

MINUTES

**Town of Wappinger
Zoning Board of Appeals
August 22, 2017
Time: 7:00PM**

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

Summarized Minutes

Members:

Mr. Prager	Chairman	Present
Mr. Casella	Co-Chair	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

SUMMARY

Adjourned Public Hearing:

Sharon Ann Hundley & Matthew Carpenter	Variance granted
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Public Hearing:

Smart Subdivision	Variance granted
Linda DeMuccio	Variance granted

Discussion:

Myers Corners Landing Subdivision	Public Hearing on September 12, 2017
John & Sharon Fusaro	Public Hearing on September 12, 2017
Donald & Mary Langley	Public Hearing on September 12, 2017

Mr. Casella: **Motion to accept the Minutes from August 8, 2017.**
Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Adjourned Public Hearing:

Appeal No. 17-7623 (Variance)

Sharon Ann Hundley & Matthew Carpenter: Seeking an area variance Section 240-37 of the District Regulations in an R20 Zoning District.

-Where **40 feet** to the rear yard property line is required, the applicant can only provide **16' 8"** for an existing above ground pool, thus requesting a variance of **23' 2" feet**.

-Where a shed has been placed on the adjoining property owned by the applicant without a primary use, the applicant is requesting a variance to allow the shed to remain. An accessory use may not be placed on a parcel that does not have a primary use.

The property is located at **15 Thorn Acres Drive** and is identified as **Tax Grid No. 6056-03-223388** (pool/central air) and **6056-03-228402** (existing 12' x 24' shed no electric) in the Town of Wappinger.

Mr. Johnston: **Motion to open the Adjourned Public Hearing.**
Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Mr. Prager: Come on up. Unfortunately I was not here at the last meeting. Please introduce yourself.

Mr. Carpenter: Hi, I'm Matthew Carpenter and my mother, Sharon over there. We previously had a shed there and it was falling down so I replaced it. I didn't realize that I needed a building permit.

Mr. Prager: By reading the minutes it looks like you have lived there all your life.

Mr. Carpenter: Yes.

Mr. Prager: How long has the shed been there?

Mr. Carpenter: The shed has been there approximately 10 years. We have a pool back there and I don't remember not having a pool there. The pool fell down some time ago and we replaced it with this pool.

Mr. Prager: Is the pool gone?

Mr. Carpenter: No, we have a pool there now.

Mr. Prager: What was the reason you adjourned this public hearing?

Mr. Horan: As the code currently stands, accessory use is not permitted on a lot that does not have a primary use. Mr. Carpenter mentioned that there was a shed that had been there. I did some investigation and Dutchess County parcel access has a utility on it where you can go back and look at satellite photographs. Ms. Hundley took title to this vacant lot in 1975 from the developer of the subdivision. If you look at the aerial photographs that are attached here there was a shed on the property in 1980. I looked at the zoning code that was in place in 1980, at the time does not seem to prohibit having a shed on an adjacent lot. In 1980 as the code was drafted it was permissible to have a shed on a lot without a building. Based on the testimony of the applicant, it appears there was a shed there before 1980 on the property. As far as we know there is no building permit for the shed and there's also a question whether the Town at the time required building permits. However, we do not require a building permit. I believe the applicant has applied for a building permit. The purpose of this variance is to allow the shed to remain on the lot. I think rather than to issue a variance it can be permitted as a continuation of a nonconforming use I guess. Looking at the aerial photographs it's not exactly in the same general location.

Mr. Horan continues.

Mr. Prager: Mrs. Roberti, do you have anything to add?

Mrs. Roberti: No, he's the attorney and if he feels that it's okay. I just think going forward if this lot doesn't get built on within the next 40 years would that allow someone who buys it to put a garage or shed up in the same place?

Mr. Prager: If we feel we want to grant the variance we will put a stipulation on it. If he decides to sell that lot the shed will have to come down and cannot be replaced.

