

MINUTES

**Town of Wappinger
Zoning Board of Appeals
April 28, 2015
Time: 7:00PM**

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

Summarized Minutes

Members:

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

Others Present:

Mr. J. Horan	Attorney to Town
Mrs. B. Roberti	Zoning Administrator
Mrs. B. Ogunti	Secretary

SUMMARY

Adjourned Public Hearing:

Stewart's Shops Corp # 325 -Adjourned Public Hearing to May 12th, 2015.

Public Hearings:

Earth Angels Veterinary Hospital -Granted three variances.

Garth Bosman -Denied variance for fence height.

Brian Coto -Granted two variances.

Interpretation:

RADD Automotive -Granted Interpretation.

Discussion:

James Eglit -Public Hearing on May 12, 2015

Mr. Johnston: Motion to approve the minutes for April 14, 2015.

Mr. Galotti: Second the motion.

Vote: All present voted aye.

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 & 6056-0-2-783920** in the Town of Wappinger.

Mr. Prager: I believe we need a motion to open and then close it since the attorney is not going to be here.

Mrs. Roberti: We are actually waiting for the Planning Board to declare Lead Agency at their next meeting. Until that's done, we cannot move forward.

Mr. Prager: Okay, may I have a motion to move the Public Hearing to May 12, 2015.

Mr. Johnston: Motion to open the Public Hearing.

Mr. Galotti: Second the motion.

Vote: All present voted aye.

Mr. Johnston: Motion to adjourn to May 12, 2015 at Planning Board meeting.

Mr. Galotti: Second the motion.

Vote: All present voted aye.

Appeal No. 15-7548 / Earth Angels Veterinary: Seeking an area variance Section 240-71(A,D) of Regulations in an R-80 Zoning District.

-Where a minimum of **10 acres** is required for veterinary hospitals with outdoor runs in a residential district, the applicant can only provide **8.96 acres**, thus **requesting a variance of 1.04 acres.**

-Where the zoning code for veterinarian offices permit one, non-illuminated, free-standing sign, not to exceed **6 square feet** on each side, the applicant is proposing a two-sided sign with **32 square feet** on each side, thus requesting a variance of **26 square feet for both sides of their proposed signage.**

The property is located **44 St. Nicholas Road** and is identified as **Tax Grid No. 6258-01-200871** in the Town of Wappinger.

Present: Mike Gillespie – Engineer
Alexandra Barrientos and Robert Codacovi – Owners

Mr. Prager: All the mailings in order, Bea?

Mrs. Ogunti: Yes.

Mr. Galotti: Motion to open the Public Hearing.

Mr. Johnston: Second the motion.

Vote: All present voted aye.

Mr. Gillespie: My name is Mike Gillespie from M. Gillespie Associates. We are the consulting engineers for the proposal. The property is located of St. Nicholas Road. The action has a couple of components, and we currently have a site plan application before the Planning Board. The plan you have and based on our last discussion, we were originally seeking two variances. Based on the fact that we are proposing two small run in sheds for the miniature horses in the front, which I will provide an explanation for. We did detail on the plan which I provided to Barbara to distribute to you guys. I assume you had your site visit over the weekend.

Mr. Prager: The one I've got here you can hardly see it. Is that the building you are talking about?

Mr. Gillespie: Yes. The site has not been used for a year and a half. It was actually a wholesale winery club. The intent of the prospective purchasers is to

convert this use to a veterinary hospital. Earth Angels is currently doing business in the Town of East Fishkill off Route 376.

Mr. Prager: How long have they been in business?

Mr. Codacovi: We've been in business for 5 years.

Mr. Gillespie: Because they currently rent, there's the ability to purchase. With that, there are things we have to go through with the town. We are currently before the Planning Board relative to the site plan application. Based upon certain components of the proposal, we are now required to be before this board relative to some area variances. There's a definition within the code relative to kennels, one being commercials and the other not being so much. What defines commercial kennels is having runs. I explained in the last meeting that they do not propose conventional runs, but what they do propose is a fenced in area for the purposes of exercising the animals. If you are familiar with a typical veterinary clinic, they need literally have fence and the animals run back and forth. This is not what's proposed here. Unfortunately, the Town of Wappinger code doesn't really define what we are proposing. We thought based on the scope of the project and the size of it, we decided to come here. With the commercial type veterinary hospital, you're required to have 10 acres. This is 8.96 acres, so the first variance we are looking for is 1.04 acres to allow this use on this property. Secondly, we are proposing a sign in the front along St. Nicholas Road. We came in with a pretty substantial sign for this particular use and it is in a residential zone and it's R-80. The maximum permitted sign in this particular zone is actually 6 sf., basically 3x2 sf., on both sides.

