

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
MAY 24TH, 2018**

The regular monthly meeting was held at the Zoning Board of Appeals, Town of Yorktown, at the Yorktown Town Hall, 363 Underhill Avenue, Yorktown Heights, New York on Thursday, May 24th, 2018. The meeting began at 6:30 p.m.

The following members of the board were present:

Gregg Bucci
Robert Fahey
Gordon Fine
John Meisterich
William Gregory

Also present is Special Counsel, Mark Blanchard and Building Inspector John Landi. The meeting was aired on Channel 20 Cablevision and Channel 33 Verizon Fios.

It was announced that the next public hearing would be held June 28th, 2018, site visits are scheduled for June 23rd, 2018. Mailings are to be sent from June 4th to June 13th, 2018.

NEW BUSINESS

SHORT, MARGARET #27/18 This is an application for a special use permit for the renewal of an accessory apartment.

Property Address:
1300 Baldwin Rd.

Section 47.16, Block 1, Lot 2

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item will be handled administratively and referred to the Building Inspector.

NAKHLA, EMAD #28/18 This is an application for a special use permit for the renewal of an accessory apartment.

Property Address:
2717 Quinlan St.

Section 27.13, Block 1, Lot 38

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item will be handled administratively and referred to the Building Inspector.

RUSSEL, JACK #29/18 This is an application for an addition with a front yard setback of 7' where a minimum of 40' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Property Address:
173 Ramona Ct.

Section 27.10, Block 3, Lot 59

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on June 23rd, 2018, a Public Hearing on June 28th, 2018, and referred to the Building Inspector.

DENGLER, ROSA #30/18 This is an application to allow multiple additions with a front yard setback of 39.08' where a minimum of 40' is required. A side yard setback of 9.3' where a minimum of 15' is required and a

Section 26.15, Block 2, Lot 21 combined side yard setback of 34.3' where a 40' is required as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on June 23rd, 2018, a Public Hearing on June 28th, 2018, and referred to the Building Inspector.

SINDACO, MELANIE #31/18 This is an application for a special use permit for a day care center for 14 children. This property is located in a C-2R zone.
Property Address:
322 Kear St.

Section 37.18, Block 2, Lot 51

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on June 23rd, 2018, a Public Hearing on June 28th, 2018, and referred to the Building Inspector and Fire Marshal.

HOMELAND TOWERS, LLC #33/18 This is an application for a special use permit for a wireless communication facility. This property is located in a RSP-1 zone.

Property Address:

Dell Ave.

Section 70.15, Block 1, Lot 1

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on June 23rd, 2018, a Public Hearing on June 28th, 2018, and referred to the Building Inspector, Planning Department and County Planning.

CONTINUED PUBLIC HEARINGS

CELESTIAL HOLDINGS #8/17 This is an application for a special use permit for the keeping of fowl as per 300-81.3 of the Town Zoning Code. This property is located in a R1-80 zone.

Property Address:

822-824 Pines Bridge Rd.

Section 70.17, Block 1, Lot 5

Applicant not present. Not open.

DINEEN, KATHLEEN #48/16 This is an application to modify an existing special use permit for a day care facility per 300-53 of the Town of Yorktown Zoning Code. This property is located in an R1-10 zoning district.

Property Address:

2090 Crompond Rd.

Section 37.14, Block 2, Lot 8

Applicant before the Planning Board.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item is adjourned.

DINEEN, KATHLEEN #49/16 This is an application for a variance to allow an addition to a daycare facility to have a building coverage of 10057.5 sq. ft. where 7404 sq. ft. is the maximum allowed per 300-21 and Appendix A of the Town of Yorktown Zoning Code. This property is located in an R1-10 zoning district.

Property Address:

2090 Crompond Rd.

Section 37.14, Block 2, Lot 8

Applicant before the Planning Board.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine,

Gregory, and Meisterich, this item is adjourned.

