

**MINUTES**

**Town of Wappinger  
Zoning Board of Appeals  
June 14, 2016  
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	Absent
Mr. Galotti	Member	Absent
Mr. Travis	Member	Present

**Others Present:**

Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary
Ms. Valk	Attorney for Town

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**SUMMARY**

Stewart's Shops Corp. #325	Adjourned Public Hearing to June 28, 2016
Bradley & Nicole Cuadrado	Variance Granted
Concetta Olivieri	Adjourned Public Hearing to June 28, 2016

**Mr. Travis:** **Motion to approve the Minutes for the May 24, 2016 meeting.**

Mr. Casella Second the Motion.

Vote: All present voted Aye.

**Adjourned Public Hearing:**

**Appeal No. 15-7544: (Variance)**

**Stewart's Shops Corp. #325:** Seeking an area Variance of Section 240-52(A) & 240-52(E) of District Regulations in a 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. Casella:** **Motion to open the Public Hearing.**

Mr. Travis: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: I have a letter hear from Chuck Marshall, a representative from Stewart's Shops to Mrs. Roberti, Zoning Administrator that I am going to read.

Mr. Macho, please come up and state your name and address for the record.

Mr. Macho: Robert Macho, RJA Holdings, 51 Myers Corners Road, Wappingers Falls. I don't think he has the authority in the first place. I would like to try to get the variance because we are speaking with them and until I get my attorney which is now a conflict attorney here. I need to get another attorney but I spoke with Lisa Cobb and she said we need to get an adjournment. Without the variance, we are wasting everybody's time.

Ms. Valk: Mr. Marshall is the same individual who submitted materials to the town in 2015. I'm wondering whats the basis of Mr. Macho's statement that he would not have the authority to

vacate the project. It's on Stewart's property and if they do no longer wish to see the application go any forward, I'm not sure how the assignment can overcome that issue.

Mr. Macho: Most of this nonsense started pretty much from the escrow billing from Wappingers to Stewarts which was a mistake and it was supposed to be billed to me. Now we don't have an attorney to get this straightened out to go forward. At the same time we are sitting here with a variance which is needed and shouldn't be a big deal and get approved.

Mr. Macho continues to make his presentation of the project.

Mr. Prager: Did the original application come from Stewart's Shop?

Ms. Valk: Correct.

Mr. Prager: In that case if they don't feel like pursuing it they have the right.

Ms. Valk: Legally notwithstanding the assignment, I don't think if the property owner no longer wishes to consent to the application, I don't see how the assignment overcomes that matter.

Mr. Prager: I was just a little confused.

Mr. Macho: His attorney needs to clear up the wording because it's all misconstrued. We need time to get this straightened out.

Mr. Casella: So you didn't know there was an issue before and today is the first time you are hearing about this issue?

Mr. Macho: This is the first time we are hearing about this.

Mr. Casella: I'm surprise that today is the first time you are hearing about this.

Mr. Macho: There are a lot of things that have been going. They've offered it to us and we have been back and forth in negotiation and other deals we are working on now. We are just waiting for the variance and nobody here is looking to go forward. Until I get this variance we are going nowhere. That's why we are asking you to close the Public Hearing, grant us the variance and grant us 30 days to get this straightened out.