Rob Codacovi, who is one of the owners of the property, can elaborate on this.

Mr. Codacovi: It's a holistic veterinary hospital and the property lends itself to that. It's a pasture type of setting for the horses there, and it's all about reducing stresses and bringing people to a beautiful location.

Mr. Prager: It's not going to have riding or that type of thing that?

Mr. Codacovi: No riding at all. It's strictly a small animal hospital

Mr. Prager: How many animals are allowed?

- Mrs. Roberti: We allow one farm animal for every two acres, and you said you only have two?
- Mr. Codacovi: Yes, two.
- Mrs. Roberti: How big is the shed?
- Mr. Gillespie: The shed is 10x22 sf., and because the shed is in the front of the principle structure, there's also a variance that is required. One of the benefits to this property is the building is way off the edge of the road and pulls all the action off the front. That's why we are proposing a paddock there. That's it in a nut shell.
- Mr. Prager: How big is the sign in Fishkill Plains?
- Mr. Codacovi: To be honest with you, it's not that big. Originally it was designed that each suite will have one slot. I think the previous owner had 3 slots, but I can get those measurements for you.
- Mr. Prager: I think at the last meeting Mr. Gillespie mentioned that this was going to be a lit sign?
- Mr. Gillespie: Yes, from the top and not the exterior.
- Mr. Prager: So the sign you have now lit?
- Mr. Gillespie: Yes, it's going to be lit from the inside. The sign we have now is very corporate looking, and we want this to look as far from corporate looking as possible.
- Mr. Prager: At the last meeting, we wanted to know the hours the sign would be lit. Is it going to be lit all night or for a couple of hours?
- Mr. Codacovi: I would be lit until we close.
- Mr. Prager: What time do you close?
- Mr. Codacovi: Right now our hours are Monday 9-2 pm, Tuesday, Wednesday, Friday 9-5 pm, Thursday 9-7 pm, Saturday 9-2 pm and we are closed on Sunday.

- Mr. Prager: So the latest it's going to be lit would be 7 pm, and will there be a timer on it? I personally don't like lit signs all night, and it's a residential road and it should stay residential.
- Mr. Codacovi: We are not a 24/7 operation.
- Mr. Johnston: Are you going to board animals?
- Mr. Codacovi: Yes, we are going to have boarding, as Mr. Gillespie was saying, it's not like having runs on the outside. Most of the boarding is going to take place on the inside, and it's going to be rooms for each animal and there will be exercise space inside. We want to use the outdoor space that will be fenced in the back for exercise. The dogs going to be there for a week to 10 day, and dogs need fresh air and need to be outside. I want to stress that a no point in time they will be unattended outside. One of our kennel attendants is going to go outside with one or two dogs as they are exercising. It's not going to be uncontrolled pack of dogs running outside.
- Mr. Johnston: It's my understanding that your business day ends at 5 pm. Does that mean that your dogs are going to be inside until you open again?
- Mr. Codacovi: We will have someone staying over in the evening and might probably want to walk the dog on more time around 9 pm in the back before they turn in for the night.
- Mr. Johnston: How many rooms are you going to have?
- Mr. Codacovi: We are not exactly sure yet and we are still planning this. I would say a maximum of 18 dogs.
- Mr. Gillespie: It's important when we talk about business hours or working hours. They also have the ability that on an occasion that somebody in the dog house becomes sick. It's not going to be lit all night long.
- Mr. Prager: Where you are now, do you board animals?
- Mr. Codacovi: Only medical right now. Where we are now is very small and there's a huge demand for boarding animals.
- Mr. Horan: Is there currently a sign on that property, and how big is it?

Mr. Gillespie: It's 6 square feet, and very small.

Mr. Prager: Again, does anyone else have anything to say?

Mr. Tierney I'm Vince Tierney and I am representing the Dutchess County Pistol Association which is right across the street. We would like to encourage you to approve this appeal because it would be a great addition to the neighborhood, and we think this is a great thing to do. We would also like to express that we have no objections. We want the owner to know that we are a pistol club and we do shoot from 9:00am to 9:00pm, which was approved by the Town of Wappinger. So we want them to understand that there could be some noise but you are far away. We are all in favor of them going there, and just want it to be on the record.

Mr. Simonetti: I'm Chris Simonetti, and my address is 159 Wider Road, Wappinger's Falls. What's the procedure for sending registered letters to the adjacent property owners?

Mrs. Roberti: Anyone who abuts the property.