NEW PUBLIC HEARING

CATALIOTI #15/18 This is an application for a special use permit for the renewal of an accessory apartment.
Property Address:
1543 Hanover St.

Section 48.11, Block 3, Lot 20

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, May 16, 2018 states: The subject premises were inspected on May 9, 2018, and no changes have been made to the apartment since the previous approval.

The Use will continue to be in substantial compliance with applicable building and zoning regulations.

The Applicant should be advised that a new Certificate of Occupancy must be issued for continued use of the accessory dwelling.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit was granted for a period of three (3) years.

O'NEILL #16/18 This is an application for a special use permit for the renewal of an accessory apartment.
Property Address:
3719 Mill St.

Section 16.05, Block 3, Lot 2

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, May 17, 2018 cited no objections.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit was granted for a period of three (3) years.

TERHUNE #17/18 This is an application for a special use permit as per section 300-81.3 for the keeping of fowl.
Property Address:
2422 Susan Ct.

Section 36.5, Block 2, Lot 32

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, May 15, 2018 cited no objections.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was adjourned so the Applicant can provide a plan for the composting and screening.

TERHUNE #18/18 This is an application to allow the keeping of fowl on the lot with an area of 21,350 s.f. where a minimum of 40,000 s.f. is required as per section 300-81.3 of the Town Zoning Code. This property is located in a R1-20 zone.
Property Address:
2422 Susan Ct.
Section 36.5, Block 2, Lot 32

Mailings and sign certification in order.

Mr. Terhune said that some friends have kept chickens for a while and was interested in it and realize by the code you have to have over an acre. Still want to pursue it. Spoke with the neighbors, nobody had any concerns when he spoke to them.

Chairman Fine told the Applicant that the code has requirements for chicken coop. He asked him what's the size of the property.

Mr. Terhune said 21,350 s.f.

Chairman Fine asked if he submitted a plan.

Mr. Terhune said he does not believe so.

Chairman Fine found schematics in the file.

Mr. Meisterich told the Applicant that the coop has to be 30ft. from the property line.

Mr. Terhune said someone from the Building Department did call him about that, he did measure it, it's about 36-37ft. to the outside edge of where they want to put it.

Chairman Fine asked where he's planning on keeping the feed.

Mr. Terhune said inside, wither the garage or basement in airtight containers.

Chairman Fine asked if there's any kind of waste management removal plan.

Mr. Terhune said composting.

Chairman Fine asked if it's onsite or offsite.

Mr. Terhune said onsite.

Chairman Fine asked if there were any comments from anyone in the audience.

Regina Poltrack, neighbor, said she's concern it will draw foxes as the feed and the surrounding of the chickens will draw rodents and so forth. His backyard is very close to the parking lot for the Hunter Brook Fields where there's kids playing. Also, the fact that what is being asked for is full 50% reduction of what is required. Don't think that's wise. It's an attractive nuisance, smell, noise, foxes and kids on the field. It just does not seem prudent to be keeping chickens in that kind of environment.

Harvey Wolchan who lives in the neighborhood, said a neighbor's house had bird feeders and several years ago he was on his patio and saw rats running around, guess it's because of the bird feed. Another thing, there is a coyote problem in Westchester, it might draw coyotes to the area.

Chairman Fine told them that if granted, by statute the first time the permit is granted the permit can only be for a period of one (1) year. It was done that way so the Town can see if there are any problems.

Mr. Bucci said so if there's issues he's going to have to come back in a year and it can be documented if there's any of the conditions you're talking about.

Chairman Fine asked the Applicant if he was planning on doing any kind of screening for the chicken coop. Some kind of fencing.

Mr. Terhune said at the front of the property he was putting up arbor vitae, the coop will be behind that. The other neighbor already has hemlock there, the back is the Town baseball fields.

Chairman Fine said what about some type of solid fence behind the house to cover where the coop is to block its view from the baseball fields.

Mr. Terhune said if requested he could do that.

Chairman Fine said it will prevent some noise from emanating into the fields so it would keep some of the people who are curious from coming closer.

