

MINUTES

**Town of Wappinger
Zoning Board of Appeals
December 13, 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	Present
Mr. Galotti	Member	Present
Mr. Travis	Member	Present

Others Present:

Mr. Roberts	Town Attorney
Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

SUMMARY

Public Hearing:

Kelly Daniel

Variance granted

Mr. Johnston: **Motion to accept the Minutes from November 29, 2016.**
Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Public Hearing:

Appeal No. 16-7603 (Variance)

Kelly Daniel: Seeking an area variance Section 240-37 of District Regulations in an R20 Zoning District.

-Where **40 feet** to the rear yard property line is required, the applicant can only provide **7 feet** for the construction of a **12' x 20'** garage, thus requesting a variance of **33 feet**.

-Where **20 feet** to the right yard property line is required, the applicant can only provide **5 feet** for the construction of a **12' x 20'** garage, thus requesting a variance of **15 feet**.

The property is located at **89 Old Hopewell Road** and is identified as **Tax Grid No. 6157-01-118594** 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. Johnston: Second the Motion.
Vote: All present voted Aye.

Mr. Prager: Good evening. Please state your name for the record.

Ms. Daniel: I'm Kelly Daniel.

Mr. Prager: Please tell us a little bit about what you need and why you need it.

Ms. Daniel: I'm looking to put a 12' x 20' prefab garage on my property. I have a very small property and in order to maintain access to the backyard because the septic and everything is back there.

Mr. Prager: We did have a site inspection and we have some drawings here of the single car garage.

Mr. Casella: One of the things we talked about when we were at your location was moving the shed a little closer to the back porch. Did you get a chance to look at that?

Ms. Daniel: Yes, I think I can go 7 feet from the rear yard line. I'm okay with that but because the Public Hearing was already published the 5 feet stays like that.

Mr. Prager: So if we leave it at 5 feet you will still have enough room?

Ms. Daniel: Yes.

Mr. Casella: That was one of the things we talked about to decrease that percentage.

Mr. Prager: Any other questions? Is there anyone in the audience who would like to speak for or against this variance?

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

Mr. Galotti: **Motion to grant the applicant the variance. I don't believe the benefit can be achieved by any other feasible means. It's not going to create any undesirable change to the neighborhood. The request is substantial and it will not pose any adverse physical or environmental effects to the character of the neighborhood.**

Mr. Casella: Second the Motion.
Roll Call Vote:
Mr. Casella YES
Mr. Galotti YES
Mr. Johnston YES
Mr. Travis YES
Mr. Prager YES

Discussion:

Appeal No. 16-7598 (Use Variance)

33 Middlebush Road: Seeking use variance Section 240-37 of District Regulations in an R20/40 Zoning District.

-The applicant intends to utilize the existing 6,766 sf. commercial structure as a contractor's storage facility with accessory offices on 1.75 acres in a Residential Zoning District. The applicant intends to combine the two lots into one to extinguish the property

line between parcels. The property was originally purchased with the building on it to renovate and use as a church. The building has been in existence since the 1950s. The property is located at **33 Middlebush Road** and is identified as **Tax Grid Nos. 6157-01-414840 (.88 acres) and 6157-01-396837 (.87 acres)** in the Town of Wappinger.

Mr. Prager: Good evening.

Mr. Cappelli: Good evening.

Mr. Casella: I see you updated the square footage again. It was 6,600 sf. now it's 6,766 sf.

Mr. Cappelli: It's in my notes. Whatever the number is that's in the package that I sent to you about 2 three meetings ago.

Mrs. Roberti: You said it in a meeting but we will verify that.

Mr. Cappelli: It's in one of my letters to you.

Mr. Prager: I got 6,766 sf.

Mrs. Roberti: You said it at the last meeting.

Mr. Roberts: It is referenced on this document as 6,600 sf.

Mr. Cappelli: I have the November 15th memo here that says 6,766 sf.

Mrs. Roberti: That's where I got the number.

Mr. Cappelli: Rather than just come back and show you so say you can't build two houses there, I did a site study. You should have an 8 ½ x 11 site plan that shows even though we are in an R20/20 zone with water and sewer I need to meet the requirements of an R40 zone. I would need some variances but I can in fact squeeze two houses on the properties with the requisite systems if not for the wetlands.

Mr. Cappelli continues his review of the project.

Mr. Travis: This is a residential zone so we are going to need some more solid numbers of what it would cost to construct the one single family and not just the sale price.

Mr. Cappelli: We provided that two meetings ago.

Mr. Casella: For the sale it is \$330,000.

Mr. Travis: Is that the cost of doing it?

Mr. Cappelli: No, that's the sale including real estate fees, the approvals, knocking down the existing building. I put a guestimate in based on what the realtor told me. I have documents today from a realtor saying what he feels the market value is of the house on Middlebush Road.

Mr. Travis: I'm sorry I was not here at that meeting. I think outside of the cost of renovating and what he's going to be doing there, the concern would be what the economic hardship would be?

Mr. Cappelli: I submitted the letter from Century 21 Real Estate that says what the value of the house is based on some recent sales.

