

## MINUTES

Town of Wappinger  
Zoning Board of Appeals  
January 23, 2018  
Time: 7:00PM

Town Hall  
20 Middlebush Road  
Wappinger Falls, NY

Summarized Minutes

### Members:

Mr. Prager	Chairman	Present
Mr. Casella	Member	Present
Mr. Galotti	Member	Present

### Others Present:

Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

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## SUMMARY

### Public Hearing:

John & Pam Nabais	Variance granted
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### Discussion:

M & C of Dutchess, Inc.	Resubmit for February 13, 2018
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**Mr. Casella:** Motion to accept the Minutes as amended from January 9, 2018.  
**Mr. Galotti:** Second the Motion.  
**Vote:** All present voted Aye.

**Public Hearing:**

**Appeal No. 18-7636 (Variance)**

**John & Pam Nabais:** - Seeking an area variance Section 240-37 of District Regulations in an R40 Zoning District.

-Where **10 feet** to the rear yard property line is required, the applicant can only provide **7 feet** to the rear for an existing 8' x 12' shed, thus requesting a variance of **3 feet**.

-Where **No accessory structure is permitted in the front yard, the shed is located 60' from front yard line on Diddell Road, the applicant is seeking a variance to allow for an existing 8' x 12' shed to remain in the front yard.**

-Where **50 feet** to the rear property line is required, the applicant can only provide **11 feet** to the rear for an existing 15' x 30' pool with a 4' rear deck, thus requesting a variance of **39 feet**.

-Where **50 feet** to the rear yard property line is required, the applicant can only provide **36 feet** to the rear for an existing 14' x 20' deck off house, thus requesting a variance of **14 feet**.

The property is located at **2 Spring Hill Court** and is identified as **Tax Grid No. 6359-03-212246** in the Town of Wappinger.

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

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

**Mr. Casella:** I do have one question and I brought it up at the last meeting that two of these were switched 50 feet and I thought it was 14 feet for the first one and 11 feet for the other one?

**Mr. Prager:** We read that wrong. The first one is the deck on the house and when we were there we were confused about that being a deck or a pool. It is correct.

**Mr. Casella:** Okay, I just want to make sure.

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

**Mr. Galotti:** Second the Motion.

**Vote:** All present voted Aye.

**Mr. Prager:** Hi there, please come up and state your name for the record.

**Mr. Nabais:** John Nabais.

- Mr. Prager: Please explain a little bit about what you need and why you need it. You can start by talking about the shed.
- Mr. Nabais: When I put the shed in about 20 years ago, it was 10 feet from the property line. I thought I was 10 feet from the property line because my neighbor told me that the trees on the corner were my trees and the fence as well. I thought I had a little more property beyond the fence. The shed is even with the dog pen and we bought the house with the dog pen.
- Mr. Prager: The second portion has to do with it being in the front yard and the way your lot is you have two front yards. Even though it is in the back it is your front yard. Did you put the pool in?
- Mr. Nabais: Yes, I put that in and I got a permit on everything.
- Mr. Prager: When did you put it in?
- Mrs. Nabais: About 20 years ago.
- Mr. Prager: Was the deck there when you bought the house?
- Mr. Nabais: Yes, the deck was there when we bought the house.
- Mr. Prager: Barbara, do you have anything to say?
- Mrs. Roberti: He does have a pool and deck permit for that existing pool but the measurements on that permit were incorrect once we got the survey. So I've added that to the variance to legalize it and moving forward if anyone buys this house from them they will see that the pool and the deck are legal. If they remove it and put a new one on they will have a problem. I figure while they are here we might as well do a little housekeeping.
- Mr. Galotti: Diddell side of the road is a corner lot and even though the driveway and the address are on Spring Hill Court, it's still a front?
- Mrs. Roberti: It doesn't matter because when you are on a corner you have two front yards, a rear and a side. On the first accessory structure, you get to pick which is the front or rear yard. This house unfortunately was really pushed very far back almost in a corner. It impedes them from needing any kind of setback.

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

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

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

**Mr. Casella: Motion to grant the applicant the variance. Whether the benefit can be achieved by any other means, I don't think so. He does have two front yards and has lived there for 15+ years. It is not an undesirable change because it's existing already. It is somewhat substantial but based on the fact that everything has been there for quite some time it is okay. It doesn't change any physical or environmental effects to the character of the neighborhood.**

Mr. Galotti: Second the Motion.

Roll Call Vote: Mr. Casella YES  
Mr. Galotti YES  
Mr. Prager YES

**Discussion:**

**Appeal No. 18-7637 (Use Variance)**

**M&C of Dutchess, Inc.:** - Seeking an area variance Section 240-37 of District Regulations in an R20 Zoning District.

-The applicant intends to utilize the existing 2,500 sf. commercial structure built in 1950 as a contractor's shop and storage in a Residential Zoning District. The property is located at **20 MacFarland Road** and is identified as **Tax Grid No. 6157-04-720271** in the Town of Wappinger.