Mr. Simonetti: I understand the pistol range got a letter but his neighbor said he did not get a registered letter.

Mrs. Roberti: We use the GIS computer program. When we plot the property in question and we put within 100 feet, that's across Route 9, it's something we up it because it's across the road.

Mr. Simonetti: I thought it was 500 feet.

Mrs. Roberti: No, it's 100 feet.

Mr. Simonetti: So nobody in Morgan Court got it?

Mrs. Roberti: No, if they are not close enough.

Mr. Simonetti: They are going to be close enough if they are going to hear dogs.

Mrs. Roberti: It says all abutting and adjacent property owners across the street or road included shall be notified by mail by the applicant of said hearings. It does not have the 500 foot that you are referring to.

- Mr. Prager: So all of these people got the letter, Dutchess County Pistol, Scott Hartley, and Barry Zehnbbauer at 40 St. Nicholas Road. Al Berberich got the letter as well.
- Mr. Simonetti: Barry got the letter? Well, Barry doesn't live at the house.
- Mr. Prager: These are the people that got the letter.
- Mr. Simonetti: So no one in Morgan Court got it.
- Mr. Simonetti: From a procedural point of view, the only reason this applicant has to have a minimum 10 acres is because it's a commercial use in a residential area?
- Mr. Prager: Is it a commercial use?
- Mrs. Roberti: It's a veterinary use in a residential district.
- Mr. Horan: It's a special permitted use in a residential district.
- Mr. Simonetti: So, they have to apply for a special use permit?
- Mrs. Roberti: They have, and they are at the Planning Board.
- Mr. Simonetti: I have some concerns about an eventual kennel. I don't know what the applicant's plans are, and it's a fairly large property.
- Mr. Prager: The owner is here, let's find out.
- Mr. Codacovi: Most of the board is going to take place indoor, and that where we are going to have our rooms. When the dogs are brought outside to exercise, they are only going to be in a specified fenced in area in the rear of the building.
- Mr. Simonetti: Let me clarify what I'm saying. Are dogs that are going to be in the kennel ones you are treating, or people are going to bring their animals there for you to watch while on vacation?
- Mr. Codacovi: It's going to be both. We will have medical boarding which is animals being in the hospital getting procedures done and there for a couple of days.

- Mr. Simonetti: That's not my concern. My concern is, are dogs going to be boarded when people go away?
- Mr. Codacovi: Yes, they are.
- Mr. Simonetti: Continues with his objection of the veterinary hospital in a residential area.
- Mr. Gillespie: First and foremost, we are a veterinary hospital. Our intent is not to be a commercial kennel with an adjunct veterinary hospital.
- Mr. Simonetti: What's going to stop you a year from now to come to the Planning Board to open a kennel?
- Mr. Horan: If I may for the board and for the public, the applicable section is 240-71 of the zoning code which is entitled veterinary offices and commercial kennels. Subdivision A says in residential districts, the minimum lot area shall be 7 acres for veterinary offices and shall be 10 acres for commercial kennels or any facilities with outdoor runs. Mr. Gillespie indicated because of the fact that they have a veterinary hospital with an outdoor run, they need to have 10 acres. Likewise, for a commercial kennel, the standard would be 10 acres. As far as the size, Subdivision B which is applicable to the Planning Board says all facilities shall be centrally located on the property to allow for adequate distance from the property line to reduce the effect of barking animals. Subdivision C, the Planning Board may impose such conditions as it deems necessary to avoid and minimize traffic noise, auto impacts, etc.
- Mr. Horan continues read the codes.
- Mr. Prager: Chris, some of the things you are talking about might pertain to the Planning Board and not us. What we have to talk about tonight is the area and signage.
- Dr. Barrientos: Can I say something?
- Mr. Prager: Could you state your name for the record?
- Dr. Barrientos: I understand exactly what you are saying. When we were looking to build our place in this area, we did not choose it because of how it was situated, as much as knowing that we are in a residential area. Where we are now, all of our boarding whether it's a hospital or not, dogs still

bark whether they are sick or when they see other dogs. We had a company that came in to soundproof the walls. We have a business next to us that abuts us, so you can come and have them if they hear any noise.

Dr. Barrientos continues to explain the noise issue.

Mr. Simonetti: If I came to you and want you to keep my dog for two weeks, are you going to keep my dog inside for two weeks?

Dr. Barrientos: The dog will not be indoors for two weeks and they are not in a cage. As Mr. Codacovi mentioned, there will be small rooms with sofa and they come in and play with kennel attendants outside and then they come in.

Mr. Simonetti: I'm not too hung up on the cruelty thing. The other issue is the 10 acres minimum requirement. So if you grant them, they can come back.

