

MINUTES

**Town of Wappinger
Zoning Board of Appeals
September 8, 2015
Time: 7:00PM**

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

Summarized Minutes

Members:

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

Others Present:

Mr. Horan	Attorney for Town
Mrs. Roberti	Zoning Administrator
Mrs. Gale	Secretary sitting in Mrs. Ogunti

SUMMARY

Public Hearing:

Vincent Gesmundo -Adjourned Public Hearing on October 27, 2015

Discussion:

Cheung Chingfai -Public Hearing on October 27, 2015

Mr. Johnston: **Motion to open the Public Hearing.**
Mr. Casella: Second the motion.
Vote: All present voted aye.

Appeal No. 15-7565 Variance

Vincent Gesmundo: - Seeking an area variance Section 240-37 / 240-5 of District Regulations in an R-20 Zoning District.

-Where 2 acres are required for farm animals, the applicant can only provide .36 of an acre for pigeons, thus requesting a variance of 1.64 acres.

The property is located **22 Robert Lane** and is identified as **Tax Grid No. 6158-04-950110** in the Town of Wappinger.

Mr. Prager: Are all the mailings in order?

Mrs. Gale: Yes, they are.

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

Mr. Gesmundo: My name is Vincent Gesmundo.

Mr. Prager: Explain a little bit about what you want and why you want it.

Mr. Gesmundo: I have a bunch of pigeons in my backyard and they are my pets. We all have pets and I'm sure you gentlemen have a dog, a cat and maybe two of each. I have pigeons and they are not feral pigeons. Feral pigeons are the ones that poop on people and even carry disease. The pigeons I have are homing pigeons and you can take them far and put them in a race for the fun of it and see who comes home first. This is a love I have for pigeons. May I deviate for a couple of minutes if you do not mind me discussing.

Fifteen years ago, (I'm sure the Browns can testify to a certain point) I had two parrots that I had in my basement. They had babies I raised them and I took them away from the parents. They got big I trained them and took them outside. My wife got a call from her girlfriend one day and she said Rita, one of your parrots is down the block. We went there and got the bird, I had some peanuts with me and within a minute she came down on my shoulder. As we are walking back to the house (about 10 feet apart), there was Mr. Rosetti and Mr. Becchio. They are talking in the front of their house and see us coming and said is that a parrot? All of a sudden the parrot took off from my shoulder to my wife's shoulder. The point I'm trying to make here is have you ever seen that in your life?

Mr. Casella: No.

Mr. Gesmundo: I didn't think so. I wish there were experts to tell you how much I know about birds. The birds cost me \$500.00 a year to feed them. In this instance, it cost me \$250.00 to start this application process. It cost me \$80.50 to put it in the newspaper and \$85.00 to send certified letters to the various neighbors of mine. What do you think this is all about? Do you think I'm making money from all of this? I don't sell eggs, that's for chickens and I don't sell pigeons feet, this is a hobby. Mr. Prager, I hope I proved to you the last time that they don't poop any place. This whole case is based on one thing only, myself and this other person here don't get along. We are enemies.

Mr. Casella: You have to understand that we are not here to decide what's best for you.

Mr. Gesmundo: Mr. Casella, what I'm trying to say is if you and your wife were getting a divorce, she will tell the lawyers whatever they want to hear. Am I right or wrong?

Mr. Prager: Let's not worry about that right now. How long have you had these pigeons?

Mr. Gesmundo: I've had them for 25 years and I've lived in my house for 38 years.

Mr. Prager: As you know obviously, we did have site inspection and we did see you let the pigeons out and a couple of them flew around and they came right back.

Mr. Casella: Is there anything else you want to say, otherwise we are going to see if anybody in the audience has anything they want to say.

Mr. Johnston: Have you been told that pigeons are considered farm animals?

Mr. Gesmundo: No, and let me say something if I may? I purposely went out of my way and asked 10 people what farm animals are? They all named different animals and no one ever mentioned pigeons.

Mr. Johnston: Were any of these people town lawyers or zoning administrators?