Mr. Roberts: Can we go into Executive Session?

Mr. Johnston: **Motion to go into Executive Session for legal advice.**
Mr. Casella: Second the Motion.
Vote: All present voted Aye.

Mr. Johnston: **Motion to come out of Executive Session.**
Mr. Casella: Second the Motion.
Vote: All present voted Aye.

Mr. Roberts: Al, you've got two parcels. Both are zoned R20 (residential zone) right in front of the school in a residential community. Each parcel has to be addressed on the facts and circumstances to that particular parcel. You are going to have to demonstrate that you cannot get a building permit for a single family residence on the vacant parcel. You can't talk about it until you have shown that you've applied for a building permit and you were rejected. I understand that there are wetlands in front that are going to limit the use of that residential parcel. You have to address the inability to get a reasonable return on that parcel and same thing on the parcel that has the brick building. Getting a use variance does not necessarily impose the right to

increase the nonconformity by adding base and commercial units and combining it with the vacant parcels now that you have from your client's perspective a viable commercial enterprise in a residential zone. That's not what a use variance is all about. You are going to change the character of the neighborhood with the proposal that you've submitted. To try to combine two parcels and make a larger nonconforming use out of both doesn't work based on this information.

Mr. Cappelli:

Okay. We discussed at one time being owned by the same entity and would be purchased by a different common entity. Would we dissolve the property line? I said yes and not for the advantage of gaining more property for us to do what we want to do because I feel that the wetlands are going to prohibit us from doing that. We had demonstrated that you can't build a single family house on that one lot. I thought we demonstrated from a financial point of view that it is economically unfeasible to build a single house on either one or two parcels? The Town of Wappinger is going to end up taking that lot over to the left of the building because it's unbuildable. Nobody is going to have it and nobody is going to pay taxes on it. If you are telling me that I can only have one tenant in the building then the project is dead.

Mr. Roberts:

I didn't say one tenant. What you are proposing to do is expand the facility to include rental units on the second floor.

Mr. Cappelli:

No, it's accessory to the space downstairs. I want to use 100% of my 6,600 divided by 5 and want to put the offices upstairs. If I can do it, we still have the hurdle of the Planning Board, parking and other issues. I said that I can architecturally make the building look exactly the same and add full dormers up there if we don't get to use the second floor.

Mr. Roberts:

I'm not sure what you are saying. You are talking about being unable to get a reasonable return on this lot with this concrete building on it. That's what you have to demonstrate and what you are trying to suggest to me is the only way you can get a reasonable return is if you segmented and break it up into 4 or 5 rental spaces and make it into a full fletch commercial facility.

Mr. Cappelli: I'm not saying that.

Mr. Roberts: That's what you've been talking about.

Mr. Cappelli: I'm saying it would market itself better as 5 smaller rentable entities than one large entity.

Mr. Roberts: Al, the issue is not whether it's going to be marketable. The issue is whether or not the property owner can get a reasonable return of that particular site in its present configuration. Not whether it's marketable or not. With respect to that old building, that's a much easier threshold to make.

Mr. Cappelli: So the only use that's consistent in the neighborhood is a single family residence which I demonstrated that I can't get a return on a single family residence. I'm allowed to do anything with that building with the exception of filling it up with a 6,600 sf. residential use. I can't make a two or three family house and I can't do anything beyond a single family residence.

Mr. Roberts: Why can't you make it a two family house?

Mr. Cappelli: Is it allowed by zoning?

Mr. Roberts: No. So that's your one answer. You can show what it's going to take to renovate it into a single family residence.

Mr. Cappelli: Which I did. We are done, we submitted that.

Mr. Roberts: What did you submit?

Mr. Cappelli: Three meetings ago, we submitted a costs analysis of what it would cost to build a single family home on that lot. I have a cost of \$331,000.00 and I don't think that's a stretch. You couldn't even sell a house for \$331,000.00.

Mr. Roberts: You also put a price tag of \$85,000.00 on the parcel.

Mr. Cappelli: Yes, and he was selling it for \$120,000.00 and now it's down to \$85,000.00.

Mr. Roberts: It's not what he wants for this property it's what it is worth. It may not be worth \$85,000.00.

Mr. Cappelli: Again, this gentleman doesn't want this house flipped. He doesn't want to buy it for that purpose. Eddie is in the church business and he's not in a single family home business. He made a bad investment and he's trying to get out from under it.

Mr. Roberts: We are trying to come up with something you can achieve so that we can accommodate some use of the site.

Mr. Cappelli: I'm not going to keep on coming back. I'm going to give it to the owner and say get an attorney and they can handle it.

Mr. Travis: I think he's taking care of it and we have legitimate questions and concerns that we are following all of these things to the letter of the law with the use variance because we don't do a lot of these.

Mr. Cappelli: I thought we demonstrated putting a single family home there?

Mr. Roberts: You can build a single family home there but you are just suggesting that it's too costly because of the price tag that the current owner has on the parcel. He made a mistake but that's not what we are talking about. You have two separate parcels each and parcel facts and circumstances have to be demonstrated separated.

Mr. Cappelli: I'll take one off the table right away.

