

**MINUTES**

**Town of Wappinger  
Zoning Board of Appeals  
May 9, 2017  
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	Absent

**Others Present:**

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

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**SUMMARY**

**Public Hearing:**

William & Christina Butler	Variance Granted
33 Middlebush Road	Decision to be made on June 13, 2017

**Discussion:**

Old Hopewell Commons	Public Hearing on May 23, 2017
Timothy Stinson	Public Hearing on May 23, 2017

**Mr. Johnston:** Motion to accept the Minutes from April 25, 2017.  
**Mr. Casella:** Second the Motion.  
**Vote:** All present voted Aye.

**Public Hearing:**

**Appeal No. 17-7614 (Variance)**

**William & Christina Butler:** Seeking an area variance Section 240-37 of the District Regulations in an R40 Zoning District.

-Where **50 feet** to the rear yard property line is required, the applicant can only provide **36 feet** for the construction of a **16' x 32'** deck around an above ground pool, thus requesting a variance of **14 feet**.

-Where **50 feet** to the rear yard property line is required, the applicant can only provide **42.33 feet** for an existing **16 x 32 feet** pool, thus requesting a variance of **7.67 feet**. A pool alarm rated ASTM F 2208 must be activated once pool is filled with water, electrical inspection and certificate of compliance is required before using the pool.

The property is located at **86 Brothers Road** and is identified as **Tax Grid No. 6358-03-040316** in the Town of Wappinger.

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

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

**Mr. Prager:** Please come up and state your name for the record.

**Mr. Butler:** Michael Butler.

**Mr. Berta:** Michael Berta, architect for the applicant.

**Mr. Prager:** Please give us an idea as to what you want and why you want it. We did a site inspection and we had a discussion a couple of weeks ago. There might be someone in the audience who would like to know something about it.

**Mr. Berta:** There was an in ground pool that was put in about 18 months ago and the Butler's waited for the ground to settle before they put a decking around it. The contractor put the pool in the wrong spot without their knowledge.

**Mr. Prager:** As you know, we did a site visit of the property.

**Mr. Casella:** Are there going to be steps in the back of the deck and is that a part of the variance you are asking for today?

**Mr. Berta:** Yes.

**Mrs. Roberti:** That might increase the variance.

Mr. Berta: We will put it in a place so it won't increase the variance.

Mr. Johnston: If the variance for the deck is granted, will you still need the variance for the pool?

Mr. Berta: Yes. The decking that's going around the pool is for safety reasons in case they needed to get to the other side.

Mr. Johnston: How high is the pool?

Mr. Berta: The pool is about 42 inches off the grade.

Mr. Prager: 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. Casella: Motion to grant the applicant the variance. The benefit cannot be achieved by any other means and it is not an undesirable change to the neighborhood. The request is substantial however it has no environmental effects to the character of the neighborhood. Even though it is self-created, it's the only place they can do what they really need to do here and they are making if for safety reasons.**

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

**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: Alfred Cappelli – Architect

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

Mrs. Ogunti: Yes, they are.

**Mr. Casella:**  
Mr. Johnston:  
Vote:

**Motion to open the Public Hearing.**  
Second the Motion.  
All present voted Aye.

Mr. Cappelli:

So 33 Middlebush Road is the concrete block building across the street from Town Hall. Previous uses were commercial in nature. The prior and current zoning were residential. When you have a use that ceases operation for a period of time the use reverts back to what the zoning allows which is single family residential only. We are here this evening to seek a use variance to reestablish a commercial use of 33 Middlebush Road. The property was purchased maybe two or three years ago by a church organization to put a church there. They went through the approval process and ran into some problems and they could not overcome so they put the property on the market again. My client is a local contractor and is looking to renovate the building and use it for contractor storage. In many Towns and this Town included you cannot have commercial vehicles parked in a residential neighborhood.

Mr. Cappelli continues his overview of the project.

Mr. Prager:

Could you explain to us why the owner couldn't put a residential home there.

Mr. Cappelli:

We looked at alternatives as part of the due diligence. We can leave it as it is and let it just sit and rot away or raise the building and knock it down. So we did an analysis and the costs to combine the lots, knocking down the building, improving two lots for two small homes, we could not justify that financially.

Mr. Prager:

Mr. Horan, we had talked about some uses in that building.

Mr. Horan:

Part of the requirement for granting a use variance is that the applicant had to demonstrate that none of the uses that are permitted in that zoning district provides the owner of the property a reasonable return on their investment. That was what Al was referring to. One of the other uses in that zone would be a church. That was tried and it failed. The other would be a governmental use. Based on the discussions we've had in the past was the types of uses permitted on the site would be

retail, restaurant, service business, recreation, medical offices, farming and automotive uses. What the applicant is proposing falls in the category of warehouse and storage.

Mr. Horan continues his overview of the uses.

Mr. Prager: Since he's proposing contractor storage, what type of things can be stored there?

Mr. Cappelli: For instance a small residential contractor who would need somewhere to store his supplies until the job starts instead of letting it sit at N&S Supplies.