Mr. Horan: If they do sell the lot the intent would be to put a house up and you would have to take the shed down. Rather than granting a variance we would say a variance is not required. Based on the status of the code that it's permitted as a nonconforming use as a stipulation. As the applicant mentioned there has been a pool there since 1980.

Mrs. Roberti: My argument is even though you've had a pool for 30 years if you replace it you still need a variance whether it's in the same place.

Mr. Prager: I agree with you that you would need a variance for the pool.

Mr. Casella: Even though the pool existed you want a variance for that?

Mrs. Roberti: Just because you had one without a permit doesn't give you the right to put a new one up.

Mr. Prager: How old is the pool?

Mr. Carpenter: About 10 years.

Mr. Johnston: If we issue a variance for the pool and it falls apart, what happens?

Mr. Horan: It can be replaced.

Mrs. Roberti: If the pool is replaced four times you need four permits. That is how this works.

Mr. Carpenter: Will I need a variance?

Mrs. Roberti: No, just permits.

Mr. Horan: Unless the pool is less than 24 inches high.

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

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

Mr. Prager: Now could I have a motion to either grant or deny this variance.

Mr. Casella: Technically, it's not a variance. It's a nonconforming use so you are not really granting the variance.

Mr. Horan: The variance would be with respect to the pool.

Mr. Casella: Don't you need to put the stipulation for the shed and the pool?

Mr. Horan: We should do it as two separate motions.

Mrs. Roberti: When you have a nonconforming use doesn't the code say to replace you have to go more nonconforming? The shed hasn't been in the same place. However way you want to work it out at this point.

Mr. Horan: There's no other use on the lot the shed is conforming. It's conforming with respect to the setback and sides.

Mr. Prager: It just cannot be touched. It has to stay there so I would suggest two separate motions one for the pool and one for the shed.

Mr. Casella: **Motion to grant the variance for the pool. Whether the benefit can be achieved by any other feasible means, it can't. It's not undesirable because it's been there for 10 years. The request is somewhat substantial but the pool has been there for 10 years. It's not going to have an adverse physical or environmental impact to the neighborhood.**

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

Mr. Casella: **Motion to grant the variance for the shed because it predates the zoning code going back to 1980. Conditions: The shed cannot be replaced or increased in size.**

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

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 **125 feet** lot width is required within the principle building envelope on lot 1, the applicant can provide **115.4 feet**, thus requesting a variance of **9.6 feet**.

-Where **50 feet** is required for the length of a flag lot driveway on lot 2, the applicant can only provide **40 feet** at the narrowest point, thus requesting a variance of **10 feet**.

-Where **50 feet** is required for a front yard setback on lot 2, the applicant can provide **35 feet**, thus requesting a variance of **15 feet** front yard setback.

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
Michael Bodendorf – Engineer

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

Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Mr. Prager: Good evening Mr. Cantor.

Mr. Cantor: Good evening on this hot day.

Mr. Prager: I missed the last meeting.

Mr. Cantor: I assume that you don't need a presentation. You have our submissions and the reason why we are asking you to grant either the original variance or more likely the three variances that you indicated you prefer to the original application. There were questions from the public and the board and we tried to answer them. You have Negative Declarations from both the Planning Board and the alternative application. Thank you very much.

Mr. Prager: It looks like the exact thing we discussed with Mr. Cantor in the past. We did speak with our attorney about it and she was good enough to prepare a resolution. I am not going to read the whole thing since it's basically what we had agreed to.

Ms. Valk gives a brief summary of the priority of the motion as well as the statement of the criteria the board must consider.

See attached resolution.

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

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

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Mr. Galotti: **Motion to grant the applicant the variance based on the resolution prepared by the town attorney. We have had an opportunity to review the resolution and it meets with our approval.**

Mr. Johnston: Second the Motion.

Roll Call Vote: Mr. Casella YES

Mr. Galotti YES

Mr. Johnston YES

Mr. Prager YES

Mr. Cantor: Thank you for your patience.

Appeal No. 17-7624 (Variance)

Linda DeMuccio: Seeking an area variance Section 240-37 of the District Regulations in an R20 Zoning District.