Present: Neil Alexander – Cuddy & Feder, LLP

Mr. Prager: Hi there.

Mr. Alexander: Good evening gentlemen, for the record my name is Neil Alexander from the law firm of Cuddy & Feder. Just a little background, you probably know more than I do. Essentially on M&C of Dutchess, Inc. the principal is Craig O'Donnell. He was the financier from 2014 when Mr. Darcy bought it.

Mr. Prager: Who was that?

Mr. Alexander: Craig O'Donnell. He wound up getting this property back by deed in lieu of foreclosure in November of 2017 from a Brian Darcy. As you know this property goes back a very long time.

It was the ambulance site and I believe they sold it to Mr. Van Tassell around 2003. Mr. Darcy took over in 2004 but essentially the ambulance moved over roughly in 1994. It is zoned R40 and in the assessor's record I found building permits from 1966 which was an addition. From what we are gathering, it was legally non-conforming for 50+ years. In the years that Mr. Darcy had it doesn't look like it was operated with its legal conforming status.

Mr. Prager: What did he use it for?

Mr. Alexander: I don't really know.

Mr. Casella: Didn't he own Five Star?

Mrs. Roberti: Yes, Brian Darcy owned Five Star. He bought 20 MacFarlane and leased it out to different types of auto mechanics, and detailing shops. I found out later when Mercedes was going to do their renovations and additions that Mercedes was parking overflow cars there. We were constantly going after him over the years but then he would get rid of somebody and somebody else would sneak in. Mark Lieberman was over there a lot in the early 2000.

Mr. Prager: It sounds to me there were a lot of problems since he's owned it.

Mrs. Roberti: It has been nothing but enforcement problems for the last 14 years.

Mr. Alexander: Mr. O'Donnell got it back through deed and foreclosure and he filed this use variance application in December 2017 and I'm here in January. He's focused on this and before he retained us contacted the Building Department. We looked into many uses and we said motor vehicle sales but you need a minimum of 3 acres so that's a problem. We looked at contractors supply lumber yard but you need 7 acres. We narrowed it down and went under the heading of warehouse and storage.

Mr. Alexander continues his overview of the project.

Mr. Prager: Is that what he wants to use it for?

Mr. Alexander: Yes, we were thinking of contractor's office, storage and/or construction supplies, etc. Or straight warehouse and not self-storage on a minimum lot of 2 acres because we are about 2.3

acres and there's a little bit of discrepancy between parcel access and the survey we just got.

Mr. Prager: Barbara, do you know what the minimum acreage is?

Mrs. Roberti: No, not off the top of my head.

Mr. Alexander: We have a survey we just got today.

Mr. Prager: If you could get a copy for all of us.

Mr. Alexander: Survey shows it is 2.394 acres and parcel access shows 2.275 acres. We seem like we've complied with everything except it's a flag lot. I believe that's legally nonconforming.

Mr. Prager: I know that Mr. O'Donnell sent us a narrative on the history of the project. Could you get us a really good breakdown from 1950 to present?

Mr. Alexander: I will go back to the assessor's records and I know they are trying to find the grid file.

Mrs. Roberti: Not successfully so far.

Mr. Alexander: I will get you the organic documents.

Mr. Prager: At least put it down on paper in chronological order of who owned it and what it was used for. That's what is really important to me. Were there breaks in time and was it not used for anything for more than a year.

Mr. Galotti: Is it currently vacant?

Mrs. Roberti: When Mr. O'Donnell took it over he cleaned it up. The last time he was in my office there was one more car he needed to dispose of. He has really spent a lot of time out there in the short time that he took it over and cleaned up what was a horrible site.

Mr. Prager: What's in the assessor's records?

Mr. Alexander: It gets really candidly once it's no longer being used for the ambulance. It is really unclear.

Mr. Prager: He must be paying taxes and I'm sure there's an assessor's report.

- Mr. Alexander: The Building Department was nice enough so I just have to put my finger on it. They pulled one paper for me and basically from 1993 to 2010 there is no activity with the Building Department whatsoever. In 2010 an electrical permit was pulled after a storm outage.
- Mr. Prager: I don't need it tonight.
- Mr. Alexander: I will gladly share but I just wanted to create an expectation appropriately.
- Mr. Prager: We did receive the cost analysis and we want to know what he pays for taxes and that type of thing.
- Mr. Alexander: As far as what we are currently paying or you are looking for us to go back more years.
- Mr. Prager: For the last 5 years.
- Mr. Alexander: I can get the one pager for the last 5 years.
- Mr. Prager: We are going to need \$3,000 escrow on this. I would like to make sure our attorney gets all the information on this and be at the next meeting.
- Mrs. Roberti: I will work on that tomorrow and make sure he gets it.
- Mr. Prager: As you can tell there are a couple of members missing and I would like to have another member. I would like a full board and as you know they are not that easy to get passed.
- Mr. Alexander: I understand and we are going to do the best that we can. We will gladly provide information because we know we have a process before us. It's a tough situation here and at the end of the day it is zoned the way it's zoned with the current uses. You have a lot of improvements out there.
- Mr. Prager: When did you say Mr. O'Donnell purchased the property?
- Mr. Alexander: He got it as a deed in lieu and he got it in November 2017. He was the financier and the owner preserved his collateral to take it back. I have not checked the titled on it but I don't think he ever owned it.
- Mr. Casella: I thought Craig O'Donnell owned it since 2004.

