



**Mr. Johnston:** **Motion to accept the Minutes from February 28, 2017.**

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

**Adjourned Public Hearing:**

**Appeal No. 17-7610 (Variance)**

**Suey Wa Ng** – Seeking an area variance Section 240-37 of District Regulations in an R20 Zoning District.

-Where **20 feet** to the side yard property line is required, the applicant can only provide **15 feet** for the installation of a 24' above ground round pool and an **8' x 6'** deck, thus requesting a variance of **5 feet**.

The property is located at **2 Sylvia Drive** and is identified as **Tax Grid No. 6257-02-804738** in the Town of Wappinger.

**Mr. Johnston:** **Motion to open the Adjourned Public Hearing.**

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: Hi there. We did get the information you supplied to us that we asked for on a site plan survey awhile back. Did everybody get it and do you have any questions? At the site inspection we did see the overhead utilities and know why you couldn't put the pool there. Is there anyone in the audience with any questions? I think we have all the information from you from the last meeting.

**Mr. Johnston:** **Motion to close the Adjourned Public Hearing.**

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

**Mr. Johnston:** **Motion to grant the applicant the variance. The benefit cannot be achieved by any other feasible way other than to put the pool where we discussed. It's not an undesirable change to the neighborhood and I don't believe it is substantial. I don't believe it will cause any adverse or physical impact to the character of the neighborhood.**

Mr. Casella: Second the Motion.

Roll Call Vote:

Mr. Casella	AYE
Mr. Johnston	AYE
Mr. Travis	AYE
Mr. Prager	AYE

**Public Hearing:**

**Appeal No. 17-7609 (Variance)**

**Smart Subdivision** – Seeking an area variance Section 240-20B of District Regulations in an R40 Zoning District.

-Where **50 feet** is required for the length of a flag lot driveway, the applicant can only provide **25 feet** at the narrowest point, thus requesting a variance of **25 feet**.

The property is on 2.059 acres and is located at **191 River Road North** and is identified as **Tax Grid No. 6056-01-241913** in an R-40 Zoning District in the Town of Wappinger. (Hudson Land Design) (Cantor)

Present: Richard Cantor – Attorney for the applicant  
Mike Bodendorf – Engineer for the applicant

Mr. Prager: I was not here for the original meeting. Was this public hearing already open or is it a new one?

Mrs. Roberti: This is a new public hearing.

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

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

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

Mrs. Ogunti: Yes, they are.

Mr. Prager: Good evening Mr. Cantor.

Mr. Cantor: Good evening Mr. Chairman and members of the board. We have Mr. Bodendorf of Hudson Land Design here. Would the board like a two minute overview of this subdivision and a flag lot or not?

Mr. Prager: It wouldn't be a bad idea since I did miss the first meeting.

Mr. Bodendorf: This is a 2-lot subdivision on River Road North with an existing house in front and we are looking to subdivide a piece in the back to accommodate a single family dwelling. The house will gain access via the existing driveway. We are proposing to use that shared driveway but we do have a paper driveway showing to the flag portion of the lot. Due to the width of the overall lot, that's the reason we are asking for variance on the

flag portion. We've demonstrated with grading that the driveway can be built within that spot and also provide the utilities to get back to the house.

Mr. Prager:

Thank you.

Mr. Cantor:

Are there any questions for Mr. Bodendorf before I addressed you?

Mr. Prager:

I don't. Does anybody else have any questions?

Mr. Casella:

Not yet.

Mr. Cantor:

As you've indicated, this is a request for an area variance. The flag lot that we can provide ranges from 37.5 feet in width to 25 feet in width. Hudson Land has designed this so we are asking for the minimum variance that we need in order to obtain a subdivision approval. The matter before you is to the benefit of the applicant and that's pretty clear. The applicant needs this variance in order to obtain subdivision approval for a 2-lot subdivision. That's to be balanced in your judgment against the detriment to the health, safety and welfare of the neighborhood or community by the granting of the variance. The issue before you is there a detriment to the health, safety and welfare of the neighborhood or community by a flag lot that ranges from 37.5 feet to 25 feet rather than 50 feet. We think the answer is a clear no there is no detriment of any kind to the neighborhood.