Mr. Prager: So there won't be any retail or sales out of there?

Mr. Cappelli: Correct. Again, we are here for a use variance. We will have to go before the Planning Board for a site plan application and another public hearing will be held.

Mr. Horan: For the record, there is no current site plan for the site because it predates zoning. The application was submitted to the Department of Public Works because it's on a County road. Is there anywhere on the property that sheds would be permitted?

Mr. Cappelli: I don't think so but we did talk about no expansion of the building, no expansion of the use of the property. Right now there is nothing on the table for outdoor storage or trailers.

Mr. Prager: If we feel we want to grant this, I'm sure there would be conditions.

Mr. Cappelli: Sure. We talked about using the other lot for landscaping purposes to the west side of the building. The septic is currently on the property that the building is on.

Mr. Prager: Is it large enough to accommodate anything you want to put there?

Mr. Cappelli: We foiled the file at the health department and it has been recently designed.

- Mr. Horan: What's about sign?
- Mr. Cappelli: We haven't really gotten there as far as signs. I know there are requirements.
- Mrs. Roberti: That's in a residential neighborhood and I think you are only allowed 1 x 2 but you can always get a waiver.
- Mr. Prager: Since it's going to be contractors, I don't see why you would need a sign.
- Mr. Horan: Ultimately, the question is do you allow it on the building itself rather than a freestanding sign.
- Mr. Cappelli: I'm not sure that we are going to have it listed on there. It's not a designation location.
- Mr. Horan: The only reason I brought it up is I went to the use table and it's to the back.
- Mr. Stinson: Timothy Stinson, 12 Cameli Drive. You said the west side of the property.
- Mr. Cappelli: It's to the west side of the property.
- Mr. Stinson: That property was for sale for something else.
- Mr. Cappelli: That's part and parcel but we are going to dissolve the property line with that little flag.
- Mr. Stinson: Are you going to put sprinklers in?
- Mr. Cappelli: If it's needed by code.
- Mr. Stinson: That's a Planning Board question.
- Mr. Cappelli: Actually, it's a Building Department question. Given the type of use, the construction of the building is what dictates whether we need sprinklers or not.
- Mr. Stinson: That west property is wet and it drains right into the stream. If you have landscaping the phosphate will get into the water but again that's a Planning Board matter.
- Mr. Horan: Under our code, contractors and landscapers are treated differently. Landscapers are treated as a service

business and contractor is under the warehouse category.

Mr. Horan: Are you looking at a landscaping type of business?

Mr. Cappelli: I don't know yet.

Mr. Prager: Do you recommend we close the public hearing?

Mr. Horan: I'm comfortable with what has been said so far. If we close the public hearing we have 62 days to render a decision.

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

Mr. Johnston: Second the Motion.

Vote: All present voted Aye.

Mr. Casella: Should we put something in there that we have 62 days to render a decision?

Mr. Prager: We don't have to. He has up to 62 days for a decision.

Mr. Horan: A variance application is different and if the board does not reach a determination within 62 days, the variance is deemed to be denied. It's the opposite of a subdivision approval. Should the applicant wish to grant us additional time to render the decision, it would be in his interest to do so. What would be appropriate is we do a draft resolution and the nitty gritty would be the condition which I think we can talk about at the next meeting. We should put it over two meetings.

Mr. Prager: We will put it over to June 13, 2017.

**Discussion:**

**Appeal No. 17-7615 (Variance)**

**Old Hopewell Commons:** Seeking an area variance Section 240-37 of the District Regulations in an HB Zoning District.

-Where a minimum of **2 acres** is required in an HB Zoning District, the applicant can only provide **0.74 acres** for the realignment of Sgt. Palmateer Way and Old Hopewell Road, thus requesting a variance of **1.26 acres**.

The property is located at the corner of **Sgt. Palmateer Way and Old Hopewell Road** and is identified as **Tax Grid No. 6157-02-542585** in the Town of Wappinger.

Present: Brian Watts – Engineer

Mr. Prager: Good evening.

Mr. Watts: Good evening.

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

Mr. Watts: Brian Watts from M. A. Day Engineering, here on behalf of the applicant who is also present.

Mr. Prager: Please tell us what you need and why you need it.

Mr. Watts: The applicant is seeking to develop the existing parcel with residential units and commercial buildings. It is currently before the Planning Board for the necessary approvals from that board. With that we requested to realign the existing Sgt. Palmateer Way for the purposes of increasing the functionality and the safety of that intersection. We've done the best that we can with the study and we realigned it so that the new Sgt. Palmateer Way can be directly across from the Hark Plaza now known as the Southside Plaza.

Mr. Prager: We got some notices here from the State, County and Town and you can see that it would be a much better than what it now is for sure.

Mr. Watts: We are seeking the variance now and it's anticipated that while this is now 0.74 acres and what would be abandoned will be given back to us. The final size of this lot will increase but until that happen it will only be 0.74 acres. When this is granted back to the property owner, this would be closer to 1 acre.