- Ms. Valk: I don't think the board is in the position to make a decision on the variances because it's been awhile since you've taken any hearing material on this. You will have to review your minutes.
- Mr. Macho: This has been going on for a long time now.
- Ms. Valk: In fairness it was going on with a whole different application so the board has to refresh itself on this application.
- Mr. Macho: That's why we are asking to get our attorney and give us time to move forward here. I asked for a July date but they pushed it to this date.
- Mrs. Roberti: We pushed it to this date because nothing has gone on for a year so sometimes you have to push it to the edge to get something done. The escrow was in arrears and unless it was paid, we couldn't entertain anything. Chuck Marshall who was their representative when this came before the Planning Board prior to you said he would check but didn't think Stewart's wanted to move forward. He said we would get a letter to me one way or the other today. I didn't send the letter to you because you were copied.
- Mr. Casella: Are we caught up on escrow?
- Mrs. Roberti: Yes.
- Mr. Travis: Would that have to be a new application in RJA Holdings' name?
- Mrs. Roberti: There's more to this Richie? You weren't here so Rebecca should take over. Stewart's made a formal application to the Planning Board in 2015 and in April of 2015, Local Law No. 1 of the Zoning they changed a lot of items. One of the items they changed was gas station is no longer to be allowed in the CC Zone which this is. Any pending submitted application would be allowed to proceed. Stewart's backed out and gave the assignment to Mr. Macho. However, the project he proposed was not the exact project. He was building a gas station as was originally submitted but he was adding a convenience store on his property. So I made an interpretation that it wasn't the same project because the second building was not in the first plan.

This board upheld my decision and this has been adjourned with no movement.

Ms. Valk: If Stewart's no longer want to have their property be part of it, I don't know if it's possible to take those improvements only onto Mr. Macho's property. Their original intention was to join the properties and the intention to have a path through the properties. The second proposal was not the same project. So without the property owner's consent, I don't see how the project can go forward.

Mr. Macho: Unless I purchase it, and that's where we are right now. That's why we need some time.

Mr. Casella I vote for you personally allowing you more time since you are in the process of purchasing the property. I will be receptive of giving you a couple of weeks. Rebecca, I don't know if you have a different opinion and can we do that?

Ms. Valk: There's got to be some clear movement of some discussion or something because I can tell you that is not something Stewart's has been sharing with the Town their interest in this matter.

Mr. Prager: We have to rectify this and get rid of it.

Ms. Valk: As I was saying they need to indicate some information to the Town because of this grandfathering issue because they don't have the luxury of keeping it to themselves if they want to. They are going to have to make it clear whether Mr. Macho is going to have the interest in that property to keep this application going. At this point, I don't think he does.

Mr. Travis: That's the question I had about them removing that grandfathering clause. I don't fully understand it.

Mrs. Roberti: We need some understanding as well. Chuck Marshall represents Stewart's and is no longer interested in going forward.

Ms. Valk: Because he's the owner of the property and he knew that would be the result so if there's some other discussion, we are going to need something concrete.

- Mr. Travis: What happens now if Mr. Macho decides to purchase the property and does that change the grandfathering clause?
- Mr. Macho: No, nothing changes.
- Mrs. Valk: My opinion is that the grandfathering clause goes to the property so just a mere change of ownership would not take you out of that protection because these types of laws don't run just to the owner, they run to the property. That was the key issue in your interpretation decision was that the other project was not the same property in a sense.
- Mr. Casella: How much time you think you would need?
- Mr. Macho: When is the next meeting?
- Mr. Prager: I would like to see it done by the next meeting on June 28<sup>th</sup>.
- Mr. Macho: I wish I could get more time and it's scaring me. Is there any way I can go to the second meeting?
- Ms. Valk: If Stewart's give some indication that they are willing to have discussions about possible transfer of the property that would be sufficient. I would want to see something written from Stewart's.
- Mr. Casella: Within two weeks, we need something in writing from Stewart's. This is my opinion and my opinion only.
- Ms. Valk: Within two weeks they are not going to have contract terms hammered out but at least we are willing to entertain an offer.
- Mr. Casella: I don't want to completely shut them out either.
- Mr. Macho: That's why I asked for 30 days.
- Ms. Valk: This letter gives no indications that Stewart's wants its property to be any part of it.
- Mr. Casella: Other than something in writing or a contract that would suffice?
- Ms. Valk: I would say a letter to the effect that Stewart's does not wish the property to be withdrawn because of current negotiations. Something showing some interest from

Stewart's that they are considering selling. Barbara say something if you feel differently.