Mr. Meisterich said with the onsite composting plan because of the small size, do you think that have any kind of negative ramifications.

Mr. Fahey asked the Applicant where he's going to put the compost.

Mr. Terhune said he'll have to investigate that some more, have to look into that and see what's the best solution will be.

Memo from the Assistant Building Inspector dated, May 15, 2018 cited no objections.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, this item was adjourned so the Applicant can provide a plan for composting and screening.

RYAN #19/18 This is an application to allow an addition with a front yard setback of 29.42' where a minimum of 40' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Property Address:
2827 Hedge St.
Section 26.11, Block 1, Lot 67

Mailings and sign certification in order.

Architect Ed Gemmola representing the Applicant. He said they're adding an addition out the front for a kitchen and there will be a small canopy over where the entrance is.

Mr. Gemmola showed the Board the plans.

Memo from the Assistant Building Inspector dated, May 16, 2018 states:

I have inspected the property on May 9, 2018 and have no objections in granting relief. The Applicant will need a building permit for this work.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a variance was granted to allow an addition with a front yard setback of 29.42' where a minimum of 40' is required as per section 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line and the addition be built in substantial conformity to the plans submitted.

HASAIN #20/18 This is an application for a special use permit as per section 300-81.3 for the keeping of fowl.

Property Address:
1440 Journeys End Rd.
Section 69.06, Block 1, Lot 16

Mailings and sign certification in order.

Mr. Hasain said it's an application for permit for keeping of fowl.

Chairman Fine asked Mr. Hasain to go through his plans for things, as far as how many chickens, waste disposal, that sort of things.

Mr. Hasain said no more than 10 chickens, the coop itself could hold more. The coop is connected with a full enclosed run so it's all in one place. The coop itself is an aged old design. It's meant for what's called a deep littering method of composting, so 4 cubic feet of shavings will last about 2years so the plan is they would let the compost internally, very little waste. The way it works is fully natural.

Chairman Fine asked what happens to the waste.

Mr. Hasain said the waste stays in and it just compost itself, basically just keep turning it. It decomposes at the same rate as you put a new layer of shavings.

Mr. Bucci asked what kind of odor that produces.

Mr. Hasain said none. It's usually either pine shavings or industrial hemp and once it starts going, it takes a few weeks or so.

Chairman Fine asked about the feed.

Mr. Hasain said the garage sits next to the coop, it will be inside in the garage in rodent proof bins.

Memo from the Assistant Building Inspector dated, May 16, 2018 states:

I have inspected the property on May 5, 2018 and have no objections in granting the special use permit.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a special use permit as per Section 300-81.3 for keeping of fowl was granted for a period of one (1) year, with the condition that the Applicant maintain the coop, feed and waste as discussed here and that the feed be kept in airtight contains in the garage and the waste be onsite as stated being covered with the pine shavings and be continuously turn

over to compost naturally.

SCINTO #21/18 This is an application to allow the keeping of fowl on a lot with an area of 36,537 s.f. where a minimum of 40,000 s.f. is required as per section 300-81.3 of the Town Zoning Code. This property is located in a R1-20 zone.
Property Address:
3060 Radcliffe Dr.
Section 27.05, Block 1, Lot 19

Mailings and sign certification in order.

Mr. Scinto said he's applying for a variance to have a chicken coop and a permit. Already have a chicken cop, it's been there for approximately 7 years.

Chairman Fine asked how many chickens and what's the plan for the keeping of the feed and waste management.

Mr. Scinto said there are 8 chickens, the feed is kept in a galvanized sealable container in the garage, offsite from the coop. The waste is collected periodically every 2-3 weeks and he compost that in entirety. The compost bin is approximately 100ft. from the chicken coop.

Memo from the Assistant Building Inspector dated, May 16, 2018 states:

I have inspected the property on May 7, 2018 and observed that the coop is visible from two adjacent lots. With screening in place, as required in section 300-81.3(D)(1)(d), I would have no objections in granting the special use permit.