Mrs. Roberti: Either that or they would have to go to the Planning Board.

Mr. Horan: The board can certainly say the variance is granted condition upon approval of this site plan that shown.

Mr. Simonetti: So that could still be an issue?

Mr. Prager: Not if you make that as a condition that they cannot make it any larger than what's shown on this site plan.

Mr. Simonetti: The other is the signage.

Mr. Prager: Thank you. Anybody else would like to speak for or against this variance?

Mr. Galotti: Regarding the illumination of the signage, are there going to be any big bulbs?

Mr. Gillespie: Everything LED these days. At the end of the day, I don't think it's going to be bright lights and it would be down lit and you won't see any glare.

Mrs. Roberti: It can't bleed off the property. Michael, how far back is it from the property line?

Mr. Gillespie: I would say about 10 feet from the property line.

Mr. Rexhouse: You think it won't be lit later than 7 pm?

Mr. Gillespie: No later than 7:30 pm or in that range.

Mr. Prager: I would like to have a motion to close the Public Hearing.

Mr. Galotti: Motion to close the Public Hearing.

Mr. Johnston: Second the motion.

Vote: All present voted aye.

Mr. Horan: One second, SEQRA?

Mrs. Roberti: I brought this up with David Stolman. If it's an unlisted act, then we didn't need to. I'll be back, let me check the file.

Mr. Prager: So it's unlisted and needs a negative declaration. Would someone make a motion?

Mr. Galotti: Motion to declare a negative declaration.

Mr. Johnston: Second the motion.

Vote: All present voted aye.

Mr. Prager: May I have a motion to deny or grant the variance.

Mr. Johnston: Motion to grant the first variance regarding the acreage. It cannot be achieved by the property that's available. It's not undesirable onto the neighborhood to the extent that it's something that is allowed in a residential zone. It is not substantial but it will have the caveat that it has to be within the perimeter before this board today and cannot be expanded on.

Mr. Galotti: Second the motion.

Roll Call:

Peter Galotti	- Aye
Brian Rexhouse	- Aye
Bob Johnston	-Aye
Howard Prager	-Aye.

Mr. Prager: May I have a motion on the second variance.

Mr. Johnston: Motion that the sign size is no bigger than 18 sf. , and regarding the lighting on it and due to the concerns of the public, the

caveat would be no later than 9 pm. It doesn't cause adverse physical and environmental effect having the light there.

Mr. Galotti:

Second the motion.

Roll Call:

Peter Galotti - Aye

Brian Rexhouse - Aye

Bob Johnston -Aye

Howard Prager -Aye.

Mr. Gillespie:

Just so I'm crystal clear on this variance, we are going back to the acreage issue, right? So the variance is granted based on the 1.04 acres. Typically, we would go to the Planning Board to get approved to open our operation. Then 5 years later and because we've gotten that variance, we would typically just have to go to the Planning Board. The fact that if there's an expansion of the property that would require coming back to the Zoning Board to redo that variance.

Mr. Prager:

Yes. May I have a motion for the third variance for the shelter/shed.

Mr. Johnston:

I make a motion to grant the variance for a structure in front of the property for a maximum size of 10x22 sf.. It doesn't cause an adverse condition to the neighborhood and it's far back from the road. I don't feel that it has any environmental impact.

Mr. Galotti:

Second the motion.

Roll Call:

Peter Galotti - Aye

Brian Rexhouse - Aye

Bob Johnston -Aye

Howard Prager -Nay.

Mr. Horan:

Three to one, motion passes.

Mr. Gillespie:

Thank you.

Appeal No. 15-7547

Garth Bosman: Seeking an area variance Section 240-21, (B)(4) of District Regulations in an R-40 Zoning District.

-Where 6 feet fence height is the maximum allowed, the applicant requests a **12 feet** height for a proposed fence, thus requesting a **6 feet** variance to allow for security.

The property is located **86 Ketchamtown Road** and is identified as **Tax Grid No. 6157-03-150311** in the Town of Wappinger.

Present: Garth and Kathlyn Bosman - Owners
Joseph Lopane - Owner of abutting property
Michael Lopane - Son of owner of abutting property

Mr. Prager: May I have a motion to open the Public Hearing.

Mr. Johnston: Motion to open the Public Hearing.

Mr. Galotti: Second the motion.

Vote: All present voted aye.

Mr. Prager: Mr. Bosman, please come up and state your name for the record, please.

Mr. Bosman: My name is Garth Bosman, I reside at 86 Ketchamtown Road.