Mr. Cantor continues.

Mr. Prager:

We did get a letter from Ms. Valk. Did you get a copy of that?

Ms. Valk:

No, that was attorney/client information.

Mr. Prager:

I know you had done some research into the lots as far as the dates go.

Ms. Valk:

Yes, there was a request to determine the 21 lots that were provided as identifying the character of the community. There was a request to identify the years that those lots were created. So I've created a short chart and I've also attached parcel access records.

While it is public information, I have provided a copy to Mr. Cantor this evening in an interest of fairness to have the same information in front him that the board is being presented.

Mr. Prager: The parcel access is of all of these lots?

Ms. Valk: Yes.

Mr. Prager: I just want to make sure we are talking about the same lots.

Ms. Valk: Yes, and it is the numbering system used by the applicant.

Mr. Prager: Looking at these dates, the latest looks like 1987, No. 10. Is that correct?

Ms. Valk: It appears so.

Mr. Prager: At that time did we need variances for any of these?

Mrs. Roberti: No, the law was created after that that required a 50 feet width from front to back.

Ms. Valk: To the best of my understanding it was adopted in 1991 in a different form than it is now and it was amended in the early 2000s. Some sort of flag lot restriction began in 1991.

Mr. Cantor: It doesn't matter when they were put in place nor does it matter whether they required variances. That's what is in the community and therefore the material Ms. Valk provided to you simply confirms the material that we provided to you. There are approximately 21 lots in the nearby area that have less than 50 feet width driveways.

Mr. Prager: Does anybody else have any questions while I'm looking at this information?

Mr. Johnston: Do we know of any variances issued for flag lots in that area since the zoning went into effect?

Mr. Cantor: I do not know one way or the other. Again, the issue is whether this lot creates a detriment.

- Mr. Prager: When was Section 240-37 adopted?
- Ms. Valk: That appears to be around 2001-2003 in the current version the way it is currently written.
- Mr. Prager: Do we know why that was put in?
- Ms. Valk: It appears that there was some confusion with the earlier version of the law. If you look at the legislative intent behind the local law that I found on the Secretary of States website looks like there were some confusion as to what portion of the lot the 50 feet was referring to the pole. It was clarified in the early 2000.
- Mr. Travis: Was there an easement for the driveway that's there now? That driveway now has to be extended to the rear, would that have to be addressed, altered or changed at all?
- Mr. Cantor: There is no easement. There is a permission given by the DEP to pass over DEP property. It's not technically an easement, it is permission. On day 1 if this subdivision plot is approved and finalized there is not going to be any requirement to do anything with any driveway because nothing is going to change on the site.
- Ms. Valk: For purposes of the record, I have a copy of that permission that Mr. Cantor provided to me to make sure it's part of the board's record.
- Mr. Prager: Ms. Valk, do you have anything else you would like to say?
- Ms. Valk: No, I have nothing further.
- Mr. Prager: I would like close this public hearing and have some time to make a decision.
- Mr. Johnston: It says temporary permission is hereby given.
- Mr. Cantor: Yes.
- Mr. Johnston: Is that common?

Mr. Bodendorf: That's the format. The DEP will never give permanent permission.

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

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: I believe we have some time to make a decision.

Ms. Valk: If that's the board's pleasure. Would you like to defer this then to the next meeting for purposes of a decision?

Mr. Prager: I think we should be able to by the next meeting.

Ms. Valk: Would you like to have an executive session tonight to have a discussion with me?

Mr. Prager: It wouldn't hurt in case you have some type of information we could use.

Ms. Valk: Okay. Do you wish to do that now or after you take the next matter?

