smart: I don't know, your document is not dated, directions of the Town Board... "increase unjustified" on April, 2003. The tax increase was 2002, the correction was 2003.

Mr. Prager: That was by the Town Board – right?

Mrs. Smart: Yes, during that conversation that nothing had changed.

Mr. Prager: Did they lower it?

Mrs. Smart: Yes they did – because nothing had changed, that includes the documents you had shared the last time. Mr. Harkins had made a couple of comments and I'd like to repeat them. ("there are often lots of mistakes in the data" – referring to the Tax Assessor files, and there was no way of knowing if the data was validated).

Mrs. Smart: Is there any questions so far?

Mr. Prager: No – not by me anyway (acknowledged other members of board to see if they had questions (None)

Mrs. Smart: (Continued to describe and refer to Exhibits)not certain anybody had been inside, if they were they certainly would not had said "full basement".

Mr. Prager: Did you say we have that copy or we do not?

Mrs. Smart: Yes you do

Mrs. Roberti: That's an assessors' copy, that's not a building copy. Exhibit #7

Mrs. Smart: The next is a building file, dated 9-93, and in this case there are corrections, it does reflect the right number of kitchens in 1993, it reflects the correct number of bathrooms,

and it also says the basement is a partial basement, so now we corrected a part of this record. Shows a total of twelve rooms, the number of rooms does not change.

Mrs. Smart: Continues to describe list of building codes – built in 1990 – none of the structures were built in 1990. These were here. Exhibit 9 – dated 1995 – it is a residential farm and vacant land and property card – show classification 230.

Mr. Prager: What exhibit is this?

Mrs. Smart: Number 9 – in 1995 shows zoning as R-20, the zoning in 1995 was not R-20, Had conversation with Barbara – I checked the zoning maps in my office, in 1984 your property was zoned R-20 and in 1990 it was zoned R-80, I don't know exactly when those changes took place, clearly in 1995 it was not R-20, it was R-80. Continued to exhibits 10,11,12 – computer screen shots. In exhibit 12 – shows structures being built in 1990 – they were not built in 1990.

Mr. Prager: What structures were they?

Mrs. Smart: They are coded, it think they are the poured concrete patio, the poured concrete pool, pool patio, the cabana.
The next documentation is Barbara Roberti's determination..make a few points about this... Would like to make again, not consistent with what's around there, DEP, high tension wires, not single family homes. (Describes density). Have a recommendation from Planning Board dated 8-2-10, the Planning Board came out to house recommendation should be a three family house. Also got a letter from Barbara Roberti, no mention of 3 family house. Planning Board was there, listed members, including Zoning Administrator Mrs. Lukianoff, Mrs. Roberti. (Mrs. Smart – continued to describe documentation – referring to three family house).

Mrs. Smart: Read a brief personal statement describing history of family and property.

Mr. Cantor: I'm going to provided to your secretary, a written documentation of materials and comments that Wendy made. Also going to provide that letter from me, dated today, supporting the issue that 2 or 3 family is not validly before you, the quality evidence provided by Wendy supports the inaccurate and incomplete town records that were provided to you. Is there anything more any of you would like from us this evening?

Mr. Payer: I don't – anyone on the board – No

Mr. Cantor: Would it make sense to close the public hearing?

Mr. Prager: Yes, it think we'll do that, we have 60 days to make a decision, we will read over again what Mrs. Smart brought this evening and make a decision – Do I have a motion to close the public hearing?

Motion to Close Public Hearing:

Motion – Mr. Galotti

Second – Mr. Johnston

All in Favor - Aye

Mr. Cantor: In terms of time to make your decision, we would like to make it as quickly as convenient for you; if that becomes an issue for you we would stipulate any reasonable extension that you would like.

Mr. Prager: Second Tuesday of March – March 10, 2015

Mr. Prager: I like to go into Executive Session

Motion: Mr. Johnston

Second: Mr. Galotti

All in Favor – Aye (8:10PM)

Mr. Prager: Make a motion to come out of Executive Session

Motion: Mr. Johnston

Second: Mr. Galotti

All in Favor – Aye (8:38PM)

Mr. Prager: Motion to adjourn

Motion: Mr. Johnston

Second: Mr. Galotti

All in Favor – Aye

Respectfully Submitted,

Adjourned: 8:40PM

Michelle Gale
Covering Secretary
Zoning Board of Appeals