Mr. Prager: Explain to everybody again. I know we met with you two weeks ago and we did a site inspection of your property. Explain what you need the fence for.

Mr. Bosman: I am requesting a variance in fence height to install a fence higher than 6 feet along my property line with my abutter, Mr. Lopane. I have gotten into a legal dispute with Mr. Lopane over a building that is mine which he believes is his. I am requesting a variance to put up a fence to protect my family from any further disturbance about this building until the court makes a decision on it.

Mr. Prager: Anybody on the board has any questions?

Mr. Galotti: Is it your intent to take the fence down if the court does not rule in your favor, or you will keep it up forever?

Mr. Bosman: It's not going to be up forever, it depends on how long the court case takes and what the result is.

Mr. Johnston: What is the height of the posts you have there?

Mr. Bosman: Those are at 12 feet.

Mr. Rexhouse: I thought you said they were at 14 feet.

Mr. Bosman: One or two of them is at 14 feet.

Mr. Prager: Okay, so is there anybody in the audience who would like to speak?

Mr. Lopane: Yes, Joseph and Michael Lopane.

Mr. Prager: Sure, come on up. Again, could you state your name?

Mr. M. Lopane: We would like to have that permit denied. First of all, we are joint neighbors with the Bosman's. They are trying to take the shed by adverse possession. We would like to deny that permit until the pending litigation is finished, so we can get a court order to have them removed from the shed. Also, we do not want a fence that big. It's going to devalue the property, and it is a country setting with all the trees. We would like you to deny that permit on those grounds until the litigation is finished. In terms of security, they are the ones that are trespassing deep inside of the woods. There are plenty of police reports that note that.

Mr. Prager: Again, anybody on the board wants to say anything?

Mr. J. Lopane: Just one other thing, it's 38 acres in the back and a narrow entrance at that point, so to put a fence there would definitely be a devaluation of the property.

Mr. Prager: Okay, anybody else wants to speak for or against this?

Mrs. Bosman: Yes, my name is Kathlyn Bosman, and I'm Garth's wife. I am also the owner of 86 Ketchamtown Road. I would like to simply indicate that we are not the harassers. Mr. Lopane sends his employees and/or friends to frighten my children and myself. I am a stay-at-home mom and a music teacher part-time, and I play professionally. The fence that we are requesting to put on our property line is simply to prevent Mr. Lopane and his compatriots from harassing my three year old twins, my 6 year old daughter and myself. We have filed papers in the Supreme Court to have a judge adjudicate it because they are the ones who can make the decision regarding a particular structure. We have affidavits over 10 years that states, that at no time did Mr. Lopane have had possession or have used the garage that is ours.

Mr. Prager: Thank you.

Mr. M. Lopane: I would like to approach the board and provide them with a photo of survey sticks that were removed by the Bosman's, which is a penalty by New York State law.

Mr. J. Lopane: This is a survey that was provided by the previous owners that this is filed with the town. It shows that the property and the garage on our side.

Mr. Rexhouse: So it's your garage, but it's on their property?

Ms. Bosman: It's on our property.

Mr. Lopane: It's our garage.

- Mr. Horan: With respect to the variance that's pending before the board, the applicant is simply asking for a variance from the 6 feet height requirement. The board has indicated that they would not entertain placing the fence in a location other than what's shown on their survey map.
- Mr. M. Lopane: The garage is over here, so if it's kept back away from the property line that is in dispute, would be alright. But if it's on the property line, we will object.
- Mr. Horan: Again, the purpose of the board, we do not have the jurisdiction to alter surveys, or boundary lines. The town would be bound by any determination from the court as to where the boundary ultimately is. The issue before the board is simply the height of the fence. One of the things discussed by Mr. Bosman the last time was with respect to the typography of the property. I don't know if the board wants to inquire further with respect that.
- Mr. Prager: We did a site inspection and we've seen what the property looks like.
- Mr. J. Lopane: Again, I just want to reiterate as long as it is not on the property line that's being disputed in court, that's fine.
- Mr. Prager: This sounds like something you all have been going back and forth on, and I'm not here to listen to that. We are here to decide whether the fence is going to be 6 feet or 12 feet.
- Mr. J. Lopane: We don't want the fence to be 12 feet high.
- Mr. M. Lopane: Also, we don't want them closing off that shed which I think they might do.
- Mr. Prager: I understand what you are talking about. Do we have any other questions?
- Mr. Horan: Is the fence going to be the entire boundary or a portion of the property?
- Mr. Bosman: I can indicate it for you. This is the road, it's going to go up here and around the corner, and that's it. This is all wetland over here.
- Mr. Horan: So I understand, the security fence is going to be kept open to the additional portion of the property.
- Mrs. Bosman: What's there is all water.
- Mrs. Roberti: You only speak to the board, please. Not to each other.
- Mr. Horan: So, on this property line, omitting that, and to approximately behind the garage. It stops there and does not continue and will not block the garage.
- Mr. Bosman: Right.