Mr. Scinto said he did plant arbor vitae on one side of the coop to obstruct the neighbor view.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a variance was granted to allow the keeping of fowl on a lot with an area of 36,537 s.f. where a minimum of 40,000 s.f. is required as per section 300-81.3 of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line.

SCINTO #22/18 This is an application for a special use permit as per section 300-81.3 for the keeping of fowl.
Property Address:
3060 Radcliffe Dr.
Section 27.05, Block 1, Lot 19

Mailings and sign certification in order.

Memo from the Assistant Building Inspector dated, May 16, 2018 states:

I have inspected the property on May 7, 2018 and have no objections in granting relief.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a special use permit for the keeping of fowl as per Section 300-81.3 was granted for a period of one (1) year. The Applicant set forth how the feed is going to be handled in galvanized containers in the garage and the waste is composted in bins onsite.

OUR MONTESSORI SCHOOL #23/18 This is an application for a special use permit to operate a day care facility. This property is located in a R1-20 zone.

Property Address:
2300 Crompond Rd.
Section 37.09, Block 1, Lot 59

Mailings and sign certification in order.

Joseph Riina, Project Engineer appeared before the Board with Attorney Barbara Diehl who represents the Applicant.

Mr. Riina said the school currently operates on Crompond Road in 2 locations. The one they're specifically here for is at 2300 Crompond Road, which is at the United Methodist Church.

Chairman Fine said it's not an application for new facility just increasing the number of students. Ms. Diehl said it's not even increasing the number of students, they actually have a decrease in the number of students since full day kindergarten started. What they're doing is moving the toddlers, 2-4 years, from what used to be the Nazarene Church and moving them to the Methodist Church, which is already in use as a school and it's technically part of the school because it's a Montessori program for 2,3 and 4 year olds, but under the Yorktown code they basically comes in as daycare since they're under the age of 4.

Mr. Riina said there's roughly 18020 students there now that are 4th, 5th and 6th grade. They're bringing the 2-4 year olds over to this facility.

Chairman Fine asked if the number of students isn't changing.

Mr. Riina said yes, increasing by 8 but technically can facilitate a lot more. Can facilitate because of the size of the room and the 35 per square foot per student/child they're permitted 18. So at this point it's only 8 but someday 18.

Chairman Fine asked if they want up to 18 for 2300 Crompond Road.

Ms. Diehl said 18 is in the daycare part plus the remainder of the school.

Mr. Riina said they have all their approvals in place from the state.

Mr. Riina went through the conditions of Section 53.

Chairman Fine said as the Applicant stated this is a pre-existing school, they're just adding daycare students to it. The Applicant has run through all the requirements of Section 53 for daycare facilities. It appears that they've complied with all of the requirements, the only thing they haven't technically complied with is the traffic study.

Based upon the proximity of the other school where the students are being moved from and the fact that nothing is really changing it's not a great amount, it's only 8 additional students, don't think they need to go through the expense and time to go through a traffic study.

Memo from the Assistant Building Inspector dated, May 23, 2018 cited no objections.

Memo from the Planning Board dated, May 24, 2018 states:

The Planning Board, at its meeting on April 23, 2018, discussed the subject application and the request for a Special Use Permit for a day-care facility. The usage of a school and daycare has been in operation at the site since the building was built. The Applicant requests the Special Use Permit to allow additional students to the school.

The Planning Board has no planning objections in granting of the Special Use Permit being requested.

Memo from the Fire Inspector dated, May 21, 2018 states:

On Monday May 7, 2018 the Bureau of Fire Prevention met to discuss the proposed relocation of the Our Montessori School to 2300 Crompond Rd., Yorktown Heights. The Bureau has no objections to the plan and supports the Applicant's proposal.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for a special use permit was granted for a period of three (3) years, with the stipulation that this is for up to 18 students in the daycare facility and contingent upon the submission of all the required approvals and it's per the plans submitted by the Applicant.

