

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
MARCH 28TH, 2019**

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, March 28th, 2019. The meeting began at 6:30 p.m.

The following members of the board were present:

William Gregory
Robert Fahey
Gordon Fine
John Meisterich

Also present is Special Counsel, John Buckley 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 April 25th, 2019, site visits are scheduled for April 20th, 2019. Mailings are to be sent from April 1st to April 10th, 2019.

NEW BUSINESS

3717 CROMPOND ROAD LLC #10/19 Application for an Interpretation of the Yorktown Zoning code as to whether an active main use is required to allow for the use of an approved parking lot (site plan) to be used for parking of vehicles and/or in the alternative for a variance to allow for the accessory use of the subject property for purposes of parking without an active main use.
Property Address: 3717 Crompond Rd.
c/o Law Office of Grace & Grace

Section 35.08, Block 1, Lot 13

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on April 20th, 2019, a Public Hearing on April 25th, 2019, and referred to the Building Inspector, Planning Department and County Planning.

SILVERMAN #11/19 This is an application for the keeping of fowl special use permit as per section 300-81.3 of the Town Zoning Code. This property is located in a R1-40 zone.
Property Address: 1360 White Hill Rd.

Section 36.10, Block 1, Lot 80

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Site Visit on April 20th, 2019, a Public Hearing on April 25th, 2019, and referred to the Building Inspector.

CONTINUED PUBLIC HEARINGS

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 Tow 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 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 Fahey, Fine, Gregory, and Meisterich, this item is adjourned.

NEW PUBLIC HEARING

SANDOVAL, CARLOS #3/19 This is an application for a special use permit to park a commercial vehicle on residential property. This special permit is required as per 300-62 of the Town Zoning Code.
Property Address:
2380 Crompond Rd.
Section 37.09, Block 1, Lot 33
Not open. No mailings.

NEWSHOLME, DONALD #4/19 This is an application for a renewal of a special use permit for a professional office as per Section 300-76 of the Town of Yorktown Zoning Code. Property is in an R1-20 Zone.
Property Address:
2326 Crompond Rd.
Section 37.9, Block 1, Lot 58
Mailings and sign certification in order.
Memo from the Assistant Building Inspector dated, March 22, 2019 restates the application.
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit for a professional office was granted for a period of three (3) years.

SCHNAUDIGEL, RODMAN #5/19 This is an application for a renewal of a special use permit for an accessory apartment at 1228 East Main St., Shrub Oak.
Property Address:
1228 East Main St.
Section 16.10, Block 2, Lot 76
Mailings and sign certification in order.
Memo from the Assistant Building Inspector dated, March 22, 2019 states:
The subject premises were inspected on March 21, 2019 and no changes have been made to the apartment since the previous approval, with the exception of a screened-in porch at the rear of the main dwelling that is now (heated and finished space).
The applicant has hired a design professional and is in the permitting process. After the [permit, inspections and c.o. are issued], the use will continue to be in substantial compliance with the 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 Fahey, Fine, Gregory, and Meisterich, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years, contingent upon application obtaining the Certificate of Occupancy for the screened in porch.

DAVIS, MICHAEL #6/19 Application is to renew a special use permit for the Day Care Facility per 300-52 of the Town of Yorktown Zoning Code. Premises is in an R1-20 Zone.
Property Address:
1770 Strawberry Rd.

Section 15.11, Block 1, Lot 1

Mailings and sign certification in order.

Memo from the Fire Inspector dated, March 13, 2019 cited no objections.

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

VAISSY, LANDON #7/19 This is an application to allow a 6' fence in the side yards where a maximum of 4.5' is allowed as per 300-13(F) of the Town Zoning Code. This property is in an R1-20 Zone.
Property Address:
751 Oakside Rd.

Section 16.16, Block 1, Lot 2

Mailings in order.

Memo from the Assistant Building Inspector dated, March 22, 2019 states: This is an application to allow 6' fence in the side yards where a maximum of 4.5' is allowed as per 300-13(F) of the Town Zoning Code.

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 Fahey, Fine, Gregory, and Meisterich, the application for a variance was granted to allow a 6' fence in the side yards where a maximum of 4.5' is allowed, with the stipulation that it pertains only to the requested variance and not the remainder of the property line, and is contingent upon the applicant supplying the sign affidavit and photo of the sign.