Mr. Prager: If there are no other people to speak for against this, I would like to call for a motion to close the Public Hearing.

Mr. Galotti: Motion to close the Public Hearing.

Mr. Johnston: Second the motion.

Vote: All present voted aye.

Mr. Horan: The chairman noted that it was 6 feet or 12 feet should the board decide that any height other than that, the board would have the ability to grant a lesser variance than that which is requested. I wanted to make that clear for the record.

Mr. Prager: Thank you. Could I have a motion?

Mr. Prager: May I have a motion to deny or grant the variance.

Mr. Galotti: I am going to make a motion to deny the variance and there are several reasons why. Whether the benefit can be achieved by any other feasible means, I really think that a 6 feet fence would serve the purpose you are trying to accomplish. Basically screening your property from that property creates an undesirable change in your neighborhood. In viewing those posts when we drove up to your property, it had a 12 feet panel over there, and to be honest with you, it looked like the wall of China. Whether your request would substantiate, I doubt that's what the town would permit otherwise. Whether the request would have an adverse or physical effect on the neighborhood or on the environment, probably not a more adverse effect than hysterics it may cause. Based on those issues, I'm okay with the 6 feet but of course, not the 12 feet fence. The 6 feet fence as defined in the location that the applicant wants to put it.

Mr. Horan: Before the board votes, an affirmation vote on the motion is to deny the variance.

Mr. Johnston: Second the motion of Mr. Galotti denying the variance.

Roll call:

Peter Galotti	- Deny
Brian Rexhouse	- Deny
Bob Johnston	- Deny
Howard Prager	- Deny

Appeal No. 15-7545

Brian Coto: - Seeking an area variance Section 240-37 of District Regulations in an R-40/80 Zoning District.

-Where **75 feet** is required for a front yard setback on the state or county road, the applicant can provide **51.2 feet** for an existing deck, thus **requesting a variance 23.8 feet.**

-Where 75 feet is required for a front yard setback on a state or county road, the applicant can provide **53.4 feet** for an existing Pole Barn addition, thus requesting a variance of **21.6 feet.**

The property is located **1985 Route 9D** and is identified as **Tax Grid No. 6056-02-656759** in the Town of Wappinger.

Present: Brian Coto – Owner

Mr. Prager: May I have a motion to open the Public Hearing.

Mr. Galotti: Motion to Public Hearing.

Mr. Johnston: Second the motion.

Vote: All present voted aye.

Mr. Prager: Come on up and state your name for the record.

Mr. Coto: My name is Brian Coto.

Mr. Prager: We did have a site inspection of your property on Saturday and we are familiar with what you have there. Why don't you explain what you need and why.

Mr. Coto: My front porch collapsed so I built a new one and made it a little larger to look nice from the front. It does not create any issues with the neighborhood. The pole bard is there before I purchased the house.

Mr. Prager: It looks quite old.

Mr. Coto: Yes, it's been there for 30 years and no one has ever complained about it. I own the house and it needed some repairs so I've been doing work to fix it up.

Mr. Prager: How long have you lived there?

Mr. Coto: I've lived there for four years.

Mr. Prager: Do you have a building permit for the deck?

Mr. Coto: Yes, I do.

Mr. Prager: Did someone inspect it?

Mr. Coto: Not yet, I'm waiting for the variance to be approved.

Mrs. Roberti: What happens is I look at every building permit, so when I was looking at this, I realize that there was an addition to the pole barn. When I looked through the files, the pole barn itself was 30x40 sf., and that addition was put on at some point without a building permit. This is why I want it legalized and that has been added to his building permit to the porch. If he gets the variances granted, he will have to then submit plans and have to legalize that addition.

Mr. Prager: Did you put the addition on the pole barn?

Mr. Coto: No, that was done before I purchased the property.

Mr. Prager: So you never touched it, and the only thing you built was the deck?

Mr. Coto: Yes. I just want it to be legal and don't want anything on the property that's not.

Mr. Prager: Anybody in the audience wants to speak for or against this variance? Let the record that no one is speaking for against the variance.

Mr. Horan: Just for the record, since the setback on a state road is 75 sf., it definitely needs a variance.

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

Mr. Johnston: Motion to close the Public Hearing.

Mr. Rexhouse: Second the motion.

Vote: All present voted aye.