Mr. Gesmundo: No, none of them were. I'm just talking about the average person and not friends of mine. In all honesty, I don't know where all the farm animal stuff comes from.

Mr. Johnston: Do you own a computer, sir?

Mr. Gesmundo: Yes sir, I do.

- Mr. Johnston: Do you know that the town code is online?
- Mr. Gesmundo: It may be online sir, but I still don't know where it comes from. I'm not trying to educate you but farm animals are something that you breed to make money. Animals such as cows, pigs, ducks you breed and sell them for food. Pigeons are not are not in the same category.
- Mr. Casella: Unfortunately, if you read the code it says pigeons are technically farm animals. Right or wrong and I don't necessarily agree with the code, but that what the code says.
- Mr. Gesmundo: Okay Mr. Casella, I'm not going to argue with that but I'm simply saying that you have to use common sense. You can't just go by something and say that's what it is. Common sense always should prevail.
- Mr. Prager: Mrs. Roberti, I understand that the Board of Health was out there?
- Mrs. Roberti: I am not privy to that but I was told by both neighbor and Mr. Gesmundo.
- Mr. Gesmundo: The man came a few times.
- Mr. Prager: Were any police agencies called?
- Mr. Gesmundo: One time a police officer stopped by but it had nothing to do with pigeons.
- Mr. Prager: So the Board of Health was there.
- Mr. Gesmundo: Yes, they were there several times and I gave you the paperwork.
- Mr. Prager: Yes, we do have it. Anybody in the audience would like to speak for or against this?
- Mr. Brown: My name is Earl Brown, 24 Roberts Lane, Wappingers Falls, New York.
- Mrs. Roberti: Earl, could you come up please.
- Mr. Prager: Yes, come up where the microphone is.
- Mr. Brown: Many times I have had pigeons come around my house crapping. Ones I had a party at my house and the people had to get out of the pool because the pigeons were crapping in there. I have had pigeon crap on my cars, driveway, sidewalk, back steps and you cannot sit out there. I cannot sit back there because there's pigeon crap and I have to hose all the time. I have asked him nicely to keep his pigeons on his side of the yard. It got to the point one time when he said my pigeons don't shit

and I said that they do. One time I was on my deck with my wife and our little dog and they flew over and I said to my wife, he's got his filthy pigeons flying again. His wife came outside and said you know we are not supposed to have those birds here. Many times we have arguments and one time I bought something to scare them away. It's gotten to a point where it's constantly harassing me. I walk to my front door and it come flying across my face.

Mr. Prager: Does it happen all the time?

Mr. Brown: Yes, he's flying them constantly and the area is getting wider and wider.

Mr. Johnston: Any particular time of the day or all the time?

Mr. Brown: He tries to play a game and goes off track. Sometimes early in the morning, afternoon or evening so it depends and I'm getting tired of it and I don't know what else to do. I called the cops ones or twice because of the pigeons and they said it's up to the town.

Mrs. Brown: My name is Maria Brown. He's had those pigeons three years and he built his own pigeon coop. He hasn't had them before that but now he's got them again and they are flying around. We even took picture of the poop and they are not normal bird's poop like seagull's poop. Friends of mine used to have birds like he has. They all went to Jersey and they all went to his house. He's flying around our house instead of taking them in a crate somewhere else so they can fly back. I know this because my girlfriend's father had a whole bunch of them. We used to take all of them in the car to Jersey and two days later, they all flew back. They were never flying around people's houses and this was in the country. I lived in Northern Westchester that's where they used to do that and it was legal for them to do that by the Westchester Board. You cannot fly them around the house, you have to take them somewhere else and see if they all come back.

Mr. Casella: The gentleman before said he's had the pigeons for 25 years and you are saying he's had them for 3 years.

Mrs. Brown: No, he's had parakeets. When I was a young girl, my uncle had them and he kept them in a cage in his flower house and they were friendly and were not dirty. He kept them clean but he had to sell them because he got ill.

Mr. Prager: Thank you.