CONTE HOMES #8/19 The proposed single-family residence has a front yard setback of 75' from center of the existing roadway where 100' is required as per section 300-21 and Appendix A (footnote #1) of the Town of Yorktown Zoning Code.
Property Address:
1420 Journeys End Rd.
Section 68.06, Block 1, Lot 10

Mailings and sign certification in order.

Joseph Riina, Engineer, appeared before the Board with the Victor Conte.

This application is for a vacant parcel of land, looking for an area variance. The property is zone R1-200, it's 9.09 acres, 396,091 square feet where 200,000 square feet is required. The lot itself meets all the resident zone standards. The property is moderately sloped away from the road for approximately 75ft. or so, then it starts to drop off to a little more steeply slope. There's a brook in the back of the property in the wetland area. It's a 100ft. wetland setback from the brook and the wetland.

Mr. Riina showed the Board the plans that conform to all the setback requirements. He said in the case of this lot and most of the lots on Journey's End Road, they do not have a 50ft. wide right of way, so the setback is measured from the center line of the travel way, it's measured as 100ft. from that line which supersedes the 75ft. setback for the R1-200 zone.

The house layout complies with all the setback except for the 100ft. from the center line of Journey's End Road. The house is pinned right to the wetland buffer, not allowing any back yard or usable area. It's only an invitation for homeowner to intrude on the 100ft. buffer.

What they are proposing is to move the house forward 25ft., so what that does is not only pull the house out of the steeper section of the property, it allows for a nice walkout basement and work much nicer with the grades.

Mr. Riina showed the Board the plans for the proposed house.

He said it makes the house in a better position, as far as grading goes. It reduces the amount of grading on the other plan. It requires a series of retaining walls in order to keep everything contained and keep it from going into the 100ft. buffer.

Mr. Fahey asked if they don't have to put a retaining wall with what's proposed.

Mr. Riina said there's no retaining wall required with the proposed layout.

Mr. Fahey asked what's the square footage of the proposed house.

Mr. Riina said 3400 square feet, 2 story.

Memo from the Assistant Building Inspector dated, March 22, 2019 states: The proposed single-family residence has a front yard setback of 75' from center of the existing roadway where 100' is required as per Section 300-21 and Appendix A (footnote #1) of the Town of Yorktown Zoning Code. 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 Fahey, Fine, Gregory, and Meisterich, the application for a variance was granted for a proposed single-family residence has a front yard setback of 75' from center of the existing roadway where 100' is required as per section 300-21 and Appendix A (footnote #1) of the Town of Yorktown 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.

LENSETH, ROBERT #9/19 The proposed barn has a front yard setback of 15' and a side yard setback of 10.4' where 75' and 30' respectfully is required. The applicant is requesting an interpretation of what constitutes a rear yard on a corner lot as per section 300-13(G) and Appendix A of the Yorktown Zoning Code.
Property Address: 1145 Baldwin Rd.
Section 47.19, Block 1, Lot 12

Mailings and sign certification in order.

Mr. Lenseth said he's looking to build a barn in the back, relative term corner of the property. Trying to determine what setbacks are required and depend on the setbacks, request a variance for such barn to be placed at 15 feet off Baldwin Road and 10 feet off the property line adjoining the next neighbor.

Chairman Fine asked if he's also asking for an interpretation as to the rear yard.

Mr. Lenseth said yes, would like that to be formally and officially determine.

Chairman Fine asked Mr. Gregory if that would have been determine when the house was built.

Mr. Lenseth said that was previously determined 3 years ago when they first did an application.

Chairman Fine said that doesn't change.

Mr. Lenseth said he was told it did, it's being interpreted differently.

Mr. Landi said it was determined by the Zoning Board, it was determined by a previous Building Inspector and the way that his departments now determines a corner yard setback is different, and the building department would love a determination on this.

Mr. Meisterich said there's 2 different determination that we're talking about. One, there's a one-time way to determine what is your front yard, what is your rear yard and your 2 side yards, but somewhere in the history of the property that can be decided.

Mr. Lenseth said the property has been around since the 1700's, it's been divided up multiple times.

Mr. Gregory asked what they did 3 years ago?

Mr. Lenseth said they got a special use permit.

Chairman Fine said there was the pool house.

Mr. Lenseth said he's been here a few times, the pool house would have been the side yards.