Mr. Prager: Let's do it now while it's fresh in our minds.

**Mr. Casella:** **Motion to go into Executive Session for purposes of seeking legal advice.**

Mr. Travis: 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. Prager: We are changing our way of doing things and we would like to reopen the Public Hearing.

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

Mr. Johnston: Second the Motion.

Vote: All present voted Aye.

Ms. Valk: The reason that the board has reopened the public hearing is that they are concerned that perhaps the variance being requested is not the least variance that can be given and perhaps this might be slightly wider.

So what the board has directed me to ask of the applicant's representative is to prepare a sketch if whether or not this flag could be wider and the line go back a little bit. We recognize that may raise some issues but the board wants that information to support any determination it makes of the variance request.

Mr. Bodendorf: With that, the lot width measurement and where it's taken is usually in the building envelope since on Lot 1 there's already a house there.

Mr. Cantor: Becky, are you asking narrowing the lot?

Ms. Valk: You would be narrowing the front lot to make the pole a little bit wider. The board would like to see somewhere between the 25 feet to 50 feet and we recognize getting up to the 50 feet. They would feel more comfortable if they were to grant this variance it was the least variance necessary in order to achieve the goals.

Mr. Bodendorf: Right where it's next down here is 25 feet width of this lot right here.

Ms. Valk: In other words the results would be to request a variance for the lot width.

Mr. Bodendorf: Lots aren't always the width.

Mr. Cantor: What we don't want to do is create another non-conformity with the code.

Ms. Valk: The board would like to understand what the alternatives would be if this was moveable.

Mr. Horan: It might be helpful if you could explain how you came to this configuration.

Mr. Cantor: Mike, are you able to explain now how you came to this configuration?

Mr. Bodendorf: The proposed lot line represents 125 feet from this line so that's how we established the width we are asking for here. The pole starts at 50 feet at the frontage but that's in the 37.4 feet before the building setback line.

Mr. Bodendorf continues his explanation of the configuration.

Mr. Casella:

Is there a way to sketch it out because this is a 100% variance and we are trying to narrow that gap and we don't want to set an unnecessary precedence. We want to make sure if we are going to do this we do it right the first time. We think there are alternatives and that's what we are looking for. We are not saying that the variance won't be granted at some point. We just want to see the entire picture to make an informed decision.

Mr. Cantor:

We would sound foolish if we disagreed with your statement you want to do it the right way. We understand that it should be done the right way. If this is a critical issue of the board maybe we should put it over one meeting. I suggest that Mike and I meet with Barbara and Becky if she chooses to go through various alternatives and whether that would create other problem solvers.

Mr. Prager:

That's definitely what we are after. Again, we want to get something that will work for both of us. We will put you back on the calendar for April 11, 2017.

Mr. Cantor:

Barbara, are you okay with meeting with us? Becky, would you like to join us?

Ms. Valk:

At the board's direction. Would you like me to meet with them?

Mr. Prager:

Yes, that's fine with us.

Mr. Cantor:

Maybe tomorrow Mike, Barbara, Becky and I can find a time tomorrow that we can get together.

Mr. Johnston:

Do we need a motion to close this?

Mr. Cantor:

If you choose you can close the public hearing. It's obvious that there's not an overwhelming public demand to be heard.

Ms. Valk:

If that's the request of the applicant, I have no objection to you closing the public hearing because it's at their risk if somebody comes out of the woodwork and ask a question about this.

**Mr. Johnston:**

Mr. Casella:

Vote:

**Motion to close the Public Hearing.**

Second the Motion.

All present voted Aye.

**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.

Present:

Al Cappelli – Architect

Mr. Prager:

Good evening Mr. Cappelli.

Mr. Cappelli:

The last time we were here was two months ago. Maybe Jim was here and maybe we didn't have a full board. We kept on saying we want everyone to be here and we still don't have everyone here tonight.