Mrs. Roberti: No. Just something that shows that there's some due diligence on your end and their end to sell you the property. The other thing is, the escrow was paid and actually have an \$18.00 balance.

Mr. Macho: I gave you \$20.00.

Mrs. Roberti: We will need more escrow because we are being represented by Ms. Valk so for the next two weeks and possibly another adjournment, you need to put at least \$1,000 in escrow. If you do proceed further, you can replenish in time.

Mr. Macho: Fair enough.

Mr. Casella: If we are going to progress, I would like to see that within the next day or two rather than wait two weeks. So \$1,000.00 within the next couple of days this way we know that you are legit and we are just not spinning our wheels.

Mr. Macho: I just ran here and paid the escrow. Do you know how much money I've spent on this folder so far?

Mr. Casella: I didn't mean to sound that way.

Ms. Valk: I think you mean showing of intent to go forward, more of a commitment.

Mr. Casella: So you are going to give \$1,000.00 in escrow within two days, he has to have something in writing from Stewart's that negotiation is underway and you have four weeks to come back.

Mrs. Roberti: Why are you waiting four weeks? Why don't we bring him back in two weeks?

Mr. Casella: He's going to need time to raise the money.

Mrs. Roberti: You said he only have two weeks to get the letter?

Mr. Prager: I would think two weeks is going to be plenty of time.

Mr. Casella: I'm trying to give him the opportunity.

- Ms. Valk: In two weeks you are going to look to see if you have something showing that they are negotiating with him and then you adjourn it to July maybe.
- Mr. Prager: So we are going to adjourn it to July 12, 2016.
- Mr. Casella: Bottom line, do want to let him know what we want before we adjourn?
- Mrs. Roberti: Sure, we might want to state it clearly.
- Mr. Casella: So \$1,000.00 in two days, something in writing from Stewart's in two weeks.
- Mr. Macho: That's like Friday.
- Mr. Casella: We are trying to help you.
- Mr. Prager: So we are going to adjourn it to June 28<sup>th</sup>?
- Mr. Casella: No, in two weeks he will come back with something from Stewart's in writing that they are going to continue. At least something that will substantiate that this will close in a reasonable amount of time.
- Mr. Prager: Two weeks from tonight is June 28<sup>th</sup>.
- Mr. Casella: July 12<sup>th</sup> gives him a month.
- Mrs. Roberti: June 28<sup>th</sup> is when he needs to have a letter. July 12<sup>th</sup> is when we are going to adjourn it to.
- Mr. Casella: Is that fair enough?
- Mr. Macho: Let's roll. I will do my best one way or the other.
- Ms. Valk: Just to be clear, on June 28<sup>th</sup> we are looking for evidence from Stewart's that they willing to discuss the sale of the property. It's not a contract, not a commitment, not declaring these are the terms of our sale. It is yes, we are in the discussion phase and don't take our property out of the application. I just want to make it clear that we are just looking for a statement of intent.
- Mr. Prager: We need that on June 28<sup>th</sup>.

**Mr. Casella:** Motion to adjourn the Public Hearing to July 12, 2016.  
**Mr. Travis:** Second the Motion.  
**Vote:** All present voted Aye.

**Public Hearing:**

**Appeal No. 16-7583 (Variance)**

**Bradley & Nicole Cuadrado:** Seeking an area variance Section 240-37 of District Regulations in an R-40 Zoning District.

-Where **30 feet** to the rear property line is required, the applicant can only provide **15 feet** for the installation of a 24' above ground pool, thus requesting a variance of **15 feet**. The property is located at **19 Lenny Court** and is identified as **Tax Grid No. 6257-01-383560** in the Town of Wappinger.

**Mr. Prager** Bea, are all of the mailings in order?

**Mrs. Ogunti:** Yes, they are.

**Mr. Casella:** Motion to open the Public Hearing.  
**Mr. Travis:** Second the Motion.  
**Vote:** All present voted Aye.