Mr. Gregory asked if he remember what the application was that he's saying made the initial determination.

Mr. Lenseth said the first building they did on the property was the pool, so it would have been that

because the special use permit was existing.

Mr. Gregory asked if he had another building permit for an extension or expansion, other than the swimming pool.

Mr. Lenseth said no.

Mr. Meisterich asked the one that the Board was there for.

Mr. Lenseth said the addition to the cottage was next, that under the current building department. Did not do any setbacks on the cottage, only the square footage. The addition was built closer to Baldwin Road.

Mr. Gregory asked when he built the addition did he not require a setback.

Mr. Lenseth said it was not brought up to him.

Mr. Meisterich said the interpretation at the time is it did not require a variance because it was side yard.

Mr. Gregory said no, it's a rear yard. So, the question is if that was the determination back then, then it still is a rear yard.

Mr. Lenseth said the addition was done 1½ year ago.

Chairman Fine said the designation did not change.

Mr. Gregory said the designation can't change.

Mr. Lenseth said it has since then, on this application.

Mr. Meisterich said before we go crazy trying to decide if it's all rear yard, with all the out buildings will it negate the need for variances for this project.

Mr. Gregory said yes, it would be a 10ft. setback.

Chairman Fine said what you're saying is that determination is based on the other buildings already in the rear and this one is similarly located.

Mr. Gregory said you get one shot, and you make a determination. Either the owner does it originally or at some point it's made that you can pick one lot line as a front lot line. You always have 2 sides lot lines, you never have 2 front lines, but you get to choose. Once you choose, if in fact this was done by virtue of the owner choice or by an action by a Board determining to be a rear yard, then it's always going to be a rear yard.

If we can determine that this thing was determined as rear yard when the other buildings was built, then this is now the rear yard as well.

The Board and the applicant further discussed the definitions of front yard, rear yards and side yards lot lines and looked at the survey.

Chairman Fine asked Mr. Landi if he had any questions about what was being discussed.

Mr. Landi looked at the survey of the property with the Board and discussed the different lot lines.

Mr. Gregory said you cannot make a valid interpretation of this in terms of whether it is a front yard or rear yard or side yard unless they see the records.

Mr. Lenseth asked what sort of records do you expect to find.

Mr. Gregory said the files from the building department that had to do with other structures that was built.

Mr. Lenseth said the file would show the CO that was issued, which means without a variance granted that they would be in conformity with the set standards.

Mr. Gregory said that's why they want to see those records.

Mary Sebolt came up to the podium, she owns the property across the street on Baldwin Road. She said wanted to seek clarification as to where the proposed bard is and what's the proposed use of this barn. It seems like you're going through determining what's a front yard and what's a rear yard.

Chairman Fine said it's not a determination as to where the barn is going, that's not changing. It's going by the driveway.

Ms. Sebolt said the determination of the location is going to be based upon whether or not you

agree.

Chairman Fine said they're not determining the location, he have it set where he wants it, we're just talking about what's a front yard and what's a rear yard, and see what variance would or would not be required if he put it in that location.

Mr. Fahey showed Ms. Seabolt the plans.

Chairman Fine said to make things clear as to what the Board is doing. There's different machinations the Board has to go through by law to make a determination and one of them is whether or not a variance is required, and if the interpretation shows us that what's a rear yard versus side yard, it's very possible where he's planning on putting the barn would not require any variances. That's the first determination we have to make.

The Board, Mr. Landi and the applicant discussed the locations of front yards, rear yards and the definitions.

Chairman Fine asked Special Counsel Mr. Buckley to look into the definitional section and the code, and see if they can come up with some kind of formula that's in there and then compare it to the records of this case.

Mr. Lenseth asked if he can make a request. Given the fact that this determination is still pending, can he move forward with the building department approval of the barn prior to official code interpretation by the Zoning Board, so once he gets directions from the Zoning Board a month from now, he can start construction.

Chairman Fine said he don't know if they can, they already issued a denial.

Mr. Meisterich told Mr. Lensieth that you don't want to build anything until you get the determination. Mr. Lenseth said he's not building; he's looking for approval on the plans because that has yet to be done.

Mr. Landi said he'll absolutely review the plans and if this is determined to be in favor, just issue the permit.

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

Recording Secretary, Glenda Daly
Meeting adjourned at 7:53pm
Happy Zoning!