Mr. Roberts: That's not the issue. What would you plan to do with the vacant parcel? Is it going to be part of the site plan?

Mr. Cappelli: Absolutely.

Mr. Roberts: You are extending the nonconformity of that unusable commercial building to an adjacent residential parcel and that's where we have an issue.

Mr. Cappelli: Not a problem. We will amend the application and take that lot off the table. I don't need it for any purpose at all so I will just take it off.

Mr. Roberts: Would it help to get a land use attorney and come back in January to try to get this back on track?

Mr. Cappelli: We'll get a land use attorney and I don't need to be part of the meeting AI. No disrespect or anything.

Mr. Roberts: I think you should.

Mr. Cappelli: Why? I think you should work it out with the land use attorney. Whatever you guys work out and get back to me.

Discussions continued.

Mr. Travis: Is all of the information he has submitted enough for an economic hardship?

Mr. Galotti: Can you get two homes?

Mr. Cappelli: No, I can't because of the wetlands. I do need setback variances, wetlands variances on the other one which I'm sure it would be no problem if that's what we are looking to do.

Mr. Casella: Whether it's \$331,000.00 or \$85,000.00 for the lot or \$40,000.00, he still is not going to get a return on his investment and I think he's met that particular criteria. You said you are sure you will need BOH approval on the septic and the building as it is today.

Mr. Cappelli: It's already BOH approved. I foiled the file over at the County Health Department but I don't have it with me here so I feel pretty comfortable.

Discussions continued.

Mr. Casella: So he's got BOH approval, and you said you can't put a house on there because it is cost prohibited so that's economic hardship. What else do we need him to do?

Mr. Cappelli: We know what's going to happen if it gets rented to one guy. He's going to sublease it out to other guys. I don't know if we get anywhere doing that.

- Mr. Casella: Would it be a return in investment if he only got one guy in there? You think for storage space someone is going to pay \$1,500 a month?
- Mr. Cappelli: He told me he checked the market and it was \$15.00 to \$20.00 per sf. but I think I used \$12.00 per sf.
- Discussions continued.
- Mr. Roberts: The variance goes with the land. The conditions that the board imposes would go to any successful owner.
- Mr. Cappelli: It's something you guys have to think about. This guy is a decent guy and he will run a good ship but 10 years from now if he sells it and there's a bum in there.
- Mr. Roberts: That's going to be controlled by the variance, the conditions and the site plan.
- Mr. Cappelli: We will have to put the policemen on them to take care of this.
- Mrs. Roberti: I won't be here in 10 years.
- Mr. Roberts: There have been a number of people interested but nobody wanted to go for the use variance. We have to put the facts in line with the statutory requirements to demonstrate that you are entitled to the use variance. Then we have to impose a reasonable number of restrictions on the use of the building. I don't think cutting it up into 4 or 5 tenants spaces is necessarily appropriate. The important thing here is it's only good for storage and that's what your focus should be on and what it's going to take you to renovate that and utilize it for storage as oppose to a single family residence. Secondly would be the adjacent lot and how you would integrate into the piece with the building on it if at all.
- Mr. Cappelli: What second lot? It's off the table and it doesn't serve me any advantage at all. I don't need it for density and I don't need it for any of those things.
- Mr. Roberts: If you are going to buy it and use it as part of the landscaping for the primary site it might be worth it.

- Mr. Cappelli: Maybe there's a way you give the use variance for the one lot and I don't know how you can do this and the other lot stays residential zoned or use wise but the property line is still dissolved between the two.
- Mr. Roberts: We could do that. It's not necessarily preferable but we can do that as a condition.
- Mr. Cappelli: This way you can't do anything on the residential parcel.
- Mr. Roberts: That site could be used to mitigate the impact of the storage building A1.
- Mr. Cappelli: I don't think you can see the building from that side anyway.
- Mr. Roberts: It's right on the property line.
- Mr. Cappelli: It's all foliage there. Why cut down trees and replant trees on that site?
- Mr. Roberts: That's not the issue. You have scrub trees oppose to designer trees.
- Mr. Cappelli: Don't put me on for any agendas. We'll see where it goes.
- Mr. Roberts: I think you should adjourn it to a date certain then you can withdraw or if you want to come back.
- Mrs. Roberti: This is just a discussion.
- Mr. Cappelli: We've been discussing this for some time. We did formalize an application, EAF, etc.
- Mr. Roberts: I've only been here for an hour.
- Mr. Prager: What do we want to do?
- Mrs. Roberti: When we have to be a Lead Agency, the Planning Board would be an involved agency?
- Mr. Roberts: It depends on the proposal and based on what has been presented, the answer is yes.

Mr. Cappelli: You can put me on but I may not be able to have everything put together by the next meeting. You should wait for me to say I would like to see you guys again.
Thank you.

Mr. Prager: Thank you.

Mr. Galotti: **Motion to adjourn.**
Mr. Johnston: Second the Motion.
Vote: All present voted Aye.

Respectfully Submitted,

Adjourned: 8:15 pm

Bea Ogunti
Secretary
Zoning Board of Appeals