AT&T #25/18 This is an application for a renewal of a special use permit for the wireless telecommunications facility.

Property Address:
2651 Strang Blvd.

Section 26.19, Block 1, Lot 2

Mailings and sign certification in order.

Attorney Taylor Palmer representing the Applicant. It's renewal of an existing rooftop mounted telecommunication facility.

Memo from the Assistant Building Inspector dated, May 17, 2018 cited no objections.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit for the wireless telecommunications facility was granted for a period of three (3) years.

BOWEN #26/18 This is an application to allow a structure with a combined side yard setback of 35.8' where a minimum of 40' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.
Property Address:
1930 Glen Rock St.
Section 37.18, Block 1, Lot 43

Mailings and sign certification in order.

Architect David Tetro representing the Applicant. Mr. Tetro said they're doing an addition over the existing family room and living room. Right now it's 1 story, the house is currently situated in such a way it is skewed from the property line so it's existing non-conforming. What they're doing with the addition is basically taking the exterior walls and extending them up. The variance being sought is not just that, they're also putting a small stairs on the side of the house along the driveway side which encroaches into the required set back.

The addition is maintaining the existing roof line, not going above the roof line. The only footprint they're extending of the house is out towards a small canter level off of the back over the garage. Not looking for anything over the top.

Memo from the Assistant Building Inspector dated, May 17, 2018 states:
I have no objections in granting relief. The application will require a building permit.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for variance was granted to allow a structure with a combined side yard setback of 35.8' where a minimum of 40' is required as per section 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line.

CLOSED AND RESERVED

PROVE #2/18 This application is to allow a building lot with an area of 10,000 s.f. where a minimum of 20,000 s.f. is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is in a R1-10 zone.
Property Address:
Allen Ave.
Section 37.18, Block 2, Lot 31

Chairman Fine said there has been quite a bit of testimony over the last several meeting. Residents from the neighborhood came out against it for various reasons. Not sure what the specific thoughts are as for the other Board members, have been doing quite a bit of thinking on this, we went through the history in order to determine whether or not there was a lot merger. It was determined there was no lot merger because of the timing of the application. There was testimony also that most of the other properties on the street are approximately the same size as the lot in question, but this particular lot was up zoned which requires the need for the variance at this time. Not really enamored with this application but cognizant of the fact that personal feelings cannot take a part in what we do here. The board has to rely upon the law and precedence.

Mr. Bucci discussed the up zoning and stated that when you view that in the context of substantiality it completely mitigates that, because the lot is the same size as was developed in conjuncture with all the other lots in the neighborhood and the Town essentially changed the character by up zoning that for whatever purpose. So while on paper it seems substantial, it was a result of the Town much after the fact up-zoning the requirement. Almost all of these application have a self created hardship which is really not an overwhelming factor among the 5 and most application have that. Don't see

that as being particularly problematic. As far as the environmental impact, there was testimony that the drainage system will be an improvement. As we said, the lot size is similar to all the other lots sizes in the neighborhood so essentially you're not changing the character of the neighborhood. Chairman Fine said the topography of the lot was a concern also, but the other issue we have to look at is topography of the other lots on the street as well. There are built upon lots that are much higher and some that are the same level basically.

Mr. Meisterich said there's 5 factors we have to deliberate on. One is the character of the neighborhood, it's hard to say that this would affect the character of the neighborhood because the same size lots are common in the neighborhood. Self created: it was self created because the contract vendee has purchased a non-conforming lot.

Chairman Fine said this also has the aspect that it is not all together the Applicant, the Town has up zone the lots on that street.

Mr. Meisterich said he can see if the original owner was in possession when it was up zoned, would not call that self created. If you bought something 50 years after it was up zone it is self created.

Mr. Bucci said now you basically change what the owner have bought. They're looking to sell it and their ability to do what they want with their property have been changed arbitrarily by the Town up zoning it.