Mr. Prager: May I have a motion to deny or grant the variance?

Mr. Galotti: Motion to grant the variances. On the first, to grant the applicant a variance to the deck. I can't believe the benefit can be achieved by any feasible means, and it's a nice deck actually. It creates no undesirable change to the neighborhood, it actually enhances it. The request is not substantial and it does not create any adverse effects on the neighborhood at all.

To the second variance, I vote yes, to grant the applicant variance. The benefit cannot be achieved by any other feasible means and creates no undesirable effects to the neighborhood.

The request is not substantial in my opinion, and does not create any adverse effects to the environment.

Mr. Johnston: Second the motion.

Roll call: Peter Galotti – Aye.
 Brian Rexhouse – Aye.
 Bob Johnston – Aye.
 Howard Prager - Aye.

Mr. Prager: The motion has been made and seconded for both variances on Appeal No. 15-7545.

Mr. Coto: Thank you.

Appeal No. 15-7549 (Interpretation)

RADD Automotive: Seeking an Interpretation of the Determination from the Zoning Administrator in regards to the whether or not automobile repair is a service business or not. The business is in the R-20 residential zoning district and is a legal non-conforming business. Section 240-16 (C)(1)(b) states: *Further, a building or structure which contains a legal nonconforming use shall not be enlarged relative to the size of such use on the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever, except that when authorized by special permit of the Planning Board, a building containing a nonconforming retail or service business use may be enlarged or extended to an extent not exceeding 50% of the gross floor area of the building devoted to such nonconforming use which legally existed on the date that such use became nonconforming under the terms of the Town of Wappinger Zoning Law.*

The property is located **1441 Route 376** and is identified as **Tax Grid No. 6259-04-840023** in the Town of Wappinger.

Present: Al Cappelli Architect

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

Mr. Galotti: Motion to open the Public Hearing.

Mr. Johnston: Second the motion.

Roll call: Peter Galotti – Aye.
 Brian Rexhouse – Aye.
 Bob Johnston – Aye.
 Howard Prager - Aye.

Mr. Cappelli: We are here to discuss the nature of the use of RADD Automotive whether it is a service business or not.

- Mr. Prager: There's a part in our code that states whether it's a service business or not. It's up to us to decide whether this business is entitled to be a service or not. Are we on the same page?
- Mr. Horan: For the record, the subject of the appeal is the determination of the zoning administrator's letter dated March 26, 2015. It is regarding a particular section of the zoning code 240-16, and the language which states a building or structure which contains a legal nonconforming use. For purposes of this application that's before you, the use predates zoning and it existed prior to zoning, a considered a legally nonconforming use as a gas station.
- Mr. Horan continues to read the code.
- Mr. Prager: Anybody in the audience wants to say something?
- Ms. Lopez: My name is Donna Lopez and I live at 16 Dorett Drive. RADD Automotive is right behind me. We have been in our house for 28 years and when we first bought it, there were a lot more trees in the back. He has already cleared some land to park his cars, and I don't think anything else needs to be cleared. Three months out of the year we can see his business and hear his high power automotive equipment. There is a light on his garage that's on all night long. My other concern is that it will impact the property value.
- Mr. Johnston: How far away is the fence from your house?
- Ms. Lopez: The fence is right behind the garage, and you can see it when you go on Route 376. I don't see the fence from my house.
- Mr. Prager: The fence is half way through the property.
- Ms. Lopez: How many neighbors did you send the Public Hearing to?
- Mr. Prager: Do you know what they are going to be doing there?
- Ms. Lopez: Not completely.
- Mr. Cappelli: If you guys look from the back of your property, you see this building. To the back left hand corner of the building, there's a little steel structure there that he's temporarily storing cars. We are going to close that and put it inside.
- Ms. Lopez: To do what?
- Mr. Cappelli: For automotive repair. We are currently before the Planning Board and if you want landscaping or lighting, we can certainly do that.

Mrs. Roberti: I would like to speak to the Public Hearing notice, 7 people were notified. It was Vincent Keller, John Fischer, Frank Olivetto, Joseph Schussler, Mr. Aboshanab, Robert Cinelli and yourself.

Ms. Lopez: I spoke to Cinelli and she never got the letter.

Mrs. Roberti: It went out registered returned receipt.

Mr. Prager: What we are here for today on whether the zoning administrator's interpretation is a service business or not. That's all we are here for. If we decide that it's a service, it then goes to the Planning Board, then you can go there and make sure they understand your problems.

Ms. Lopez: So I will have to put in a request?

Mr. Prager: No, it will be a Public Hearing just like this and everybody will get a chance to speak.