Mr. Gesmundo: Mr. Prager, first of all I explained to you because you asked me. You don't have pigeons and you take them out to Jersey today, Guatemala tomorrow, you don't do that. Every now and then you take them somewhere. I've been around pigeons since 1961 so I think I know what

I'm talking about. You asked me if I can prove to you that they do not poop. I'm not surprised what they people are saying. I mentioned to you to do me a favor for you guys to be on his property, do you remember me saying that?

Mr. Prager: Do you remember what I told you?

Mr. Gesmundo: You said you couldn't but here's the thing Mr. Prager, I mentioned to you to see if you can have someone on their property so you can see if they poop or not.

Mr. Prager: We got the point.

Mr. Gusmundo: I wish there was another expert that knew more than me here tonight to tell you exactly what I'm talking about.

Mr. Prager: You do have the option as the Browns do to have somebody come here. So that's up to you guys, you have to prove to us. One other question, say you had 2 acres, do you think you would still have this problem of the bird flying on other people's property?

Mr. Gesmundo: I don't think so because they would have enough room to fly. The point is Mr. Prager, they don't poop and if I saw him lying on the ground by a car I won't even go next to him, I will leave him there. That's the way it is right now. I'm sure he feels the same way about me. This is what it's about and we are not friends.

Mr. Prager: Are there other neighbors complaining? Any other neighbors have problems with your pigeons?

Mr. Casella: What's about the house on the other side? Do the neighbors have any problems or issues with them at all?

Mr. Gesmundo: Not that I am aware of. Like I said, I've had them for 25 years before the Browns came.

Mr. Prager: Okay, that's fine. As you can see, there are only three of us here tonight. Normally under all best conditions, there are 5. Unfortunately, we lost one member, he resigned. One member is at work tonight so he couldn't make it. What I would like to do is adjourn the Public Hearing until October 27th and hopefully we can have at least the 4 members on the board here. I don't think it will be fair to vote on this with just the 3 of us.

Mr. Casella: If all 3 people voted tonight, you would have to have 3 "yeses" and we don't know the result.

Mr. Gesmundo: Is there a possibility of you getting someone who knows even more than I do about birds.

Mr. Prager: I'm not getting anybody but you can get somebody that would be a different story.

Mr. Gesmundo: I'm not demeaning anybody here but I would like to see you guys educated a little more about birds.

Mr. Horan: If he could get any documentation or written publication that should work.

Mr. Prager: We do have some information here about homing pigeons that you had given us but if you know somebody that's an expert who would like to come in, they can come on the October 27th.

Mr. Gesmundo: The only problem I'm having right now in all honesty and on my behalf, who's the expert?

Mr. Prager: I don't know. Don't look at me. I don't know anything about pigeons.

Mr. Gesmundo: I may get someone who has been with pigeons for 25 years and he will tell you what I'm telling you.

Mr. Prager: Let's not get too far off track. What we have here tonight is an area variance and under our zoning code, you need 2 acres to have a farm animal. Whether that's correct or not correct, I'm not going to argue that tonight. You only have a little over a third of an acre and when you get right down to it, that's what we are looking at. Pigeons pooping on other people's property, we can look at it but that's not going to have a lot of change to what I think or Mr. Casella or Mr. Johnston thinks. Just so you keep in mind that it's an area variance and that's what we are here for. That's about all I'm going to say on this subject and I'm adjourning this until October 27th.

Mr. Gesmundo: If the case indeed is like Mr. & Mrs. Brown says it is with the poop and everything, don't you think this room would be full with neighbors tonight?

Mr. Prager: I don't know.

Mr. Casella: Motion to adjourn the Public Hearing to October 27, 2015.

Mr. Johnston: Second the motion.

Vote: All present voted aye.

Appeal No. 15-7566 (Variance)

Cheung Chingfai: Seeking an area variance Section 240-37 of District Regulations in an HM Zoning District.

-Where **75 feet** to the front yard property line is required to a county and state road, the applicant can only provide **7.5 feet** to the county road for an existing **10' x 16'** shed, thus requesting a variance of **67.5 feet.**

-Where **75 feet** to the front yard property line is required to a county and state road, the applicant can only provide **11 feet** to the county road for an existing **8' x 12'** shed, thus requesting a variance of **64 feet.**

-Where accessory structures must comply with all minimum yard setback requirements for buildings, but in no case shall they be permitted in the front yard, the applicant is requesting a variance for encroachment into front yard.