Mr. Gregory said the owner that owned the property in 1970 when the rezoning probably has not been around for couple of years.

Mr. Meisterich said whoever owned it in 1970 it wasn't self created for that person if it was up zone. The person who bought it in 2017 it is self created.

Chairman Fine said as discussed in the last meeting, when you buy a lot that is substandard you are not guaranteed you are going to get a variance on it. That being said, you also have to look at what has been approved in the Town in similar cases.

Mr. Bucci said nobody is denying that it is self created but you're putting an emphasis on what's the impact of that factor. Yes they are all self created and the Town was part of that self creation by up zoning. Don't see that as a major factor. There's 3 others that outweigh that anyway.

Mr. Fahey said it's a congested neighborhood and the traffic flow.

Chairman Fine said it us one additional house on an already congested neighborhood. It is there as a building lot originally, but for the fact that someone did not put a house on it way back when, it would have been the same as everything else.

Mr. Bucci said it is arbitrarily substantial because the Town decided to change what the lots were developed as.

Mr. Meisterich said he does not know if he necessarily agrees with that, there are many ways to look at substantiality, really have nothing to do with the Town doing something. Is it substantial or not substantial. Self created is somebody else doing something.

Mr. Bucci said the first question is, is it substantial. It's 50% but the point is what's the cause of the substantiality and the cause of the substantiality is the Town.

Mr. Meisterich said that's not a factor.

Mr. Bucci said of course it is. There's a case law that says that when a Town up zones they have changed the character of the neighborhood.

Mr. Meisterich said that's a different factor. Character of the neighborhood is one factor, substantiality is another.

Mr. Bucci asked how did it come to be that the area is now increased by double, it's because the Town decided to change what have already existed and have already been developed and approved.

Chairman Fine said all the other lots but 2 on that street were developed already when it was up zoned.

He said all the other houses would have needed a variance if built after the up zoning.

Mr. Gregory said we've had couple of variances in that same area.

Mr. Meisterich said there's other properties and they have their own set of factors. We may have

done same size, but were there 2 lots next to each other, that's part of the equation.

Chairman Fine said it's not because there was no merger, they're 2 individual lots.

Mr. Meisterich said it's substantial in the fact that the density of these 2 lots allows for 2 houses instead of 1. Say you have 1 house in Mohegan Lake with 100x100, 1 lot by itself, you're not increasing the density of the street, but if you're putting 2 houses where the zoning, you're more or less granting an as of right into the next lot.

Chairman Fine said we cannot look at what someone else is going to do in the future or not do, you can't do that by law.

Mr. Meisterich said it's substantial because it allows for 2 houses.

Mr. Bucci said this application does not allow a second house.

Mr. Meisterich said it more or less grant it an as of right to the next.

Mr. Bucci said somebody else would have to come with an application and decide what they intend to do with that property, right now this one in of itself there's no evidence that they're doing anything to the other lot.

Chairman Fine said there is only 1 application in front of us for 1 house. That is all we can consider. The 5 factors are one thing in area variances, you also have to look at precedence, what the courts have said in the past on these applications, what the board has approved on similar applications. It's not just the 5 factors, it is not that objective a standard. May not like the application, but when you look at everything, I do not see a legally defensible way of saying no.

Mr. Bucci said it's one thing if there's an undeveloped area that was zoned ½ acre and the Town has decided that as a development plan they want to up zone that so it's consistent with that entire area being developed that way. Here, this is like 97% developed and it's all been done in ½ acre zoning.

Mr. Gregory said it was done under ¼ acre.

Mr. Bucci said by the Town doing that it's so far after the fact that you've basically pinpointing 2 lots on an already developed area, that changes the character of the neighborhood by pretending that somehow you're going to need an acre when a ½ acre is sufficient.

Chairman Fine asked Special Counsel Mark Blanchard if they're off or on with legal reasoning.