**Mr. Prager:** Hi there. Again, please state your name for the record.

**Ms. Cuadrado:** Nicole Cuadrado.

**Mr. Prager:** We did have a site inspection to look at the property and we have a better understanding of what you are talking about. If you could just explain to the audience exactly what you need and why you need it.

**Ms. Cuadrado:** We are applying for a 15 feet variance because where we would like to place the pool on the property cuts a little close to the edge of the property. The back edge of the property is not bordering any neighbors. It's just wooded area and we would like to leave enough space on the opposite side of the pool closest the house to extend our deck in the future. The placement we have on the plot diagram is what we are really hoping to achieve.

**Mr. Prager:** Ok. Does anyone have any questions?

**Mr. Travis:** No.

Mr. Prager: Does anyone in the audience wish to speak for or against this variance?

**Mr. Casella: Motion to close the Public Hearing.**

Mr. Travis: Second the Motion.

Vote: All present voted Aye.

**Mr. Casella: Motion to grant the variance and it's not an undesirable change to the character of the neighborhood or nearby properties. It is a little bit substantial but it's probably because they can't put it anywhere else. It does not have an adverse effect or impact on the physical or environmental condition in the neighborhood. It is somewhat self-created but again based on what we saw and the kind of variance I make a motion to grant the applicant the variance.**

Mr. Travis: Second the Motion.

Vote: All present voted Aye.

#### **Appeal No. 16-7584 (Variance)**

**Concetta Olivieri:** Seeking an area variance Section 240-37 and 240-30 of District Regulations in an R-20 Zoning District.

-Where **No accessory structure is permitted in the front yard, the applicant is seeking a variance to allow a 14' x 28' shed to be placed in their front yard.**

-Where **75 feet** to the front property line is required on a state or county road, the applicant can only provide **20 feet** to the front property line for the construction of a **14' x 28'** shed, thus requesting a variance of **55 feet**.

-Where **no more than two accessory buildings shall be permitted in any 1-Family Residence District, the applicant has 4 additional sheds,** thus requesting a **variance for 5 sheds to remain.**

The property is located at **207 Old Hopewell Road** and is identified as **Tax Grid No. 6157-02-668575** in the Town of Wappinger.

Mr. Prager: Bea, are all the mailings in order?

Mrs. Ogunti: Yes, they are.

**Mr. Casella: Motion to open the Public Hearing.**

Mr. Travis: Second the Motion.

Vote: All present voted Aye.

Mrs. Olivieri: I know you were at the property and you noticed we did remove one of the tents and we are in the process of removing the other one and the tents that were considered sheds.

- Mr. Prager: Right, we did a site inspection and we noticed two teepees but they call them canvas were removed. So you have four now?
- Mrs. Olivieri: Yes, the new one will be the fourth shed.
- Mr. Casella: There's three plus the new one so it's four in total.
- Mrs. Olivieri: My son told you once we get the approval he's going to remove the other stuff. We are cleaning the property and removing a lot of stuff.
- Mr. Prager: For the record, please tell us what you need and why you need it.
- Mrs. Olivieri: My husband has a lot of old tools and my son made him get rid of a lot of them.
- Mrs. Roberti: Like scrap metal.
- Mr. Prager: Were those the things that were lying around?
- Mrs. Olivieri: Yes. Some of the stuff is old farm equipment.
- Mr. Casella: He also mentioned there were a number of truck loads he got rid of and you have the receipt to show for the removal.
- Mr. Prager: Do you have the receipt?
- Mrs. Olivieri: Yes, I have the receipts.
- Mr. Prager: Actually, we have copies. Anything else you would like to say before we close the Public Hearing?
- Mrs. Olivieri: No, just to that it's necessary for him to get everything organized and cleaned up to get this shed.
- Mr. Prager: Rich, do you have anything to mention about this variance?
- Mr. Travis: No, I did the site visit and I have an idea of the property. I'm just curious about Variance No. 3. Is it going to be amended now and do we have to do something to amend that? The way it's listed here it's for 5 sheds and there are 6 sheds remaining.
- Mr. Prager: If I remember correctly, we originally saw 5 sheds not including the new one.