Mrs. Roberti: If this is granted and they go back to the Planning Board, they will also have a Public Hearing and all of you will be notified again, registered return receipt. At that meeting, the items of landscaping, lighting, noise, etc., are all discussed at the Planning Board.

Ms. Lopez: So nothing can be done until then?

Mrs. Roberti: Yes, until they go to the Planning Board.

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

Mr. Johnston: Motion to close the Public Hearing.

Mr. Rexhouse: Second the motion.

Roll call: Peter Galotti – Aye.

Brian Rexhouse – Aye.

Bob Johnston – Aye.

Howard Prager - Aye.

Mr. Horan: For the record and which was noted in Barbara's letter dated March 26, 2015, on January 10, 1984 the ZBA granted a special use permit. Presently, RADD Automotive is seeking a special use permit to expand a nonconforming use. That special use permit is pending before the Planning Board. In 1984, that authority rested with the Zoning Board Appeals and not with the Planning Board. With respect to this particular property, the same request was made at that time to expand the building. At that time the wanted to expand to allow for a carwash and the special use permit was granted.

Mr. Galotti: So is it going to be grandfathered and granted the same?

Mrs. Roberti: From what we can tell, it was a carwash that was never built.

Mr. Galotti: I will make a motion to determine that the existing use of RADD Automotive is a service business for purposes of this session.

Mr. Rexhouse: Second the motion.

Roll call: Peter Galotti – Aye.
Brian Rexhouse – Aye.
Bob Johnston – Aye.
Howard Prager - Aye.

Mr. Cappelli: Thank you very much.

Appeal No. 15-7550 James Eglit: Seeking an area variance Section 240-37 of District Regulations in an R-40 Zoning District.

-Where **50 feet** to the rear yard is required, the applicant can only provide **20 feet** for the installation of a 27" round above ground pool, thus requesting a variance of **30 feet**.

The property is located **20 Alfreda Drive** and is identified as **Tax Grid No. 6157-03-106465** in the Town of Wappinger.

Present: James Eglit

Mr. Eglit: My name is James Eglit and I live on 20 Alfreda Drive.

Mr. Prager: What we do here is you tell us what you want and why you want it, and if there's anything you need for the Public Hearing, we will ask you to bring it in. I have your map here.

Mr. Eglit: Where the house is situated, it's very close to the back line so with that 50 foot variance, it brings it close to about 5 feet from our deck so there's not enough room for any size pool. Right now, we have our backyard fenced in. We have trees around the fence and a forest between us and our neighbors. It shouldn't impact them and I've already spoken with the neighbors that are adjacent to us and they said that it's not an issue.

Mr. Johnston: Can you show us on the map where the pool is going to be?

Mr. Eglit: As you see here, it's a pie-shaped property, and as we get closer to the northern side, it will be right around here. I try to put it as far away but it's about 5 feet from the well and I couldn't put it any further.

Mr. Galotti: There is a requirement at the pool needs to be away from the well.

- Mr. Eglit: I spoke with the pool guys and they said there's not an issue since it is 5 feet away and they are not going to touch that area. They are just going to level that a couple of inches.
- Mr. Prager: How far is it from the house?
- Mr. Eglit: It's about 7 feet from the deck and from this part about 15 feet.
- Mr. Prager: On your plan, you have about 17 feet from the breakfast nook.
- Mr. Eglit: We have a fenced in backyard and the trees behind it.
- Mr. Prager: We will need to do a site inspection.
- Mr. Eglit: In regards to marking it, it will be difficult because it's in the woods.
- Mr. Prager: I mean to mark where the pool is going to be.
- Mr. Johnston: Are there any markers on that property?
- Mr. Eglit: There are property markers on the corners but you won't be able to see it.
- Mr. Prager: Just put some sticks back there so we can see.
- Mr. Eglit: Sure, I can do that.
- Mr. Prager: We will do a site inspection on Saturday, May 9th at 9 am.
- Mr. Eglit: Okay, I will put that down on my calendar.
- Mr. Prager: The Public Hearing will be May 12, 2015 and make sure you get your homework done.
- Mr. Eglit: So I have to send out certified mail to the neighbors and put it in the newspaper?
- Mrs. Roberti: We will put it in the newspaper and you are going to pay for it before the hearing.
- Mr. Eglit: Thank you very much.

Mr. Johnston : I make a motion to adjourn this meeting.
Mr. Galotti: Second the motion.
Mr. Prager: All in Favor – Aye

Respectfully Submitted,

Adjourned: 8:45pm

Bea Ogunti
Secretary
Zoning Board of Appeals