Mr. Prager:

Do you have anything you would like to say?

Mr. Horan:

There were some issues that were brought up regarding the lot that does not have the building. Our office has come to the conclusion that it's basically up to the applicant. From what Al told us, they don't need this lot to make this work. Is there an issue with lot area?

Mr. Prager:

No, I don't think there is.

Mr. Horan:

There are setback issues from the road and there are setback issues from the common lot line between the two lots.

Mr. Cappelli:

Right, unless we resolve that.

Conversation continues.

- Mr. Prager: I believe we talked about how many tenants were going to be in there.
- Mr. Cappelli: Correct. The concern was the subleasing of it and how can we prevent a tenant from subleasing a space.
- Mr. Prager: Won't they have to have a bathroom for each one of those?
- Mr. Cappelli: Not necessarily. I have three garage doors 3,000 sf. I'll have one bathroom that they all can share.
- Mr. Horan: It becomes difficult to regulate tenants. You could put a provision that says no physical subdivision within the space. This will just be a storage facility for most of those guys and they are going to be working offsite.
- Mr. Prager: That's what we understood that it was originally going to be.
- Mr. Horan: Have you had any conversations with County DPW?
- Mr. Cappelli: Not recently. We did when we first came on board and that was before they started working over there.
- Mr. Horan: What were comments?
- Mr. Cappelli: They were taking the danger out of it (the horizontal/vertical) curve to whatever degree they did or didn't.
- Mr. Prager: Are there going to be offices above?
- Mr. Cappelli: Yes.
- Mr. Casella: I don't recall us agreeing to have offices above.
- Mr. Cappelli: I said I would put fake dormers up there just in case the board says I can't use upstairs. If I can't use upstairs it's not going to be a showstopper.
- Mr. Travis: Are you going to park the commercial vehicles outside the structure for the evening?
- Mr. Cappelli: No, everything is inside. At night there should be nothing outside in that parking lot.

- Mr. Travis: It has to be made clear in the variance so the zoning administrator can enforce it.
- Mr. Cappelli: Also, no outdoor storage.
- Mr. Prager: Obviously people working for the contractor will have their cars parked outside in the day.
- Mr. Cappelli: Correct. There might be delivery made during the day and put outside until they can put it inside but it will not be there overnight.
- Mr. Prager: Do you want to discuss with your client the minimum amount of rooms in there?
- Mr. Cappelli: He's not at a negotiating point. Tell me what you guys will allow and it is what it is. You are holding all the cards here. Having two tenants is unreasonable in my opinion. I would argue for three or four.
- Mr. Horan: With respect to tenants, I don't think that's a big issue for this board to decide.
- Mr. Prager: Correct, we are going for the use.
- Mr. Horan: You would allow the use and say any further division of the space would have to go back to the Planning Board. That is more of a Planning Board issue.
- Mr. Cappelli: I do have to put "x" amount of garage doors which may in fact dictate how many kind of tenants there will be.
- Mr. Horan: Again, that's not really this board's issue.
- Mr. Travis: Right now there are two lots, are you looking to combine them?
- Mr. Cappelli: That was the intent from day one then you kept going back and forth. Keep the lot, join them, etc.
- Mr. Travis: So we are looking at the variance for one lot?
- Mr. Cappelli: Correct.