Mrs. Olivieri: The last one is incorrect as it is stated right now.

Mr. Travis: It is incorrect so will that portion be amended?

Mr. Prager: No.

Mr. Casella: They actually took one down.

Mr. Prager: Anyone in the audience who would like to speak for or against this variance?

**Mr. Casella: Motion to close the Public Hearing.**

Mr. Travis: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: Since we do not have a full board, would you like to hold off until our next meeting for this?

Mrs. Olivieri: I just want to make something clear to you that my son measured from the road to the shed was 100 feet and from the road to the house is 270 feet. From the east side of the property line is 130 feet and the west side is 240 feet. So I have the feeling that these measurements are not correct.

Mrs. Roberti: You don't own to the pavement. When you are on a State, County or Town road, the setback varies. The Town road is usually 10 to 12 feet that the Town owns. The County or State road can change. Old Hopewell is considered a turnpike so it's 66 feet wide and this was discovered when they did the water line. So it would be 33 feet from the center line each way and from there you would start your property line. Property line changes because the road bends so from your survey you have to how much property you have from where your property begins to the road. Your son was the one who told me he measured from where your property began because he showed me something. I have 20 feet from that spot to where you want the shed. You may in fact have a 100 feet to the road but the first and the other 270 feet might not be yours and maybe the County's.

Mrs. Olivieri: Ok. So that might not be ours.

Mrs. Roberti: So you have to go by the survey.

Mrs. Olivieri: But you have the survey.

Mrs. Roberti: I don't make up the numbers, I go by what the applicant gives us and in this case it was your son who told me what he measured. When he came in to do the variance, those were the numbers he gave. He had 20 feet from where the shed would lay from the County property.

Mrs. Olivieri: In other words, we are asking for a variance of 55 feet.

Mrs. Roberti: Right.

Mrs. Olivieri: So if you do not have a quorum and make a decision tonight it stands?

Mr. Prager: Right. If two of us who either vote "yes" or "no" and the other one vote the opposite, then that vote stands.

Ms. Olivieri: So it's not majority rule?

Mr. Casella: Four people then yes but not three.

Mrs. Olivieri: When will this get postponed to?

Mr. Prager: It will be on June 28<sup>th</sup>.

Mrs. Olivieri: May I ask who is missing from the board tonight?

Mr. Prager: Pete Galotti and Bob Johnston.

Mrs. Olivieri: They came to the property?

Mr. Prager: I know Bob was with us that day and Pete said he went by himself.

Ms. Olivieri: I don't think he ever did.

Mr. Travis: I spoke with your son and he said he was waiting for someone else from the board but they hadn't been there yet.

Mr. Prager: We will check to make sure he went there if he hasn't already. If you would like to wait it might be wise.

Mrs. Olivieri: We will wait.

Mr. Prager: We will adjourn this Public Hearing until June 28<sup>th</sup>.

**Mr. Casella:** **Motion to adjourn the Public Hearing to June 28, 2016.**  
**Mr. Travis:** Second the Motion.  
**Vote:** All present voted Aye.

Mrs. Olivieri: If we set the shed back from the road, will that change the whole thing?

Mr. Prager: Will she have to pay anything more if she changed the application?

Mrs. Roberti: If you make the variance greater, like if you wanted to move it closer to Old Hopewell Road, then you have to republish but if you make a smaller variance, they can grant a smaller variance.

**Mr. Casella:** **Motion to adjourn.**  
**Mr. Travis:** Second the motion.  
**Vote:** All present voted Aye.

Respectfully Submitted,

Adjourned: 7:50 pm

Bea Ogunti  
Secretary  
Zoning Board of Appeals