The property is located at **2358 Route 9D** and is identified as **Tax Grid No. 6157-01-059624** in the Town of Wappinger.

Mr. Prager: Come on up Ms. Chingfai. What we do here is basically we let you explain why you are here and if we think we need some more information from you, we will have you get it to our secretary. We will also have a site inspection to give us a better idea. Explain a little bit about what happened and why you are here.

Ms. Chingfai: This started a couple of years ago when the town had to do the underground project. The town's attorney contacted me to say that they needed my site to do an easement. I do not know about zoning codes so I asked the lawyer and he said they would contact me when they needed it and you cannot fight with the government. So whatever they ask you for and you think it is okay, then go with it. I took whatever money they paid me and they tried to explain to me where my garage is and what I needed to do. After everything was done there were a lot of problems and I wanted to stay away from it. They said they cannot do their job or whatever. When they took the building down it became a 2-car garage and they left that part open and when people drove by, they stopped to look. So my brother-in-law was trying to put two sheds there to stop people from coming in. The money they provided was not enough to build a 2-car garage. I had just put a roof on to make it look nicer and then they took it down. So I built two sheds there and before I put that in I asked if I needed anything and they said no.

Mr. Prager: Who said no? Was it the town?

Ms. Chingfai: The town and the lawyer. There were 5 people there and I remember he (pointing to Jim Horan) was there. I also remember the town supervisor, Susan, and the town engineer were there.

Mrs. Roberti: It was Barbara Gutzler, Town Supervisor.

Ms. Chingfai: When I asked, they said we have 5 people here and you've got our word. So I believed their word and when I came back, she said I don't remember what we said it's all on the paper. You made me trust the lawyer, supervisor and everybody that were there and now you say you don't remember and I have to look at the contract. I said fine, I give up. By the time they took that down, I had a blacktop on my driveway and they left the rocks right there and did not pave it. You told me that it's all professional people doing this work and I took your word for it. I don't know anything about measurements or anything, I work in a restaurant. When all the work was done, they did not blacktop it so I asked them if I could put two sheds there and they said yes, no problem. After I put the two sheds in, the town keeps telling me that you have to do this and do that. So I told them that you didn't tell me that first.

Mr. Prager: Are these pictures of the sheds is what's there now?

Ms. Chingfai: Yes. When I bought the house, it was there. How would I know what the county road or state road is.

Mr. Prager: That's fine. Are these new?

Ms. Chingfai: I bought it from a garage sale?

Mr. Prager: Did you buy it at the same time?

Ms. Chingfai: No, at different times.

Mr. Prager: Which one, when and where?

Ms. Chingfai: My husband and his brother did that. This is first and this is later.

Mr. Prager: When do you think this was put there?

Ms. Chingfai: This was put in two years ago.

Mr. Prager: So that would be 2013?

Ms. Chingfai: Yes.

Mr. Prager: How about this one here?