- Mr. Travis: What would happen after the fact and you did want to join them?
- Mr. Horan: There are a couple of reasons to suggest to join the two lots was the way to go. The biggest one being the property line on the lot line because if you didn't combine the lots, they would have to get a variance on them. We don't have in the town lot coverage requirement for residential districts. The other would be if you left the other piece zoned as residential. I believe our code prohibits accessory structures associated with a commercial use in a residential district.
- Mr. Cappelli: I think that's for above ground. I believe I can do whatever I want below ground. I can put my septic on the adjacent lot if I wanted to. I can't put parking there but I can put septic.
- Mrs. Roberti: Won't that be better if you joined the lots to get the use as one then to keep it as a split zone?
- Mr. Horan: It makes more sense.
- Mr. Cappelli: You are not changing the zone, Barbara.
- Mrs. Roberti: You are changing the use on one and not the other.
- Mr. Horan: There's not a whole lot you can do with that lot. I don't know the history of these lots and where they came from. They seem to be weird and that's my opinion.
- Mr. Johnston: If we grant the variance for one lot we are actually changing the second lot also for use.
- Mrs. Roberti: If it's combined.
- Mr. Prager: It's still two lots, right?
- Mr. Cappelli: Correct.
- Mr. Prager: I think we are giving the use variance for the building on the one lot and the other one is still residential.
- Mr. Horan: They are both in the application right now.  
Mr. Prager: They will need to go to the Planning Board to do away with that property line.

- Mr. Horan: He needs to go to the Planning Board for site plan approval.
- Mr. Prager: After that line is gone, what happens to the other lot?
- Mr. Horan: You are giving the variance to cover both lots.
- Mr. Cappelli: Someone smarter than me will come along and want to put parking on the other side of the building. What are you going to do?
- Mr. Horan: You can prohibit it in the condition.
- Mr. Prager: Are you ready to do a public hearing on this?
- Mr. Cappelli: I would like to see this moving at some point in time.
- Mr. Horan: Do you have anything before the Planning Board?
- Mr. Cappelli: Not on this.
- Mr. Horan: We can only beat the horse several times. I think this will be driven by what the public weighs in, the county and what does the Planning Board say. Do you have a site plan or just the elevations?
- Mr. Cappelli: I just did the preliminary plan and elevations and did not try to generate a site plan. We did discuss but I haven't done it.
- Mr. Horan: If you just want to put something generic together and put a building on there.
- Mr. Cappelli: There is a building on there on the other side.
- Mrs. Roberti: Do you want the Planning Board to weigh in on this?
- Mr. Horan: At some point in time the Planning Board is going to weigh in.
- Mr. Prager: They have to have some kind of input on this.
- Mrs. Roberti: Dutchess County Planning & Development already said it's a matter of local concern.

- Mr. Horan: They did?
- Mr. Cappelli: We did talk about going to the Planning Board to get their consent.
- Mr. Horan: We should send something to county DPW.
- Mr. Casella: How long does that process take? We would probably like to have that in hand so when he comes back the next time to move this forward. We've been sitting on this thing for so many months.
- Mrs. Roberti: I would recommend the public hearing be the second meeting in April.
- Mr. Casella: I will not be here for the second meeting in April.
- Mr. Cappelli: Let's do the first meeting in May. Should I go to the Planning Board in the interim?
- Mrs. Roberti: We will put you on as miscellaneous.
- Mr. Cappelli: That's fine and that gives us two months for the county to weigh in at the Planning Board.
- Mr. Prager: I would like to set the next Public Hearing for May 9, 2017.
- Mr. Horan: So we have a survey with a building on it?
- Mr. Cappelli: Correct.
- Mr. Horan: Does it have the current curb cut?
- Mr. Cappelli: I have a separate drawing from the county.
- Mr. Horan: So they have all that information.
- Mr. Cappelli: Do I have to circulate to the DPW?
- Mrs. Roberti: No, we will. We will put it on the Planning Board agenda for April 17<sup>th</sup>.
- Mr. Cappelli: I can't be at that one. Can you put me on the May 1<sup>st</sup> agenda?

Mrs. Roberti: Yes.

Mr. Prager: Jim, will you be able to write something up by April 25<sup>th</sup> meeting and we will be able to have it before May 9<sup>th</sup>?

Mr. Horan: Yes. We should go into executive session for legal advice.

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

Respectfully Submitted,

Adjourned: 8:45 pm

Bea Ogunti  
Secretary  
Zoning Board of Appeals