Mr. Blanchard said he agrees with everything that's being discussed. They're doing what the Board is supposed to do, going through each factor. You're right, for example when you get to the factor about self created, the courts have consistently said and in fact the Town law reads, that thou it's one factor, it's the one that have the least amount of weight to it. It's not dispositive. This is not like a use variance where you must meet each criteria before you move on to the next one, here it is a balancing test.

The point that you're making that has to be stressed is the existing build out of the existing neighborhood is significant, probably the factor that gets the most weight is the changing of the character of the neighborhood and that's very significant here. Like you said, maybe not the most attractive application, but since most of this area has been built out to the previous standard, that particular factor weighs heavily in favor of the Applicant.

Mr. Bucci said he gets that it's a busy street and it's somewhat condensed, but that's the character of the neighborhood unfortunately, and the lots that are there have been there just as long as all the other lots, they were just fortuitously undeveloped for a period of time, but for the Town up zoning this, this would not even be here.

Mr. Meisterich said even after everything he said with the 5 factors, still only think 2 would be in favor of denial anyway out of 5.

Mr. Bucci said which would that be, self created and substantiality.

Mr. Meisterich responded yes.

Mr. Bucci said he does not disagree on a technical aspect of the substantiality, just saying when you're looking at that as a possible negative when you factor in why it's substantial, it's because of the up zoning. That mitigates that inability to meet that criteria.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine,

Gregory, and Meisterich, the application for a variance was granted to allow a building lot with an area of 10,000 s.f. where a minimum of 20,000 s.f. is required as per section 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line and the house be built in substantial conformity to the plans submitted and that the vegetation, landscaping as well as the drainage that was outlined by the Applicant be installed and maintained by whoever owns the property.

**A & E FUNERAL SERVICES
#12/18
Property Address:
2118 Saw Mill River Rd.
Section 37.10, Block 1, Lot 1**

The proposed apartment will be located in a separate dwelling whereas two families in an R-2 zone are required to be located in a single dwelling per 300-21(c)(2)(a)(2) of the Town of Yorktown Zoning Code.

The following variances are required:

- The proposed dwelling will be located in a separate building from the existing one family dwelling whereas two family dwellings in a R-2 zone are required to be located in one building per 300-21(c)(2)(a)(2) of the Town of Yorktown Zoning Code.
- The proposed second dwelling will create two main buildings on a single lot whereas not more than one main building on one lot is permitted per 300-11(B) of the Town of Yorktown Zoning Code.
- The proposed second dwelling will be located in the rear yard of the existing dwelling whereas no yard or other open space provided about any building shall be included as any part of the yard or open space for any other building per 300-11(C) of the Town of Yorktown Zoning Code.
- The proposed dwelling will not have a front yard whereas a minimum front yard of 30' are required per 300-21 and Appendix A of the Town of Yorktown Zoning Code.
- The proposed dwelling will have a rear yard setback of 8.6' where 30' are required per 300-21 and Appendix A of the Town of Yorktown Zoning Code.

Chairman Fine said there was quite a bit of testimony on this matter. What the application is that there is now an existing one family dwelling on the property. It is two family zoning. The building that's on the property now per the Applicant and per the Building Inspector, only has one, one family dwelling on it. What the Applicant is seeking to do is to have the barn which is in the back yard, turned into the 2nd dwelling unit. So there will be only be 2 dwelling units on the property but instead of 1 building it will be in 2 buildings.

There was testimony back and forth about whether this was a substantial variance, whether it would change the character of the neighborhood. The testimony was that this property is located on Route 35 in a section where right next door to the subject property is a commercial establishment, that being the funeral home. There are other similarly situated lots on the same strip of roadway where you have the one building in the front and a garage or barn or some other structure in the back. Those have been existing there for years. As a matter of fact one of the lots had a commercial usage in the rear yard for many years.

Some of the neighbors were complaining about the size of the variance. What you have to keep in mind is it's not a new building being proposed, it's a structure that's there already. It is just being converted. So although on paper this variance may be substantial a new structure is not being created.