-Where **20 feet** to the right yard property line is required, the applicant can only provide **10 feet** for an existing **24' x 22'** deck, thus requesting a variance of **10 feet**.

The property is located at **38 Amherst Lane** and is identified as **Tax Grid No. 6057-04-825428** in the Town of Wappinger.

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

Ms. DeMuccio: Linda DeMuccio, 38 Amherst Lane.

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

Mr. Johnston: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: Good evening. I missed your first meeting so please explain to us again what you need and why you need it.

Ms. DeMuccio: When I submitted my permit application it showed that I didn't have enough space on the other side of my house. So I'm requesting a variance of 10 feet.

Mr. Prager: Did you guys go to see the property?

Mr. Casella: Yes, we took a look at it and it is deceiving and there's a lot of brush that's cleared where the property begins. It looks like they have more space than what they do.

Mrs. Roberti: How this came about is years ago when she put the decks on they just assumed they owned 32 feet and the decks were approved. Now she came in for additions that were fine and she has a survey and it clearly shows that the deck is over 10 feet so this is just to legalize.

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. Johnston: Motion to grant the variance. The benefit cannot be achieved by any other means. It's not going to be an undesirable change to the neighborhood. It is somewhat substantial but I don't think it is going to cause an adverse physical or environmental effect to the character of the neighborhood.

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

Discussion:

Appeal No. 17-7625 (Variance)

Myers Corners Landing Subdivision – Seeking an area variance Section 240-37 of the District Regulations in an R20 Zoning District.

-Where **20,000 square feet** is required for a lot in a subdivision, the applicant can only provide **13,409.8 square feet**, thus requesting a variance of **6,590.2 square feet**.

-Where **75 feet** is required for a lot in a front yard setback on a State or County road, the applicant can only provide **18 feet**, thus requesting a variance of **57 feet**.

The property is located on **Myers Corners Road** and is identified as **Tax Grid No. 6157-02-899988 (0.26 acres)** in the Town of Wappinger. (Povall)

Present: Bill Povall – Engineer

Mr. Prager: Good evening.

Mr. Povall: Good evening. I'm Bill Povall and I'm the engineer for the applicant, RJA Holdings. We are before the board tonight requesting these variances as you just mentioned. It's a lot that's on Myers Corners Road at the Robert Lane intersection. As you may know this is the lot that has an existing commercial building on it which is in the residential district before the Planning Board right now for this parcel as well as the Barger piece behind it. It is for a 10 lot subdivision. The Planning Board requested that we improve this lot as part of the subdivision application. We are proposing to add some land to this lot from the back parcel.

Mr. Prager: Could you come up to the dais to go over the plan?

Conversation continues.

Mr. Prager: Is the shed going?

- Mr. Povall: The shed is proposed to stay.
- Mrs. Roberti: There is no permit for the shed so we will see what the Planning Board wants to do with it.
- Mr. Galotti: It has to come down.
- Mr. Povall: When we submitted the application we requested the variance to the building we are proposing but we didn't propose it to the front step or porch. So I need to adjust that. It's going to be roughly 5 feet closer to Myers Corners Road.
- Mr. Prager: So it will be 56.6 feet instead of 51.6 feet?
- Mr. Povall: Actually where you have 23.4 feet that would be cut down to 18 feet. So the variance would go from 51.6 feet to 57.0 feet.
- Mrs. Roberti: So the porch will have steps?
- Mr. Povall: It's just an overhang and then the steps down the walk to the side. I apologize to the board for that oversight.
- Ms. Valk: It is better that you caught it now than after the public hearing and you have to start over.
- Mr. Prager: Ms. Valk, do you have anything?
- Ms. Valk: It's just that it's a nonconforming lot and the code states that if they need a variance for anything other than just the lot size, they got to come in and legalize everything. So that's why we are here because of that setback to the road.
- Mr. Povall: Both variances requested is actually improving what is out there now.
- Mr. Prager: We will schedule a site visit for this Saturday at 9:00am and the public hearing for September 12th.