- Ms. Chingfai: Closer to the end of 2014.
- Mrs. Roberti: The second one appeared this year because I go by it every single day. It wasn't there in the spring.
- Mr. Prager: When do you think it was there Barbara?
- Mrs. Roberti: The spring, April or May. It was after the winter.
- Mr. Prager: I will put April of 2015. When was the road work done?
- Mr. Horan: It was probably done May of 2013. The easement here is a little bit larger than some of the easements that were acquired in the area where that shed was, and the shed was up against what was shown as the deed line. The deed line represented a 50 feet right-of-way and the black line represents a 60 feet right-of-way. As Ms. Chingfai had mentioned, it really isn't their fault. This was an issue we had with a number of properties on Old Hopewell Road and because of the nature of Hughsonville, virtually all of the properties are very close to the road. If you look at the aerial, I don't think anything meets the setback.
- Mr. Prager: I'm sure of that.
- Mr. Horan: First of all, there are two front yards, one on Route 9D and the other on Old Hopewell Road. The depth of this whole lot is about 121 feet and probably less than that because it's at an angle.
- Mr. Johnston: Did the garage used to butt up against the road?
- Mr. Horan: That's the garage and basically what the town had agreed to do was to make a payment to acquire the easement in for the garage. This is larger here and the town had to bore the waterline under Route 9D so they didn't trench Route 9D. That's why this was slightly larger and the issue with that was the building was very close to the road. Was there a fence next to it originally?
- Ms. Chingfai: There used to be a fence there but the town took it down.
- Mr. Horan: I believe there was an easement agreement so we can look at that.
- Ms. Chingfai: After all of that, I said I need a spot to put the shed so I asked them where should I put it and they said put it here. I asked if I needed a permit and they said no.
- Mr. Johnston: Do you know the amount of stuff you had in your garage?
- Ms. Chingfai: There's a whole bunch of stuff inside.

- Mr. Johnston: That wouldn't fit in just one garage?
- Ms. Chingfai: It was a 2-car garage.
- Mr. Johnston: Oh, it was a 2-car garage in the beginning?
- Mr. Horan: It was not the size of a current 2-car garage.
- Mr. Prager: The sheds we are talking about that you have on the property now, they were not there when this building was built, am I correct?
- Ms. Chingfai: Yes.
- Mr. Prager: The reason they are there now is because they took that down, correct?
- Ms. Chingfai: Yes.
- Mr. Prager: If I remember correctly and I could be wrong, the house is that apartments?
- Mr. Chingfai: It's a four apartment building.
- Mr. Prager: Somebody is saying that these sheds are in the front yard? So why are we saying that this side is the front yard and that's not the front yard?
- Mrs. Roberti: They are both front yards and now you have two front yards and only one side and one rear.
- Ms. Chingfai: I don't even know why.
- Mr. Horan: It's just the law.
- Ms. Chingfai: When I bought it they sent me the address, 77 Old Hopewell Road. I said no it's 2358 Rout 9D.
- Mr. Prager: That's the point I was trying to bring up.
- Mr. Horan: Technically, it's in the back of the house.
- Mr. Prager: We are going to have a site inspection this Saturday, September 12th around 9:00 am.
- Mr. Casella: Do we need any sticks or anything marked up over there?
- Mr. Prager: No, the sheds are already there.
- Mr. Casella: Should we assume the road is the edge of the property?

- Mr. Prager: No, the center of the road. Is that correct?
- Mr. Horan: It is 33 feet from the center of the road.
- Mrs. Roberti: We are going to set the public hearing for October 27, 2015 so you will need to stop in within the next week or so to get the public hearing notice.
- Ms. Chingfai: Another paper?
- Mrs. Roberti: Yes, you have to send them out and we will explain everything to you.
- Ms. Chingfai: So I will just come on that date and I will know the answer?
- Mrs. Roberti: Don't come on the 27th, you have to come before that to get paperwork to mail out.
- Mr. Prager: When is Bea coming back?
- Mrs. Roberti: Tomorrow, she's in.
- Mr. Prager: Okay, come in tomorrow and get the paperwork because you have to put it in the newspaper.
- Mrs. Roberti: We are going to put it in the paper but you have to come to us before October 27th because if you wait until the month is over, you are going to forget. It's better if you can come by within the next week or so while you are remembering.
- Ms. Chingfai: What is that for?
- Mr. Casella: You have to notify your neighbors.
- Mr. Prager: There has to be a notice in the newspaper for anybody like a neighbor that has to know what's going on.
- Mr. Johnston: They notify your neighbors that you are requesting a variance.
- Mr. Casella: That's all that is.
- Mrs. Roberti: If it's granted and a year from now, one of your neighbors doesn't like you, they cannot do anything about it because they had an opportunity to say there peace at the public hearing. It's only for your protection.

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

Respectfully Submitted,

Adjourned: 7:50 pm

Michelle Gale for Bea Ogunti
Secretary
Zoning Board of Appeals