Mr. Bucci said one of them does not have people in it at the moment.

Chairman Fine said correct, but the property is allowed to have 2 families.

Mr. Bucci said the structures are already there, whatever impact of the structures have been there

and that's not changing it has not changed forever.

Chairman Fine said whether or not that creates a nuisance to the neighboring property if the 3 family is too loud cannot be considered. We cannot pre-suppose that. Just like you cannot pre-suppose that a garage usage would not be too loud.

The Applicant stated he wouldn't have any difficulties if granted in not having any illumination on the property that illuminate the neighbor's property. We could also condition it so that we only permit 1 dwelling unit per building so it remains a 2 family lot.

Mr. Gregory said the other thing the Applicant was talking about with the neighbors was also putting a fence, there's some section of fencing along the property line to begin with. The Applicant indicated he would not have an issue with putting a fence behind the building itself to further separate the property from the neighbor behind him.

Mr. Meisterich said when that came up the neighbor did not think that that would really matter so much because of the way the Applicant constructed the fence. It is already back there it stops at the corners of the building. So it probably won't buy you much to add another fence.

Mr. Gregory said the Applicant said he would do that.

Mr. Fahey asked if the Applicant is not going to live on the property.

Chairman Fine said he does not have to.

Mr. Fahey said if he did live on the property you probably for all intent and purposes, that building at the rear of the property would be used for storage, would be used in same way as it is now.

The fact that he is not going to live there, think he gets the best use of the property by following what he proposes rather than leaving it as an empty structure.

Mr. Bucci said the current structure is in it somewhat disrepair, You have some vermin. It certainly seem that if it were fixed up it would probably be more attractive and increase the value of not only the property but those around it.

Chairman Fine said one of the arguments of at least one of the neighbors is they were concerned that putting a house back there would decrease their property value. They did not provide any data as far as that's concerned about how they came up with that conclusion.

Mr. Bucci said a more attractive newer, nicer looking structure that isn't dilapidated and full of vermin, think that would be an improvement.

Mr. Meisterich said hard to picture how that would change the property value. You have a structure there, you're building something in the structure.

Mr. Fahey said the one problem he see is there's 2 meters on the house already, not sure how the house is split up, if you have a 2nd floor, 1st floor.

Chairman Fine said one was owned by the landlord.

Mr. Fahey said he understands that, but the fact there's 2 meters there and now you put a third on the back of the property. I'll be looking to put some kind of restrictions.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Bucci, Fahey, Fine, Gregory, and Meisterich, the application for variances was granted for proposed apartment will be located in a separate dwelling whereas two families in an R-2 zone are required to be located in a single dwelling per 300-21(c)(2)(a)(2) of the Town of Yorktown Zoning Code.

- The proposed dwelling will be located in a separate building from the existing one family dwelling whereas two family dwellings in a R-2 zone are required to be located in one building per 300-21(c)(2)(a)(2) of the Town of Yorktown Zoning Code.
- The proposed second dwelling will create two main buildings on a single lot whereas not more than one main building on one lot is permitted per 300-11(B) of the Town of Yorktown Zoning Code.
- The proposed second dwelling will be located in the rear yard of the existing dwelling whereas no yard or other open space provided about any building shall be included as any part of the yard or open space for any other building per 300-11(C) of the Town of Yorktown Zoning Code.
- The proposed dwelling will not have a front yard whereas a minimum front yard of 30' are required

per 300-21 and Appendix A of the Town of Yorktown Zoning Code.

- The proposed dwelling will have a rear yard setback of 8.6' where 30' are required per 300-21 and Appendix A of the Town of Yorktown Zoning Code

With the stipulation that this variance pertains only to the requested variance and not the remainder of the property line and the new apartment be built per the plans submitted. There will be no lights illuminating any of the neighbors property and that there be permitted only 1 dwelling per building.

Recording Secretary, Glenda Daly

Meeting adjourned at 8:18pm

Happy Zoning!