Mr. Prager: Will the future building need a variance?

Mrs. Roberti: I don't think so because in the HB that won't be frontage anymore. So you only need 10 feet to the side.

Mr. Johnston: The road that you are proposing, will it meet highway specs?

Mrs. Roberti: It will meet highway specs. For the record, the State, DOT, DPW are very much in favor of this because this is a dangerous intersection. Changing this hopefully will make this safer for people.

- Mr. Johnston: Will this be dedicated to the Town?
- Mrs. Roberti: Yes, once it's accepted.
- Mr. Horan: Did the County and NYS DOT look at this already? I guess my question is how far as the horizontal curves, how far does the County jurisdiction go back?
- Mr. Watts: The County owns from Old Hopewell to entire in length. NYS DOT I believe owns about 100 feet from the County right-of-way. From there on is the Town.
- Mr. Horan: The new road that is being created, I know the County has 100 feet right-of-way. Does the Town have equivalent?
- Mr. Watts: I'm not familiar and I don't believe they do but I can double check that.
- Mr. Horan: The only thing would be if something changed and the County or State wanted a change in the curve it would potentially be a problem.
- Mr. Galotti: The County agrees, right?
- Mrs. Roberti: We had a very large meeting here with the County, State, Highway Superintendent and almost 20 other people were at this meeting. This is the last chance to possibly change this intersection so for the record the property owner is within his right to just develop as a site and leave everything the way it is. He has been willing to do this for the betterment of this intersection.
- Mr. Galotti: So those agencies have weighed in.
- Mr. Horan: My only concern was that if we granted the variance and they went through the Planning Board process and they went to get a permit from the County and the County wanted to move it. Things like that have happened in the past. One more thing, there were some back and forth with the Planning Board. I noted to the Planning Board because there was a question but without this variance this road cannot be moved.
- Mrs. Roberti: Also, I just want to read the first line from Gregory Bentley, regional permits coordinator. His first line says

NYS DOT wishes to express enthusiastic support of the realignment of Route 9 at the intersection of Old Hopewell Road. I believe that's in your packet and we also have a letter from Robert Belkind from the DPW and he also wishes to express strong support of Old Route 9 at the intersection.

Mr. Johnston: So the unused portion of the roadway is going to be dedicated back to the applicant, then it will abut Sgt. Palmateer Park?

Mr. Watts: Yes.

Mr. Prager: I will set a Public Hearing for May 23<sup>rd</sup>.

Mrs. Ogunti: I will email Public Hearing notice to you tomorrow.

Mr. Watts: Thank you.

**Appeal No. 17-7616 (Variance)**

**Timothy Stinson**: Seeking an area variance Section 240-37 of the District Regulations in an R40 Zoning District.

-Where **10 feet** to the side yard property line is required, the applicant can only provide **2 feet** for the installation of a **10' x 12'** pre-fab shed, thus requesting a variance of **8 feet**. The property is located at **12 Cameli Drive** and is identified as **Tax Grid No. 6157-01-443804** in the Town of Wappinger.

Mr. Prager: Good evening. Please tell us why you need the shed so close to your property?

Mr. Stinson: Tim Stinson, 12 Cameli Drive. We tried other spots on the property and it just wouldn't fit and it would be sticking out. Any other place on the property the shed would be an eyesore. Putting it on the corner of the garage would probably be the best and the neighbor next door already has a shed on the property line which was grandfathered in. He also has a playhouse there. That neighbor will not see the shed at all. The garage has accumulated stuff throughout the years.

Mr. Prager: We will do a site inspection on this one for Saturday, May 13<sup>th</sup> around 9:00am. The Public Hearing is set for May 23<sup>rd</sup>.

Mr. Johnston: Is that the only place you can put it?

Mr. Casella: Could it be back where the 2-car garage is side-by-side?

Mr. Stinson: Once you see it you will see why.

Mr. Prager: We'll be there on Saturday so we will see it.

Mrs. Stinson: I'm his wife Jackie Stinson. I don't want it there because it will look ugly. Where we are going to put it would look better.

Mr. Prager: We will take a look at it on Saturday.

Mr. Galotti: Is there some way you could identify your property line?

Mr. Stinson: The neighbor's shed is right on the property line. It's my parents' house and they passed so that house is in Trust in our names. Next door is my property. I spoke to Barbara and that shed is 1 or 2 inches on my property. I was going to move that shed over and get another variance just for that but the contractor and people I talked with said it would cost less money to build one.

Mr. Prager: If you could just mark where the shed is going with paint or stick.

**Mr. Johnston: Motion to go into Executive Session for legal advice.**

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

Mr. Galotti: Motion to come out of Executive Session.

Mr. Johnston: Second the Motion.

Vote: All present voted Aye.

**Mr. Johnston: Motion to adjourn.**

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Respectfully Submitted,

Adjourned: 8:03 pm

Bea Ogunti  
Secretary  
Zoning Board of Appeals