Appeal No. 17-7626 (Variance)

John & Sharon Fusaro: Seeking an area variance Section 240-37 of the District Regulations in an R20 Zoning District.

-Where **20 feet** to the side yard property line is required, the applicant can only provide **13.4 feet** to construct an addition, thus requesting a variance of **6.6 feet**.

The property is located at **25 Sucich Place** and is identified as **Tax Grid No. 6157-02-820590** in the Town of Wappinger.

Mr. Prager: Good evening. For the record please state your name.

Mr. Pelon: Good evening. Paul Pelon and I am an architect. I'm here with the homeowner John Fusaro. John and Sharon have a growing family and they would like to put an addition on their home. In order to do so they would need a variance. There is an existing deck in the area where the addition is going. This new addition is going to be in line with widest addition to their existing home so we are not making the nonconformance any worse. We are trying to maintain what is already there. The existing condition of the home prevents us from putting it in any other location. The existing house is already at the 20 feet required setback and you really can't do anything on the other side of the property. We don't think that this is a substantial request and we are keeping it in line with the existing home. A 6.6 feet variance in our opinion seems relatively small. The house was built in 1964.

Mr. Prager: Paul, come up for a second please.

Conversation continues.

Mr. Prager: We will take a look at it this on Saturday around 9:15am and set the public hearing for September 12th.

Mr. Johnston: Make sure the property line is marked.

Appeal No. 17-7627 (Variance)

Donald & Mary Langley: Seeking an area variance Section 240-30B of the District Regulations in an R40 Zoning District.

-Where **no more than two accessory buildings shall be permitted in any 1-Family Residence District. No such accessory building shall have a footprint greater than 600 square feet nor a height in excess of 20 feet.** The applicant is proposing a **24' x 30' (720 sf.)**, thus requesting a variance of **120 square feet.**

The property is located at **118 Rosewood Drive** and is identified as **Tax Grid No. 6256-02-519980** in the Town of Wappinger.

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

Mr. Loughran: My name is Derek Loughran. I'm the owner of Remodeling Concepts. I'm in contract with the customer and I was actually not aware of the issue with the square footage. In any event they have a 5 acre lot, deck, a garage and shed so they have three accessory buildings. What we are asking for is 120 sf. above the 600 sf. that's allowed.

Mr. Prager: In looking at the site plan you have here it's a little over 2 acres?

Mr. Loughran: Yes, it's about 2.4 acres.

Mr. Prager: Come on up just to make sure I'm right. Is this driveway here now?

Mr. Loughran: Yes.

Conversation continues.

Mr. Johnston: He has two accessory buildings already and you would like a third one?

Mr. Loughran: He would be willing to take that one down if he had to but he really wants this building. He's from California and is a retired technology teacher and he came here because of his grandchildren. The reason for the size is he has plans for that type of space and a smaller building is not going to work for what he wants to do.

Mr. Prager: That is going to be a problem. We will take a look at it around 9:30am. Mark it out so we know where it is. Will the owners be there?

Mr. Loughran: Yes, they certainly will.

Mrs. Roberti: I will send you an email on this if it's preexisting. I printed out all of the building permits when the first owner came for a screened porch in 1998. May I ask what he's going to do with the building?

Mr. Loughran: He will use it as a workshop.

Mr. Casella: So he will have electricity and water?

Mr. Loughran: No, it's going to be basically a garage with power and he wants to be able to keep two cars in there. They are from California and they are not used to the weather.

Mr. Galotti: So it's really a garage?

Mr. Loughran: It's only 15 feet tall.

Mr. Johnston: There's not going to be a second story?

Mr. Loughran: No. It's a very big lot and it is concealed so it won't bother anybody in the neighborhood.

Mrs. Roberti: I'll check the property out and send you an email tomorrow.

Mr. Johnston:

Mr. Galotti:

Vote:

Motion to adjourn.

Second the Motion.

All present voted Aye.

Respectfully Submitted,

Adjourned: 7:50 pm

Bea Ogunti
Secretary
Zoning Board of Appeals