- Mr. Alexander: Is that what he said? Like I said I'm still getting up to speed.
- Mr. Prager: This is why I really need that breakdown from 1950 to present or when Mr. O'Donnell purchased it. Put in the times as to who owned it and for how long.
- Mr. Alexander: I don't believe Mr. O'Donnell really owned it. I believe the title here is John Sloper and then it became Sloper Willen Community Ambulance Service in 1984. Then in 2003 Patrick Van Tassell owned it from Sloper Willen Community Ambulance Service. In 2004 Brian Darcy bought it from Patrick Van Tassell. I believe in his course of operations Brian Darcy provided surety essentially to a financial instrument that M&C gave to them as a loan. It was secured by this real estate which is this property and I'm reading from the deed and foreclosure. The deed and foreclosure reads that there was a financial relationship between the parties. The collateral in this financial relationship was this property. So a loan was given in 2004 secured by this property. That loan was amended in 2014 or 2015 and still there was not sufficient performance. In order to protect the collateral, M&C foreclosed with a deed in lieu of foreclosure. That occurred on the 21<sup>st</sup> day of November, 2017. Basically, M&C was a lender to Darcy in 2014 which was recorded note and that mortgage was modified in March 2015. Because of nonperformance they took the asset to secure their loan.
- Mr. Casella: Is one of those Craig in M&C?
- Mr. Alexander: Yes, Craig O'Donnell.
- Mr. Casella: What's about the M?
- Mr. Alexander: I don't know.
- Mrs. Roberti: It's probably his children their initials are M & C.
- Mr. Alexander: M&C owned the real estate prior to November of 2017.
- Mr. Prager: The more information you can get us we can better look at this. I can't promise anything.
- Mr. Alexander: I understand how this works.

- Mr. Prager: We will do a site inspection on Saturday, January 27<sup>th</sup> at 9:00am.
- Mr. Alexander: Do you need somebody there?
- Mr. Prager: I am familiar with the property but I have not seen it in a long time.
- Mr. Alexander: I will confirm if he can be there this Saturday at 9:00am.
- Mr. Prager: Just let Bea know.
- Mr. Alexander: So you need survey, more detail on the chronological uses, the taxes for the last 5 years, \$3,000 escrow and details about the site visit.
- Mr. Prager: We will try to get this done for you.
- Mr. Alexander: He's just trying to figure out what he can do and the economics that's the reason why he filed this use variance for rehabilitation.
- Mr. Prager: Make sure we have the information that he does own this.
- Mr. Alexander: I have the deed and foreclosure documents. Parcel access doesn't show anything.
- Mr. Prager: Thank you.
- Mr. Alexander: Thank you very much.

**Miscellaneous:**

**Myers Corners Landing Subdivision**

- Mr. Prager: Barbara, I believe one of the criteria for this property was to clean the place. When I drive by I don't see any cleaning up of the place.
- Mrs. Roberti: Yes. Because he's before the Planning Board with the subdivision, he's clearing it to put the road into the basecoat and utilities. It's usually a mess for a while and the reason they do that is whatever the bond would cost to do it from starch, we always let the subdividers go in and get to that first spot. Then they reduce what the bond would be and that's what they post

as the road escrow. The performance bond or surety bond for the road and at that point he can then get the map filed and pull his first building permit.

Mr. Prager:

When does all of that stuff have to go out?

Mrs. Roberti:

He's in the process of getting that part in then he can get the bond reduced.

Mr. Galotti:

What property are we talking about?

Mr. Casella:

That's the one we did the site visit on.

Mr. Prager:

That's the property with a trailer and boat. Looks like people are living in that trailer.

Mrs. Roberti:

The boat is still there? I will have to go after him and take care of that tomorrow.

Mr. Prager:

Yes, I would like that taken care of.

Mrs. Roberti:

So that's the boat and trailer.

Mr. Prager:

There was a shed back there and all sort of stuff.

Mrs. Roberti:

There were two sheds and the house that's supposed to be removed.

Mr. Prager:

There's also a lot of junk back there.

Respectfully Submitted,

Adjourned: 7:35 pm

Bea Ogunti  
Secretary  
Zoning Board of Appeals